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federal register

TUESDAY, JUNE 21, 1977

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1934

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Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
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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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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

PART 402—RAISIN CROP INSURANCE

RAISIN CROP INSURANCE

Revision of Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule wil revise the Raisin Crop Insurance Regulations for the 1976 and Succeeding Crop Years by restructuring the format of the regulations; by increasing reconditioning allowance for wet and dry processed raisins; by increasing the coverage for those raisins removed from the field; by clarifying the intent of the Corporation with respect to other insurance; by eliminating the provision whereby the Corporation and the insured agree to establish units; by placing the "Meaning of terms" section at the beginning of the regulations; and, by eliminating the "Application" portion of the regulations in order to utilize the Standard Application Form as is currently being used with other crops. The revised regulations are needed to correct the present regulations. The revisions will make the regulations more equitable and administratively effective.

EFFECTIVE DATE: June 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-3325).

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation is revising the Raisin Crop Insurance Regulations effective with the 1977 crop year. These regulations, which were published in the FEDERAL REGISTER on June 2, 1976 (41 FR 22252-22255), contain some elements which are being corrected in order to make them more equitable and more administratively effective. The specific revisions, as contained in the Raisin Crop Insurance Regulations for the 1977 and Succeeding Crop Years, as set forth below, are as follows:

(1) Increase the wash and dry reconditioning allowance from $45.00 to $55.00 to reflect more nearly the reconditioning costs in the market place. (2) Increase coverage $25.00 per ton for raisins removed from the field. This corrects an inequity which allows no differential between raisins removed from the field, and raisins remaining in the field, thus making no provision for this additional production expense. (3) Provides that if the insured purchases any other insurance before the raisins are placed on trays for drying, the Federal Crop Insurance contract will be voided for the current crop year for the unit(s) on which the private insurance was secured. Otherwise, such FCIC contract will continue. (4) The elimination of the provision whereby the insured and the Corporation agree to the establishing of units. Inasmuch as insurance is provided on the basis of separate units by variety, it is felt that the current provisions which permitted the establishment of units by prior agreement between the insured and the Corporation serves no useful purpose in the operation of the program and therefore has been eliminated. (5) The application portion of § 402.6 has been eliminated in favor of using the Standard Application Form as is currently being used with other crops. Such application form will be processed in the same manner and by the same method as standard applications, and (6) The "Meaning of Terms" section of the regulations will be placed at the beginning of the document to assist the reader in following the language.

The above revisions are not considered by the Corporation to be substantive, and do not adversely affect the policyholder. Notice of any changes must be given to the insured not later than June 15, 1977, in order to be effective for the 1977 crop year. It is, therefore, impossible to follow both the procedure for notice and public participation and the contractual obligations relative to giving notice of changes to current insureds by June 15, 1977. In view of this, the Corporation has found and determined that compliance with the procedure for notice and public participation would be impracticable and contrary to the public interest. Therefore, these revisions are being issued without compliance with such procedure.

RULE

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), as amended, 7 CFR Part 402, Raisin Crop Insurance Regulations, is amended to read as set forth below effective with the 1977 crop year and succeeding crop years until amended or superseded. The provisions of the Raisin Crop Insurance Regulations for the 1976 and Succeeding Crop Years shall remain in effect for the 1976 crop year.

Sec.

402.1 Availability of raisin crop insurance.
402.2 Premium rates and amounts of insurance.
402.3 Application for insurance.
402.4 Public notice of indemnities paid.
402.5 Creditors.
402.6 The policy.

AUTHORITY: Sections 506, 516, 52 Stat. 73 as amended, 77, as amended; (7 U.S.C. 1506, 1516).

§ 402.1 Availability of raisin crop insurance.

Raisin Crop Insurance shall be offered for the 1977 and Succeeding Crop Years under the provisions of §§ 402.1 through 402.6 in counties in California within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from a list of counties approved by the Board of Directors of the Corporation for raisin crop insurance. The counties designated by the Manager shall be published by appendix to this section.

§ 402.2 Premium rates and amounts of insurance.

(a) The Manager shall establish premium rates and amounts of insurance per ton which shall be shown on the actuarial table on file in the office for the county. Such premium rates and amounts of insurance may be changed from year to year.

(b) The following shall apply to the transfer of any premium reduction earned under the provisions of section 8 of the Policy set forth in § 402.6 if the insured is a partnership, corporation, or any other joint enterprise and there is no break in the continuity of participation. Upon dissolution of such enterprise, such premium reduction may be credited to the contract of any member or stockholder thereof if the Corporation determines such person is operating only land formerly operated by the dissolved enterprise. Upon formation of a joint enterprise, the smallest premium reduction (zero if none), which the Corporation determines would have been applicable to any insurable acreage brought into the enterprise if the enterprise had not been formed, may be credited to the joint enterprise contract.

§ 402.3 Application for insurance.

The application for insurance, on a form prescribed by the Corporation, shall be submitted at the office for the county for the Corporation on or before the July 31, of the first crop year for which insur-

ance is to be in effect, or such earlier day as may be established by the Corporation for any county in any year upon its determination that the insurance risk involved is excessive. The Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county by publishing a notice in the FEDERAL REGISTER, upon his determination that no adverse selectivity exists: *Provided, however,* That if adverse conditions should develop during such period the Corporation will immediately discontinue the acceptance of applications.

§ 402.4 Public notice of indemnities paid.

The Corporation shall provide for the posting annually in each county at the county courthouse of a listing of the indemnities paid in the county.

§ 402.5 Creditors.

An interest of a person other than the insured in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract other than as provided in the Policy set forth in § 402.6.

§ 402.6 The policy.

The provisions of the Policy for Raisin Crop Insurance for the 1977 and Succeeding Crop Years are as follows:

RAISIN POLICY

Subject to the regulations of the Federal Crop Insurance Corporation (herein called "Corporation") and in accordance with the terms and conditions set forth in this policy, the Corporation upon acceptance of a person's application does insure such person's raisin crop against unavoidable loss of production due to rainfall. No term or condition of the contract shall be waived or changed on behalf of the Corporation except in writing by a duly authorized representative of the Corporation.

TERMS AND CONDITIONS

1. *Meaning of terms.* For purposes of insurance on raisins the terms:

(a) "Actuarial table" means the forms and related materials approved by the Corporation which are on file for public inspection in the office for the county, and which show the applicable amounts of insurance, premium rates, and related information regarding raisin crop insurance in the county.

(b) "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right of way shall be considered contiguous.

(c) "Contract" means the application, this policy, and the actuarial table.

(d) "County" means the county shown on the application.

(e) "Crop year" means the calendar year in which the raisins are placed on trays for drying.

(f) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(g) "Person" or "Insured" means an individual, partnership, association, corporation, estate, trust, or other business enterprise, or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(h) "Raisin tonnage report" means the form prescribed by the Corporation for initially reporting and revising (if necessary) all of the insured's acreage, share and tonnage of raisins in the county.

(i) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured raisins as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share in the raisin crop shall be deemed to be insurable.

(j) "Tenant" means a person who rents land from another person for a share of the crop or proceeds therefrom.

(k) "Ton" means 2,000 pounds of raisins on the trays. When deemed appropriate, the Corporation may determine raisin tonnage computed on the basis of one ton of raisins insured for every four tons of fresh grapes when first placed on trays for drying.

(l) "Unit" as to each insured variety of raisins means all acreage in the county of that variety located on contiguous land, on the date insurance attaches for the crop year, (1) in which the insured has a 100 percent share; (2) which is owned by one person and operated by the insured as a tenant; or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land only shall be considered as owned by the lessee. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the raisin tonnage report, and has the right to consider any acreage, tonnage, and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Cause of loss.* (a) The insurance provided is against unavoidable loss resulting from rainfall on the raisins while in the vineyards, on trays or in rolls, for drying.

(b) The contract shall not cover any loss or damage due to (1) neglect or malfeasance of the insured, any member of the insured's household, tenants, or employees; (2) failure to follow recognized good raisin management practices; or (3) any cause not specified as an insured cause in this policy.

3. *Raisins insured.* The raisins insured are all of the varieties (a) Thompson seedless, (b) Muscats, (c) Monukkas, and (d) Sultanas produced by the insured on the unit: *Provided,* That insurance shall not attach in any crop year to raisins which are first placed on trays after September 20 for those raisins drying in east/west rows, or an earlier date if specified on the actuarial table for those raisins drying in north/south rows, as determined by the Corporation.

4. *Life of contract and contract changes.* (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel insurance for any crop year by giving written notice to the other by the June 30 immediately preceding such crop year. In the absence of such notice to cancel, and subject to the provisions of subsection (b), (c), and (d) of this section, the contract shall continue in force for each succeeding crop year.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; however, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

(c) If the premium for any crop year is not paid by the July 31 following the calendar year in which the insurance period begins, the contract shall terminate for the succeeding crop year: *Provided,* That the date of payment for a premium (1) deducted from a loss claim shall be the date the insured signs such claim, or (2) deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(d) The contract shall terminate if no premium is earned for three consecutive years.

(e) The Corporation reserves the right to change the terms and conditions of the contract from year to year. Notice thereof shall be mailed to the insured or placed on file and made available for public inspection at the office for the county by the June 15 immediately preceding the crop year for which such changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in subsection (a) of this section.

(f) For any crop year, the insured may with the consent of the Corporation change the amount of insurance per ton which was previously elected by notifying the Corporation in writing not later than the closing date for filing applications for such crop year.

5. *Responsibility of insured to report tonnage, acreage, and share data.* The insured at the time of filing the application shall also file on a form prescribed by the Corporation, a report showing by variety (1) the name of the variety, (2) the location of the vineyard(s), (3) acreage, (4) estimated tonnage of insurable raisins to be produced, and (5) the insured's share. Such information may be revised by the insured by giving notice in writing to the office for the county not later than August 25 of any crop year. *Provided, however,* That downward revisions of estimated tonnage after August 25 of any crop year for premium adjustment purposes for any unit may be allowed if requested by the March 31 immediately following the crop year involved and substantiated by records satisfactory to the Corporation. When an annual premium is recomputed on the basis of a downward revision made after August 25 of any crop year, such recomputed premium shall be increased $10. The latest acceptable revision for any crop year shall be considered as the basis for continuation of insurance from year to year.

6. *Insurance period.* For each crop year, insurance attaches at the time the raisins are placed on trays for drying, as provided in section 3 above, and ceases upon the earlier of October 25, or the date the raisins are boxed or removed from the vineyard.

7. *Amount of insurance.* The amount of insurance for any unit for the crop year shall be determined by multiplying the insured tonnage of raisins times the applicable amount of insurance per ton times the insured's share. The insured tonnage and share for each crop year shall be that reported by the insured or as determined by the Corporation, whichever the Corporation shall elect.

8. *Annual premium.* (a) The annual premium for each unit is earned and payable at the time insurance attaches and shall be determined by multiplying the insured tonnage times the applicable premium rate times the insured's share at the time insurance attaches and, where applicable, applying the premium reduction or adjustment

herein provided and adding thereto any increase provided in section 5 above.

(b) In counties where the actuarial table does not provide for adjustments in premium, the total annual premium on all insurance units shall be reduced as follows after consecutive years of insurance without a loss for which an indemnity was paid on any unit hereunder (eliminating any year in which a premium was not earned): 5 percent after five years; 7 percent after six years; 9 percent after seven years; 11 percent after eight years; 13 percent after nine years; 15 percent after ten years; 17 percent after eleven years; 19 percent after twelve years; 21 percent after thirteen years; 23 percent after fourteen years; and 25 percent after fifteen or more years. However, if the insured has a loss for which an indemnity is paid hereunder the number of such consecutive years of insurance without a loss shall be reduced by five years, except that where the insured has fifteen or more such years, a reduction to ten shall be made and where the insured has five or less such years, a reduction to zero shall be made. *Provided*, That, if at any time, the cumulative indemnities paid hereunder exceed the cumulative premiums earned hereunder from the start of the insuring experience through the previous crop year, the premium reductions in this subsection shall not thereafter apply until such cumulative premiums equal or exceed such cumulative indemnities.

(c) In counties where the actuarial table provides for adjustments in premium, the provisions of subsection (b) of this section shall not apply.

(d) If there is no break in the continuity of participation, any premium reduction or adjustment applicable under subsection (b) or (c) of this section shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured; (2) the contract of the person who succeeds the insured as the insured's transferee in operating only the same vineyard or vineyards, if the Corporation finds that such transferee had previously actively participated in the vineyard operation involved; or (3) the contract of the same insured who stops operating a vineyard in one county and starts operating a vineyard in another county.

(e) If there is a break in the continuity of participation, subsection (b) of this section, or any reduction in premium earned under subsection (c) of this section shall not thereafter apply.

9. *Notice of damage.* The insured shall give notice to the office for the county immediately after each damage to the raisins from rainfall becomes apparent giving the date(s) of such damage. If not so reported within seven days, the Corporation reserves the right to reject any claim resulting from such damage on the unit if it determines that it has been prejudiced by such failure to report.

10. *Claim for loss.* (a) Any claim for loss for any unit shall be submitted to the Corporation on a form prescribed by the Corporation within 30 days after the total destruction of the raisins in the vineyards or after required records are available to the insured; but, in no event later than the March 31 immediately following the normal harvesting period for the crop year. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision.

(b) Losses shall be adjusted separately for each unit. The amount of loss with respect to any unit shall be determined by multiplying the insured tonnage of raisins times the applicable amount of insurance per ton times the insured share in the raisins and deducting from such product the insured share in the value, as determined by the Corporation, of the damaged and undamaged raisins produced on the unit: *Provided*, That the share insured shall be the share of the insured at the time damage becomes apparent as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect.

(c) Undamaged raisins or raisins damaged solely by uninsured causes shall be valued at the market value or the amount of insurance, whichever is higher.

(d) Raisins damaged partially by rainfall and partially by uninsured causes shall be valued at the highest prices obtainable, subject to an adjustment for any reduction in value due to uninsured causes.

(e) Raisins damaged by rainfall, but which are reconditioned and can be marketed as undamaged raisins, shall be valued at the market price or the amount of insurance, whichever is higher, except that the cost of reconditioning shall be deducted from such value. The maximum allowance for any one reconditioning as a result of rainfall shall be $35 per ton for a dry reconditioning and $55 per ton for a wash and dry reconditioning; but, such reconditioning allowance, or the aggregate thereof, shall not exceed the value of the raisins after reconditioning as determined by the Corporation.

(f) The Corporation shall have the right to require the insured to recondition representative samples of raisins damaged by rainfall to determine whether or not they may be marketed as undamaged raisins. On the basis of determinations made by the Corporation from representative samples, the Corporation shall have the right to require the insured to recondition all such raisins or to recondition no more than the representative samples. If the reconditioned raisins of the representative samples cannot be marketed as undamaged raisins, the cost of reconditioning such samples shall be deducted from the total value of the raisins for the unit.

(g) In determining the value of raisins produced on the unit, a minimum value of $25.00 per ton shall be counted for any raisins not removed from the vineyard as determined by the Corporation.

(h) Notwithstanding any other provision hereof, the Corporation shall have the right to acquire all of the right, title, and share of the insured in any raisins damaged by rainfall. In such event, the raisins shall be valued at zero in determining the amount of loss. The Corporation's representatives and employees shall have the right to ingress and egress on the insured's farm to the extent necessary to take possession of, care for, and remove such raisins from the farm.

(i) If the insured fails to report all of the tonnage or all of the insurable share of raisins for the unit, the Corporation may elect to determine the amount of loss with respect to all of the insurable tonnage and share on either a tonnage or premium ratio basis, and reduce the amount of loss proportionately.

(j) If the tonnage of raisins reported by the insured is greater than the tonnage determined by the Corporation, or if the Corporation determines that the share of the insured is less than reported, the indemnity shall be computed on the basis of the tonnage and share determined by the Corporation, and the resulting decrease in premium refunded to the insured without charge for revision.

(k) It shall be a condition precedent to payment of any claim that the insured furnish any information required by the Corporation regarding the production, weight and handling of the insured raisins and the manner and extent of loss, including authorizing the Corporation to examine and obtain any records pertaining to the production and/or marketing of the insured raisins under this contract from the raisin packer, raisin reconditioner, and /or the Raisin Administrative Committee established under orders issued by the U.S. Department of Agriculture. If the production from a unit is commingled with the production from any other acreage and the insured fails to keep separate records satisfactory to the Corporation, the Corporation may (1) allocate the commingled production as it deems appropriate, or (2) reject the claim for the unit without affecting the insured's liability for the premium.

(l) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

11. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for loss is approved by the Corporation. However, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

12. *Other insurance.* If the insured in any crop year obtains any other insurance on any unit(s) against rainfall damage or loss while the raisins are on the trays for drying, this contract shall be voided for the current crop year on such unit(s) if such other insurance is obtained before insurance attaches under this contract.

13. *Misrepresentation and fraud.* The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right or remedy including the right to collect any unpaid premiums if at anytime, either before or after any loss, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

14. *Collateral assignment.* Upon submission and approval of forms prescribed by the Corporation, the insured may assign the right to an indemnity for any crop year and the assignee shall have the right to submit the loss notices and forms as required by the contract.

15. *Transfer of insured share.* If the insured transfers all or any part of the insured share in any crop year, the Corporation will, upon submission and approval of forms prescribed by the Corporation, continue to provide protection according to the provisions of the policy to the transferee for such crop year with respect to the transferred share and the transferee shall have the same rights

and responsibilities under the contract as the transferor for the current crop year.

16. *Subrogation.* The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made and shall execute all papers required and take appropriate action to secure such rights.

17. *Records and access to farm.* The insured shall keep or cause to be kept for two years after the time of loss, separate records of the production, storage, shipments, sale or other disposition of all insured raisins produced on each unit. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

18. *Forms.* Copies of forms referred to in the contract are available at the office for the county.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516.)

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

NOTE.—The Federal Crop Insurance Corporation 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.

JAMES D. DEAL,
Manager, Federal Crop Insurance Corporation.

[FR Doc.77-17605 Filed 6-20-77;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER E—VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS; ORGANISMS AND VECTORS

PART 105—SUSPENSION OF BIOLOGICS LICENSES OR PERMITS

Miscellaneous Amendments

AGENCY: Animal and Plant Health Inspection Service (APHIS).

ACTION: Final rule.

SUMMARY: This amendment will delete a reference to "special license" in Part 105. Special licenses are no longer issued, and when they were discontinued, an effort was made to eliminate all references to them. This amendment will correct an oversight made at that time.

EFFECTIVE DATE: This amendment becomes effective June 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price (301-436-8245).

SUPPLEMENTARY INFORMATION: On October 8, 1976, there was published in the FEDERAL REGISTER (41 FR 44358) a promulgation of final regulations relating to licenses for biological products. Issuance of special licenses was discontinued at that time and known references to special licenses were deleted from the regulations.

A reference to special license appearing in § 105.2 of the current regulations was overlooked at that time. This amendment correct that oversight.

Part 105 is amended by revising § 105.2 to read:

§ 105.2 Notification of infractions.

If an infraction of a requirement of a product license is brought to the attention of the licensee by written notification thereof by Veterinary Services, a subsequent violation of similar nature occurring with the same licensed biological product within 6 months of the said written notification shall be primafacie evidence of willful violation and the license for the product shall be subject to suspension or revocation under the provisions of § 105.1(b).

(21 U.S.C. 151 and 154; 37 FR 28477, 28846; 38 FR 19141.)

This amendment makes administrative changes to correct an oversight without making other substantive changes in the regulations. In order for them to be of maximum benefit, they must be made effective immediately.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure concerning this amendment are impracticable and unnecessary, and good cause is found for making this amendment effective less than 30 days after publication in the FEDERAL REGISTER.

The foregoing amendment shall become effective upon issuance.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., this 13th day of June, 1977.

PIERRE A. CHALOUX,
Acting Deputy Administrator, Veterinary Services.

[FR Doc.77-17503 Filed 6-20-77;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0081, FC-0082]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretations of Regulation Z, issued by a duly authorized official of the Division of Consumer Affairs.

EFFECTIVE DATE: June 17, 1977.

FOR FURTHER INFORMATION CONTACT:

D. Edwin Schmelzer, Chief, Fair Credit Practices Section, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412).

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index provding identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

(2) Official staff interpretations may be reconsidered upon request of interested parties and in accordance with 12 CFR Part 226.1(d)(2). Every request for reconsideration should clearly identify the number of the official staff interpretation in question, and should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

(3) 15 U.S.C. 1640(f).

12 CFR Part 226, FC-0081

§ 226.6(a) Disclosure format which lists various options with regard to repayment and security interests and which has blanks preceding each option which are to be checked prior to execution of note is permissible under Regulation Z.

JUNE 3, 1977.

This is in response to your letter of * * *, requesting an official staff interpretation with regard to the development of a consumer loan form. It is staff's opinion that an official staff interpretation is appropriate in response to only one of the questions you posed. Your remaining questions will be dealt with in an unofficial staff interpretation which will be sent to you separately.

Your client is attempting to design a form to accommodate most consumer loans. Therefore, it contains various optional disclosures of certain of the terms. Prior to execution of the consumer note, the provisions applicable to the specific transaction involved would be indicated by a checkmark.

This letter will respond to your first question which deals with the required repayment schedule and the security interest disclosures. You state that various options for repayment are listed with blanks preceding each alternative payment schedule option. The note also details possible options (with blanks preceding each option) with regard to the security interest disclosure requirement of § 226.8(a)(5), such as whether the note is secured or unsecured. Blanks are also provided preceding the options available to indicate the nature of the security interest, if the particular transaction is secured. The applicable repayment schedule and security interest blanks are to be checked prior to execution of the note. You ask whether it is permissible, consistent with the requirements of §§ 226.6(a), 226.8(b)(3), and 226.8(a)(5), to make disclosures using such a method.

Staff believes that such a format is permissible under Regulation Z. This statement is not intended as an approval or disapproval of the content of the repayment schedule or security interest disclosures contained in the form attached to your letter, nor is it an indication of whether or not such disclosures are clear, conspicuous, and in meaningful sequence. Such a determination is dependent upon the manner in which such disclosures are integrated into the disclosure statement as a whole.

This is an official staff interpretation of Regulation Z issued pursuant to § 226.1(d)(3) of the regulation and limited in its application to the facts outlined above. I trust that it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

12 CFR Part 226, FC-0082

§ 226.15(b) Disclosure of formula for determining amount owed by lessee at early termination is permissible, so long as amount resulting from application of formula is not labelled "estimated value" of vehicle.

Itemized "total lease obligation" consists of nonrefundable cash payments made at consummation, portion of scheduled periodic payments attributable to rent (excluding maintenance and insurance charges), and estimated value of property at end of term.

§ 226.15(b)(15) Rebuttable presumption and limitations on lessee's liability concerning value of property do not apply to value of property and lessee's liability at early termination.

JUNE 3, 1977.

This is in response to your letter of * * *, in which you raised several questions concerning the Consumer Leasing Act and the amendments to Regulation Z which implement it.

Your client engages in vehicle leasing, usually with lease terms of 36 or 48 months. After the first six months of the lease term, your client would like to give the lessee the right to terminate the lease on prior written notice. Your client further wants the right to terminate the lease upon failure by the lessee to pay the monthly rental charge or upon other breach of the terms or conditions of the lease. If either the lessee or the lessor exercises its right to terminate the lease prior to the end of the full term, it is your client's desire that the lessee be responsible for paying the difference between the "estimated value" of the vehicle at the time of termination and the realized value of the vehicle upon its subsequent sale. You state that while it is possible for your client to estimate the value of the vehicle at the end of the lease term, it is impossible to estimate its value for any period prior to this point since it is unknown when a breach will occur or when a lessee will exercise its right to early termination.

You propose the use of a formula to determine the "estimated value" of the vehicle at early termination by the lessee or by the lessor. The use of this formula will determine a "monthly depreciation reserve" by subtracting the estimated value of the vehicle at the end of the lease term from the value of the vehicle at consummation and dividing the remainder by the number of months in the lease term. For example, if the value of the vehicle at consummation is $5,600, and it is estimated that the value of the vehicle at the end of a 36-month lease term will be $2,000, the estimated depreciation of the vehicle over the lease term is $3,600. The monthly depreciation reserve would be $100, calculated by dividing $3,600 by 36 months. Thus, if one assumes that the lease is terminated after 12 months by either the lessor or lessee, the "estimated value" of the vehicle on that date would be calculated by multiplying the monthly depreciation reserve ($100) times the number of months of the term which have expired (12) and subtracting that figure ($1,200) from the value of the vehicle at consummation ($5,600). The lessee will then be responsible for paying the difference between that amount ($4,400) and the realized value of the vehicle. The lessee will also be responsible for any delinquent lease payments to that date.

On the basis of the facts set forth above, you ask the following questions:

1. Does disclosure of the above formula for determining the amount owing by the lessee upon early termination of the lease by either the lessee or the lessor comply with § 226.15(b)(12) of Regulation Z, which requires disclosure of, inter alia, "the amount or method of determining the amount of any penalty or other charge for early termination?"

It is the staff's opinion that disclosure of the formula described above as the method of determining the amount owing by the lessee at early termination by either party is permissible under § 226.15(b)(12). The monthly depreciation reserve figure merely reflects what straight line depreciation would be on a monthly basis over the lease term. It is staff's understanding that motor vehicles do not depreciate on a straight line basis; typically, a vehicle will have depreciated at the end of three months in excess of $300 (using the example set forth in this letter) since vehicles depreciate at an accelerated rate at the beginning of their useful life. Thus, the use of a straight line monthly depreciation reserve in calculations which arrive at an "estimated value" of the vehicle over the term will not actually approximate the value of the vehicle, particularly during the first portion of the lease term. Therefore, the staff wishes to add a caution that labelling the amount resulting from the application of the proposed formula as the "estimated value" of the vehicle may not comply with § 226.6(f) of Regulation Z, which permits estimates of required information when that information is unknown or unavailable to the lessor, but only when the estimate is reasonable and based upon the best information available to the lessor.

2. What is the precise meaning of the term "itemized total lease obligation" as it is required to be disclosed under § 226.15(b)(15)(i)? Are the actual amounts which are to be disclosed to the lessee as the total lease obligation equal to the amounts disclosed under § 226.15(b)(2) through § 226.15(b)(5)?

It is the staff's opinion that the definition of "total lease obligation" in § 226.2(rr) of the regulation is the itemized total lease obligation which should be disclosed under § 226.15(b)(15)(i). Section 226.2(rr) defines "total lease obligation" as "the total of (1) the scheduled periodic payments under the lease, (2) any nonrefundable cash payment required of the lessee or agreed upon by the lessor and the lessee or any trade-in allowance made at consummation, and (3) the estimated value of the leased property at the end of the lease term."

The disclosure would include those portions of the § 226.15(b)(2) disclosure which are nonrefundable cash payments required of or agreed upon by the lessee (including any trade-in allowance), the total amount of periodic payments disclosed under § 226.15(b)(3), and the estimated value of the leased property at the end of the lease term. The Board has stated that, for purposes of the definition of "total lease obligation" and the calculations of which it is an element, the "term 'scheduled periodic payments under the lease' includes that portion of the payments attributable to depreciation, cost of money, lessor's profit and taxes, but excludes, in leases where such charges are included in the periodic payments, charges for maintenance and insurance." 41 FR 45537, Friday, October 15, 1976. The itemized total lease obligation should not include any items disclosed under § 226.15(b)(4) and (5) or any refundable security deposit disclosed under § 226.15(b)(2).

3. Does § 226.15(b)(15)(ii), which establishes a rebuttable presumption that the estimated value of the leased property at the end of the term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average monthly payment, and precludes the lessor from collecting the amount of excess liability from the lessee without court action in which the lessor pays the lessee's attorney's fees, apply to early termination of the lease by the lessor or lessee?

It is the staff's opinion that § 226.15(b)(15)(ii) applies only to the calculations based on the estimated value of the leased property at the end of the lease term and is inapplicable to early termination of the lease. The subparagraph applies only to the "estimated value of the leased property at the end of the lease term" and does not mention the value of the property at early termination.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation and limited to the facts outlined herein. I trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Board of Governors of the Federal Reserve System, June 14, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-17580 Filed 6-20-77;8:45 am]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1025—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Interim Rules of Practice for Adjudicative Proceedings Under Consumer Product Safety Act and Flammable Fabrics Act

AGENCY: Consumer Product Safety Commission.

ACTION: Interim rules on which comment is solicited.

SUMMARY: This document contains Rules of Practice for Adjudicative Proceedings under the Consumer Product Safety Act and the Flammable Fabrics Act. These rules are a revision of the adjudicative rules of practice the Commission first proposed on July 23, 1974 (39 FR 26848). These revisions were made in light of the comments on the July 23, 1974 proposal and experience gained by the Commission Staff in using the July 23, 1974 proposal. These rules are being issued as interim rules with an opportunity for public comment before adoption of final rules.

DATE: These rules will be effective, on an interim basis, on June 21, 1977. Comments concerning the rules should be received by July 21, 1977.

ADDRESS: Comments should be sent to: Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, N.W., Third Floor, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Winston M. Haythe, Bureau of Compliance, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207, (301) 492-6632.

SUPPLEMENTARY INFORMATION: In this notice, the Consumer Product Safety Commission issues as interim

rules, and solicits comments on, rules of practice for adjudicative proceedings under the Consumer Product Safety Act and the Flammable Fabrics Act. Until final rules of practice are issued, these interim rules will serve as rules of practice for adjudicative proceedings before the Commission and supersede the rules of practice that were proposed by the Commission on July 23, 1974 (39 FR 26848), and which served as interim rules.

Although notice and comment are not required for rules of agency procedure or practice (5 U.S.C. 553(b)), the Commission has decided to solicit public comment on these rules. Comments will be received on or before July 21, 1977.

These rules apply to adjudicative proceedings under sections 15, 17 and 20 of the Consumer Product Safety Act (15 U.S.C. 2064, 2066, 2069) and sections 3 and 8(b) of the Flammable Fabrics Act (15 U.S.C. 1092, 1097(b)). The Federal Trade Commission rules of practice (16 CFR Parts 2 through 4) will continue to apply to adjudicative proceedings which were instituted prior to July 23, 1974 and consent agreements which were negotiated under the Flammable Fabrics Act prior to July 23, 1974. As to any adjudicative proceedings or negotiations or consent agreements under the Flammable Fabrics Act or the Consumer Product Safety Act instituted by the Commission on or after July 23, 1974 but before June 21, 1977, the rules of practice for adjudicative proceedings, published by the Commission on July 23, 1974 (39 FR 26848) as proposed and interim rules will continue to apply. However, as to any adjudicative proceedings or negotiations of consent agreements under the Flammable Fabrics Act or the Consumer Product Safety Act instituted by the Commission hereafter, these interim rules will apply. These rules will also be applicable to certain cases commenced within the last 60 days and in which the Commission has given the parties actual notice of the applicability of such rules together with copies thereof.

Published elsewhere in this issue of the FEDERAL REGISTER, are interim Commission Rules of Practice for Expedited Proceedings under the Consumer Product Safety Act (16 CFR Part 1026). The Commission is also soliciting comment on those rules. Those rules will be applicable to civil penalty proceedings arising under section 20 of the Consumer Product Safety Act, (15 U.S.C. 2069). The Commission will also apply those rules to other cases on an individual basis after public notice. Those rules specifically incorporate various provisions of these rules of practice. It should be noted, however, that certain proceedings brought under section 20 of the Consumer Product Safety Act, when joined with adjudicative proceedings commenced under other provisions of the Consumer Product Safety Act or the Flammable Fabrics Act, will be governed solely by these rules.

All existing rules and regulations issued by the Federal Trade Commission applicable to adjudicative proceedings under the Flammable Fabrics Act pursuant to section 30(e)(2) of the Consumer Product Safety Act (15 U.S.C. 2079 (e)(2)) are superseded by these interim rules. Also superseded are the existing Proposed and Interim Rules of Practice for Adjudicative Proceedings published by the Consumer Product Safety Commission on July 23, 1974, except as made applicable herein to pending matters.

The Commission received comments to the proposed and interim rules published on July 23, 1974 from a total of eleven commenters. Seven of the commenters addressed themselves to the originally proposed rules on intervention (§ 1025.33 (39 FR 26851)). Industry representatives generally stated that the proposed rule on intervention, which was drafted to reflect the policy of the Commission to allow intervention in adjudicative proceedings to the greatest extent possible, was too broadly worded, while consumer advocates generally argued that the proposed rule on intervention was too restrictive. The interim rule on intervention has been redrafted so as to continue the Commission's broad policy of allowing various competing interests, including industry and consumer representatives, to intervene with full litigating rights. The new rule sets out specific criteria for the presiding officer to consider when ruling on intervention requests. In addition to allowing for intervention, the new rule allows a status of participation short of intervention. This provision is designed for those who may wish to present views through briefs and/or oral argument but who do not desire to undertake the involvement of a full intervenor.

Another major area of concern raised by the comments was the discovery rules. It was suggested that the Commission attempt to conform its discovery procedures to the Federal Rules of Civil Procedure because of the familiarity of practitioners with the Federal Rules and the availability of settled interpretations. The Commission believes this to be a prudent course and has endeavored to draft the new discovery procedures using the Federal Rules as a model. Similarly, in an effort to achieve uniformity the new rules incorporate the Federal Rules of Evidence with a caveat to allow the presiding officer to relax such rules if the ends of justice would be better served in so doing.

Industry commenters were in many instances concerned that the rules did not provide adequate protection for trade secrets which might be discoverable and/or placed in evidence during some proceedings. The Commission has sought to cure any potential uncertainty in this area by including a new provision for protective orders and strengthening the rule for in camera materials. Finally, the Commission has considered and where appropriate has adopted various technical and language changes suggested by the commenters.

These interim rules constitute a complete overhaul of the originally proposed rules with numerous changes and revisions throughout. Some of the more important changes include the incorporation of a definition section; modified provisions for the commencement of a proceeding and the service of documents; and the rule governing issuance of subpoenas. Some entirely new provisions relating to class actions (§ 1025.18), related proceedings (§ 1025.59); expert witnesses (§ 1025.44), and specific provisions governing prohibited communications (§ 1025.68).

The above discussion of changes and additions in these rules from the rules proposed by the Commission on July 23, 1974 is not intended to be, and should not be, construed as exhaustive. Very few provisions, if any, are being reissued verbatim as originally proposed on July 23, 1974.

The Commission concludes that the public should be invited to comment on the rules and that these interim rules should serve as interim rules of practice for applicable adjudicative proceedings. Because these are rules of agency procedure a delayed effective date is not required by the Administrative Procedure Act, 5 U.S.C. 553(d). However, even if that provision were applicable the Commission finds that it is necessary to have these rules effective upon publication in the FEDERAL REGISTER for the orderly conduct of Commission business.

Accordingly, under the provisions of the Consumer Product Safety Act (sections 15, 17 and 20, Pub. L. 92–573, 86 Stat. 1221, 1223 and 1226; 15 U.S.C. 2064, 2066, 2069) and the Flammable Fabrics Act (sec. 5, Pub. L. 90–189, 81 Stat. 570; 15 U.S.C. 1194), the Consumer Product Safety Commission issues on an interim basis 16 CFR Part 1025 as follows:

Subpart A—Scope of Rules—Nature of Adjudicative Proceedings—Definitions.

Sec.

1025.1 Scope of the Rules.
1025.2 Nature of Adjudicative Proceedings.
1025.3 Definitions.

Subpart B—Pleadings, Form, Execution, Service of Documents

1025.11 Commencement of Proceedings.
1025.12 Answer.
1025.13 Amendments and Supplemental Pleadings.
1025.14 Form and Filing of Documents.
1025.15 Time.
1025.16 Service.
1025.17 Intervention.
1025.18 Class Actions.
1025.19 Joinder of Proceedings.

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals, Summary Judgment; Settlement

1025.21 Prehearing Conferences.
1025.22 Prehearing Briefs.
1025.23 Motions.
1025.24 Interlocutory Appeals.
1025.25 Summary Decision and Order.
1025.26 Settlements.

Subpart D—Discovery; Compulsory Process

1025.31 General Provisions Governing Discovery.
1025.32 Written Interrogatories to Parties.
1025.33 Production of Documents and Things.
1025.34 Requests for Admission.
1025.35 Depositions Upon Oral Examination.
1025.36 Motions to Compel Discovery.
1025.37 Consequences of Failure to Comply with Discovery Orders.
1025.38 Subpoenas.
1025.39 Orders Requiring Witnesses to Testify or Provide Other Information and Granting Immunity.

Subpart E—Hearings

Sec.
1025.41 General Rules.
1025.42 Powers and Duties of Presiding Officer.
1025.43 Evidence.
1025.44 Expert Witnesses.
1025.45 In Camera Materials.
1025.46 Proposed Findings; Conclusions and Order.
1025.47 Record.
1025.48 Official Docket.
1025.49 Fees.

Subpart F—Decision

1025.51 Initial Decision.
1025.52 Adoption of Initial Decision.
1025.53 Appeal from Initial Decision.
1025.54 Review of Initial Decision in Absence of Appeal.
1025.55 Decision on Appeal or Review.
1025.56 Reconsideration.
1025.57 Effective Date of Order.
1025.58 Reopening of Proceedings.
1025.59 Related Proceedings.

Subpart G—Appearances; Standards of Conduct

1025.61 Who May Make Appearances.
1025.62 Authority for Representation.
1025.63 Written Appearances.
1025.64 Attorneys.
1025.65 Persons Not Attorneys.
1025.66 Qualifications and Standards of Conduct.
1025.67 Restrictions as to Former Members and Employees.
1025.68 Prohibited Communications.

AUTHORITY: Sec. 15, 17, and 20, Pub. L. 92-573, 86 Stat. 1221, 1223 and 1226; 15 U.S.C. 2064, 2066, 2069; Sec. 5, Pub. L. 90-189, 81 Stat. 570; 15 U.S.C. 1194.

Subpart A—Scope of Rules—Nature of Adjudicative Proceedings—Definitions

§ 1025.1 Scope of the rules.

The rules in this part govern procedure in adjudicative proceedings relating to the provisions of sections 15 (c), (d) and (f) and 17(b) of the Consumer Product Safety Act (15 U.S.C. 2064 (c), (d) and (f); 2066(b)), and sections 3 and 8(b) of the Flammable Fabrics Act (15 U.S.C. 1192, 1197(b)), which are required by statute to be determined on the record after opportunitiy for a public hearing.

§ 1025.2 Nature of adjudicative proceedings.

Adjudicative proceedings shall be conducted in accordance with Title 5, United States Code, sections 551 through 559 and these Rules. It is the policy of the Commission that adjudicative proceedings shall be conducted expeditiously and with due regard to the rights and interests of all persons affected and in locations chosen with due regard to the convenience of all parties. Therefore, the Presiding Officer and all parties shall make every effort at each stage of a proceeding to avoid unnecessary delay.

§ 1025.3 Definitions.

As used in this part:

(a) The term "application" means an ex parte request by a party for an order that may be granted or denied without opportunity for response by any other party.

(b) The term "Commission" means the Consumer Product Safety Commission or a quorum thereof.

(c) The term "Commissioner" means a Commissioner of the Consumer Product Safety Commission.

(d) The term "Complaint Counsel" means counsel for the Commission staff.

(e) The term "motion" means a request by a party for a ruling or order that may be granted or denied only after opportunity for response by each party.

(f) The term "party" means any person named or any intervenor in a proceeding governed by the Rules in this Part.

(g) The term "person" means any individual, partnership, corporation, association, public or private organization, a federal, state or municipal governmental entity.

(h) The term "petition" means a written request, made by a person or a party and addressed to the Commission or the Presiding Officer, that the addressee take some affirmative action.

(i) The term "Presiding Officer" means the person who conducts an adjudicative hearing under this Part, and may include a duly designated member or members of the Commission, or an administrative law judge qualified under Title 5, United States Code, Section 3105 and assigned by the Chief Administrative Law Judge of the Commission.

(j) The term "Respondent" means any person against whom a complaint has been issued.

(k) The term "Secretary" means the Secretary of the Consumer Product Safety Commission.

(l) The term "staff" means the staff of the Consumer Product Safety Commission.

Subpart B—Pleadings; Form; Execution; Service of Documents

§ 1025.11 Commencement of proceedings.

(a) *Notice of Institution of an enforcement proceeding.* An adjudicative proceeding under this Part is commenced by the issuance of a complaint by the Commission.

(b) *Form and content of complaint.* The complaint shall be signed by the Secretary under seal of the Commission, and shall contain the following:

(1) Recital of the legal authority for instituting the proceeding, with specific designation of the statutory provisions involved in each allegation.

(2) Identification of each respondent or class of respondents.

(3) A clear and concise statement of the charges, sufficient to inform each respondent with reasonable definiteness of the factual basis of the allegations of violation and/or hazard. A list and summary of documentary evidence supporting the charges shall be attached.

(4) A statement of the relief which the staff believes is in the public interest.

(c) *Accompaniment to complaint.* Documents and/or portions of documents which accompanied the staff's recommendation as to whether a complaint should issue and which are obtainable under the Freedom of Information Act, 5 U.S.C. 552.

(d) *Notice to the public.* Once issued, the complaint shall be immediately submitted to the FEDERAL REGISTER for publication.

§ 1025.12 Answer.

(a) *Time for filing.* A respondent shall have twenty (20 days after service of a complaint within which to file an answer.

(b) *Content of answer.* An answer shall conform to the following:

(1) *Contested allegations.* An answer in which the allegations of a complaint are contested shall contain:

(i) Specific admission or denial of each allegation in the complaint. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, respondent shall so state. Such a statement shall have the effect of a denial. Denials shall fairly meet the substance of the allegations denied. Allegations not thus answered shall be deemed to have been admitted.

(ii) A concise statement of the factual and/or legal defenses to each allegation of the complaint.

(2) *Admitted allegations.* If the respondent admits or fails to deny any factual allegations, he or she shall be deemed to have waived a hearing as to such allegation.

(c) *Default.* Failure of the respondent to file an answer within the time provided, unless extended, shall be deemed to constitute a waiver of the right to appear and contest the allegations set forth in the complaint and to authorize the Presiding Officer to make such findings of fact, conclusions of law, and Initial Decision which are just and reasonable under the circumstances.

§ 1025.13 Amendments and supplemental pleadings.

Whenever determination of a controversy on the merits will be facilitated thereby, the Presiding Officer may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceeding or cause undue delay.

§ 1025.14 Form and filing of documents.

(a) *Filing.* Except as otherwise provided, all documents submitted to the Commission or a Presiding Officer shall be addressed to and filed with the Secretary. Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.

(b) *Caption.* Every document shall contain a caption setting forth the name of the action in connection with which it is filed, the docket number, and the title of the document.

(c) *Copies.* An original and nine (9) copies of all documents shall be filed. Documents may be reproduced by printing or any other process, provided that all copies filed are clear and legible.

(d) *Signature.* (1) The original of each document filed shall be signed by a representative of record for the party; or in the case of parties not represented, by the party; or by a partner, officer or regular employee of any corporation,

partnership, or association, who files an appearance on behalf of the party.

(2) The act of signing a document constitutes a representation by the signer that the signer has read it; that to the best of the signer's knowledge, information and belief, the statements made in it are true; and that it is not filed for delay.

(e) *Form.* (1) All documents shall be dated and shall contain the address and telephone number of the signatory.

(2) If printed, documents shall be on opaque, unglazed paper not more than seven (7) inches by ten (10) inches, nor less than six and one-eight (6⅛) inches by nine and one-quarter (9¼) inches.

(3) If typewritten, the impression shall be on only one side of the paper and shall be double spaced, except that quotations of more than three lines shall be single spaced and indented. The documents shall be on paper not less than eight (8) inches nor more than eight and one-half (8½) inches by not less than ten and one-half (10½) inches nor more than eleven (11) inches.

(4) The type size for both printed and typewritten documents shall not be less than standard elite or twelve (12) point type. The type shall be clear and adequately leaded.

(5) All documents shall be fastened at the top left corner. The left margin of each page shall be at least one and one-half (1½) inches and the right margin at least one (1) inch.

§ 1025.15 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Rule, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a document and the document is served by mail, three (3) days shall be added to the prescribed period.

(c) *Extensions.* For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed by these Rules or by order of the Commission or the Presiding Officer, except those governing the filing of interlocutory appeals and appeals from Initial Decisions and those expressly requiring Commission action. Except as otherwise provided by law, the Commission, for good cause shown, may extend any time limit prescribed by these Rules or by order of the Commission or the Presiding Officer.

§ 1025.16 Service.

(a) *Mandatory service.* Every document filed with the Secretary shall be served upon all parties to a proceeding, i.e., Complaint Counsel, respondent(s), and party intervenors, and upon the Presiding Officer.

(b) *Service of complaint, ruling, order, decision, or subpoena.* Service of a complaint, ruling, order, decision, or subpoena may be effected as follows:

(1) By registered or certified mail. A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be served at his, her or its residence or principal office or place of business; registered or certified; and mailed; or

(2) By delivery to an individual. A copy of the document may be delivered to the person to be served; or to a member of the partnership to be served; or to the president, secretary, or other executive officer, or a director of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(3) By delivery to an address. A copy of the document may be left at the principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer, a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served.

(4) By publication in the FEDERAL REGISTER. A respondent not otherwise served pursuant to these rules may be served by publication in the FEDERAL REGISTER and such other notice as may be directed by the Presiding Officer, where a complaint has issued in a class action, pursuant to § 1025.18, or in a related proceeding, pursuant to § 1025.59.

(c) *Service of documents with prescribed response periods.* When service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document shall be served as provided in paragraph (b) of this section.

(d) *Service of other documents.* All other documents may be served as provided in paragraph (b) of this section, or by ordinary first-class mail, properly addressed, postage prepaid.

(e) *Service on a representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service on the party.

(f) *Certificate of service.* The original of every document filed with the Commission and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing, postage prepaid (or by delivering in person) a copy to each such party.

Dated at _____ this ____ day of _____, 19____.

(Signature) _____

For _____

(g) *Date of service.* The date of service of a document shall be the date on which the document is deposited in the United States mail or is delivered in person.

§ 1025.17 Intervention.

(a) *Participation as a intervenor.* Any interested person who desires to participate in a proceeding commenced pursuant to § 1025.11 as a party shall file a written petition for leave to intervene with the Secretary and shall serve a copy of such petition on each party to the proceeding. A petition shall be filed not later than the opening of the prehearing conference. Nontimely filings will not be entertained absent a determination by the Presiding Officer that the petitioner has made a substantial showing of good cause for failure to file on time. A petition shall (1) identify the specific aspect or aspects of the proceeding as to which the petitioner wishes to intervene, (2) set forth the interest of the petitioner in the proceeding, (3) state how the petitioner's interest may be affected by the results of the proceeding, and (4) state any other contentions of the petitioner, including the facts and reasons why the petitioner should be permitted to intervene as a party, with particular reference to the factors set forth in paragraph (d) of this section. Any petition relating only to matters outside the jurisdiction of the Commission shall be denied. Any person who files a petition for leave to intervene pursuant to this subsection and whose petition is granted by the Presiding Officer shall be known as an "intervenor" and as such shall have the full range of litigating rights afforded to any other party.

(b) *Participation by a person not an intervenor.* Any person interested in a proceeding commenced pursuant to § 1025.11 who does not elect to petition for leave to intervene in the proceeding as an intervenor pursuant to paragraph (a) of this section, but who desires to participate in the proceeding as a nonparty shall file with the Secretary a request to participate in the proceeding and shall serve a copy of such request on each party to the proceeding.

(1) A request shall be filed not later than the commencement of the hearing. Untimely filings will not be entertained absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time.

(2) A request shall set forth the nature and extent of the person's alleged interest in the proceeding. Any request

relating only to matters outside the jurisdiction of the Commission shall not be granted.

(3) Any person who files a request to participate in the proceeding as a nonparty and whose request is granted by the Presiding Officer shall be known as a "participant" and shall have the right to participate in the proceeding to the extent of making a written or oral statement of position, filing proposed findings of fact, conclusions of law and a post hearing brief with the Presiding Officer, and filing an appellate brief if an appeal is taken or review is ordered in accordance with §§ 1025.53–1025.54.

(c) *Response to petition to intervene.* Any party to a proceeding may file a response to a petition for leave to intervene after the petition is filed with the Secretary, with particular reference to the factors set forth in paragraph (d) of this section.

(d) *Ruling by presiding officer on petition.* In ruling on a petition for leave to intervene as an intervenor, the Presiding Officer shall consider the following factors, among other things:

(1) The nature of the petitioner's right under the applicable statute governing the proceeding to be made a party to the proceeding;

(2) The nature and extent of the petitioner's interest in protecting himself/herself and/or the public against unreasonable risks of injury associated with consumer products;

(3) The nature and extent of the petitioner's property, financial or other substantial interest in the proceeding;

(4) Whether the petitioner would be aggrieved by any order which may be entered in the proceeding;

(5) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record;

(6) The extent to which the petitioner's interest will be represented by existing parties;

(7) The extent to which the petitioner's participation may broaden the issues or delay the proceeding; and

(8) The extent to which the petitioner's interest can be protected by other available means.

If the Presiding Officer determines that a petitioner does not meet the requirements to be an intervenor, the Presiding Officer shall view such petition to intervene as if it had been timely filed as a request to participate in the proceeding as a participant pursuant to paragraph (b) of this section.

(e) *Ruling by presiding officer on request.* In ruling on a request to participate as a participant, the Presiding Officer, in the exercise of his/her discretion, shall be mindful of the Commission's mandate under its enabling legislation (see 15 U.S.C. 2051 et seq.) and its affirmative desire to afford interested persons, including consumers and consumer organizations as well as governmental entities, an opportunity to participate in the agency's regulatory processes, to include adjudicative proceedings. The Presiding Officer shall consider the following factors, among other things:

(1) The nature and extent of the person's alleged interest in the proceeding;

(2) The possible effect of any order which may be entered in the proceeding on the person's interest; and

(3) The extent to which the person's participation can be expected to assist the Presiding Officer and the Commission in rendering a fair and equitable resolution of all matters in controversy in the proceeding. The Presiding Officer may deny a request to participate if he/she determines that the person's participation cannot reasonably be expected to assist the Presiding Officer and/or the Commission in rendering a fair and equitable resolution of matters in controversy in the proceeding or if he/she determines that the person's participation would unduly broaden the issues in controversy or unduly delay the proceeding.

(f) *Designation of Single Representative.* If the Presiding Officer, in the course of a hearing held under these Rules, determines that a petitioner pursuant to paragraph (a) of this section or a person requesting to participate pursuant to paragraph (b) of this section is a member of a class of prospective intervenors or participants, as applicable, who share an identity of interest, the Presiding Officer may limit such intervention or participation, as applicable, through designation of a single representative.

§ 1025.18 Class actions.

(a) *Prerequisites to a class action.* One or more members of a class of respondents may be proceeded against as representative parties on behalf of all respondents if (1) the class is so numerous or geographically dispersed that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the defenses of the representative parties are typical of the defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Composition of class.* A class may be composed of (1) manufacturers, distributors, or retailers, or a combination thereof, of products which allegedly share the same defect, or (2) manufacturers, distributors or retailers, or a combination thereof, of products which allegedly fail to conform to an applicable consumer product safety rule, standard, or regulation, or (3) manufacturers, distributors or retailers, or a combination thereof, who have themselves allegedly failed to conform to an applicable consumer product safety rule, standard or regulation. When appropriate, a class may be divided into subclasses and each subclass shall be treated as a class.

(c) *Notice of commencement.* A complaint issued by the Commission under this Rule shall identify the class, the named respondents deemed to be representative of such class, and the defect or non-conformity common to the products manufactured, imported, distributed or sold by each member of the designated class. A complaint issued under this Rule may be validly served upon the parties in accordance with § 1025.16.

(d) As soon as practicable after the commencement of a proceeding brought as a class action, the Presiding Officer shall determine by order whether it is to be so maintained. A class action shall be maintained if the Presiding Officer finds that the issues of fact and/or questions of law common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. In reaching his/her decision, the Presiding Officer shall consider the interests of members of the class in individually controlling the defense of separate actions, and the difficulties likely to be encountered in the management of a class action, as well as the benefits expected to result from the maintenance of a class action.

(e) Upon motion of any party or any member of the class, or upon the Presiding Officer's own initiative, the Presiding Officer may revise the membership of the class.

(f) *Orders in conduct of class actions.* In proceedings to which this Rule applies, the Presiding Officer may make appropriate orders: (1) Determining the course of the proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Presiding Officer may direct either to some or to all the members of any step in the action, or of the extent of the proposed order, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on party intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; or (5) dealing with similar procedural matters. The orders may be combined with a prehearing order under § 1025.21, and may be altered or amended as may be desirable from time to time.

(g) *Scope of final order.* In a proceeding maintained as a class action, any Decision and Order of the Commission or the Presiding Officer under §§ 1025.51 and 1025.55, whether or not favorable to the class, shall include and describe those respondents whom the Commission or the Presiding Officer finds to be members of the class.

(h) *Notice of results.* Upon the termination of a proceeding that has been maintained as a class action, the best notice practicable of the results of the proceeding shall be given to all members of the class in such manner as the Commission or the Presiding Officer directs.

§ 1025.19 Joinder of proceedings.

Two or more matters which have been scheduled for adjudicative proceedings, and which involve similar issues, may be consolidated for the purpose of hearing or Commission review. A motion for consolidation may be filed by any party to such proceedings not later than thirty (30) days prior to the hearing and served upon all parties to all proceedings whose joinder is contemplated. The motion may include a request that the consolidated proceeding be maintained as a class action in accordance with § 1025.19. The proceedings may be consolidated to such extent and upon such terms as may be deemed proper. Such consolidation may also be ordered upon the initiative of the Presiding Officer or the Commission. Single representatives may be designated to represent parties, intervenors, and participants with an identity of interests.

Subpart C—Prehearing Procedures, Motions, Interlocutory Appeals, Summary Judgment; Settlement

§ 1025.21 Prehearing conferences.

(a) *When held.* (1) A prehearing conference shall be held in person or by conference telephone call, except in unusual circumstances, approximately fifty (50) days after publication in the FEDERAL REGISTER of the complaint, upon ten (10) days' notice to all parties and participants, to consider any or all the following:

(i) Petitions for leave to intervene;

(ii) Motions for consolidation of proceedings;

(iii) Identification, simplification and clarification of the issues;

(iv) Necessity or desirability of amending the pleadings;

(v) Stipulations and admissions of fact and of the content and authenticity of documents;

(vi) Oppositions to notices of depositions;

(vii) Motions for protective orders to limit or modify discovery;

(viii) Issuance of subpoenas to compel the appearance of witnesses and the production of documents;

(ix) Limitation of the number of witnesses, particularly the avoidance of duplicate expert witnesses;

(x) Matters of which official notice will be taken and matters which may be resolved by reliance upon the Commission's substantive standards, regulations, and consumer product safety rules;

(xi) Disclosure of the names of witnesses and of documents or other physical exhibits which are intended to be introduced into evidence;

(xii) Consideration of offers of settlement;

(xiii) Establishment of a schedule for the exchange of final witness lists, prepared testimony and documents, and for the date, time and place of the hearing, with due regard to the convenience of the parties.

(xiv) Such other matters as may aid in the disposition of the proceeding.

(b) *Public notice.* The Presiding Officer shall cause the notice of the first prehearing conference, including a statement of the issues, to be duly published in the FEDERAL REGISTER at least ten (10) days prior to the date scheduled for the conference.

(c) *Additional conferences.* Additional prehearing conferences may be convened at the discretion of the Presiding Officer, upon due notice to the parties and to the public.

(d) *Reporting.* Prehearing conferences may be stenographically reported as provided in § 1025.47, and shall be open to the public.

(e) *Prehearing orders.* The Presiding Officer may enter an order in substantially the form set forth in Appendix I which recites the rulings made and agreements reached at each prehearing conference. The prehearing conference order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.

§ 1025.22 Prehearing briefs.

Not later than ten (10) days prior to the hearing, the parties shall, except when ordered by the Presiding Officer in unusual circumstances, simultaneously serve and file prehearing briefs, which shall set forth (a) A statement of the facts expected to be proved, and of the anticipated order of proof; (b) a statement of the issues and the legal arguments in support of the party's contentions with respect to each issue; and (c) a table of authorities with a designation by asterisk of the principal authorities relied upon.

§ 1025.23 Motions.

(a) *Presentation and disposition.* During the time a proceeding is before a Presiding Officer, all motions, whether oral or written, except those filed under § 1025.42(e), shall be addressed to the Presiding Officer, who shall rule upon them promptly after affording an opportunity for response.

(b) *Written motions.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor. If a motion is supported by memoranda, affidavits or other documents, they shall be served and filed with the motion. All motions shall contain a proposed order setting forth the relief sought. All written motions shall be filed with the Secretary and served on all parties, and all motions addressed to the Commission shall be in writing.

(c) *Answers.* Within ten (10) days after service of any written motion or petition or within such longer or shorter time as may be designated by these Rules or by the Presiding Officer or the Commission, the opposing party shall file a written response to such motion. Failure to respond to a written motion may, in the discretion of the Presiding Officer be deemed as consent to the granting of the relief sought in the motion. The moving party shall have no right to reply, except as permitted by the Presiding Officer or the Commission.

(d) *Rulings on motions for dismissal.* When a motion to dismiss a complaint or motion for other relief is granted, with the result that the proceeding before the Presiding Officer is terminated, the Presiding Officer shall issue an Initial Decision and Order thereon in accordance with the provisions of § 1025.51. If such a motion is granted as to all issues alleged in the complaint in regard to some, but not all, the respondents, or is granted as to any part of the allegations in regard to any or all the respondents, the Presiding Officer shall enter an order on the record and consider the remaining issues in the Initial Decision. The Presiding Officer may elect to defer ruling on a motion to dismiss until the close of the case.

§ 1025.24 Interlocutory appeals.

(a) *General.* Rulings of the Presiding Officer may not be appealed to the Commission prior to the Initial Decision, except as provided herein.

(b) *Exceptions.* (1) Interlocutory appeals to Commission. The Commission may, in its discretion, entertain interlocutory appeals where a ruling of the Presiding Officer:

(i) Requires the production of records claimed to be confidential;

(ii) Requires the testimony of a supervisory official of the Commission other than one especially cognizant of the facts of the matter in adjudication.

(iii) Excludes an attorney from participation in a proceeding pursuant to § 1025.42(b);

(iv) Denies or unduly limits a petition for intervention pursuant to the provisions of § 1025.17.

(2) Procedure for interlocutory appeals. Within ten (10) days of issuance of a ruling, any party may petition the Commission to entertain an interlocutory appeal on a ruling in the categories enumerated above. The petition shall not exceed fifteen (15) pages. Any other party may file a response to the petition within ten (10) days of its service. The response shall not exceed fifteen (15) pages. The Commission shall thereupon act upon the petition, or the Commission shall request such further briefing or oral presentation as it may deem necessary.

(3) Interlocutory appeals from all other rulings. (i) Grounds. Interlocutory appeals from all other rulings by the Presiding Officer may proceed only upon motion to the Presiding Officer and a determination by the Presiding Officer in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation, or that subsequent review will be an inadequate remedy.

(ii) Form. If the Presiding Officer so determines, a petition for interoluctory appeal may be filed with and acted upon by the Commission in accordance with paragraph (b)(2) of this section.

(c) *Proceedings not stayed.* A petition for interlocutory appeal under this Rule shall not stay the proceedings before the Presiding Officer unless the Presiding Officer or the Commission shall so order.

§ 1025.25 Summary decision and order.

(a) *Motion.* Any party may move, with a supporting memorandum, for a Summary Decision and Order in its favor upon all or any of the issues in controversy. Complaint Counsel may so move at any time after thirty (30) days following issuance of a complaint, and any other party may so move at any time after issuance of a complaint. Any such motion by any party shall be filed at least twenty (20) days before the date fixed for the adjudicatory hearing.

(b) *Response to motion.* Any other party may, within ten (10) days after service of the motion, file a response thereto with a supporting memorandum.

(c) *Grounds.* A Summary Decision and Order shall be granted if the pleadings and any depositions, answers to interrogatories, admissions, and/or affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a Summary Decision and Order as a matter of law.

(d) *Legal effect.* A Summary Decision and Order upon all the issues being adjudicated shall constitute the Initial Decision of the Presiding Officer, and may be appealed to the Commission in accordance with § 1025.53. A Summary Decision, interlocutory in character, may be rendered on fewer than all issues and may not be appealed prior to issuance of the Initial Decision.

(e) *Case not fully adjudicated on motion.* A Summary Decision and Order that does not dispose of the whole case shall include a statement of those material facts as to which there is no substantial controversy, and of those material facts that are actually and in good faith controverted. The Summary Order shall direct such further proceedings as are just.

§ 1025.26 Settlements.

(a) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(b) *Form.* Offers of settlement shall be in the form of a consent agreement and order, shall be signed by respondent or respondent's representative, and may be signed by any other party. Each offer of settlement shall be endorsed by its proponents, accompanied by a motion to transmit the proposed agreement and order outlining the substantive provisions of the agreement and the reasons why it should be accepted by the Commission.

(c) *Contents.* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps, and of all rights to seek judicial review or otherwise to contest the validity of the Commission order;

(3) Provisions that the allegations of the complaint are resolved by the consent agreement and order;

(4) A description of the alleged hazard, non-compliance, or violation.

(5) A listing of the acts or practices from which the respondent shall refrain;

(6) A detailed statement of the corrective action(s) which the respondent shall execute. In proceedings arising under section 15 of the Consumer Product Safety Act (15 U.S.C. 2064), this statement shall contain all the elements of a "Corrective Action Plan," as outlined in the Commission's Policy and Procedures Regarding Substantial Product Hazards, 16 CFR 1116.

(d) *Transmittal.* The Presiding Officer may transmit all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph (c) of this section to the Commission for decision. The Presiding Officer may, but need not, recommend acceptance of such offers. Any party may object to the transmittal to the Commission of a proposed consent agreement by filing an answer to the motion.

(e) *Stay of proceedings.* When an offer of settlement has been agreed to by the parties and has been transmitted to the Commission, the proceedings shall be stayed until the Commission has ruled on the offer. When an offer of settlement has been made and transmitted to the Commission but has not been agreed to by all parties, the proceedings shall not be stayed pending Commission decision on the offer.

(f) *Commission ruling.* The Commission will rule upon all transmitted offers of settlement. If the Commission accepts the offer, the Commission shall issue an appropriate order. The order shall become effective upon issuance.

(g) *Commission rejection.* If the Commission rejects an offer of settlement, the Secretary, in writing, shall give notice of the Commission's decision to the parties and the Presiding Officer. Promptly thereafter, the Presiding Officer shall issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

(h) *Effect of rejected offer.* Rejected offers of settlement shall not be admissible in evidence over the objection of any signatory, nor shall the fact of the proposal of the offer be admissible in evidence.

Subpart D—Discovery; Compulsory Process

§ 1025.31 General provisions governing discovery.

(a) *Applicability.* The discovery Rules established in this Subpart are applicable to the discovery of information among the parties to a proceeding. Parties seeking information from persons not parties may do so by subpoena in accordance with § 1025.38.

(b) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: (1) Written interrogatories; (2) requests for production of documents or things; (3) requests for admission; or (4) depositions upon oral examination. Unless the Presiding Officer otherwise orders under subsection (d) of this Rule, the frequency of use of these methods is not limited.

(c) *Scope of discovery.* The scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Exception. Parties may not obtain discovery of documents which accompanied the staff's recommendation as to whether a complaint should issue. Section 1025.11(c) already provides for release to the respondent at the time of the issuance of a complaint of all of the documents and/or portions thereof accompanying the staff's recommendation that would be releasable under the Freedom of Information Act, 5 U.S.C. 522.

(3) Hearing Preparation: Experts. A party may obtain discovery of facts known and opinions held by experts, regardless of whether they are acquired or developed in anticipation of or for litigation. Such discovery may be had by any of the methods provided in paragraph (b) of this section.

(d) *Protective orders.* Upon motion by a party, and for good cause shown, the Presiding Officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, competitive disadvantage, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery shall not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and/or place; (3) that the discovery shall be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters shall not be inquired into, or that the scope of the discovery shall be limited to certain matters; (5) that discovery shall be conducted with no one present except persons designated by the Presiding Officer; (6) that a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way or only to designated parties; and (7) that responses to discovery shall be placed in camera in accordance with § 1025.45. If a motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms or conditions as are just, order that any party provide or permit discovery.

(e) *Sequence and timing of discovery.* Discovery may commence at any time after filing of the answer. Unless otherwise provided in these Rules or by order of the Presiding Officer, methods of discovery, whether by deposition or other- the fact that a party is conducting discovery, whether by deposition or other-

wise, shall not operate to delay any other party's discovery.

(f) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired.

(g) *Completion of discovery.* All discovery shall be completed as soon as practical but in no case longer than one hundred fifty (150) days after issuance of a complaint unless otherwise ordered by the Presiding Officer in exceptional circumstances and for good cause shown. All discovery shall be served by a date which affords the party from whom discovery is sought the full response period provided by these Rules.

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of depositions, shall be filed with the Secretary and served on all parties and the Presiding Officer.

(i) *Control of discovery.* The use of these discovery procedures is subject to the control of the Presiding Officer, who may issue any just and appropriate order for the purpose of ensuring their timely completion.

§ 1025.32 Written interrogatories to parties.

(a) *Availability; procedures for use.* Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of the Presiding Officer, be served upon any party after filing of the answer.

(b) *Procedures for response.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the representative making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after service of the interrogatories. The Presiding Officer may allow a shorter or longer time for response. The party submitting the interrogatories may move for an order under § 1025.36 with respect to any objection to or other failure to answer an interrogatory.

(c) *Scope of interrogatories.* Interrogatories may relate to any matters which can be inquired into under § 1025.31(c)(1), and the answers may be used to the extent permitted under these Rules. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory would involve an opinion or contention that relates to fact or to the application of law to fact, but the Presiding Officer may order that such an interrogatory need not be answered until a later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts, or summaries.

§ 1025.33 Production of documents and things.

(a) *Scope.* Any party may serve upon any other party a request (1) to produce and permit the party making the request, or someone acting on behalf of that party, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phone-records, and any other data-compilation from which information can be obtained, translated, if necessary, by the party in possession into reasonably usable form), or (2) to inspect and copy, test or sample tangible things which constitute or contain matters within the scope of § 1025.31(c)(1) and which are in the possession, custody or control of the party upon whom the request is served.

(b) *Procedure for request.* The request may be served at any time after the filing of the answer without leave of the Presiding Officer. The request shall set forth the items to be inspected either by individual item or by category, and shall describe each item or category with reasonable particularity. The request shall specify a reasonable time, place and manner for making the inspection and performing the related acts.

(c) *Procedure for response.* The party upon whom the request is served shall serve a written response within twenty (20) days after service of the request. The Presiding Officer may allow a shorter or longer time for response. The response shall state, with respect to each item or category requested, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an item or category, that part shall be so specified. The party submitting the request may move for an order under § 1025.36 with respect to any objection to or other failure to respond to the request or any part thereof, or to any failure to permit inspection as requested.

§ 1025.34 Requests for admission.

(a) *Procedure for request.* A party may serve upon any other party a written request for the admission, for the purposes of the pending proceeding only, of the truth of any matters within the scope of § 1025.31(c)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been, or are otherwise, furnished or made available for inspection and copying. The request may, without leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter as to which an admission is requested shall be separately set forth.

(b) *Procedure for response.* The matter as to which an admission is requested is deemed admitted unless within thirty (30) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representatives. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter as to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that he/she has made reasonable inquiry and that the information known or readily available to him/her is insufficient to enable him/her to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of the answer or objection thereto in accordance with § 1025.36. If the Presiding Officer determines that an answer does not comply with the requirements of this Rule, he/she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of admission.* Any matter admitted under this Rule is conclusively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party who obtained the admission fails to satsify the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by that party for any other purpose, nor may it be used against that party in any other proceeding.

§ 1025.35 Depositions upon oral examination.

(a) *When depositions may be taken.* At any time after the first prehearing conference, upon leave of the Presiding Officer and under such terms and conditions as the Presiding Officer may prescribe, any party may take the deposition of any other party, including the agents, employees, consultants or prospective witnesses of that party at a place convenient to the deponent. The attendance of witnesses and the production of documents and things at the deposition may be compelled by subpoena as provided in § 1025.38.

(b) *Notice of deposition.*—(1) *Deposition of a party.* A party desiring to take a deposition of another party to the proceeding shall, after obtaining leave from the Presiding Officer, serve written notice of the deposition on all other parties and the Presiding Officer at least ten (10) days before the date noticed in the deposition. The notice shall state (i) the time and place for taking the deposition; (ii) the name and address of each person to be deposed, if known, or if the name is not known, a general description sufficient to identify him/her; and (iii) the subject matter of the expected testimony. If a subpoena duces tecum is to be served on the person to be deposed, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice of deposition.

(2) *Deposition of a non-party.* A party desiring to take a deposition of a person who is not a party to the proceeding shall make application for a subpoena, in accordance with § 1025.38, to compel the attendance, testimony and/or production of documents by such person who is not a party. The party desiring such deposition shall serve written notice of the deposition on all other parties to the proceeding, after issuance of the subpoena by the Presiding Officer or a designated alternate. The date specified in the subpoena for the deposition shall be at least twenty (20) days after the date on which the application for the subpoena is made to the Presiding Officer.

(3) *Opposition to notice.* A person served with a notice of deposition may oppose, in writing, the taking of the deposition within five (5) days of service of notice. The Presiding Officer shall rule on the notice and any opposition and may order the taking of all noticed depositions, upon a showing of good cause therefor. The Presiding Officer may, for good cause shown, enlarge or shorten the time for the taking of a deposition.

(c) *Persons before whom depositions may be taken.* Depositions may be taken before any person authorized to administer oaths by the laws of the United States or of the place where the examination is held. No deposition shall be taken before a person who is a relative or employee or attorney or representative of any party, or who is a relative or employee of such attorney or representative, or who is financially interested in the action.

(d) *Taking of deposition*—(1) *Examination.* Each deponent shall be duly sworn, and all testimony shall be duly recorded. All parties or their representatives may be present and participate in the examination. Examination and cross-examination of deponents may proceed as permitted at the hearing. Evidence objected to shall be taken subject to the objections. Objections shall be in short form, and shall state the grounds relied upon. The questions propounded and the answers thereto, together with all objections made, shall be recorded by the official reporter before whom the deposition is taken. The original or a verified copy of all documents and things produced for inspection during the examination of the deponent shall, upon a request of any party present, be marked for identification and annexed to the record of the deposition.

(2) *Motion to terminate or limit examination.* At any time during the taking of the deposition, upon motion of any party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party, the Presiding Officer may, upon motion, order the party conducting the examination to cease taking the deposition, or may limit the scope and manner of taking the deposition as provided in §1025.31 (d) of these Rules.

(3) *Participation by parties not present.* In lieu of attending a deposition, any party may serve written questions in a sealed envelope on the party conducting the deposition. That party shall transmit the envelope to the official reporter, who shall unseal it and propound the questions contained therein to the deponent.

(e) *Transcription and filing of depositions*—(1) *Transcription.* Upon request by any party, the testimony recorded at a deposition shall be transcribed. When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signing, and shall be read to or by the deponent, unless such examination and signature are waived by the deponent. Any change in form or substance which the deponent desires to make shall be entered upon the deposition by the official reporter with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing, or the deponent is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty (30) days of its submission to him/her, the official reporter shall sign it and state on the record the fact of the waiver of signature or of the illness or absence of the deponent or the fact of the refusal to sign, together with a statement of the reasons therefor. The deposition may then be used as fully as though signed, in accordance with paragraph (i) of this section.

(2) *Certification and filing.* The official reporter shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the testimony given and corrections made by the deponent. The official reporter shall then seal the deposition in an envelope endorsed with the title and docket number of the action and marked "Deposition of [name of deponent]" and shall promptly file the deposition with the Secretary. The Secretary shall notify all parties of the filing of the deposition and shall furnish a copy of the deposition to any party or to the deponent upon payment of reasonable charges therefor.

(f) *Costs of deposition.* The party who notices the deposition shall pay for the deposition. The party who requests transcription of the deposition shall pay for the transcription.

(g) *Failure to attend or to serve subpoena; expenses.* If a party who notices a deposition fails to attend and proceed therewith and another party attends in person or by a representative pursuant to the notice, the Presiding Officer may order the party who gave the notice to pay the attending party the reasonable expenses incurred. If a party who notices a deposition fails to serve a subpoena upon the deponent and as a result the deponent does not attend, and if another party attends in person or by a representative because that party expects the deposition to be taken, the Presiding Officer may order the party who gave notice to pay the attending party the reasonable expenses incurred.

(h) *Deposition to preserve testimony.* (1) *When available.* By leave of the Presiding Officer, a party may take the deposition of his/her own witness for the purpose of perpetuating the testimony of that witness. A party who wishes to conduct such a deposition shall obtain prior leave of the Presiding Officer by filing a motion. The motion shall include a showing of substantial reason to believe that the testimony could not be presented at the hearing. If the Presiding Officer is satisfied that the perpetuation of the testimony may prevent a failure of justice or is otherwise reasonably necessary, he/she shall order that the deposition be taken.

(2) Procedure. Notice of a deposition to preserve testimony shall be served at least fifteen (15) days prior to the deposition. The deposition shall be taken in accordance with the provisions of paragraph (d) of this section. Any deposition taken to preserve testimony shall be fully transcribed and filed in accordance with paragraph (e) of this section.

(i) *Use of depositions.* At the hearing or upon a motion or interlocutory proceeding, any part or all of a deposition may be used against any party or participant who was present or represented at the deposition or who had reasonable notice thereof, in accordance with any of the following:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of anyone who at the time of the taking of the deposition was an officer, director, managing agent,

or person otherwise designated to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party to the proceeding may be used by any adverse party for any purpose.

(3) The deposition of a witness may be used by any party for any purpose if the Presiding Officer finds: (i) That the witness is dead; or (ii) that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or (iii) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (iv) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (v) that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard for the importance of presenting the testimony of witnesses orally during the hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, any other party may move to introduce any other part of the deposition.

§ 1025.36 Motions to compel discovery.

If a party fails to respond to discovery, in whole or in part, the party seeking discovery may move within twenty (20) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery. For purposes of this subsection, an evasive or incomplete response is to be treated as a failure to respond. When taking depositions, the discovering party shall continue the examination to the extent possible with respect to other areas of inquiry before moving to compel discovery.

§ 1025.37 Sanctions for failure to comply with order.

If a party fails to obey an order to provide or permit discovery, the Presiding Officer may take such action as is just, including but not limited to the following:

(a) Infer that the admission, testimony, document or other evidence would have been adverse to the party;

(b) Order that for the purposes of the proceeding, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon the documents or other evidence withheld;

(d) Order that the party withholding discovery not introduce into evidence, or otherwise use at the hearing, information obtained in discovery;

(e) Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(f) Order that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order was issued, be stricken, or that decision on the pleadings be rendered against the party, or both; and

(g) Exclude the party or representative from proceedings, in accordance with § 1025.42(b).

Any such action may be taken by order at any point in the proceedings.

§ 1025.38 Subpoenas.

(a) *Availability.* A subpoena shall be addressed to any person not a party for the purpose of compelling attendance, testimony and production of documents at a hearing or deposition, and may be addressed to any party for the same purposes.

(b) *Form.* A subpoena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Commission and signed by the Secretary or by the Presiding Officer. A subpoena *duces tecum* shall specify the books, papers, documents, or other materials on data-compilations to be produced.

(c) *How obtained*—(1) *Content of application.* An application for the issuance of a subpoena stating reasons shall be submitted in triplicate to the Presiding Officer. The Presiding Officer shall cause such application to come to the attention of the Commission by forwarding the document or a copy thereof or by communicating the contents of the application by any other means, e.g., by telephone.

(2) *Procedure for application.* The original and two copies of the subpoena, marked "original," "duplicate" and "triplicate," shall accompany the application. The Commission shall rule upon an application for a subpoena *ex parte*, by issuing the subpoena or by issuing an order denying the application.

(d) *Issuance of a subpoena.* The Commission shall issue a subpoena by ordering the Secretary or the Presiding Officer to sign and date each copy in the lower right-hand corner of the document. The "duplicate" and "triplicate" copies of the subpoena shall be transmitted to the applicant for service in accordance with these Rules; the "original" copy shall be retained by or be forwarded to the Secretary for retention in the docket of the proceeding.

(e) *Service of a subpoena.* A subpoena may be served in person or by certified mail, return receipt requested, as provided in § 1025.16(b). Service shall be made by delivery of the signed "duplicate" copy to the person named therein.

(f) *Return of service.* A person serving a subpoena shall promptly execute a return of service, stating the date, time, and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" of the subpoena, bearing or accompanied by the return of service, shall be returned forthwith to the Secretary after service has been completed.

(g) *Motion to quash or limit subpoena.* Within five (5) days of receipt of a subpoena, the person against whom it is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within five (5) days of service, and shall be ruled on immediately thereafter. The order shall specify the date, if any, for compliance with the specifications of the subpoena.

(h) *Consequences of failure to comply.* In the event of failure to comply with a subpoena, the Presiding Officer may take any of the actions enumerated in § 1025.37, or may order any other appropriate relief to compensate for the withheld testimony, documents, or other materials. If in the opinion of the Presiding Officer such relief is insufficient, the Presiding Officer shall certify to the Commission a request for judicial enforcement of the subpoena.

§ 1025.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) This Rule applies only to proceedings arising under the Flammable Fabrics Act.

(b) A party who desires the issuance of an order requiring a witness or deponent to testify or provide other information upon being granted immunity from prosecution under Title 18, United States Code, section 6002, may make a motion to that effect. The motion shall be made and ruled on in accordance with § 1025.22, and shall include a showing:

(1) That the testimony or other information sought from a witness or deponent, or prospective witness or deponent, may be necessary to the public interest; and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of that individual's privilege against self-incrimination.

(c) If the Presiding Officer determines that the witness' testimony appears necessary and that the privilege against self-incrimination may be invoked, he/she may certify to the Commission a request that it obtain the approval of the Attorney General of the United States for the issuance of an order granting immunity.

(d) Upon application to and approval of the Attorney General of the United States, and after the witness has invoked the privilege against self-incrimination, the Presiding Officer shall issue the order granting immunity unless he/she determines that the privilege was improperly invoked.

(e) Failure of a witness to testify after a grant of immunity or after a denial of the issuance of an order granting immunity shall result in the imposition of appropriate sanctions as provided in § 1025.37.

Subpart E—Hearings

§ 1025.41 General rules.

(a) *Public hearings.* All hearings pursuant to these Rules shall be public unless otherwise ordered by the Commission or the Presiding Officer.

(b) *Expedition.* Hearings shall proceed with all reasonable speed, and insofar as practicable and with due regard to the convenience of the parties and shall continue without suspension until concluded, except in unusual circumstances.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary for a full and complete disclosure of the facts, and to be heard by objection, motion, brief and argument.

(d) *Rights of participants.* Every participant shall have the right to make a written or oral statement of position, file proposed findings of fact, conclusions of law and a post hearing brief, in accordance with § 1025.17(b).

(e) *Rights of witnesses.* Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel or other representative, and may purchase a transcript of his/her testimony.

§ 1025.42 Powers and duties of Presiding Officer.

(a) *General.* A Presiding Officer shall have the duty to conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He/she shall have all powers necessary to that end, including the following powers:

(1) To administer oaths and affirmations;

(2) To compel discovery and to impose appropriate sanctions for failure to make discovery;

(3) To rule upon offers of proof and receive relevant, competent, and probative evidence;

(4) To regulate the course of the hearings and the conduct of the parties and their representatives therein;

(5) To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;

(6) To consider and rule, orally or in writing, upon all procedural and other motions appropriate in an adjudicative proceeding;

(7) To issue Initial Decisions, rulings and orders, as appropriate;

(8) To certify questions to the Commission for its determination; and

(9) To take any action authorized by the Rules in this Part or in conformance with the provisions of Title 5, United States Code, sections 551 through 559.

(b) *Exclusion of parties by presiding officer.* A Presiding Officer shall have the authority, for good cause stated on the record, to exclude from participation in a proceeding any party, participant, and/or representative who shall violate the requirements of § 1025.66. Any party, participant and/or representative so excluded may appeal to the Commission in accordance with the provisions of § 1025.23. If the representative of a party or participant is excluded, the hearing shall be suspended for a reasonable time so that the party or participant may obtain another representative.

(c) *Substitution of presiding officer.* In the event of the substitution of a new Presiding Officer for the one originally designated, any motion predicated upon such substitution shall be made within five (5) days.

(d) *Interference.* In the performance of adjudicative functions, a Presiding Officer shall not be responsible to or subject to the supervision or direction of any Commissioner or of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for the Commission. All directions by the Commission to a Presiding Officer concerning any adjudicative proceeding shall appear on and be made a part of the record.

(e) *Disqualification of presiding officer.* (1) When a Presiding Officer deems himself/herself disqualified to preside in a particular proceeding, he/she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judge and the Office of the Secretary of the Commission of the withdrawal.

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the Secretary a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Secretary on the Presiding Officer whose removal is sought. The Presiding Officer shall have ten (10) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Commission. If the Presiding Officer does not disqualify himself/herself, the Commission will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting loan of another Administrative Law Judge through the U.S. Civil Service Commission.

§ 1025.43 Evidence.

(a) *Applicability of Federal rules of evidence.* Unless otherwise provided by statute or these rules, the Federal Rules of Evidence shall apply to all proceedings held pursuant to these rules. However, the Federal Rules of Evidence may be relaxed by the Presiding Officer if the ends of justice will be better served by so doing.

(b) *Burden of proof.* (1) Complaint counsel shall have the burden of sustaining the allegation of any complaint.

(2) Any party who is the proponent of a legal and/or factual proposition shall have the burden of sustaining the proposition.

(c) *Presumptions.* A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the hearing upon the party on whom it was originally cast.

(d) *Admissibility.* All relevant and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence.

(e) *Official notice*—(1) *Definition.* Official notice means use by the Presiding Officer and/or the Commission of extra-record facts and legal conclusions drawn from those facts. An officially noticed fact or legal conclusion must be one not subject to reasonable dispute in that it is either (i) generally known within the jurisdiction of the Commission; or (ii) known by the Commission in areas of its expertise; or (iii) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(2) Method of taking official notice. The Presiding Officer and/or the Commission may at any time take official notice upon motion of any party or upon its own initiative. The record shall reflect the facts and conclusions which have been officially noticed.

(3) Opportunity to challenge. Any party may upon application in writing rebut officially noticed facts and conclusions by supplementing the record. The Presiding Officer or the Commission shall determine the permissible extent of this challenge; that is, whether to limit the party to presentation of written materials, whether to allow presentation of testimony, whether to allow cross-examination, or whether to allow oral argument. The Presiding Officer or the Commission shall grant or deny the application on the record.

(f) *Objections and exceptions.* Objections to evidence shall be timely interposed, shall appear on the record, and shall contain the grounds upon which they are based. Rulings on all objections, and the bases therefor, shall appear on the record. Formal exception to an adverse ruling is not required to preserve the question for appeal.

(g) *Offer of proof.* When an objection to proffered testimony or documentary evidence is sustained, the sponsoring party may make a specific offer, either in writing or orally, of what the party expects to prove by the testimony or the document. When an offer of proof is made, any other party may make a specific offer, either in writing or orally, of what the party expects to present to rebut or contradict the offer of proof. Written offers of proof or of rebuttal, adequately marked for identification, shall accompany the record and be avail-

able for consideration by any reviewing authority.

§ 1025.44 Expert witnesses.

(a) *Definition.* An expert witness is one who, by reason of education, training, experience, or profession, has peculiar knowledge concerning the matter of science or skill to which his/her testimony relates and from which he/she may draw inferences based upon hypothetically stated facts or from facts involving scientific or technical knowledge.

(b) *Method of presenting testimony of expert witness.* Except as may otherwise be ordered by the Presiding Officer, the direct testimony of an expert witness shall be in writing and shall be filed on the record and exchanged between the parties no later than ten (10) days preceding the commencement of the hearing. The written testimony of the expert witness shall be incorporated into the record and shall constitute the testimony of the witness. Upon a showing of good cause, the party sponsoring the expert witness may be permitted to amplify the written testimony during the hearing.

(c) *Cross-examination and redirect examination of expert witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness will proceed in due course based upon the written testimony and any amplifying oral testimony.

(d) *Failure to file and/or to exchange written testimony.* Failure to file and/or to exchange written testimony of an expert witness as provided in this Rule shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented.

§ 1025.45 In camera materials.

(a) *Definition.* In camera materials are documents, testimony, or other data which by order of the Presiding Officer or the Commission are kept confidential and excluded from the public record. The right of the Presiding Officer, the Commission, and reviewing courts to order disclosure of in camera materials is specifically reserved.

(b) *In camera treatment of documents and testimony.* The Presiding Officer or the Commission shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserved in camera. The order shall specify the length of time for in camera treatment and shall include:

(1) A description of the documents and/or testimony;

(2) The reasons for granting in camera treatment for the specified length of time.

(c) *Access and disclosure to parties.* (1) Commissioners and their staffs, Presiding Officers and their staffs, and Commission staff concerned with enforcement and judicial review shall have complete access to in camera materials. All other parties may seek access only in accordance with paragraph (c)(2) of this section.

(2) Any party desiring access to and/or disclosure of in camera materials for the preparation and presentation of that party's case shall make a motion which sets forth the justification therefor. The Presiding Officer or the Commission may grant such motion only for substantial good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring other necessary safeguards. The Presiding Officer or the Commission may examine the in camera materials and excise portions thereof prior to disclosure of the materials to the moving party.

(d) *Segregation of in camera materials.* In camera materials shall be segregated from the public record and protected from public view.

(e) *Public release of in camera materials.* In camera materials constitute a part of the confidential records of the Commission and shall not be released to the public until the expiration of in camera treatment.

(f) *Reference to in camera materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of in camera materials. Such refraining shall not preclude general references to such materials. To the extent that parties consider it necessary to include specific details of in camera materials, the references shall be incorporated into seperate proposed findings, briefs, or other documents marked "Confidential, Contains In Camera Material," which shall be placed in camera and become part of the in camera record. These documents shall be served only on parties accorded access to the in camera materials by these Rules or by the Presiding Officer or by the Commission.

§ 1025.46 Proposed findings, conclusions, and order.

Within a reasonable time after the closing of the record and receipt of the transcript, all parties and participants may, simultaneously, file post-hearing briefs, including proposed findings of fact, conclusions of law and order, together with reasons therefor. The Presiding Officer shall establish a date certain for the filing of the briefs, which shall not exceed 45 days after the close of the record except in unusual circumstances. The briefs shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. Replies shall be filed within fifteen (15) days of the date for the filing of briefs unless otherwise established by the Presiding Officer. The parties and participants may waive either or both submissions.

§ 1025.47 Record.

(a) *Reporting and transcription.* Hearings shall be recorded and transcribed by the official reporter of the Commission under the supervision of the Presiding Officer. The original transcript shall be a part of the record and the official transcript. Copies of transcripts are available from the reporter at a cost not to exceed the maximum rates fixed by contract between the Commission and the reporter. In accordance with section 11 of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C.A. Appendix I) copies of transcripts may be made by members of the public or by Commission personnel, when available, at the Office of the Secretary at reproduction costs set forth in the Commission's procedures under the Freedom of Information Act.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. The Presiding Officer may order corrections, either on his/her own motion or on motion of any party. The Presiding Officer shall determine the corrections to be made and so order. Corrections shall be interlineated or otherwise inserted in the official transcript so as not to obliterate the original text.

§ 1025.48 Official docket.

(a) The official docket is adjudicatory proceedings will be maintained in the Office of the Secretary and will be available for public inspection during normal working hours (8:30 a.m. to 5 p.m.) Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied by the Secretary or by the delegate of the Secretary, as prescribed in the Commission's Procedures for Disclosure or Production of Information under the Freedom of Information Act.

§ 1025.49 Fees.

(a) *Deponents and witnesses.* Any person compelled to appear in person in response to a subpoena or notice of deposition shall be paid at least the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with Title 28, United States Code, Section 1821. The fees for expert witnesses shall be set in the discretion of the Presiding Officer.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance deponents or witnesses appear.

Subpart F—Decision

§ 1025.51 Initial decision.

(a) *When filed.* The Presiding Officer shall endeavor to file an Initial Decision with the Commission within sixty (60) days of the close of the record, the filing of post-hearing briefs, or the filing of replies thereto, whichever is latest.

(b) *Content.* The Initial Decision shall be based upon a consideration of the entire record and it shall be supported by reliable, probative, and substantial evidence. It shall include:

(1) Findings and conclusions, as well as the reasons or bases therefor, upon the material questions of fact, material issues of law, or discretion presented on the record, and should, where practicable, be accompanied by specific page citations to the record and to legal and other materials relied upon.

(2) An appropriate order.

(c) *By whom made.* The Initial Decision shall be made and filed by the Pre-

siding Officer who presided over the hearing, unless otherwise ordered by the Commission.

(d) *Reopening of proceeding by Presiding Officer; termination of jurisdiction.* (1) At any time prior to or concomitant with the filing of the Initial Decision, the Presiding Officer may reopen the proceedings for the reception of further evidence.

(2) Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the filing of the Initial Decision, unless and until the proceeding is remanded to the Presiding Officer by the Commission.

§ 1025.52 Adoption of initial decision.

The initial decision and order shall become the final decision and order of the Commission forty (40) days after issuance unless an appeal is noted and perfected or unless review is ordered by the Commission. Upon the expiration of the fortieth day, the Secretary shall prepare, sign and enter an order adopting the Initial Decision and Order.

§ 1025.53 Appeal from initial decision.

(a) *Who may file notice of intention.* Any party may appeal an Initial Decision to the Commission provided that within ten (10) days after issuance of the Initial Decision such party files and serves a notice of intention to appeal.

(b) *Appeal brief.* The appeal shall be in the form of a brief, filed within forty (40) days after service of the Initial Decision, duly served upon all parties. The appeal brief shall contain, in the order indicated, the following:

(1) A subject index of the matters in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A concise statement of the case;

(3) A specification of the position urged;

(4) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of rule or order for the Commission's consideration in lieu of the rule or order contained in the Initial Decision.

(c) *Answering brief.* Within thirty (30) days after service of the appeal brief upon all parties, any party may file an answering brief which shall also contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto. Such brief shall present clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and legal or other material relied upon.

(d) *Participant's brief.* Within thirty (30) days after service of the appeal brief upon all parties, any participant may file an appellate brief which should contain a subject index, with page references, and a table of authorities being relied upon. Such brief shall present clearly the position taken by the participant on each question raised by the appellant(s).

(e) *Cross appeal.* If a timely notice of appeal is filed by a party, any other party may file a notice of cross-appeal within ten (10) days of the date on which the first notice of appeal was filed. Cross-appeals shall be included in the answering brief and shall conform to the requirements for form, content and filing specified in paragraph (c) of this section. If an appeal is noticed but not perfected, no cross-appeal shall be permitted and the notice of cross-appeal shall be deemed void.

(f) *Reply brief.* A reply brief shall be limited to rebuttal of matters in answering briefs, including matters raised in cross-appeals. A reply brief shall be filed and served within fourteen (14) days after service of an answering brief, or on the day preceding the oral argument, whichever comes first.

(g) *Oral argument.* The purpose of an oral argument is to emphasize and clarify the issues. Any party may request oral argument. The Commission may order oral argument upon request or upon its own initiative. All oral arguments shall be reported and transcribed. A Commissioner absent from an oral argument may participate in the consideration of and decision on the appeal.

§ 1025.54 Review of initial decision in absence of appeal.

The Commission may, by order, place a case on its own docket for review. Thereupon the parties shall and participants may file briefs in accordance with § 1025.53 (b), (c), (d), (e), and (f) except that the Commission may, in its discretion, establish a different briefing schedule in its order. Any such order shall issue within forty (40) days of issuance of the Initial Decision. The order shall set forth the scope of review and may make provision for the filing of briefs.

§ 1025.55 Final decision on appeal or review.

(a) Upon appeal from or review of an Initial Decision, the Commission shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition, shall, to the extent necessary or desirable, exercise all the powers which it could have exercised if it had made the Initial Decision.

(b) In rendering its decision, the Commission shall adopt, modify, or set aside the findings, conclusions, and rule or order contained in the Initial Decision, and shall include in its Final Decision a statement of the reasons or bases for its action and any concurring or dissenting opinions. The Commission shall issue an order reflecting its Final Decision.

§ 1025.56 Reconsideration.

Within twenty (20) days after issuance of a Commission final decision and order, any party may file with the Commission a petition for reconsideration of such decision or order, setting forth the relief desired and the grounds in support thereof. Any petition filed under this subsection must be confined to new questions raised by the decision or order upon which the petitioner had no previous opportunity to argue. Any party desiring to oppose such a petition shall file an answer thereto within ten (10) days after service of the petition. The filing of a petition for reconsideration shall not stay the effective date of the Decision and Order or toll the running of any statutory time period affecting the decision or order unless specifically so ordered by the Commission.

§ 1025.57 Effective date of order.

(a) *Orders in proceedings arising under the Consumer Product Safety Act.* An order of the Commission in a proceeding arising under the Consumer Product Safety Act becomes effective upon issuance.

(b) *Orders in proceedings arising under the Flammable Fabrics Act*—(1) *Consent orders.* An order in a proceeding arising under the Flammable Fabrics Act which has been issued following Commission acceptance of an offer of settlement in accordance with § 1025.26 of these Rules, becomes effective upon issuance.

(2) *Litigated orders.* All other orders in proceedings arising under the Flammable Fabrics Act becomes effective upon the expiration of the statutory period for court review specified in section 5(c) of the Federal Trade Commission Act, Title 15, United States Code section 45(c), or, if a petition for review has been filed, upon court affirmance of the Commission's order.

(c) *Consequences of failure to comply with effective order.* A respondent against whom an order has been issued who is not in compliance with such order on or after the date the order becomes effective is in violation of the order, and is subject to an immediate action for the civil or criminal penalties provided for in the applicable statute.

§ 1025.58 Reopening of proceedings.

(a) *General.* A proceeding may be reopened by the Commission at any time, either on its own initiative or upon petition of any party to the proceeding.

(b) *Exception.* Proceedings arising under the Flammable Fabrics Act shall not be reopened while pending in a United States court of appeals on a petition for review after the transcript of the record has been filed, or while pending in the United States Supreme Court.

(c) *Commission-originated reopening.* (1) Before effective date of order. At any time before the effective date of a Commission order, the Commission may, upon its own initiative and without prior notice to the parties, reopen a proceeding and enter a new decision or order modifying or setting aside in whole, or any part of the decision or order previously issued.

(2) After effective date of order. Whenever the Commission is of the opinion that changed conditions of fact or law or the public interest may require that a Commission decision or order be al-

tered, modified, or set aside in whole or in part, the Commission shall serve upon all parties to the original proceeding an order to show cause, stating the changes the Commission proposes to make in the decision or order and the reasons such changes are deemed necessary. Within thirty (30) days of service of an order to show cause, any party to the original proceeding may file an answer thereto. Any party not responding to the order to show cause within the time allowed shall be deemed to have consented to the proposed changes.

(d) *Petition for reopening.* Whenever any person subject to an effective order is of the opinion that changed conditions of fact or law require that the rule or order be altered, modified, or set aside, or that the public interest so requires, that person may petition the Commission to reopen the proceeding. The petition shall state the changes desired and the grounds therefor, and shall include such supporting evidence and argument as will in the absence of a contest provide the basis for a Commission decision on the petition. The petition shall be served upon all parties to the original proceeding. Within thirty (30) days of service of the petition, Complaint Counsel shall file a response thereto. Any other party to the original proceeding also may file a response within that period.

(e) *Hearings.* (1) *Unopposed.* Where an order to show cause or petition to reopen is not opposed, or is opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the order to show cause or petition and responses thereto, or it may serve upon the parties a notice of hearing, setting forth the date when the case will be heard. The hearing normally will be limited to the filing of briefs but may include oral argument when deemed necessary by the Commission.

(2) *Factual issues.* When the pleadings raise substantial factual issues, the Commission shall direct such hearings as it deems appropriate. Unless otherwise ordered and insofar as practicable, such hearings will be conducted in accordance with the Commission's Rules of Practice for Expedited Proceedings, 16 CFR Part 1026, 42 FR 31446 (June 21, 1977). Upon conclusion of the hearings, and after opportunity for the filing by the parties of post-hearing briefs containing proposed findings of fact, conclusions of law, and order, the Presiding Officer shall issue a Recommended Decision, including proposed findings and conclusions, and the reasons or bases therefor, and a proposed order. If the Presiding Officer recommends that the order be reopened, the proposed order shall include appropriate provisions for the alteration, modification or setting aside of the original order. The record and the Presiding Officer's Recommended Decision shall be certified to the Commission for final disposition of the matter.

(f) *Commission disposition.* Upon receipt of the Presiding Officer's recommendation, the Commission shall make a decision and issue an order based on the hearing record as a whole. If the Commission determines that changed conditions of fact or law or the public interest so requires, it shall reopen the order previously issued; alter, modify, or set aside its provisions in whole or in part; and issue an amended order reflecting the alterations, modifications, or deletions. If the Commission determines that the original order should not be reopened, it shall issue an order affirming the original order. A decision stating the reasons and bases for the Commission's order shall accompany the order.

§ 1025.59 Related proceedings.

(a) *Definition.* A related proceeding means (1) a proceeding which shares questions of fact and/or issues of law with a matter previously adjudicated by the Commission, and/or (2) a proceeding in which the Commission takes official notice of the facts and law decided in a matter previously adjudicated.

(b) *Procedure.* A hearing in a related proceeding shall be commenced by issuance of a complaint and shall otherwise be conducted in accordance with the Commission's Proposed Rules for Expedited Procedures, 42 FR 31446 (June 21, 1977), 16 CFR Part 1026. A complaint in a related proceeding shall include a statement that the Commission takes official notice of the contents of the Decision and Order in a matter previously adjudicated and a citation of the title, the docket number, and the date of the Decision and Order. The Decision and Order shall be attached to the complaint.

Subpart G—Appearance; Standards of Conduct

§ 1025.61 Who may make appearances.

A party or participant may appear in person, or by a duly authorized officer, partner, regular employee, or other agent of the party or participant, or by or with counsel or other duly qualified representative, in any proceeding under the regulations in this Part.

§ 1025.62 Authority for representation.

Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Presiding Officer or the Commission to show his/her authority to act in such capacity. A regular employee of a party who appears on behalf of the party shall be required by the Presiding Officer or the Commission to show his/her authority to so appear.

§ 1025.63 Written appearances.

(a) Any person who appears in a proceeding shall file a written notice of appearance with the Secretary or deliver a written notice of appearance to the reporter at the hearing, stating for whom the appearance is made and the name, address, and telephone number (including area code) of the person making the appearance and the date of the commencement of the appearance. The written appearance shall be made a part of the record.

(b) Any person who has previously appeared in a proceeding may withdraw his/her appearance by filing a written notice of withdrawal of appearance with the Secretary. The notice of withdrawal of appearance shall state the name, address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance, and such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance.

§ 1025.64 Attorneys.

An attorney at law who is admitted to practice before the Federal courts or before the highest court of any State, the District of Columbia, or any territory or commonwealth of the United States, may practice before the Commission. An attorney's own representation that he/she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Presiding Officer or the Commission.

§ 1025.65 Persons not attorneys.

(a) Any person who is not an attorney at law may be admitted to appear in an adjudicative proceeding if that person is a citizen of the United States and files proof to the satisfaction of the Presiding Officer that he/she possesses the necessary legal, technical, and/or other qualifications to render valuable service in the proceeding and is otherwise competent to advise and assist in the presentation of matters in the proceedings. An application by a person not an attorney at law for admission to appear in a proceeding shall be submitted in writing to the Secretary, not later than thirty (30) days prior to the hearing in the proceedings. The application shall set forth in detail the applicant's qualifications to appear in the proceedings.

(b) No person who is not an attorney at law and whose application has not been approved shall be permitted to appear in Commission proceedings. However, this provision shall not apply to any person who appears before the Commission on his/her own behalf or on behalf of any corporation, partnership, or association of which the person is a partner, officer, or regular employee.

§ 1025.66 Qualifications and standards of conduct.

(a) The Commission expects all persons appearing in proceedings before the Commission or a Presiding Officer to act with integrity, with respect, and in an ethical manner. Business transacted before and with the Commission shall be in good faith.

(b) To maintain orderly proceedings, the Commission or the Presiding Officer may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against certain *ex parte* communications.

(c) The Commission or a Presiding Officer may disregard and order the exclusion from the record of any written or oral submissions or representations which are not made in good faith, or which are unfair, incomplete or inaccurate.

(d) An excluded party, participant, or representative thereof may petition the Commission to entertain an interlocutory appeal in accordance with § 1025.24. If, after such appeal, the representative of a party or participant is excluded, the hearing shall, at the request of the party or participant, be suspended for a reasonable time so that the party or participant may obtain another representative.

§ 1025.67 Restrictions as to former members and employees.

(a) Except as otherwise provided in paragraph (b) of this section, the past employee restrictions applicable to former Commission members and employees, as set forth in the Commission's "Employee Standards of Conduct," 16 CFR Part 1030, Subpart L (41 FR 8023 (February 23, 1976)), shall govern the activities of former Commission members and employees in matters connected with their former duties and responsibilities.

(b) A former member or employee of the Commission may participate in a proceeding as a witness in response to a subpoena and may testify with respect to the facts of his/her past participation in a Commission proceeding or investigation. Commission authorization for such participation shall not be required.

(c) In cases to which paragraph (a) of this section is applicable, a former member or employee of the Commission may request authorization to appear or participate in a proceeding or investigation by filing with the Secretary of the Commission a written application therefor, disclosing the following information:

(1) The nature and extent of the former member's or employee's participation in, knowledge of, and connection with the proceeding or investigation during his/her service with the Commission;

(2) Whether the files of the proceedings or investigation came to his/her attention;

(3) Whether he/she was employed in the bureau, division, or administrative unit in which the proceeding or investigation is or has been pending;

(4) Whether he/she worked directly or in close association with Commission personnel assigned to the proceeding or investigation and, if so, with whom and in what capacity; and

(5) Whether during service with the Commission, he/she was engaged in any matter concerning the individual or company involved in the proceeding or investigation.

(d) The requested authorization shall not be given in any case:

(1) Where it appears that the former member or employee during service with the Commission participated personally and substantially in the proceeding or investigation; or

(2) Where the Commission is not satisfied that the appearance or participation will not involve any actual or apparent impropriety; or

(3) In any case which would result in a violation of 18 U.S.C. 207.

§ 1025.68 Prohibited communications.

(a) *Applicability.* This rule is applicable during the period commencing with the date of issuance of a complaint and ending upon final Commission action in the matter.

(b) *Definitions.* (1) Decision-maker. Those Commission personnel who render decisions in adjudicative proceedings under this Part, or who advise officials who render such decisions, including:

(i) The Commissioners and their staffs;

(ii) The Administrative Law Judges and their staffs;

(iii) The General Counsel and his/her staff, unless otherwise designated by the General Counsel.

(2) Ex parte communication:

(i) Any written communication made to a decision-maker by any person other than a decision-maker which is not served on all parties;

(ii) Any oral communication made to a decision-maker by any person other than a decision-maker without advance notice to the parties to the proceeding and opportunity for them to be present.

(c) *Prohibited ex parte communications.* Any oral or written ex parte communication relative to the merits of a proceeding under this Part is a prohibited ex parte communication, except as provided in paragraph (d) of this section.

(d) *Permissible ex parte communications.* The following communications shall not be prohibited under this Rule:

(1) Ex parte communications authorized by statute or by these Rules. (See, for example, the Rule governing applications for the issuance of subpoenas, § 1025.38.)

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Commission.

(e) *Procedures for handling prohibited ex parte communication.* (1) Prohibited written ex parte communication. To the extent possible, a prohibited written ex parte communication received by any Commission employee shall be forwarded to the Secretary rather than to a decision-maker. A prohibited written ex parte communication which reaches a decision-maker shall be forwarded by the decision-maker to the Secretary. If the circumstances in which a prohibited ex parte written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) Prohibited oral ex parte communication:

(i) If a prohibited oral ex parte communication is made to a decision-maker, he/she shall advise the person making the communication that the communication is prohibited and shall terminate the discussion.

(ii) In the event of a prohibited oral ex parte communication, the decision-maker shall forward to the Secretary a dated statement containing such of the following information as is known to him/her:

(a) The title and docket number of the proceeding;

(b) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(c) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(d) A brief statement of the substance of the matters discussed;

(e) Whether the person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) Filing. All communications and statements forwarded to the Secretary under this Rule shall be placed in a public file which shall be associated with, but not made a part of, the record of the proceedings, to which the communication or statement pertains.

(4) Service on parties. The Secretary shall serve a copy of each communication and statement forwarded under this Rule on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Secretary that service of the communication or statement would be unduly burdensome, he/she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying.

(5) Service on maker. The Secretary shall forward to the person who made the prohibited ex parte communication a copy of each communication and/or statement filed under this Rule.

(f) *Effect of ex parte communications.* No prohibited ex parte communication shall be considered as part of the record for decision unless introduced into evidence by a party to the proceedings.

(g) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

APPENDIX I—CASE CAPTION

FINAL PREHEARING ORDER

A prehearing conference was held in this matter pursuant to Rule 21 of the Commission's Rules of Practice for Adjudicative Proceedings, on the _____ day of _____, 19____, at ____ o'clock, __m.

Counsel appeared as follows:
For the Commission staff: _____
For the Respondent(s): _____
Others: _____

1. Nature of action and jurisdiction.
This is an action for _____ and the jurisdiction of the Commission is involved under Section ____ of Title _____, U.S.C. The jurisdiction of the Commission is (not) disputed. The question of jurisdiction was decided as follows:

2. Stipulations and statements.

The following stipulations and statements were submitted, attached to, and made a part of this order:

(a) A comprehensive written stipulation or statement of all uncontested facts;

(b) A concise summary of the ultimate facts as claimed by each party. (Complaint Counsel must set forth the claimed facts, specifically; for example, if violation is claimed, Complaint Counsel must assert specifically the acts of violation complained of; each respondent must reply with equal clarity and detail.)

(c) Written stipulations or statements setting forth the qualifications of the expert witnesses to be called by each party;

(d) A written list or lists of the witnesses whom each party will call, a written list or lists of the additional witnesses whom each party may call, and a statement of the subject on which each witness will testify;

(e) An agreed statement of the contested issues of fact and of law, and/or separate statements by each party of any contested issues of fact and law not agreed to;

(f) A list of all depositions to be read into evidence and statements of any objections thereto;

(g) A list and brief description of any charts, graphs, models, schematic diagrams, and similar objects that will be used in opening statements or closing arguments, but will not be offered in evidence. If any other such objects are to be used by any party, they will be submitted to opposing counsel at least three days prior to hearing. If there is then any objection to their use, the dispute will be submitted to the Presiding Officer at least one day prior to hearing;

(h) Written waivers of claims or defenses which have been abondoned by the parties.

The foregoing were modified at the pretrial conference as follows:

(To be completed at the conference itself. If none, recite "none".)

3. Complaint counsel's evidence.

3.1 The following exhibits were offered by Complaint Counsel, received in evidence, and marked as follows:

(Identification number and brief description of each exhibit.)

The authenticity of these exhibits has been stipulated.

3.2 The following exhibits were offered by the Complaint Counsel and marked for identification. There was reserved to the respondent(s) and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality.)

4. Respondent's evidence.

4.1 The following exhibits were offered by the respondent(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit.)

The authenticity of these exhibits has been stipulated.

4.2 The following exhibits were offered by the respondent(s) and marked for identification. There was reserved to Complaint Counsel and party intervenors, if any, the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competencey, relevancy materiality.)

5. Party intervenor's evidence.

5.1 The following exhibits were offered by the party intervenor(s), received in evidence, and marked as herein indicated:

(Identification number and brief description of each exhibit.)

The authenticity of these exhibits has been stipulated.

5.2 The following exhibits were offered by the party intervenor(s) and marked for identification. There was reserved to Complaint Counsel and respondent(s) the right to object to their receipt in evidence on the grounds stated:

(Identification number and brief description of each exhibit. State briefly ground of objection, e.g., competency, relevancy, materiality.)

NOTE.—If any other exhibits are to be offered by any party, they will be submitted to opposing counsel at least ten (10) days prior to hearing, and a supplemental note of evidence filed into this record.

6. Additional actions.

The following additional action was taken:

(Amendments to pleadings, agreements of the parties, disposition of motions, separation of issues of liability and remedy, etc., if necessary.)

7. Limitations and Reservations.

7.1 Each of the parties has the right to further supplement the list of witnesses not later than ten (10) days prior to trial by furnishing opposing counsel with the name and address of the witness and general subject matter of his/her testimony and filing a supplement to this pretrial order. Thereafter additional witnesses may be added only after application to the Presiding Officer, for good cause shown.

7.2 Rebuttal witnesses not listed in the exhibits to this order may be called only if the necessity of their testimony could not reasonably be foreseen ten (10) days prior to trial. If it appears to counsel at any time before trial that such rebuttal witnesses will be called, notice will immediately be given to opposing counsel and the Presiding Officer.

7.3 The probable length of hearing is____ days. The hearing will be commenced on the ____ day of _____, 19 ____, at ____ o'clock __m. at _____.

7.4 Prehearing briefs will be filed not later than 5:00 p.m. on _____.

(location)

(Insert date no later than ten (10) days prior to hearing.) All anticipated legal questions, including those relating to the admissibility of evidence, must be covered by prehearing briefs.

This prehearing order has been formulated after a conference at which counsel for the respective parties appeared. Reasonable opportunity has been afforded counsel for corrections or additions prior to signing. It will control the course of the hearings, and it may not be amended except by consent of the parties and the Presiding Officer, or by order of the Presiding Officer to prevent manifest injustice.

_____

(Presiding officer's name)

_____

(Presiding officer's title)

Approved as to form and substance.

Date: _____

_____

Complaint Counsel

_____

Attorney for respondent(s)

NOTE.—Where intervenors appear pursuant to § 1025.17 of these Rules, the prehearing order may be suitably modified; the initial page may be modified to reflect the intervention.

Interested persons are invited to submit, on or before July 21, 1977, written comments regarding these interim rules. Comments received after this date will be considered if practicable. Comments and any accompanying data or material should be submitted preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments and accompanying data may be seen in the Office of the Secretary, 1111 18th Street NW., Third floor, Washington, D.C. 20207.

Dated: June 7, 1977.

RICHARD E. RAPPS,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-17690 Filed 6-20-77;8:45 am]

PART 1026—RULES OF PRACTICE FOR EXPEDITED PROCEEDINGS

Proposed and Interim Rules of Practice for Expedited Proceedings Under the Consumer Product Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Interim rule on which comment is solicited.

SUMMARY: The Commission issues as an interim rule and requests public comment on Rules of Practice for Expedited Proceedings under the Consumer Product Safety Act. These rules establish expedited proceedings for the assessment of civil penalties under section 20 of the Consumer Product Safety Act. The purpose of these rules of practice is to insure that expedited proceedings are conducted impartially, thoroughly, and speedily, with due regard to the rights and interests of all persons affected. The Commission shall also apply these rules to other adjudicative matters after public notice. These rules should result in the orderly administration of Commission business.

DATE: These rules will be effective, on an interim basis, on June 21, 1977. Comments concerning the rules should be received by July 21, 1977.

ADDRESS: Comments should be sent to: Office of the Secretary, Consumer Product Safety Commission, 1111 18th Street, N.W., Third Floor, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Gwendolyn Crockett, Bureau of Compliance, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C., 301-492-6629.

SUPPLEMENTARY INFORMATION: In this notice, the Consumer Product Safety Commission proposes Rules of Practice for Expedited Adjudicative Proceedings under the Consumer Product Safety Act. Until final rules of practice for these expedited proceedings are issued, these proposed rules will serve as the interim rules of practice before the Commission. These rules will also be applicable to certain cases commenced within the last 60 days and in which the Commission has given the parties actual notice of the applicability of such rules together with copies thereof.

Although notice and comment are not required for rules of agency procedure or practice (5 U.S.C. 553(b)), the Commission has decided to solicit public comment on these rules. Comments will be received on or before July 21, 1977.

The rules apply to certain expedited administrative proceedings for the assessment of civil penalties under section 20 of the Consumer Product Safety Act (15 U.S.C. 2069) and to such other adjudicative matters as the Commission, in its discretion and upon public notice, shall direct.

The proposed rules provide (§ 1026.10) that the assessment process commences with the issuance of a Notice of Violation and Assessment of Civil Penalty. There follows a thirty (30) day period which provides an opportunity for payment of the penalty and/or negotiations. In the event no settlement is reached, a show cause order issues (§ 1026.10), commencing adjudicative proceedings and the matter is set for hearing. Notice to the public of the issues to be heard and the time and place selected for a hearing will be published in the FEDERAL REGISTER shortly after service of the show cause order. Pertinent provisions of the Rules of Practice for Adjudicated Proceedings, proposed and published this date (see 16 CFR Part 1025) are incorporated by reference into these rules.

The Commission concludes that the public should be invited to comment on the rules and that these rules should serve as interim rules of practice for applicable expedited proceedings. Because these are rules of agency procedure a delayed effective date is not required by the Administrative Procedure Act, 5 U.S.C. 553(d). However, even if that provision were applicable the Commission finds that it is necessary to have these rules effective upon publication in the FEDERAL REGISTER for the orderly conduct of Commission business.

Accordingly, under the provisions of the Consumer Product Safety Act (Sec. 20 Pub. L. 92-573, 86 Stat. 1226; 15 U.S.C. 2069) the Consumer Product Safety Commission adds, on an interim basis, a new Part 1026 to Title 16 as follows:

Subpart A—Scope of Rules; Nature of Expedited Proceedings; Definitions

Sec.
1026.1 Scope of rules.
1026.2 Nature of expedited proceedings.
1026.3 Definitions.

Subpart B—Commencement of Proceedings; Answer; Default

1026.10 Commencement of proceedings.
1026.12 Default.

Subpart C—Subpoenas

1026.20 Subpoenas.

Subpart D—Discovery

1026.21 Discovery.

Subpart E—Burden of Proof; Interlocutory Appeals; Proposed Findings, Conclusions and Recommended Orders

1026.30 Evidence.
1026.31 Interlocutory appeals.
1026.32 Proposed findings, conclusions and recommended order.

Subpart F—Initial Decision

Sec.
1026.40 Initial decision.
1026.41 Commission decision and order.
1026.42 Payment of penalty.
1026.50 General rules.

AUTHORITY: Sec. 20, Pub. L. 92-573, 86 Stat. 1221, 1223 (15 U.S.C. 2069).

Subpart A—Scope of Rules; Nature of Expedited Proceedings; Definitions

§ 1026.1 Scope of rules.

The Rules in this Part govern the procedure in adjudicative proceedings for the assessment of civil penalties pursuant to section 20 of the Consumer Product Safety Act (15 U.S.C. 2069) and for any other adjudicative matter under the Consumer Product Safety Act and the other acts administered by the Commission which, in the discretion of the Commission and upon public notice, can be handled by expedited proceedings. These rules do not apply to any proceeding in which the assessment of civil penalties is heard in conjunction with consideration of other remedies, unless the Commission orders to the contrary.

§ 1026.2 Nature of expedited proceedings.

Expedited proceedings shall be conducted in accordance with these rules and in accordance with 5 U.S.C. 551-559. It is the policy of the Commission that expedited proceedings shall be conducted impartially, thoroughly, and speedily, with due regard to the rights and interests of all persons affected and in locations chosen with due regard to the convenience of all parties. The Commission believes that administrative adjudicative proceedings should be conducted in an expeditious manner. Delay does not benefit the public or any party. Therefore, in the conduct of such proceedings, the Presiding Officer and all parties and their representatives shall make every effort at each stage of the proceeding to avoid unnecessary delay.

§ 1026.3 Definitions.

As used in this Part:

(a) The term "application" means the staff's application for a show cause order and for a notice of violation. A proposed respondent may, but need not, submit a position document along with the staff's application.

(b) The term "Commission" means the Consumer Product Safety Commission or a quorum thereof.

(c) The term "complaint counsel" means counsel for the Commission staff.

(d) The term "Notice" means the notice of violation and assessment of civil penalty.

(e) The term "Presiding Officer" means the person who conducts an expedited adjudicatory hearing under this Part, and may include a duly designated member or members of the Commission, or an administrative law judge qualified under 5 U.S.C. 3105 and assigned by the Chief Administrative Law Judge of the Commission.

(f) The term "respondent" means any individual, partnership, corporation, association, or public or private organization against whom a notice of violation and assessment of civil penalty has issued.

(g) The term "staff" means the staff of the Consumer Product Safety Commission.

Subpart B—Commencement of Proceedings; Answer; Default

§ 1026.10 Commencement of proceedings.

(a) *Settlement Procedure.* The civil penalty assessment procedure is commenced by the issuance of a notice of violation and assessment of civil penalty. The notice shall issue upon a preliminary determination by the Commission that reasonable cause exists to support a finding that a violation has occurred, and that based on the material submitted a civil penalty in the amount proposed is appropriate. The notice shall be accompanied by the application and by documents and/or portions of documents which accompanied the staff's application to the Commission and which are obtainable under the Freedom of Information Act, 5 U.S.C. 552. The notice shall contain information concerning settlement negotiations and information explaining the alleged violation and the proposed penalty. The penalty proposed in the notice may be compromised, remitted, or mitigated by the Commission based on information submitted and considered during the negotiation process. There is a thirty (30) day period, commencing upon receipt of the notice by the respondent, for the purpose of payment and/or settlement of the proposed assessment. In the absence of a settlement agreement signed by respondent and complaint counsel the adjudicative proceedings shall commence thirty (30) days from the date respondent receives the notice. The proceeding may commence before the expiration of the thirty (30) days if the respondent so requests in writing.

(b) *Commencement of Expedited Proceedings.* The expedited adjudicative proceeding is initiated by the service upon respondent of a show cause order issued by the Office of the Secretary.

(c) *Form of Show Cause Order.* The show cause order shall contain the following:

(1) Allegations that a violation has occurred and that a civil penalty should be assessed if the facts are found to be as alleged in the staff's application; and,

(2) A specified date, time and place for respondent to show cause why a final order should not issue in the amount of the proposed civil penalty.

(d) *Notice to the Public.* Notice of issues to be heard and the time and place for a hearing, the time to be at least fifteen (15) days after the date for service of respondent's answer, shall be published in the FEDERAL REGISTER within a short time subsequent to the service of the show cause order. The notice to the public shall also state the legal authority

and justification for instituting the proceeding.

§ 1026.11 Answer.

(a) *Time for Filing.* A respondent shall have fifteen (15) days from service of the show cause order within which to file an answer thereto.

(b) *Content of Answer.* An answer shall contain the following:

(1) Specific admission, denial or explanation of each fact alleged in the application or, if the respondent is without knowledge thereof, a statement to that effect. Allegations in the application not thus answered shall be deemed to have been admitted;

(2) A concise statement of the factual and/or legal defenses to each of the allegations contained in the application.

§ 1026.12 Default.

Failure of the respondent to appear at the time and place stated in the show cause order, unless otherwise ordered by the Presiding Officer, shall be deemed to constitute a waiver of the right to appear and to contest the allegations of the application. In the event respondent fails to appear, complaint counsel shall present to the Presiding Officer, on the record, all items of evidence necessary to prove the allegations of the application. The Presiding Officer, without further notice to the respondent, is authorized to find facts and to enter a recommendation to the Commission containing findings of fact, conclusions of law, and an initial decision and order.

Subpart C—Subpoenas

§ 1026.20 Subpoenas.

Section 1025.38 of the Rules of Practice for Adjudicative Proceedings, is incorporated herein by reference and made part hereof.

Subpart D—Discovery

§ 1026.21 Discovery.

Discovery under these expedited procedures will be the exception rather than the rule. Discovery on an expedited basis may be permitted under these expedited procedures at the discretion of the Presiding Officer and in accordance with Subpart D of Part 1025 of the Rules of Practice for Adjudicative Proceedings.

Subpart E—Burden of Proof; Interlocutory Appeals; Proposed Findings, Conclusions and Recommended Orders

§ 1026.30 Evidence.

(a) *Burden of Proof.* Complaint Counsel shall have the burden of proving the allegations contained in the application by a preponderance of the evidence. Respondent has the burden of proving: (1) Any fact or circumstance alleged to remit or mitigate the amount of the proposed civil penalty, (2) Any fact alleged to refute the alleged violation, and/or (3) Any other factual proposition which it advances.

(b) The provisions of §§ 1025.43, 1025.44, and 1025.45 of the Rules of Practice for Adjudicative Proceedings, are incorporated herein by reference and made part hereof.

§ 1026.31 Interlocutory Appeals.

Rulings of the Presiding Officer prior to the initial decision shall not be appealed to the Commission.

§ 1026.32 Proposed findings, conclusions and recommended order.

Within ten (10) days after the close of the record, unless otherwise ordered by the Presiding Officer in unusual circumstances, the parties may simultaneously file proposed findings of fact and conclusions of law and a proposed recommended order, together with memoranda in support thereof. Such proposals shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon. Replies to the proposed findings shall be served within ten (10) days thereafter unless otherwise ordered by the Presiding Officer. The parties may waive either or both submissions.

Subpart F—Initial Decision

§ 1026.40 Initial decision.

(a) *When Filed and When Effective.* The Presiding Officer shall endeavor to file an initial decision with findings of fact, conclusions of law, and an order within thirty (30) days after the close of the record.

(b) *Content.* The initial decision and order shall be based upon a consideration of the entire record and it shall be supported by reliable, probative, and substantial evidence. It shall include a statement of:

(1) Findings and conclusions, as well as the reasons or bases therefor, founded upon the material issues of fact, law or discretion presented on the record, and

(2) An appropriate order.

(c) *By Whom Made.* The initial decision shall be made and filed by the Presiding Officer who presided over the hearings, except when the Presiding Officer shall become unavailable to the Commission.

§ 1026.41 Commission decision and order.

(a) Within ten (10) days after service of the initial decision and order, either party may file with the Commission exceptions to the initial decision and order not to exceed fifteen (15) pages. If exceptions are filed, then the Commission shall endeavor to render a decision at the earliest possible date. The exception shall point out with particularity the specific errors in the decision. If an exception is filed, all other parties have ten (10) days to file written responses not to exceed fifteen (15) pages.

(b) In the event that no exceptions are filed, the initial decision and order will become the decision and order of the Commission thirty (30) days after service of the initial decision and order, unless the Commission on its own motion decides to undertake review of the matter.

(c) In the event exceptions are filed or the Commission decides on its own motion to review the matter, the Commission may adopt, modify, or set aside the findings, conclusions, and order contained in the initial decision and order of the Presiding Officer. The Commission decision shall include a statement of the reasons or bases for the action and any concurring and dissenting opinions. In civil penalty matters, the Commission shall consider the size of the party's business and the gravity of the violation in determining the amount of the penalty or whether it should be mitigated or remitted.

§ 1026.42 Payment of penalty.

The civil penalty imposed by the Commission's order shall become due and payable on the day specified in the order. Enforcement of the order by the Commission will be in accordance with the provisions of section 27(b)(7) of the Consumer Product Safety Act, as amended (15 U.S.C. 2076(b)(7)).

Subpart G—General Rules

§ 1026.50 General rules.

The provisions of the following sections of the Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, are incorporated herein by reference and are to be read as references to applications and show cause orders as used in these rules.

Sec.

1025.13	Amendments and Supplemental Pleadings.
1025.14	Form and Filing of Documents.
1025.15	Time.
1025.16	Service.
1025.17	Intervention.
1025.20	Joinder of Proceedings.
1025.41	General Rules.
1025.42	Powers and Duties of Presiding Officer.
1025.47	Record.
1025.48	Official Docket.
1025.49	Fees.
1025.58	Reopening of Proceedings.
1025.59	Related Proceedings.
1025.61	Who May Make Appearances.
1025.62	Authority for Representation.
1025.63	Written Appearances.
1025.64	Attorneys.
1025.65	Persons Not Attorneys.
1025.66	Qualifications and Standards of Conduct.
1025.67	Restrictions as to Former Members and Employees.
1025.68	Prohibited Communications.

Interested persons are invited to submit, on or before July 21, 1977 written comments regarding these interim rules. Comments received after this date will be considered if practicable. Comments and any accompanying data or material should be submitted preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments and accompanying data may be seen in the Office of the Secretary, 1111 18th Street, N.W., Third floor, Washington, D.C. 20207.

Dated: June 7, 1977.

RICHARD E. RAPPS,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-16758 Filed 6-20-77;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77-162]

PART 159—LIQUIDATION OF DUTIES

Scissors and Shears From Brazil

AGENCY: Customs Service, Treasury Department.

ACTION: Liquidation of Duties.

SUMMARY: This notice is to inform the public of the amount of countervailing duty which will be assessed on certain scissors and shears exported from Brazil. This action results from new information supplied by the Brazilian government leading to the reduction in the export subsidy previously determined.

EFFECTIVE DATE: February 11, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Vincent P. Kane, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of February 11, 1977 (42 FR 8634), the Commissioner of Customs gave notice that the United States Customs Service had determined that exports of certain scissors and shears from Brazil are subject to bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The scissors and shears are provided for in the Tariff Schedules of the United States as scissors and shears valued at more than $1.75 per dozen under item number 650.91.

At the time, notice was given that such dutiable scissors and shears from Brazil, if entered for consumption or withdrawn from warehouse for consumption on or after February 11, 1977, would be subject to payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed. A deposit of estimated countervailing duties in the amount of 17 percent of the f.o.b. or ex-works price was required at the time of entry of the subject merchandise for consumption or upon withdrawal from warehouse for consumption on or after Feburary 11, 1977.

From information received since the issuance of the notice, it has been finally ascertained, determined or estimated that the net amount of the bounty or grant paid or bestowed upon the subject merchandise is 15.8 percent of the f.o.b. or ex-works price, and countervailing duties in this amount will be collected upon the liquidation of all entries of the subject merchandise for consumption or withdrawals thereof from warehouse for consumption on or after February 11, 1977.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting in respect of the commodity "Certain scissors and shears from Brazil," the number of this Treasury Decision in the column headed "Treasury Decision" and the words "Final rate declared" in the column headed "Action."

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2050 (19 U.S.C. 66, 1303), as amended, 1624.)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 13, May 17, 1977, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47(d) of the Customs Regulations (19 CFR 159.47(d)), insofar as they pertain to the issuance of a countervailing duty order by the Commissioner of Customs, are hereby waived.

HENRY C. STOCKELL, Jr.,
Acting General Counsel of the Treasury.

JUNE 14, 1977.

[FR Doc.77-17752 Filed 6-20-77;8:45 am]

[T.D. 77-161]

PART 159—LIQUIDATION OF DUTIES

Cotton Yarn From Brazil

AGENCY: Customs Service, United States Treasury.

ACTION: New Countervailing Duty Rate Declared.

SUMMARY: This notice is to inform the public the countervailing duty rate of 21.4 percent on imports of cotton yarn from Brazil is changed to 19.6 percent of the f.o.b. or ex-works price for export to the United States. This action results from new information supplied by the Brazilian government leading to the reduction in the export subsidy previously determined.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Vincent P. Kane, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone (202-566-5492).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of March 15, 1977 (42 FR 14089), there appeared a notice of countervailing duties to be imposed under section 303, Tariff Act of 1930, as amended, by reason of the payment or bestowal of a bounty or grant upon the manufacture, production, or exportation of cotton yarn from Brazil. Paragraph 9, column 2, states that the amount of such bounties or grants has been estimated and declared to be 21.4 percent of the f.o.b. or ex-works price for export to the United States of cotton yarn from Brazil.

Subsequent to this determination, the Government of Brazil provided information to show that the benefits derived from preferential financing would be less than had originally been established.

Accordingly, the amount of such bounties or grants has been estimated and declared to be 19.6 percent of the f.o.b. or ex-works price for export to the United States of cotton yarn from Brazil.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for Brazil the words "Cotton yarn" in the column headed "Commodity", the number of this Treasury Decision in the column headed "Treasury Decision," and the words "Bounty Declared-Rate" in the column headed "Action".

(R.S. 251, secs. 303 as amended, 624; 46 Stat. 687, as amended, 759, 88 Stat. 2050; 19 U.S.C. 66, 1303, 1624.)

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 13, May 17, 1977, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47(d) of the Customs Regulations (19 CFR 159.47(d)), insofar as they pertain to the issuance of a countervailing duty order by the Commissioner of Customs, are hereby waived.

HENRY C. STOCKWELL, Jr.,
Acting General Counsel of the Treasury.

JUNE 14, 1977.

[FR Doc.77-17751 Filed 6-20-77;8:45 am]

Title 21—Food and Drugs

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

[Docket No. 76N-0459]

CERTAIN FLUOROCARBON (CHLOROFLUOROCARBON) PROPELLANTS IN SELF-PRESSURIZED CONTAINERS

Warning Statement Requirement

Correction

In FR Doc. 77-12210, appearing at page 22018 in the issue for Friday, April 29, 1977, on page 22024 in the paragraph numbered 18, the seventh line of third column should read: "melanoma skin cancer is not certain, but."

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 76P-0092]

PART 155—CANNED VEGETABLES

Standard of Identity for Canned Mushrooms

Correction

In FR Doc. 77-16656, appearing on page 30358 in the issue of Tuesday, June 14, 1977, make the following changes:

1. In the first line of the paragraph beginning "DATES" in column one, the date should read, "August 15, 1977".

2. In the second line of the paragraph beginning "Effective date" in column three, the date should read, "August 15, 1977".

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0174]

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Revised pH Test Method

Correction

In FR Doc.77-16183, appearing at page 29857 in the issue of Friday, June 10, 1977, the fourth line of the first column

on page 29858 should read, "tion differs by more than 0.05 pH unit of its".

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 510—NEW ANIMAL DRUGS

Sponsors of Approved Applications; Abbott Laboratories; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations to reflect a change in corporate name of a sponsor of an approved new animal drug application. Agricultural and Veterinary Products Division, Abbott Laboratories is changed to Abbott Laboratories.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857 (301-443-4317).

SUPPLEMENTARY INFORMATION: The Food and Drug Administration has been advised of a sponsor name change—Agriculture and Veterinary Products Division, Abbott Laboratories to Abbott Laboratories.

The Commissioner of FDA is amending Part 510 (21 CFR Part 510) to reflect this change.

Therefore, under the Federal, Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1), § 510.600 is amended in paragraph (c)(1) to delete the entry for "Agricultural and Veterinary Products Division, Abbott Laboratories," and to add a new entry alphabetically; and in paragraph (c)(2) to delete the firm name and address for "043731" and to insert in its place a new firm name and address to read as follows:

§ 510.600 Names, addresses, and code numbers of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address:	*Drug listing No.*
* * * * *	
Abbott Laboratories, North Chicago, IL 60064	043731
* * * * *	

(2) * * *

Drug listing No.:	*Firm name and address*
* * * * *	
043731	Abbott Laboratories, North Chicago, IL 60064.
* * * * *	

Effective date: June 21, 1977.

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

Dated: June 13, 1977.

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

[FR Doc.77-17602 Filed 6-20-77;8:45 am]

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

Pentazocine Lactate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule amends regulations to reflect approval of an injectable animal drug for horses. The application was filed by Winthrop Laboratories, Division of Sterling Drug, Inc., which proposed using the drug in horses for safe and effective control of pain due to colic.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert A. Baldwin, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857 (301-443-3420).

SUPPLEMENTARY INFORMATION: The agency is approving a new animal drug application (044-611V) filed by Winthrop Laboratories, Division of Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, proposing safe and effective use of pentazocine lactate injection for controlling pain due to colic in horses.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), 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.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))), and under authority delegated to the Commissioner (21 CFR 5.1), Part 522 is amended by adding new § 522.1698 to read as follows:

§ 522.1698 Pentazocine lactate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains pentazocine lactate equivalent to 30 milligrams of pentazocine base.

(b) *Sponsor.* See No. 000024 in § 510.600(c) of this chapter.

(c) *Conditions of use.*—(1) *Amount.* 0.15 milligrams of pentazocine base per pound of body weight per day.

(2) *Indications.* The drug is used for the symptomatic control of pain due to colic in horses.

(3) *Limitations.* It is administered intravenously and intramuscularly, intravenous injections being made slowly in the jugular vein. In cases of severe pain, a second dose is recommended 10 to 15 minutes after the initial dose, intramuscularly, at the same level. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date: This regulation becomes effective on June 21, 1977.

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

Dated: June 14, 1977.

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

[FR Doc.77-17585 Filed 6-20-77;8:45 am]

SUBCHAPTER F—BIOLOGICS

[Docket No. 75N-0129]

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

Cryoprecipitated Antihemophilic Factor (Human)

Correction

In FR Doc. 77-12297, appearing at page 21772 in the issue for Friday, April 29, 1977, in the second line of the Supplementary Information paragraph numbered 5, "650.54" should read "640.54."

On page 21774, in the paragraph numbered 24, at the top of the third column, between the second and third lines, insert: "recommended that the Source Plasma."

Title 25—Indians

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

SUBCHAPTER W—MISCELLANEOUS ACTIVITIES

PART 256—OFF-RESERVATION TREATY FISHING

Subpart B—Fraser River Convention Sockeye and Pink Salmon Fishery

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

ACTION: Emergency Regulations.

SUMMARY: These regulations implement a treaty Indian fishery for sockeye and pink salmon in off-reservation nonexclusive treaty fishing areas located in waters coming under the United States Convention with Canada for the protection, preservation, and extension of the sockeye and pink salmon fishery of the Fraser River System. These rules implement domestic law of the United States in a manner consistent with the United States obligation to Canada under the Convention. Nontreaty fisheries in these waters are governed by the rules promulgated by the International Pacific Salmon Fisheries Commission. These rules are promulgated by the Bureau of Indian Affairs to apply only to treaty In-

dians exercising fishing rights secured to them by treaties of the United States.

EFFECTIVE DATE: 0001 a.m. on June 26, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. George M. Crossland, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Washington, D.C. 20245. (202-343-5831.)

SUPPLEMENTARY INFORMATION: The Department of the Interior is responsible for the supervision and management of Indian Affairs under 43 U.S.C. 1457, 25 U.S.C. 2 and 9, and the Reorganization Plan No. 3 of 1950 (64 Stat. 1262), including the protection and implementation of off-reservation fishing rights secured by the Treaty of Point Elliot, 12 Stat. 927 (1859); Treaty with the Makah, 12 Stat. 939 (1859); and Treaty of Point No Point, 12 Stat. 933 (1859) as affirmed in *U.S.* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd 520 F. 2d 676 (C.A. 9, 1975), cert. den. 423 U.S. 1086 (1976). Such treaty Indian fisheries include a sockeye and pink salmon fishery at off-reservation nonexclusive treaty fishing locations located in waters coming under the United States Convention with Canada respecting the sockeye and pink salmon fisheries of the Fraser River System.

On June 1, 1977, the International Pacific Salmon Fisheries Commission forwarded to the Governments of Canada and the United States, for the approval required by the Convention, the regulations applicable in Convention waters during the 1977 fishing season. The United States, acting through the Department of State, has approved the regulations except as to treaty Indians fishing in accordance with regulations promulgated by this Department providing for the exercise of fishing rights secured by United States treaties. The fishing season in Convention waters begins on June 26, 1977. These regulations are necessary to implement the off-reservation nonexclusive fishing rights of certain Northwest Washington Indian tribes and to meet the United States obligations to Canada under the Fraser River Convention. For these reasons the Secretary of the Interior hereby and for good cause finds that the formal advance notice, public comment procedures, and delayed effectiveness procedures of 5 U.S.C. 553 are impracticable and contrary to the public interest. These regulations are therefore effective at 0001 a.m. on June 26, 1977.

NOTE.—An environmental assessment has been completed and it has been concluded that the implementation of a treaty Indian fishery by these regulations is not a major Federal action which would significantly affect the environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement is not required. The Department of the Interior has also determined that these regulations do not contain a major federal proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Comments from treaty Indian tribes and other persons are invited at the address indicated above and will be considered in respect to amendments to this subpart.

The primary author of this document is Susan Hvalsoe, Office of Rights Protection, Bureau of Indian Affairs, Department of the Interior. (202-343-5473.)

Dated: June 17, 1977.

JAMES A. JOSEPH,
Acting Secretary.

Sections 256.1 to 256.10 of Chapter 1 of Title 25 CFR are designated as Subpart A and such chapter is amended by adding the following Subpart B to Part 256.

Subpart B—Fraser River Convention Sockeye and Pink Salmon Fishery

Sec.

256.11 Purpose of this subpart: compliance.
256.12 Definition of terms.
256.13 Other laws and regulations.
256.14 Identification.
256.15 Fishing assistance.
256.16 Reporting requirements.
256.17 Fishing seasons.
256.18 Emergency orders.
256.19 Treaty tribe fishing regulations.
256.20 Unlawful possession.
256.21 Forcible assault on enforcement officer.

AUTHORITY: The provisions of subpart B are issued under the authority of 25 U.S.C. 2, 9; 5 U.S.C. 301; 43 U.S.C. 1451 et. sec.; 25 CFR 256.

§ 256.11 Purpose of this subpart: compliance.

(a) This subpart governs fishing for sockeye salmon or pink salmon by any treaty Indian who is fishing at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery.

(b) Any treaty Indian shall comply with this subpart when fishing for sockeye or pink salmon at his tribe's treaty fishing places in U.S. Convention waters during the time the Commission exercises control over the Fraser River Convention sockeye and pink salmon fishery. Fishing by any person which is not in accordance with these regulations is governed by 50 CFR Part 371 and violations thereof are subject to the penalties of the Act.

§ 256.12 Definition of terms.

(a) Act means: the Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f.

(b) Commission means: The International Pacific Salmon Fisheries Commission provided for by Article II of the Convention.

(c) Convention means: the convention between the United States and Canada for the protection, preservation, and extension of the sockeye salmon fisheries of the Fraser River system, signed at Washington on the 26th day of May 1930, as amended by the protocol to include pink salmon, signed at Ottawa on the 28th day of December 1956.

(d) Convention waters means: those waters described in article I of the convention.

(e) Enforcement Officer means:

(1) Any enforcement agent of the National Marine Fisheries Service;

(2) Any commissioned, warrant, or petty officer of the Coast Guard;

(3) Any Coast Guard personnel accompanying and acting under the direction of any persons described in (2) of paragraph (e) of this section;

(4) Any tribal enforcement officer authorized to enforce treaty tribal regulations described under § 256.19 of this part;

(5) Any other person authorized by the Regional Director, Northwest Region, National Marine Fisheries Service, to enforce the provisions of the Convention, the Commission's regulations, the Act, or 50 CFR 371;

(6) Any other person authorized by the Secretary of the Interior to enforce the provisions of 25 CFR 256 subpart A or B.

(f) Fish, fishing means: the fishing for, catching, or taking, or the attempted fishing for, catching, or taking, of any sockeye salmon or pink salmon in convention waters.

(g) Fishing gear means: any net, trap, hook, or other device, appurtenance or equipment, of whatever kind or description, used or capable of being used for the capturing of fish or as an aid in capturing fish.

(h) Lawful gear means: any gill net, purse seine, reef net troll line, beach seine, or stake net, as defined under tribal law or in Washington Administrative Code Chapter 220-16 and 220-47-301 through 304.

(i) Person includes: individuals, partnerships, associations, and corporations.

(j) Pink salmon means: that species of salmon known by the scientific name *Oncorhynchus gorbuscha*.

(k) Sockeye salmon means: that species of salmon known by the scientific name *Oncorhynchus nerka*.

(l) State area means: fishing areas defined as Puget Sound Salmon Management and Catch Reporting Areas in Washington Administrative Code Chapter 220-22.

(m) Treaty Indian means: any member of a treaty Indian tribe which has treaty fishing places in U.S. convention waters.

(n) Treaty Indian identification means: identification issued by the Bureau of Indian Affairs or a treaty Indian tribe identifying the holder as a member of the issuing tribe. The identification card shall include the name and address of the tribal member, the member's enrollment number (if any), date of birth, and the member's photograph.

(o) Treaty Indian tribe means: any tribe which has been found by the United States District Court for the Western District of Washington to be entitled to exercise treaty-secured fishing rights in U.S. Convention waters.

Currently these tribes are the Makah Tribe, Lower Elwha Band Clallam Tribe, Port Gamble Band Clallam Tribe, Suquamish Tribe, Lummi Tribe, Nooksack Tribe, the Swinomish Indian Tribal Community, and Tulalip Tribe.

(p) Treaty fishing places (of an Indian tribe) means: any location which shall have been previously determined by the United States District Court for the Western District of Washington in *U.S.* v. *Washington* to be a place at which that treaty tribe may take fish under rights secured by a treaty of the United States with such tribe or its predecessor in interest.

(q) Washington Administrative Code means: only those chapters and sections of the Washington Administrative Code that were in effect as of June 1, 1977.

(r) Vessel means: every type or description of water craft or other contrivance used, or capable of being used, as a means of transportation in water.

§ 256.13 Other laws and regulations.

Nothing in this subpart shall be construed to relieve a treaty Indian or his authorized assistant from any applicable requirement lawfully imposed by a tribe, the United States, or the State of Washington. Nor shall anything herein authorize any treaty Indian or his authorized assistant to act contrary to any restriction or requirement of applicable tribal laws.

§ 256.14 Identification.

(a) Any treaty Indian fishing under the authority of this subpart shall have in his possession at all such times treaty Indian identification required by 25 CFR 256.3 and by applicable tribal law.

(b) Any person assisting a treaty Indian under the authority of § 256.15 of this part shall have in his possession at all such times an identification card issued by the Bureau of Indian Affairs or by a treaty Indian tribe, identifying the holder as qualified to assist a treaty Indian. The identification shall include the name of the issuing tribe, the name, address, date of birth, and photograph of the assistant, and the name and enrollment number (if any) of the treaty Indian the assistant is qualified to assist.

(c) Identification described in paragraphs (a) or (b) of this section shall be shown on demand to an enforcement officer by the treaty Indian or authorized assistant.

(d) Any treaty Indian fishing under this subpart shall comply with the treaty Indian vessel and gear identification requirements of Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S.* v. *Washington*, as implemented in Washington Administrative Code 220-47-121.

§ 256.15 Fishing assistance.

Notwithstanding 25 CFR 256.5, any treaty Indian fishing under this subpart may be assisted, if authorized by the treaty Indian's tribe, by the treaty Indian's spouse, forebears, children, grandchildren, and siblings authorized by the United States District Court for the Western District of Washington in *U.S.* v. *Washington*. Persons so authorized shall be considered treaty Indians for the purposes of this subpart.

§ 256.16 Reporting requirements.

(a) Any person receiving or purchasing fish caught by any treaty Indian fishing under this subpart shall comply with Decision No. 1 and subsequent Orders of the U.S. District Court for the Western District of Washington in *U.S.* v. *Washington* as implemented in Washington Administrative Code Chapter 220-69.

(b) Any treaty Indian who sells fish caught under the authority of this subpart directly to a consumer, restaurant, boathouse, or any other retail outlet shall comply with Washington Administrative Code Chapter 220-69.

§ 256.17 Fishing seasons.

(a) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in State Areas 4B, 5, or 6C:

(1) From June 26, 1977 to July 2, 1977, both dates inclusive, except with lawful gear from 5 a.m. on Monday to 9:30 a.m. on Friday; and

(2) From July 3, 1977 to August 13, 1977, both dates inclusive, except with lawful gear from 10:30 a.m. on Sunday to 9:30 a.m. on Wednesday of each week, and except with lawful gillnets in Area 4B from 7 p.m. on Wednesday to 9:30 a.m. on Thursday of each week and from 7 p.m. on July 30 to 9:30 a.m. on July 31.

(3) From August 14, 1977 to September 17, 1977, both dates inclusive, except with lawful gear from 10:30 a.m. on Sunday to 9 a.m. on Wednesday of each week, and except with lawful gillnets in Area 4B from 6 p.m. on Wednesday to 9 a.m. on Thursday of each week.

(b) No treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters in State Areas 6, 6A, 7 or 7A:

(1) From June 26, 1977 to July 2, 1977, both dates inclusive, except with lawful gear from 5 a.m. on Monday to 9:30 a.m. on Friday; and

(2) From July 3, 1977 to August 13, 1977, both dates inclusive, except with lawful gear from 10:30 a.m. on Sunday to 9:30 a.m. on Wednesday of each week; and

(3) From August 14, 1977 to September 24, 1977, both dates inclusive, except with lawful gear from 10:30 a.m. on Sunday to 9 a.m. on Wednesday of each week; and

(4) Notwithstanding the foregoing provisions of paragraph (b) of this section, no treaty Indian shall fish for sockeye or pink salmon in U.S. Convention waters with nets:

(i) From August 14, 1977 to September 10, 1977, both dates inclusive, in State Area 6A and that portion of State Area 6 lying southerly and easterly of a line projected from Dungeness Light to Smith Island Light to Lawson Reef Lighted Buoy to Northwest Island, thence due east to Fidalgo Island, except with nets having a mesh of not less than 8 inches extension measure, at the times when fishing with any lawful net gear is permitted in State Area 7.

(ii) From August 28, 1977 to September 3, 1977, both dates inclusive, in U.S. Convention waters lying northerly and westerly of a straight line drawn from Iwerson's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

(iii) From September 4, 1977 to September 24, 1977, both dates inclusive, in U.S. Convention waters lying westerly of a line drawn true south from the southeast tip of Point Roberts (otherwise known as Lily Point), to the intersection with the International Boundary between the U.S. and Canada.

(iv) From September 25, 1977 to October 8, 1977, both dates inclusive, in U.S. Convention waters lying northerly and westerly of a straight line drawn from Iwerson's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia.

(c) The foregoing recommended regulations shall not apply to the following United States Convention waters:

(1) State Area 7B including Hale Passage and Bellingham Bay and all Convention waters of State Area 7B lying easterly and inside of a line projected from Carter Point on Lummi Island to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island following the shoreline to Southeast Point on Guemes Island, thence to March Point on Fidalgo Island, and

(2) State Areas 6B and 7C, and

(3) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

(d) All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

§ 256.18 Emergency orders.

(a) These regulations are subject to frequent change by emergency order, particularly with respect to permissible fishing times. When the necessity for an emergency order is known 24 hours or more before the time it is to become effective, notice of the basis of the emergency and anticipated change will be transmitted immediately to the Northwest Indian Fisheries Commission for the treaty tribes, in order that the treaty tribes may amend tribal fishing regulations in response to the emergency.

(b) Notice of a change in these regulations will be provided to the Northwest Indian Fisheries Commission and is available by calling the Northwest Indian Fisheries Hot-line (800-562-6142 or 800-562-6143).

(c) Emergency orders are effective at the time notice is provided to the Northwest Indian Fisheries Commission or as otherwise stated in the order, whichever time is later.

§ 256.19 Treaty tribe fishing regulations.

To the extent that they are consistent with this subpart, treaty tribe fishing regulations governing treaty Indian sockeye and pink salmon fishing in U.S. Convention waters during the time the Commission exercises control, which are approved under 25 CFR 256.2(b), and emergency orders under such treaty tribe fishing regulations, are incorporated

herein and effective for all purposes as part of this subpart.

§ 256.20 Unlawful possession.

No person shall possess sockeye or pink salmon on board a fishing vessel which is engaged in a fishery for other species in U.S. Convention waters during times these waters are closed by the regulations in this subpart.

§ 256.21 Forcible assault on enforcement officer.

No person fishing under this subpart shall assault, resist, oppose, impede, intimidate, or interfere with an enforcement officer engaged in enforcing this subpart.

[FR Doc.77-17995 Filed 6-20-77;8:45 am]

Title 31—Money and Finance: Treasury

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 530—RHODESIAN SANCTIONS REGULATIONS

Extension of Interim Producers for In-Transit Shipments and Certification of Chromium Materials

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is extending the interim procedures governing imports of ferrochromium and specialty steel products into the United States due to progress made to date in negotiations between representatives of the exporting countries and the Treasury Department. The purpose is to provide additional time for the completion of the administrative and legislative arrangements necessary for the conclusion of certification agreements.

EFFECTIVE DATE: June 20, 1977.

FOR FURTHER INFORMATION CONTACT:

George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220 (202-376-0428).

SUPPLEMENTARY INFORMATION: Section 530.520 of the Rhodesian Sanctions Regulations was amended on May 10, 1977, to provide for the case-by-case issuance of licenses for importation of ferrochromium and steel mill products subject to the prohibitions of § 530.202 which were in-transit to the United States. Importation would be licensed in such cases when supported by a certificate from the individual producer stating that the materials were in shipment to the United States on March 18, 1977, or were in its inventory for that purpose on that date.

At the same time, § 530.523 was added to provide for an interim certification procedure effective until June 18, 1977, governing imports of ferrochrome and specialty steel products into the United States. That interim procedure applied uniformly to all shipments of ferrochrome and specialty steel to the United States pending the negotiation of permanent certification procedures for each country exporting ferrochrome or specialty steel to the United States. The interim procedure enabled administrative and legislative procedures necessary for permanent arrangements in exporting countries to go forward and prevented unnecessary disruption of trade pending conclusion of permanent certification arrangements.

The present extension until July 18, 1977, of the June 18, 1977, expiration date of the interim licensing policy for in-transit shipments and the interim certification procedure is being authorized in view of the substantial progress made to date in negotiations between representatives of countries that export ferrochrome and specialty steel products to the U.S. It is anticipated that certification agreements will be concluded before July 18, 1977, under which special certificates of origin will be issued with respect to imports into the United States of ferrochrome and specialty steel products. These interim procedures do not apply in the case of imports from Canada in view of special certification arrangements which have been worked out with that country. In addition, while Italy is eligible for certification of chromium materials, importation of Italian nickel-bearing steel products in their basic shapes and forms is prohibited under the Cuban Assets Control Regulations (31 CFR Part 515).

Since this amendment involves a foreign affairs function, the provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date are inapplicable. The primary author of this amendment is Dennis M. O'Connell.

31 CFR Part 530 is amended as follows:

1. Section 530.520 is amended to read as follows:

§ 530.520 In-transit steel mill products.

(a) All transactions incidental to the importation into the United States of ferrochromium and steel mill products subject to the prohibitions of § 530.202 are authorized, provided the pertinent ocean bill of lading was issued before March 18, 1977.

(b) Such materials may also be licensed to be imported on or before July 18, 1977, if the Office of Foreign Assets Control is satisfied that the materials were in transit to the United States on March 18, 1977. Applications must be supported by a certificate from the producer stating that the materials were in shipment to the United States on March 18, 1977, or were in its inventory for that purpose on that date.

2. Section 530.523 is amended to read as follows:

§ 530.523 Interim certification of chromium materials from third countries.

Importation on or before July 18, 1977, of chromium materials subject to the prohibitions of § 530.202(a) (2) or (3) will be authorized on a case-by-case basis upon presentation to the Office of Foreign Assets Control of a certificate or certificates issued by an appropriate agency of the government of the producing country stating in substance that pursuant to the country's implementation of the United Nations sanctions the material does not contain chromium of Rhodesian origin.

(22 U.S.C. 287(c); Pub. L. 95-12, March 18, 1977, 91 Stat. 22; Executive Order 11322; Executive Order 11419; Executive Order 11978.)

STANLEY L. SOMMERFIELD,
Acting Director.

[FR Doc.77-17759 Filed 6-17-77;3:15 am]

Title 36—Parks, Forests, and Public Property

CHAPTER I—NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Mammoth Cave National Park, Kentucky

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to establish additional restrictions on visitor activities within the caves of Mammoth Cave National Park. This has been found to be necessary in order to provide for visitor safety and protect cave resources.

EFFECTIVE DATE: July 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Albert A. Hawkins, Superintendent, Mammoth Cave National Park, Mammoth Cave, Kentucky 42259, telephone 502-758-2251.

SUPPLEMENTARY INFORMATION: *Originator:* Joseph Kulesza, former Superintendent, Mammoth Cave National Park. *Previous publications:* This amendment was published as a Notice of Proposed Rulemaking on May 27, 1975 (40 FR 22841).

Many thousands of people each year participate in tours within those portions of Mammoth Cave which have been developed for safe visitor use. These tours may be fully guided or may have a lesser degree of guidance, depending upon the area covered and the nature of the tour. It is important that persons in the caves under these circumstances confine their activities to areas which have been established for such uses. Straying into other areas of the cave or leaving a tour group subjects the visitor to danger and presents a potential for intentional or accidental damage to delicate formations in the cave.

No comments on the proposed regulations were received during or after the public comment period which followed its publication in 1975.

In consideration of the foregoing, paragraph (b) of § 7.36, Title 36, Code of Federal Regulations, is amended by redesignating the existing text of this

paragraph as paragraph (b)(1) and adding subparagraphs (2) and (3) as follows:

§ 7.6 Mammoth Cave National Park.

* * * * *

(b) *Cave entry.* (1) * * *

(2) Persons on guided cave tours must stay on the established designated trails and remain with the guides and tour group at all times. Exploration of side passages, going ahead of the lead guide and tour group or dropping behind the following guide or tour group is prohibited.

(3) Persons on "self-guided" or "semi-guided" cave tours must stay on the established, designated trails at all times. Exploration of side passages or taking alternate routes is prohibited.

ALBERT A. HAWKINS,
Superintendent.

[FR Doc.77-16740 Filed 6-20-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 4—DEPARTMENT OF AGRICULTURE

PART 4-50—DISPUTES AND APPEALS

Miscellaneous Amendments

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule amends the Agriculture Procurement Regulations to conform to coverage in the Code of Federal Regulations and to make various editorial changes and organizational name changes.

DATE: This rule is effective June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Douglas I. Metzger, Procurement, Grants and Agreements Management Staff, Office of Operations, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7527.

SUPPLEMENTARY INFORMATION: This amendment involves matters relating to agency management and contracting and, while not subject by law to the notice and public procedure requirements for rule making under 5 USC 553, is subject to the Secretary's Statement of Policy (36 FR 13804). The amendment corrects or clarifies existing policy. No useful purpose would be served by public participation, and it is found upon good cause, in accordance with the Secretary's Policy Statement, that notice and other public procedures with respect to the amendment are impracticable and unnecessary.

1. The Table of Contents of Subpart 4-50.2 is revised to read as follows:

Subpart 4-50.2—Contract Appeals

4-50.201 General.
4-50.202 Board of Contract Appeals.
4-50.203 Request by contracting officer for hearing.
4-50.204 Releases to contractors.

* * * * *

§ 4-50.104-1 [Amended]

2. In section 4-50.104-1, paragraph (b), the "Office of Plant and Operations" is changed to read "Office of Operations."

3. Section 4-50.201(b) is revised to read as follows:

§ 4-50.201 General.

* * * * *

(b) Such appeals shall be taken by mailing or otherwise furnishing to the contracting officer a written notice of appeal addressed to the Secretary of Agriculture. All necessary information concerning appeals, including contents of notice of appeal, filing requirements, and receipt and transmittal requirements for the contracting officer, is set forth in Title 7, Code of Federal Regulations, Part 24. (See § 4-52.506 of this chapter.)

§ 4-50.202 [Deleted]

§ 4-50.203 [Deleted]

4. Sections 4-50.202 and 4-50.203 are deleted.

§ 4-50.204 thru 4-50.206 [Redesignated]

5. Section numbering of sections 4-50.204, 4-50.205, and 4-50.206 is changed to read 4-50.202, 4-50.203, and 4-50.204 respectively.

§ 4-50.204 [Amended]

6. In § 4-50.204, Releases to contractors, the note "See 43 Comp. Gen. 231 in connection with this requirement.)" is deleted.

(5 USC 301, 40 USC 486(c).)

Done at Washington, D.C., this 16th day of June 1977.

E. ALVAREZ,
Director, Office of Operations.

[FR Doc.77-17659 Filed 6-20-77;8:45 am]

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

[FPMR Amendment G-41]

PART 101-38—MOTOR EQUIPMENT MANAGEMENT

Maintenance of Government-Owned Motor Vehicles

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation provides updated policy and procedures concerning the maintenance of Government-owned motor vehicles. Because of emission control and other environmental devices, agencies are encouraged to comply with the manufacturers' recommended scheduled maintenance program for motor vehicles model year 1976 and later. This amendment takes the necessary action to amend the FPMR accordingly.

EFFECTIVE DATE: This regulation is effective on June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. John Tait, Director, Regulations and Procedures Management Division, Office of Customer Service and Support, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

1. The table of contents for Part 101-38 is amended to include the following revised entries:

Subpart 101-38.10—Scheduled Maintenance of Motor Vehicles

Sec.

* * * * *

101-38-1004 [Reserved]

2. Subpart 101-38.10 is retitled and revised to read as follows:

Subpart 101-38.10—Scheduled Maintenance of Motor Vehicles

§ 101-38.1000 Scope of subpart.

This subpart prescribes agency requirements and guidelines covering a maintenance program for Government-owned motor vehicles.

§ 101-38.1001 Applicability.

This subpart is applicable to all Government-owned motor vehicles of a holding agency located in the United States or its territories or possessions, except for motor vehicles exempted by law or regulation. Other Federal agencies are encouraged to conform to the requirements of this subpart so that maximum benefits may be realized in the operation of all Government-owned motor vehicles.

§ 101-38.1002 Agency requirements.

All holding agencies shall establish a scheduled maintenance program wherever Government-owned motor vehicles are operated.

§ 101-38.1003 Guidelines.

(a) The guiding principles for a scheduled maintenance program shall encompass a recorded, systematic procedure for the servicing and inspection of motor vehicles to: (1) Ensure their safe and economical operating condition throughout the period of use; (2) meet established emission standards; and (3) meet warranty requirements. Servicing and inspection work may be performed by Government personnel, by commercial shops, or by a combination of both.

(b) Agencies shall take positive action to ensure that all Government-owned commercially designed motor vehicles, model year 1976 and later, have inspection and service performed in accordance with the manufacturers' recommended schedules and specifications. Agencies may continue to perform inspection and service of model year 1975 and earlier Government-owned commercially designed motor vehicles in accordance with their established maintenance schedules and specifications.

(c) Proper maintenance will ensure that Government-owned vehicles will operate in the most energy efficient manner and will meet Federal and State emission standards, including safe and proper

operation of the catalytic converter, during its warranted life.

§ 101–38.1004 [Reserved]

§ 101–38.1005 Assistance to agencies.

The General Services Administration will make available motor equipment management technicians, at no cost, to assist agencies in establishing or revising their scheduled maintenance programs. Requests for motor equipment management assistance shall be submitted by holding agencies to the General Services Administration (FZM), Washington, D.C. 20406.

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

NOTE.—The General Services 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 13, 1977.

JOEL W. SOLOMON,
Administrator, General Services Administration.

[FR Doc.77–17590 Filed 6–20–77;8:45 am]

SUBCHAPTER H—UTILIZATION AND DISPOSAL

[FPMR Amendment H–101]

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 101–45.8—Mistakes in Bids

GRANTING PERMISSION TO WITHDRAW BIDS ON GOVERNMENT PERSONAL PROPERTY

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation contains changed provisions relating to the granting of permission to withdraw bids on Government personal property. Mistakes made by bidders on advertised sales of Government personal property result in delays in awarding contracts. This regulation will reduce those delays by expanding the potential number of activities to which heads of executive agencies may delegate authority to permit bidders to withdraw bids on which there are mistakes.

EFFECTIVE DATE: This regulation is effective on June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Procedures Management Division, Office of Customer Service and Support, Federal Supply Service, General Services Administration, Washington, DC 20406, 703–557–1914.

1. Section 101–45.803 is amended as follows:

§ 101–45.803 Other mistakes disclosed before award.

(a) * * *

(1) A determination may be made permitting the bidder to withdraw his bid where the bidder requests permission to do so and clear and convincing evidence establishes the existence of a mistake.

(2) However, if the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and if the bid as submitted and as corrected is the highest received, a determination may be made to correct the bid and not permit its withdrawal.

(3) A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if the correction would result in displacing one or more higher acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(4) If the evidence does not warrant a determination under paragraph (a)(1), (2), or (3) of this section, a determination may be made that a bidder may neither withdraw nor correct his bid.

(b) Heads of executive agencies may delegate to one central authority in their agencies, without power of redelegation, authority to make the determinations under paragraph (a) (2), (3), and (4) of bids as provided in paragraph (a) (1) and (3) of this section may be delegated, without power of redelegation, to any sales activity having legal counsel available.

(c) Each proposed determination shall be approved by the agency's General Counsel, Deputy or Associate General Counsel, an Assistant General Counsel, or other comparable legal officer. However, authority to approve determinations to permit withdrawal of bids pursuant to paragraph (a) (1) and (3) of this section may be delegated to the legal counsel of sales activities.

* * * * *

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

NOTE.—The General Services 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 31, 1977.

JOEL W. SOLOMON,
Administrator of General Services.

[FR Doc.77–17588 Filed 6–20–77;8:45 am]

[FPMR Amendment H–100]

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Explanatory Statements for Negotiated Sales of Surplus Real Property

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This rule revises the outline for explanatory statements for proposed negotiated sales of surplus real property under section 203(e)(3)(G) or (H) of the Federal Property and Administrative Services Act of 1949, as amended. The change was suggested by the House Committee on Government Operations.

EFFECTIVE DATE: This rule is effective June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

James R. Bergdahl, Office of Real Property, Public Buildings Service, General Services Administration, Washington, D.C. 20405, 202–566–1339.

Subpart 101–47.9—Illustrations

Section 101–47.4911 is revised as follows:

§ 101–47.4911 Outline for explanatory statements for negotiated sales.

NOTE.—The illustration listed in section 101–47.4911 is filed as part of the original document and does not appear in the FEDERAL REGISTER.

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

NOTE.—The General Services Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A–107.

Dated: June 13, 1977.

JOEL W. SOLOMON,
Administrator.

[FR Doc.77–17589 Filed 6–20–77;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Equal Employment Opportunity Commission

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This section is amended to show a change in title from one Secretary to the Chairman to one Private Secretary and Confidential Assistant to the Chairman. This change reflects more appropriately the duties of the position.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling (202–632–4533).

Accordingly, 5 CFR 213.3377(c) is amended to read as follows:

§ 213.3377 Equal Employment Opportunity Commission.

* * * * *

(c) One Secretary to the Chairman and one Private Secretary and Confidential Assistant to the Chairman.

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

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

[FR Doc.77–17483 Filed 6–20–77;8:45 am]

PART 213—EXCEPTED SERVICE

Health, Education, and Welfare Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This section is amended to show that one position of Director, Office of Native American Programs is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling (202–632–4533).

Accordingly 5 CFR 213.3316(n)(17) is added as follows:

§213.3316 Department of Health, Education, and Welfare.

* * * * *

(n) *Office of the Assistant Secretary for Human Development.* * * *

(17) Director, Office of Native American Programs.

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

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

[FR Doc.77–17484 Filed 6–20–77;8:45 am]

PART 213—EXCEPTED SERVICE

Justice Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This section is amended to show that one position of Confidential Assistant to the Associate Attorney General is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling (202–632–4533).

Accordingly, 5 CFR 213.3310(a)(12) is added to read as follows:

§ 213.3310 Department of Justice.

(a) *Office of the Attorney General.* * * *

(12) One Confidential Assistant to the Associate Attorney General.

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

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

[FR Doc.77–17485 Filed 6–20–77;8:45 am]

PART 213—EXCEPTED SERVICE

Labor Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to change the title of an existing Schedule C position from Confidential Staff Assistant to the Assistant Secretary for Employment and Training to Executive Assistant to the Assistant Secretary for Employment and Training because the latter title more accurately reflects the duties of the position.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling (202–632–4533).

Accordingly, 5 CFR 213.3315(a)(54) is amended to read as follows:

§ 213.3315 Department of Labor.

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

(54) One Executive Assistant to the Assistant Secretary for Employment and Training.

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

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

[FR Doc.77–17486 Filed 6–20–77;8:45 am]

PART 213—EXCEPTED SERVICE

Labor Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This addition excepts from the competitive service under Schedule C one position of Special Assistant to the Assistant Secretary for Employment and Training because of the confidential nature of the position.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling (202–632–4533).

Accordingly, 5 CFR 213.3315(a)(56) is added as set out below:

§ 213.3315 Department of Labor.

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

(56) One Special Assistant to the Assistant Secretary for Employment and Training.

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

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

[FR Doc.77–17487 Filed 6–20–77;8:45 am]

PART 213—EXCEPTED SERVICE

Hiring of Handicapped Sons and Daughters

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment provides for a variation of the prohibition against appointing sons and daughters to Schedule A positions. This permits appointments for students or summer employment in those cases where severely physically handicapped and mentally retarded persons have traumatic difficulties related to worksite adjustments and transportation to and from duty stations and where such handicaps make it unlikely that they will be able to obtain suitable employment.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Hedwig Oswald, Civil Service Commission, 1900 E Street, NW., Washington, D.C. 20415, 202–632–4437.

Accordingly, 5 CFR 213.3101(b) is amended to read as follows:

§ 213.3101 Positions other than those of a confidential or policy-determining character for which it is not practicable to examine.

* * * * *

(b) An agency (including a military department) may not appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service, to a position listed in Schedule A for summer or student employment within the United States. This prohibition does not apply to the appointment of persons (1) who are eligible for placement assistance under the Commission's Displaced Employee (DE) Program, (2) who are employed to meet urgent needs resulting from an emergency posing an immediate threat to life or property, (3) who are members of families which are eligible to receive financial assistance under a public welfare program or the total income of which in relation to family size does not exceed limits established by the Commission and published in the Federal Personnel Manual, or (4) who are severly physically handicapped or mentally retarded when such appointments are approved in advance by the Civil Service Commission.

* * * * *

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

NOTE.—The Civil Service Commission has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A–107.

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

[FR Doc.77–17849 Filed 6–20–77;10:11 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

[7 CFR Part 1701]

BOARD OF DIRECTORS OF A POWER SUPPLY, COOPERATIVE

Proposed Revision of REA Bulletin 101–1

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its bulletin containing policy recommendations on the composition of the board of directors of an REA-financed power supply cooperative. The proposed bulletin amendments recommended reduction on restrictions covering the composition of the boards of directors of these cooperatives. The recommendations are intended to improve the mutual understanding and support between power supply cooperatives and the members of these cooperatives.

DATE: Public comments must be received by REA on or before July 11, 1977.

ADDRESS: Interested persons may submit written data, views or comments to the Director, Electric Borrowers' Management Division, Room 3346, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Director, Electric Borrowers' Management Division, during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles R. Weaver, Director, Electric Borrowers' Management Division, Rural Electrification Administration, Room 3346, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202–447–5900.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to revise REA Bulletin 101–1 issued September 14, 1955. The text of the proposed revision to REA Bulletin 101–1 is as follows:

REA BULLETIN 101–1

Subject: Constitution and Operations of the Board of Directors of a Power Supply Cooperative Borrower.

I. *Purpose:* To set forth policy recommendations of the Rural Electrification Administration for the constitution of the board of directors of a power supply cooperative borrower and practices to assure continuity of informed leadership and member system involvement.

II. *Policy:* Based on operating experience, the Rural Electrification Administration recommends that, insofar as permitted by law, the bylaws and policies of a power supply borrower should make provision for the following:

A. The board of directors should contain a workable number of members, each corporate member being equitably represented.

B. The directors should be elected by members, provided that any director should be a member, director or manager of a corporate member and provided further that no less than one-half of the borrower's board members should be directors or trustees of a corporate member.

C. Because of the increasing complexity of power supply affairs, there should be the maximum practicable technical advice and counsel to the borrower's board and management from management personnel of member systems. Subject to limitations of section II.B above, this advice and counsel often can be best achieved by member system management membership on the borrower's board of directors. Alternative or additional methods include regular manager attendance at board meetings and a regularly constituted technical advisory committee or managers' committee.

D. Provisions should be made to accomplish a continuing flow of fresh viewpoints balanced with the need for experience and continuity. Among the methods to accomplish this desirable balance, the following should be considered: staggered terms of office and plans for orderly transition such as planned rotation after a given number of years' service or maximum age.

E. Corporate officers should be elected by the board of directors from its own membership.

III. *General:* A. There should be a continuing effort to develop methods to provide maximum effectiveness by the board in its planning, review of results and development of member understanding and support. Among the methods to be considered are: maximum practicable information for study by each director in advance of board meetings; reduction of full board meeting time spent on details by such methods as referral of contract review to regular or special committees of the board; director orientation and training; and creative methods of providing information on which decisions must be based.

B. A continuing flow of information to member systems concerning major decisions, major problems and plans is essential. This should be accomplished by a combination of methods: written information such as regular publications and summaries of board minutes and discussion meetings with member boards of directors or groups of such boards.

Dated: June 10, 1977.

JOSEPH VELLONE,
Acting Administrator.

[FR Doc.77-17670 Filed 6-20-77;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Parts 23, 26, 34, 36, 40, 41, 46, 54, 56, 57, 60, 61, 62, 67, 74, 103, 114, 117, 118, 131, 142, 146, 150, 152, 154, 157, 160, 162, 165, 175, 192, 197, 205, 209, 210, 214, 215, 216, 221, 223, and 224]

INDUSTRY GUIDES

Proposed Recissions or Revisions of Trade Practice Rules

AGENCY: Federal Trade Commission.

ACTION: Proposed trade practice rule changes.

SUMMARY: The Commission invites comments on the public record on proposed total or partial rescissions or revisions of trade practice rules for 41 industries. The Commission is reviewing trade practice rules and other industry guides to retain only those determined useful in the public interest today.

DATE: Written comments should be submitted by August 22, 1977.

ADDRESS COMMENTS TO: William D. Dixon, Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION WRITE OR CALL:

Charles H. Slayman, Jr., Attorney, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, telephone 202–724–1193.

SUPPLEMENTARY INFORMATION: These trade practice rules appear in Title 16 of the Code of Federal Regulations but are not subjects of Commission action announced in FEDERAL REGISTER documents 40 FR 21047; 41 FR 2382, 2398, 2399; 42 FR 12171, 19859. Those documents deal with proposed rescissions, study and final rescissions of trade practice rules for other industries.

Trade practice rules grew out of trade practice conferences convened by the Commission on its own initiative or in

response to requests from trade associations and other members of different industries. Regardless of the industry, trade practice rules often appear in identical or nearly identical language restating statutory provisions and general principles of law concerning deceptive, unfair and anticompetitive acts and practices. The Commission is conducting a thorough review of its trade practice rules to determine which may be in the public interest to keep.

A footnote to 16 CFR 1.6 identifies trade practice rules as early industry guides. Both are administrative interpretations of Commission administered laws. They have provided the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. Noncompliance with guides may require corrective action under applicable statutes. Trade practice rules and other industry guides should not be confused with newer, specific, directly enforceable trade regulation rules.

Rescission of trade practice rules and other industry guides does not relieve anyone of duties to comply with Commission administered laws. Thus rescission is not a green light to engage in unfair or deceptive or anticompetitive acts or practices in violation of law.

The Commission intends to rescind the following provisions in trade practice rules:

(i) Group II rules because they are merely "expressions of the trade" and are not Commission interpretations of law;

(ii) Industry committee references because authority to establish such committees was rescinded in 1971; and

(iii) Stereotype sections (commercial bribery, sales below cost, prohibited discrimination, etc.) because acts and practices covered are not limited to particular industries.

Even particularized sections may be rescinded if a showing is not made that they are being used in the public interest today. The Commission does not intend to rescind sections, for example, on particular product definitions, particularized misrepresentations, misuse of specific names, etc.) where there is a showing of use in the public interest.

The Commission may eliminate the category "trade practice rules" and simply call any retained "guides".

The Commission advises interested persons that comments requesting retention or revision of any particular rules (sections) should include reasons and state the public interest in such suggestions. Comments received during the sixty day period will be placed on the public record for examination during regular business hours in Public Reference Room 130, Federal Trade Commission, Pennsylvania Avenue and Sixth Street NW., Washington, D.C., telephone 202-523-3600. The Commission will consider all such comments before final action is taken.

Accordingly the Commission invites interested persons including consumers to submit written comments on the public record for Commission consideration on proposed total or partial rescissions or revisions of trade practice rules published in the following Parts of Title 16 of the Code of Federal Regulations:

1. Part 23—Jewelry Industry, promulgated June 28, 1957.
2. Part 26—Refrigeration and/or Air-conditioning Contracting Industries, promulgated May 8, 1956.
3. Part 34—Nursery Industry, promulgated June 28, 1958.
4. Part 36—Poultry Hatching and Breeding Industry, promulgated February 22, 1961.
5. Part 40—Environmental Testing Equipment Manufacturing Industry, promulgated June 25, 1957.
6. Part 41—Metal Awning Industry, promulgated June 29, 1957.
7. Part 46—Work Glove Industry, promulgated May 22, 1959.
8. Part 54—Walnut Wood Industry, promulgated September 12, 1931.
9. Part 56—Pleasure Boat Industry, promulgated August 4, 1961.
10. Part 57—Residential Aluminum Siding Industry, promulgated April 6, 1962.
11. Part 60—Metallic Watch Band Industry, promulgated June 30, 1962.
12. Part 61—Stationers Industry, promulgated June 15, 1962.
13. Part 62—Rebuilt, Reconditioned and Other Used Automotive Parts Industry, promulgated June 30, 1962.
14. Part 67—Phonograph Record Industry, promulgated October 9, 1964.
15. Part 74—Fresh Fruit and Vegetable Industry, promulgated April 15, 1965.
16. Part 103—Rabbit Industry, promulgated June 27, 1958.
17. Part 114—Preserve Manufacturing Industry, promulgated September 12, 1936.
18. Part 117—School Supply and Equipment Industry, promulgated April 26, 1957.
19. Part 118—Mirror Industry, promulgated June 30, 1962.
20. Part 131—Shrinkage of Woven Cotton Yard Goods, promulgated June 30, 1938.
21. Part 142—Radio and Television Industry, promulgated June 28, 1955.
22. Part 145—Tuna Industry, promulgated June 23, 1945.
23. Part 150—Subscription and Mail Order Book Publishing Industry, promulgated September 4, 1940.
24. Part 152—Hosiery Industry, promulgated August 30, 1960.
25. Part 154—Luggage and Related Products Industry, promulgated June 30, 1962.
26. Part 157—Catalog Jewelry and Giftware Industry, promulgated December 23, 1943.
27. Part 160—Water Heater Industry, promulgated January 11, 1945.
28. Part 162—Wood Cased Lead Pencil Industry, promulgated June 29, 1945.
29. Part 165—Artificial Limb Industry, promulgated April 16, 1946.
30. Part 175—Office Machine Marketing Industry, promulgated February 26, 1948.
31. Part 192—Optical Products Industry, promulgated June 30, 1962.
32. Part 197—Relating to the Sale and Financing of Motor Vehicles, promulgated February 6, 1951.
33. Part 205—Upholstery and Drapery Fabrics Industry, promulgated January 15, 1952.
34. Part 209—Grocery Industry, promulgated March 19, 1952.
35. Part 210—Commercial and Industrial Floor and Vacuum Machinery Industry, promulgated June 21, 1958.
36. Part 214—Hearing Aid Industry, promulgated July 20, 1965.
37. Part 215—Portrait Photographic Industry, promulgated September 15, 1953.
38. Part 216—Millinery Industry, promulgated September 15, 1953.
39. Part 221—Cosmetic and Toilet Preparations Industry, promulgated July 1, 1966.
40. Part 223—Orthopedic Appliance Industry, promulgated November 13, 1954.
41. Part 224—Fire Extinguishing Appliance Industry, promulgated December 17, 1954.

(Secs. 5, 6, 18(a)(1)(A), amended FTC Act, 38 Stat. 719, 721, 88 Stat. 2193 (15 U.S.C. 45, 46, 57a); 16 CFR 1.5, 1.6, 17.1.)

Issued: July 21, 1977.

By the Commission.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-17607 Filed 6-20-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1025]

ADJUDICATIVE PROCEEDINGS

Proposed and Interim Rules of Practice for Adjudicative Proceedings

CROSS REFERENCE: For an interim rule regarding Rules of Practice for Adjudicative Proceedings Under the Consumer Product Safety Act and Flammable Fabrics Act see FR Doc. 77-17690 appearing in the Rules and Regulations section of this issue.

[16 CFR Part 1026]

EXPEDITED PROCEEDINGS

Proposed and Interim Rules of Practice for Expedited Proceedings Under the Consumer Product Safety Act

CROSS REFERENCE: For an interim rule regarding Rules of Practice for Expedited Proceedings Under the Consumer Product Safety Act see FR Doc. 77-16758 appearing in the Rules and Regulations section of this issue.

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 231]

[Release No. 33-5834; File No. S7-706]

REPORTS OR MEMORANDA CONCERNING REGISTRANTS

Guide

AGENCY: Securities and Exchange Commission.

ACTION: Advance Notice of Proposed Amendment.

SUMMARY: The Commission has authorized the Division of Corporation Finance to seek comments on the guide for preparation and filing of registration statements which requires reports or memoranda concerning the registrant to be furnished to the staff as supplemental information in connection with submission of a registration statement. The Commission and the Division are concerned by the apparent confusion on the part of some members of the securities industry and their attorneys as to the requirements of this guide and are interested in determining whether clarifica-

tion or substantive amendment of the guide is necessary and appropriate.

DATES: Comments must be received on or before August 20, 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. S7-706 and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT:

William C. Wood, Associate Director, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 202-755-1214.

SUPPLEMENTARY INFORMATION: The Commission today announced that its Division of Corporation Finance is soliciting comments on the operation of Guide 42, "Reports or Memoranda Concerning the Registrant," of the Guides for the Preparation and Filing of Registration Statements under the Securities Act of 1933 (15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)). Guide 42, like all existing guidelines for preparing Securities Act registration statements, is not a Commission rule nor does it bear the Commission's official approval. Rather, it represents policies and practices followed by the Division in administering the disclosure requirements of the Securities Act of 1933.

BACKGROUND

Guide 42 as it now exists was published in Securities Act Release No. 4936 (December 9, 1968) (33 FR 18617), after having been first published as Item 25 in Securities Act Release No. 4666 (February 7, 1964) (29 FR 2490), and subsequently published for comment in slightly revised form in Securities Act Release No. 4890 (December 20, 1967) (33 FR 507). Further, the staff had followed substantially the same policies and practices reflected in the guide for a considerable period of time before the guide was first published.

Dual purposes were designed to be served by the requirements of Guide 42: (1) Furnishing to the staff of materials necessary and helpful for its examination of registration statements filed under the 1933 Act; and (2) "gun-jumping" considerations. It is primarily in the first area that problems of interpretation appear to have arisen.

The first clause of Guide 42 requires submission of "any engineering, management or similar report or memorandum relating to broad aspects of the business, operations or products of the registrant" which was prepared in the previous twelve months "for or by the registrant * * * or any principal underwriter." It has recently come to the Division's attention that some members of the securities industry have interpreted this requirement in a number of ways inconsistent with longstanding staff interpretation and in some cases have confused the elements of the first clause with those of the second clause of the guide, which requires submission of any report prepared "for external use by the registrant or a principal underwriter in connection with the proposed offering." The second clause has as its focus the gun-jumping problem rather than the examination assistance which is the focus of the first clause.

SPECIFIC INTERPRETATIVE PROBLEMS

The Division's interpretative position on the first clause of Guide 42 has been to require that it be provided with all reports of the nature described in the guide which have been prepared in the past 12 months. No exceptions to this requirement are set forth in the guide and none have been read into the guide by the staff. However, there appears to have been an interpretation followed by some law firms which reads into the requirements of the first clause of Guide 42 an exception for reports prepared by an underwriter in the ordinary course of business prior to knowledge of the offering or of participation therein and not distributed after such knowledge. Suggested examples of such materials prepared in the ordinary course of business by an underwriter include such items as "research reports," "investment research reports," and "market letters." The Division does not believe such an exception is permitted by the existing guide.

The Division specifically requests comments on the advisability of such an exception to the requirements of the first clause of Guide 42. In particular, the Division is interested in comments: (1) As to whether the guide's requirements are unduly burdensome absent the suggested "exception" discussed above, (2) as to a definition of the terms "research report" and "investment research report," (3) as to specific criteria for determining which reports "relating to the broad aspects of the business" would fall within this suggested exception, and (4) as to any detrimental effect on adequate disclosure to investors which might result from such an exception.

In a similar vein, it has been suggested that Guide 42 be amended by creating a specific exception for materials meeting the requirements of Rules 138 (17 CFR 230.138) and 139 (17 CFR 230.139). Rule 138 permits a broker-dealer who participates in an offering of non-convertible senior securities registered on Forms S-7 (17 CFR 239.26) or S-9 (17 CFR 239.22) to publish opinions or recommendations concerning the registrant's common stock and conversely permits publishing opinions or recommendations concerning the registrant's non-convertible senior securities where a registrant has filed or intends to file an S-7 or S-9 registration statement relating to its common stock. Rule 139 permits a dealer who participates in an offering to publish, as part of a comprehensive list of securities, opinions or recommendations concerning the securities being registered if certain conditions are met, including that the issuer be subject to reporting requirements under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)) and that the recommendation not be given special prominence or more favorable treatment than in previous such lists. Comments are requested as to the feasibility and desirability of an amendment which would specifically except these Rule 139 and 139 materials from the requirements of Guide 42.

The requirements of the first clause of Guide 42 apply to reports "prepared by or for the registrant, any security holder named in answer to Item 19(a) of Form S-1 (17 CFR 239.11), or any principal underwriter." [1] It appears that some confusion exists as to whether the guide's requirements should extend to all members of the underwriting syndicate or instead be confined to managing underwriters only. It has been suggested that the "ordinary course of business" exception may be more appropriate for relieving the other underwriters who are members of the syndicate but not the managing underwriters from the requirements. The Division is interested in comments on the benefits, practicality and possible detrimental effect on disclosure to investors which might result from making such a distinction between managing underwriters and members of the selling group.

The materials called for by the first clause of Guide 42 include any reports or memoranda of the nature described which have been prepared in the twelve months prior to filing of a registration statement. In connection with its broad consideration of the guide, the Division is interested in receiving comments on whether this twelve month period is reasonable or whether it might be shortened without interfering with the purpose of assuring submission of materials necessary for the staff's review of the registration statement.

The Division is also interested in comments addressed to the issue of responsibility for submission of Guide 42 materials in order to determine whether there is a clear understanding that all parties mentioned in the guide, registrant, selling security holders and principal underwriters, bear responsibility for compliance and in order to determine whether this placement of responsibility is reasonable and not unduly burdensome.

Finally, the Division understands that because certain materials are not distributed after the underwriter learns of the proposed offering, in certain instances this has been treated as a basis for removing those materials from the ambit of both the first and second clauses of Guide 42. This suggests that possible confusion exists as to the differing requirements and focuses of the two clauses. It also appears to read an additional exception into the first clause of the guide, even though no basis for such

[1] A principal underwriter is defined as "an underwriter in privity of contract with the issuer of the securities as to which he is underwriter, the term 'issuer' having the meaning given in sections 2(4) and 2(11) of the Act." (17 CFR 230.405(p).)

an exception exists in either the language of the guide or the staff's interpretation thereof. Commentators are invited to address this area so that the Division will be able to determine if clarification is necessary and to assess this additional approach to the concept of an exception to the guide's requirements.

All interested persons are invited to submit their written views and comments on the foregoing areas and on any other aspects of Guide 42 which may be of assistance to the Division in its consideration of the guide.

By the Commission.

SHIRLEY E. HOLLIS,
Assistant Secretary.

JUNE 13, 1977.

[FR Doc.77-17609 Filed 6-20-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[21 CFR Part 1316]

CONFIDENTIALITY OF RESEARCH SUBJECTS AND EXEMPTION FROM PROSECUTION FOR RESEARCHERS

Notice of Proposed Rulemaking

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The proposed amendments to § 1316.21 of Title 21 of the Code of Federal Regulations limits the authority of the Drug Enforcement Administration, in granting confidentiality of identity of research subjects, to those areas specified in 21 U.S.C. 872(a). The proposed amendment to § 1316.22 of Title 21 of the Code of Federal Regulations provides for discretionary authority in granting exemption from prosecution for researchers as provided in 21 U.S.C. 872(d). Both sections are further amended to require more detailed information from petitioners to better enable the Drug Enforcement Administration to evaluate requests received pursuant to these sections.

DATES: Comments and objections must be received by July 18, 1977.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT:

Craig E. Richardson, Attorney, Office of Chief Counsel, Drug Enforcement Administration, telephone 202-382-6175.

SUPPLEMENTARY INFORMATION: Section 502(c) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 872(c)) authorizes the Attorney General to authorize persons who are engaged in research with controlled substances to withhold the names and other identifying characteristics of persons who are the subjects of such research.

In furtherance of section 502(c) of the Act, § 1316.21 of Title 21 of the Code of Federal Regulations sets forth the procedures whereby researchers may apply for confidentiality of the subjects of their research projects. This regulation speaks in general terms of persons registered to conduct research in controlled substances under the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801).

However, section 502(c) of the Act should be read in the context of section 502 of the Act in its entirety.

Section 502(a) of the Act authorizes the Attorney General to carry out educational and research programs directly related to the enforcement of laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under the Act. These programs may include:

(1) Educational and training programs on drug abuse and controlled substances law enforcement for local, State, and Federal personnel;

(2) Studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

(3) Studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this title, including the development of rapid field identification methods which would enable agents to detect microquantities of such drugs or other substances;

(4) Studies or special projects designed to evaluate the nature and sources of the supply of illegal drugs throughout the country;

(5) Studies or special projects to develop more effective methods to prevent diversion of controlled substances into illegal channels;

(6) Studies or special projects to develop information necessary to carry out his functions under section 201 of this title.

Section 502(c) of the Act speaks of persons authorized to engage in research by the Attorney General. This refers to those categories of research enumerated in section 502(a) (2-6) (supra).

Title I, Section 3(a) of the Act provides that the Secretary of Health, Education, and Welfare may authorize persons engaged in research on the use and effect of drugs to protect the privacy of individuals who are the subject of such research. This authority is not limited to enumerated categories of research, as is the authority granted to the Attorney General set forth in Section 502(a) of the Act (supra).

The Secretary of Health, Education, and Welfare has proposed regulations implementing his authority to grant protection of the identity of research subjects. (40 FR 234 (December 4, 1975)). These regulations will provide a vehicle whereby researchers conducting research on the use and effect of drugs can protect the privacy of the subjects of their research. Since this type of scientific research is more properly within the province of the Secretary, the Drug Enforcement Administration will, in the future, strictly limit its authority to grant protection to the subjects of research to those categories of research enumerated in Section 502(a) of the Act (supra).

The proposed regulation also sets forth the form in which a petition for a grant of confidentiality shall be submitted. The information required in the petition will better enable the Drug Enforcement Administration to evaluate the requests and determine if they fall within the purview of Section 502 of the Act.

Section 502(d) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 872(d)) authorizes the Attorney General to authorize the possession, distribution and dispensing of controlled substances by persons engaged in research and to exempt such persons from State or Federal prosecution for possession, distribution and dispensing of controlled substances to the extent authorized by the Attorney General.

In furtherance of Section 502(d) of the Act, § 1316.22 of Title 21 of the Code of Federal Regulations sets forth the procedures whereby researchers may apply for exemption from prosecution for possession, distribution or dispensing of controlled substances within the scope of their research.

The proposed regulation amends subsection (a) of 21 CFR 1316.22 by deleting the word "shall" and inserting the word "may". This change is instituted to confer upon the Drug Enforcement Administration the discretionary authority provided in Section 502(d) of the Act.

A new subsection (b) is added setting forth the form required for a petition for exemption from prosecution. The information requested will better enable the Drug Enforcement Administration to evaluate the petition and determine the necessity for an exemption from prosecution.

A new subsection (c) is added to permit individuals to apply for both exemption from prosecution and confidentiality of research subjects using a single petition.

Subsection (d) sets forth the form for the grant of exemption from prosecution and subsection (e) incorporates the notification requirements in the existing 21 CFR 1316.22(c).

If a person believes that one or more issues raised by him warrant a full adversary-type hearing, he should so state with particularity and summarize the reasons for his belief.

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

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A

person may object or comment on the proposals relating to any one or more of the above-mentioned substances without filing comments or objections regarding the others.

By virtue thereof and under the authority vested in the Attorney General by Sections 301 and 501(b) of the Act 21 U.S.C. 821 and 871(b)) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulation, the Administrator hereby proposes that Part 1316 of Title 21 of the Code of Federal Regulations be amended to read as follows:

§ 1316.21 Confidentiality of identity of research subjects.

(a) Any person conducting a bona fide research project directly related to the enforcement of the laws under the jurisdiction of the Attorney General concerning drugs or other substances which are or may be subject to control under the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) who intends to maintain the confidentiality of the identity of those persons who are the subjects of such research may petition the Administrator of the Drug Enforcement Administration for a grant of confidentiality, *Providing*, That:

(1) The Attorney General is authorized to carry out such research under the provisions of Section 502(a)(2–6) of the Controlled Substances Act of 1970 (21 U.S.C. 872(a)(2–6)); and the research is being conducted with funds provided in whole or part by the Department of Justice; or

(2) The research is of a nature that the Attorney General would be authorized to carry out under the provisions of Section 502(a)(2–6) of the Controlled Substances Act (21 U.S.C. 872(a)(2–6)), and is being conducted with funds provided from sources outside the Department of Justice.

(b) All petitions for Grants of Confidentiality shall be addressed to the Administrator, Drug Enforcement Administration, 1405 "Eye" Street, N.W., Washington, D.C. 20537 and shall contain the following:

(1) A statement as to whether the research protocol requires the manufacture, production, import, export, distribution, dispensing, administration or possession of controlled substances, and if so the researcher's registration number or a statement that an application for such registration has been submitted to DEA;

(2) The location of the research project;

(3) The qualifications of the principal investigator;

(4) A general description of the research or a copy of the research protocol;

(5) The source of funding for the research project;

(6) A statement as to the risks posed to the research subjects by the research procedures and what protection will be afforded to the research subjects;

(7) A statement as to the risks posed to society in general by the research procedures and what measures will be taken to protect the interests of society;

(8) A specific request to withhold the names and/or any other identifying characteristics of the research subjects; and

(9) Statements establishing that a grant of confidentiality is necessary to the successful completion of the research project.

(c) The grant of confidentiality of identity of research subjects shall consist of a letter issued by the Administrator, which shall include:

(1) The researcher's name and address.

(2) The researcher's registration number, if applicable.

(3) The title and purpose of the research.

(4) The location of the research project.

(5) An authorization for all persons engaged in the research to withhold the names and identifying characteristics of persons who are the subject of such research, stating that persons who obtain this authorization may not be compelled in any Federal, State or local civil, criminal, administrative, legislative or other proceeding to identify the subjects of such research for which this authorization was obtained.

(6) The limits of this authorization, if any.

(7) A statement to the effect that the grant of confidentiality of identity of research subjects shall be perpetual but shall pertain only to the subjects of the research described who participated in the research during the period described in the research protocol, the description of the research submitted to DEA, or as otherwise established by DEA.

(d) Within 30 days of the date of completion of the research project, the researcher shall so notify the Administrator. The Administrator shall issue another letter including the information required in paragraph (c) of this section and stating the starting and finishing dates of the research for which the confidentiality of identity of research subjects was granted; upon receipt of this letter, the researcher shall return the original letter of exemption.

§ 1316.22 Exemption from prosecution for researcher.

(a) Upon registration of an individual to engage in research in controlled substances under the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801), the Administrator of the Drug Enforcement Administration, on his own motion or upon request in writing from the Secretary or from the researcher or reseaching practitioner, may exempt the registrant when acting within the scope of his registration, from prosecution under Federal, State, or local laws for offenses relating to possession, distribution or dispensing of those controlled substances within the scope of his exemption. However, this exemption does not diminish any requirement of compliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301).

(b) All petitions for Grants of Exemption from Prosecution for the Researcher shall be addressed to the Administrator, Drug Enforcement Administration, 1405 "Eye" Street, N.W., Washington, D.C. 20537 and shall contain the following:

(1) The researcher's registration number if any, for the project;

(2) The location of the research project;

(3) The qualifications of the principal investigator;

(4) A general description of the research or a copy of the research protocol;

(5) The source of funding for the research project;

(6) A statement as to the risks posed to the research subjects by the research procedures and what protection will be afforded to the research subjects;

(7) A statement as to the risks posed to society in general by the research procedures and what measures will be taken to protect the interests of society;

(8) A specific request for exemption from prosecution by Federal, State or local authorities for offenses related to the possession, distribution and dispensing of controlled substances in accord with the procedures described in the research protocol;

(9) A statement establishing that a grant of exemption from prosecution is necessary to the successful completion of the research project.

(c) Any researcher or practitioner proposing to engage in research requesting both exemption from prosecution and confidentiality of identity of research subjects may submit a single petition incorporating the information required in § 1316.21(b) and § 1316.22(b).

(d) The exemption shall consist of a letter issued by the Administrator, which shall include:

(1) The researcher's name and address;

(2) The researcher's registration number for the research project;

(3) The location of the research project;

(4) A concise statement of the scope of the researcher's registration;

(5) Any limits of the exemption; and

(6) A statement that the exemption shall apply to all acts done in the scope of the exemption while the exemption is in effect. The exemption shall remain in effect until completion of the research project or until the registration of the researcher is either revoked or suspended or his renewal of registration is denied. However, the protection afforded by the grant of exemption from prosecution during the research period shall be perpetual.

(e) Within 30 days of the date of completion of the research project, the researcher shall so notify the Administrator. The Administrator shall issue another letter including the information required in paragraph (d) of this section and stating the date of which the period of exemption concluded; upon receipt of this letter the researcher shall return the original letter of exemption.

Dated: June 14, 1977.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc.77-17618 Filed 6-20-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Arbitrage Bonds

Correction

In FR Doc. 77-15415, appearing at page 27610 in the issue of Tuesday, May 31, 1977, the figure in the fifth to last line of column one on page 27612 should read, "$100,000."

DEPARTMENT OF LABOR

Office of the Secretary

[41 CFR Parts 29-1, 29-2, 29-3, 29-12, 29-61]

PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Proposed Miscellaneous Changes to Procurement Regulations

AGENCY: Department of Labor.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend extensively the Department of Labor Procurement Regulations. These changes are made to conform the Department of Labor Procurement Regulations to Governmentwide regulations (the Federal Procurement Regulations) and to update departmental regulations to reflect current departmental policies and responsibilities. This will result in the Department's conforming more closely to the current Federal Procurement Regulations issued by the General Services Administration and to current Department of Labor procurement standards.

DATES: Comments must be received on or before July 21, 1977.

ADDRESS: Comments shall be submitted to the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Walter C. Terry, Director, Office of Grants, Procurement and ADP Management Policy.

FOR FURTHER INFORMATION CONTACT:

Theodore Goldberg, Assistant Director, Office of Grants, Procurement and ADP Management Policy, Room S-1325, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone 202-523-9174.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of the Secretary of Labor, contained in the Act of March 4, 1913 (37 Stat. 736, 29 U.S.C. 551), it is proposed that 41 CFR Chapter 29 be amended. This amendment of Chapter 29, the Department of Labor Procurement Regulations (DOLPR), provides for the following changes: It adds procurement requirements needed to implement and supplement the current Federal Procurement Regulations (FPR), deletes entries no longer applicable, provides for changes in titles and responsibilities due to departmental reorganization, modifies language involving personal pronouns denoting gender to reflect departmental policy, modifies DOLPR numbering and text to conform the DOLPR with the current FPR, updates references, and corrects typographical errors.

Significant changes include: Section 29-1.401 changes delegations of contracting officer authority and procurement responsibilities; § 29-3.205 limits use of authority for procurement from or grants to educational institutions; § 29-3.210 (formerly § 29-1.352) prescribes specific actions to be taken by program officials and contracting officers where noncompetitive procurements are contemplated; §§ 29-3.203 and 29-3.603-1, covering small purchase procedures, are changed to conform to the current FPR requirements and the change from $2,500 to $10,000 limitation on small purchases; § 29-3.604-4 provides for the use of imprest funds for common carriers; § 29-3.604-5 encourages the use of imprest fund procedures for small purchases of $150 or less; § 29-3.802 makes limitations on divulging Government cost estimates for proposed procurements more specific and specifies requirements for DOL requests for proposals; §§ 29-3.805-50, 29-3.805-51, 29-3.805-52, 29-3.805-53, and 29-3.805-54 provide DOL requirements in evaluating proposals, negotiating with prospective contractors, and selecting contractors. Part 29-61 is deleted in its entirety.

This document was prepared under the direction and control of: Walter C. Terry, Director, Office of Grants, Procurement and ADP Management Policy, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

It is proposed to amend 41 CFR Chapter 29 as follows:

PART 29-1—GENERAL

1. The table of contents of Subpart 29-1.0 is amended to revise a caption which reads:

* * * * * *

29-1.008-50 Department of Labor (DOL) Agency implementation.

* * * * * *

§ 29-1.006-4 [Amended]

2. Section 29-1.006-4 is amended by substituting the word "Agencies" for the words "administrations and offices" in the second sentence, and by substituting the words "the Assistant Secretary's" for the word "his" in the third sentence.

3. Section 29-1.008-50 is revised to read as follows:

§ 29-1.008-50 Department of Labor (DOL) Agency implementation.

DOL Agencies may implement or supplement the FPR or the DOLPR with internal instructions whose applicability is not DOL-wide, but nevertheless necessary to implement or supplement the FPR or the DOLPR. DOL Agencies may request publication in the DOLPR of procurement instructions and other procurement material considered of interest to the general public. Such instructions shall not extensively repeat, paraphrase, or otherwise restate the FPR or the DOLPR and shall be numbered in accordance with § 1-1.007-2 of this title, except that the numbers prescribed there and in § 29-1.007-2 shall be suffixed by the alphabetic abbreviation or other symbol of the respective Agency issuing the instructions. Whether the instructions are to be published as part of the DOLPR or not, such proposed instructions and material that implement or supplement the DOLPR or the FPR must be submitted, prior to their publication, for the review and concurrence of the Assistant Secretary for Administration and Management and of the Solicitor. In the case of internal procurement instructions, the purpose of such review is to ascertain that such instructions are consistent with the FPR and the DOLPR and that they do not contain material which should be issued as the DOLPR. In the case of instructions or other material submitted for inclusion in the DOLPR, after concurrence by interested DOL Agencies, the necessary arrangements will be made for publication of such instructions or other material in the FEDERAL REGISTER.

§ 29-1.009-2 [Amended]

4. Section 29-1.009-2 is amended by substituting the word "Agency" for the words "administration or office" in the third sentence of paragraph (a), and by substituting the words "this official" for the word "he" in the fourth sentence of paragraph (c).

5. To conform the DOLPR's numbering system with that of the FPR, the table of contents for Subpart 29-1.3 is revised to delete §§ 29-1.310, 29-1.310-4, and 29-1.352, since these sections are being redesignated and transferred to other parts of the DOLPR. The revised table of contents reads as follows:

Subpart 29-1.3—General Policies

Sec.	
29-1.302	Procurement sources.
29-1.302-3	Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.
29-1.302-50	Contracts between the Government and former Government employees.
29-1.303	Approval signatures.
29-1.305	Specifications.
29-1.305-3	Deviations from Federal Specifications.
29-1.310	[Reserved].
29-1.310-4	[Reserved].
29-1.315	Use of liquidated damages provisions in procurement contracts.
29-1.315-2	Policy.
29-1.318	Disputes clause.
29-1.318-1	Contracting officer's decision under a Disputes clause.
29-1.350	Buying in.
29-1.351	Refunds from contractors.
29-1.352	[Reserved].
29-1.353	Standards of conduct.
29-1.354	Violations of law.

6. Section 29-1.302-50 is revised to read:

§ 29–1.302–50 Contracts between the Government and former Government employees.

Negotiated contracts or grants or amendments to existing contracts or grants which constitute new procurement (including those for the rental of real or personal property) may be entered into with former employees of DOL or with firms in which former employees are known to have a substantial interest, within a period of 1 year subsequent to the termination of the individual's employment by DOL, only with the prior written approval of the Assistant Secretary for Administration and Management.

§ 29–1.310 and 29–1.310–4 [Deleted]

7. Section 29–1.310 entitled "Responsible prospective contractor." and § 29–1.310–4 entitled "General policy." are deleted from Subpart 29–1.3 and are transferred to a new Subpart 29–1.12.

§ 29–1.315–2 [Amended]

8. Section 29–1.315–2 is amended by substituting the words "the contracting officer" for the word "he" in the second sentence of paragraph (a), and by substituting "(under $10,000)" for "(under $2,500)" in paragraph (a)(3)(iv).

§ 29–1.350 [Amended]

9. Section 29–1.350 is amended by substituting the words "the contractor's" for "his" in the sixth sentence.

§ 29–1.352 [Deleted]

10. Section 29–1.352 entitled "Sole source procurement." is deleted from Subpart 29–1.3 and is redesignated and transferred to Subpart 29–3.2.

11. The table of contents for Subpart 29–1.4 is revised to delete § 29–1.451 entitled "Regional administrative officer purchasing authority." and to redesignate § 29–1.454 as § 29–1.453, and reads as follows:

Subpart 29–1.4—Procurement Responsibility and Authority

Sec.	
29–1.400	Scope of subpart.
29–1.401	Responsibility of the head of the procuring activity.
29–1.402	Authority of contracting officers.
29–1.404	Selection, designation, and termination of designation of contracting officers.
29–1.404–1	Selection.
29–1.404–2	Designation.
29–1.404–50	Modification of authority.
29–1.404–51	Continuity of responsibility.
29–1.405	Ratification of unauthorized contract awards.
29–1.450	Contracting officer's representative.
29–1.451	[Reserved]
29–1.452	Responsibility of procurement officials to question requirements and reaffirm their validity.
29–1.453	Independence of procurement officials to carry out responsibilities.
29–1.454	[Reserved]

12. Section 29–1.401 is revised to read as follows:

§ 29–1.401 Responsibility of the head of the procuring activity.

(a) *First tier delegation.* In the DOL, contracting officer and grant officer authority and procurement responsibility have been delegated from the Secretary of Labor through the Assistant Secretary for Administration and Management to the following officials, or officers acting in their behalf:

(1) The Assistant Secretary for Employment and Training.

(2) The Assistant Secretary for Occupational Safety and Health.

(3) The Assistant Secretary for Employment Standards.

(4) The Deputy Under Secretary for International Affairs.

(5) The Commissioner of Labor Statistics.

(6) The Regional Administrators—Office of the Assistant Secretary for Administration and Management (OASAM).

(7) The Director, Administrative Programs and Services, OASAM.

(b) *Delegations and limitations.* The delegations noted in paragraph (a) above may be further redelegated within limitations by these officers within their respective areas of assigned responsibility. However, prior to such redelegations, contracting officers should consider the following factors to determine the extent to which authority should be redelegated: Volume of procurement programs; presence of, or capability of obtaining adequately trained personnel; consolidation of smaller procurement programs and offices on a geographical basis; and the overall strengthening of the procurement process by the selection of qualified personnel. In accordance with § 29–1.404–2, copies of every further redelegation must be furnished to the Assistant Secretary for Administration and Management, Attention: ABA.

(c) *Responsibilities.* The responsibilities of the delegations above are described as follows:

(1) *The Assistant Secretary for Employment and Training,* or an officer acting in that capacity, is assigned the responsibility for procurement and the issuance of grants for program property and services, except as otherwise delegated under paragraph (c)(7) of this section, required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Employment and Training.

(2) *The Assistant Secretary for Occupational Safety and Health,* or an officer acting in that capacity, is assigned the following responsibilities:

(i) Issuance of grant agreements with States required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary for Occupational Safety and Health.

(ii) Reimbursement to States, pursuant to Section 7(c)(1) of the Occupational Safety and Health Act of 1970, as amended (Pub. L. 91–596, 84 Stat. 1590), for services, facilities, and personnel of the States used to carry out the statutory and regulatory responsibilities imposed on the Assistant Secretary for Occupational Safety and Health.

(iii) Issuance of grants, pursuant to Section 21(b) of the Act, for the conduct of short-term training of personnel.

(3) *The Assistant Secretary for Employment Standards,* or an officer acting in that capacity, is assigned the responsibility for medical supplies and services required under the Federal Coal Mine Health and Safety Act of 1969, as amended (Pub. L. 91–173, 84 Stat. 742).

(4) *The Deputy Under Secretary for International Affairs,* or an officer acting in that capacity, is assigned the responsibility for procurement of supplies and services, except as otherwise delegated under paragraph (c)(7) of this section, required for economic research services in support of foreign economic and trade policy formulation; training and orientation of foreign nationals; and overseas exhibitions required to fulfill the statutory and regulatory responsibilities imposed on the Deputy Under Secretary for International Affairs.

(5) *The Commissioner of Labor Statistics,* or an officer acting in that capacity, is assigned the following responsibilities:

(i) Procurement of statistical and economic research services, including grants, except for those delegated under paragraph (c)(7) of this section, required to fulfill the statutory and regulatory responsibilities imposed on the Commissioner of Labor Statistics.

(ii) Procurement needed for operation of the National Office of the Bureau of Labor Statistics: (A) Using FEDSTRIP for General Services Administration (GSA) common cataloged and supplied office furnishings, equipment, and supplies; (B) using GSA Federal Supply Schedule contracts for all items except automatic data processing (ADP) hardware and software, office copiers, and ADP communication devices; and (C) using the imprest fund for small purchase items in accordance with § 29–3.604.

(iii) Sale of special statistics developed by the Bureau of Labor Statistics in accordance with the Act of April 13, 1934 (29 U.S.C., Sec. 9 (1970)).

(6) *The Regional Administrators—OASAM,* or officers acting in that capacity, are assigned the following responsibilities within their respective regions:

(i) Procurement of property and services required for the regional offices, including all imprest fund purchases and GSA Federal Supply Schedule purchases. Purchases of office machines, e.g., typewriters, adding machines, and calculators, must be written against blanket purchase orders maintained for such equipment by the Director, Administrative Programs and Services, OASAM.

(ii) Procurement of all automatic data processing (ADP) hardware and software for the regional offices, with prior approval from the Director, Office of Grants, Procurement and ADP Management Policy.

(7) *The Director, Administrative Programs and Services, OASAM,* or an of-

ficer acting in that capacity, is assigned the following responsibilities: .

(i) Procurement of all property and services required for the operation of the DOL, and program-related property and services not specifically delegated to other officials in paragraphs (c) (1), (2), (3), (4), (5), and (6) of this section.

(ii) Procurement of all supplies and services, including program-related, through the imprest fund and from GSA Federal Supply Schedules required for the DOL National Office, except for authority delegated in § 29–1.401(c)(5); and the purchases of advertising required for the DOL National Office.

(iii) Procurement of all automatic data processing (ADP) hardware and software for the DOL National Office, only with prior approval from the Director, Office of Grants, Procurement and ADP Management Policy, OASAM.

(8) *The Director, Office of Grants, Procurement and ADP Management Policy, OASAM*, or an officer acting in that capacity, is assigned the following responsibilities:

(i) Developing and publishing departmentwide procurement and grant regulations, guidelines, and policies.

(ii) Reviewing and evaluating administrative adequacy of the Department's procurement and grant operations.

(iii) Providing technical advice and assistance to those DOL officials and officers delegated procurement and grant responsibilities. This includes interpreting the Federal Procurement Regulations as they apply to the Department's procurement operations, and obtaining the advice of the Solicitor as required.

§ 29–1.402 [Amended]

13. In line four of the first paragraph of § 29–1.402, the word "authorty" should be spelled "authority."

14. Section 29–1.404–50 is amended to read:

§ 29–1.404–50 Modification of authority.

To effect modification of a contracting officer's authority, a new designation (appointment) shall be issued revoking the present appointment.

15. Section 29–1.450 is amended to read:

§ 29–1.450 Contracting officer's representative.

(a) * * * The designation of the contracting officer's representative and the responsibilities delegated to that official * * *

(b) A person assigned to a procurement office and performing primary duties in a position within a procurement office, and under the supervision of a contracting officer, does not require written designation as a representative of the contracting officer nor designation in a contractual document to perform assigned duties. Such a person is considered to be an employee of the contracting officer, acting in the latter's behalf and, as such, has the authority and responsibility to perform under the terms and conditions of employment, and to act as assigned by the contracting officer. The contracting officer, however, shall not authorize such an employee, acting as a representative of the contracting officer, to sign any contractual document or letter in those instances where the signature of a contracting officer is required.

* * * * *

§ 29–1.451 [Deleted]

16. Section 29–1.451 entitled "Regional administrative officer purchasing authority." is deleted in its entirety.

§ 29–1.452 [Amended]

17. In line seven of paragraph (o) of § 29–1.452, the word "makes" should be substituted for the word "make."

18. Section 29–1.508–2 is revised to read:

§ 29–1.508–2 Failure or refusal to furnish Standard Form 119.

The contracting officer may take any of the actions authorized in § 1–1.508–2 of this title provided that the contract file is documented to justify the action taken.

19. Section 29–1.601–1 is revised to read:

§ 29–1.601–1 Definitions.

"Debarring Officer" means the Assistant Secretary for Administration and Management, who is the DOL official authorized to invoke debarment or suspension measures as authorized by § 1–1.602–1 (d), (f), and (g) of this title; and to include on the "DOL Debarred, Suspended, and Ineligible Bidders' List," defined below, those concerns and individuals determined to be subject to such measures in accordance with § 1–1.602–1 (a), (b), (c), and (e) of this title.

20. Section 29–1.602 is amended to correct organizational titles and make editorial changes and reads as follows:

§ 29–1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.

The Debarring Officer shall establish and maintain a list of concerns and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited for contracts with the DOL. The list shall be designated as the "DOL Debarred, Suspended, and Ineligible Bidders' List," and compliance with its use throughout DOL is mandatory. The Debarring Officer shall keep the list current and publish and distribute it bi-monthly to heads of DOL procuring activities who shall be responsible for its redistribution. The list shall be marked "For Official Use Only" to reduce inspection of its contents by other than DOL personnel required to have access thereto. The head of an Agency may request, in writing, that a concern or individual be placed on the "DOL Debarred, Suspended, or Ineligible Bidders' List" in accordance with procedures of this subpart. This official may initiate the request personally, or may do so by endorsing the recommendation of the responsible Agency contracting officer. If all necessary information is not readily available, a preliminary report concerning actions that may warrant debarment may be submitted, to be followed as soon thereafter as practicable by a completely documented report. The Debarring Officer, based on the preliminary report, may determine that a suspension is warranted. The Debarring Officer will also be responsible for making for DOL the determinations, administrative and otherwise, which are permitted under § 1–1.602–1 (d), (f), and (g), and § 1–1.604 of this title and for maintaining liaison with the General Services Administration and otherwise complying with § 1–1.606 of this title. Upon a showing by the head of an Agency that it would be in the public's best interest to make an exception for a particular procurement action and allow an award to a debarred concern or individual, the Debarring Officer may determine that an exception is warranted.

21. In § 29–1.604–1, paragraph (a) is revised to read as follows:

§ 29–1.604–1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* The Debarring Officer shall determine whether the request for debarment has sufficient merit to warrant further processing. This official shall communicate the decision to the head of the Agency recommending debarment.

(1) *Notice to contractors.* If the Debarring Officer decides further action in the matter is warranted, this official shall send a letter by registered mail, return receipt requested, to notify the concern or individual that debarment is being proposed stating, as a minimum, in addition to the items required in § 1–1.604–1 of this title, the following:

* * * * *

22. The table of contents for Subpart 29–1.7 is revised to delete §§ 29–1.708 and 29–1.708–3, entitled respectively "Certificate of competency program." and "Conclusiveness of certificate of competency.," and to redesignate § 29–1.706–53 as § 29–1.706–3 to conform to FPR numbering. The table of contents reads as follows:

Subpart 29–1.7—Small Business Concerns

Sec.	
29–1.702	Small business policies.
29–1.704	Agency program direction and operation.
29–1.704–1	Small business advisor.
29–1.704–2	Small business specialists.
29–1.704–3	Responsibilities of the procurement office.
29–1.705	Procurement set-asides for small business.
29–1.706–3	Withdrawal or modification of set-asides.
29–1.706–50	Procurement set-asides for small business when an SBA representative is not available.
29–1.706–51	General.
29–1.706–52	Review of set-aside recommendations initiated by small business specialist.
29–1.706–53	[Reserved]
29–1.706–54	Small business set-asides for proposed procurement.
29–1.708	[Reserved]
29–1.708–3	[Reserved]
29–1.709	Records and reports.

Sec.
29-1.713 Contracts with the Small Business Administration.
29-1.713-2 Policy.

23. Section 29-1.704-1 is revised to read as follows:

§ 29-1.704-1 Small business advisor.

The Director, Office of Grants, Procurement and ADP Management Policy, OASAM, or designee, under the policy direction of the Assistant Secretary for Administration and Management, is designated as DOL's small business advisor. The small business advisor shall have the responsibility, as a collateral duty, for establishing and implementing the small business program, including the minority business program, and for guiding the small business specialists in executing the program. The advisor will be the central point of contact for inquiries concerning the small business program from industry, the Small Business Administration (SBA), the Congress, and others. Duties shall include developing a plan of operation to increase the share of contracts awarded to small business by DOL.

§ 29-1.704-2 [Amended]

24. In line four of paragraph (b) of § 29-1.704-2, the word "the" should be substituted for the word "his."

25. Paragraph (b) of § 29-1.704-3 is revised to read as follows:

§ 29-1.704-3 Responsibilities of the procurement office.

* * * * *

(b) The procurement office shall insure that bidders' mailing lists identify small business and minority business concerns and that all solicitations state the applicable small business size standard and product classification.

* * * * *

§ 29-1.706-52 [Amended]

26. Section 29-1.706-52 is amended to substitute the word "the" for the word "his" on line eight.

§ 29-1.706-53 [Redesignated and amended]

27. Section 29-1.706-53 is redesignated § 29-1.706-3 to conform with FPR numbering and is amended to substitute the word "Withdrawal" for the word "Withdrawals" in the first line, and to add the words "or she" after the word "he" on the eleventh line.

28. Section 29-1.706-54 is revised to read as follows:

§ 29-1.706-54 Small business set-asides for proposed procurement.

(a) Each proposed procurement for construction estimated to cost between $10,000 and $750,000 shall be set aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn, in accordance with the procedures of § 1-1.706-3 of this title, and § 29-1.706-3 only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction procurements in excess of $750,000 shall be considered on a case-by-case basis.

§§ 29-1.708 and 29-1.708-3 [Deleted]

29. Sections 29-1.708 and 29-1.708-3 are deleted in their entirety.

30. Paragraph (a) of § 29-1.709 is revised to read as follows:

§ 29-1.709 Records and reports.

(a) A semiannual small business report shall be prepared by each procuring activity in accordance with § 1-16.804-3 of this title and shall be forwarded to the Director, Office of Grants, Procurement and ADP Management Policy, OASAM, Attention: ABA, not later than the 30th day following the end of the 6-month and 12-month periods covered respectively by the report.

* * * * *

§ 29-1.709 [Amended]

31. The penultimate line in paragraph (b) of § 29-1.709 is amended to add the word "on" after the word "Report."

32. The introductory paragraph in § 29-1.1002 is amended to read:

§ 29-1.1002 Availability of invitations for bids and requests for proposals.

A contracting officer may limit the availability of publicized unclassified invitations for bids and requests for proposals provided that they are made available for perusal at the issuing office and *Provided, further,* That the contracting officer:

* * * * *

33. The table of contents for Part 29-1 is corrected by deleting the caption "Subpart 29-1.59 [Reserved]."

34. Part 29-1 is corrected by deleting the entry of the part entitled "Subpart 29-1.50 [Reserved]."

35. This new Subpart 29-1.12 entitled "Responsible Prospective Contractors." is added to the DOLPR in lieu of § 29-1.310, to conform the numbering system to that of the FPR. The table of contents for this subpart reads:

Subpart 29-1.12—Responsible Prospective Contractors

Sec.
29-1.1202 General policy.

36. The new subpart reads as follows:

Subpart 29-1.12—Responsible Prospective Contractors

§ 29-1.1202 General policy.

(a) A contracting officer's duty to contract only with a responsible contractor does not preclude that official's disclosing to the contractor those actions the contractor might take to become "responsible" within the meaning of §§ 1-1.1203-1 and 1-1.1203-2 of this title. The contracting officer should consider the use of DOL staff in order to qualify a contractor as responsible only when such assistance is within the spirit of the Small Business Administration's program objectives; or is the only way a marginal organization, for which there is no substitute in a given geographic area, can be made eligible, such as in a program for the disadvantaged.

(b) Such DOL staff assistance can take many forms. In cases of borderline financial responsibility, the contracting officer should encourage the contractor's use of available financing techniques. These include, but are not limited to, performance guarantees, advance payments, or Small Business Administration loans. In cases where either the inadequancy of a contractor's accounting system or the contractor's inability to conform to the requirements of the Equal Opportunity Clause is a barrier to the award of a contract, the contracting officer should consider, on a case-by-case basis, the practicality of arranging for assistance to the contractor. Such assistance may take the form of either staff assistance from the Department or, in instances of an equal opportunity problem, the assistance of the applicable compliance agency. In this manner, the services of specialists could be made available to the contractor, when appropriate, to overcome the obstacle to award.

(c) Nothing herein, however, shall be construed, directly or indirectly, as placing on the contracting officer the burden of always finding a contractor "responsible" or, alternatively, initiating and pursuing a course of action which, with the help of the Department's staff, will lead to a finding of responsibility. Rather, only where the situation warrants it, is it the policy of DOL to encourage positive involvement of a contracting officer in assisting a contractor to become responsible. Where the circumstances clearly warrant a finding of nonresponsibility and also indicate the impracticality of the DOL's attempting to take steps to cure the contractor's deficiencies, it is the policy of the DOL that the contracting officer make a finding of nonresponsibility.

PART 29-2—PROCUREMENT BY FORMAL ADVERTISING

37. The table of contents for Subpart 29-2.1 is revised to delete § 29-2.102-50 entitled "Limitation on procurement by formal advertising." and reads as follows:

Subpart 29-2.1—Use of Formal Advertising

Sec.
29-2.101 Meaning of formal advertising.
29-2.102 Policy.
29-2.102-50 [Reserved].
29-2.102-51 Specification requirement.
29-2.105 Solicitation for informational or planning purposes.

§ 29-2.102-50 [Deleted]

38. Section 29-2.102-50 entitled "Limitation on procurement by formal advertising." is deleted in its entirety.

Subpart 29-2.2 [Amended]

39. The table of contents of Subpart 29-2.2 is amended to correct the caption number "29-2.205-50" to read "29-2.205-5."

§ 29–2.202–1 [Amended]

40. Line 14 of § 29–2.202–1 is amended to substitute "20 or 30 calendar days" for "15 or 30 days."

§ 29–2.202–2 [Amended]

41. Line nine of the provision required in § 29–2.202–2 is amended to substitute the word "the" for the word "he."

42. Section 29–2.202–3 is revised to read:

§ 29–2.02–3 Place and method of delivery of supplies.

To the maximum extent practical, invitations for bids issued by DOL shall stipulate "f.o.b. destination." Only where it is determined to be in the Government's best interest, may the contracting officer deviate from this policy.

§ 29–2.202–52 [Amended]

43. Line 11 of paragraph (a) of § 29–2.202–52 is amended by substituting the words "the contracting officer" for the word "he."

44. Section 29–2.202–53(a) is amended to read:

§ 29–2.202–53 Prebid conference.

(a) *General.* A prebid conference is a procedure, generally reserved for complex procurements, whereby prospective suppliers (and their subcontractors, if known) are invited to a metting, presided over by the contracting officer, where there is discussed any unusual aspect of a particular procurement for which an invitation for bids (IFB) or a request for proposals (RFP) has been issued. Whenever the contracting officer deems it in the DOL's best interest (but only, in the case of IFB's, after approval of the Director, Administrative Programs and Services, Office of the Assistant Secretary for Administration and Management) a prebid conference is authorized.

* * * * *

§ 29–2.205–50 [Amended]

45. The heading for § 29–2.205–50 entitled "Release of bidders mailing lists" is corrected to read, "29–2.205–5 Release of bidders mailing lists."

§ 29–2.301 [Amended]

46. Line two of § 29–2.301 is amended to substitute the words "or the bidder's" for the word "his."

47. Section 29–2.303–1 is amended to read as follows:

§ 29–2.303–1 General.

The contracting officer may not alter the late bid regulations and procedures of § 1–2.303 of this title or in this § 29–2.303 in response to a bidder's argument either that the bid is only slightly late (e.g., several minutes) or that none of the other bidders has been prejudiced by the late bid.

§ 29–2.402 [Amended]

48. Section 29–2.402 is amended to substitute the word "representatives" for "representative" on line 11 and to delete the word, "his" on line 21.

49. Section 29–2.402–50 is amended to correct pronouns limiting gender and reads:

§ 29–2.402–50 Firm-bid rule.

Under the "firm-bid rule," a bidder is bound after the bid opening by the bid submitted and may not, in the absence of the exceptions provided in the mistakes in bids procedures of § 1–2.406 of this title, withdraw the bid prior to the time of award or until after the expiration of the period provided in the bid for bid acceptance. It is the Department's policy, on the other hand, that it will not be bound by its invitation for bids, except that if it does make an award based on bids submitted in response to its invitation, it must award to that responsible supplier submitting the lowest responsive bid. Aside from that, however, the Department will not be bound by any bid it receives. The Department's preferred position is justified judicially on the basis that laws concerning the advertising and award of public contracts may be construed as primarily for the Government's own benefit and protection. Therefore, no bidder acquires any enforceable rights from the Department until the valid acceptance of the bid by an official authorized to do so. The mere submission of a bid does not, in and of itself, bestow a right or grant an interest in any prospective procurement.

§ 29–2.402–52 [Amended]

50. Section 29–2.402–52 is amended to substitute the word "a" for the word "his" in line two of paragraph (a); to substitute the word "conducive" for the word "conductive" in line seven of paragraph (b); and to substitute the word "that official" for the word "he" in line three of paragraph (c).

§ 29–2.404–1 [Amended]

51. Section 29–2.404–1 is amended to delete the word, "he" on line five.

§ 29–2.407–3 [Amended]

52. Section 29–2.407–3 is amended to delete the words, "or requests for proposals" on lines one and two.

53. Section 29–2.407–8 is amended to delete pronouns limiting gender and reads:

§ 29–2.407–8 Protests against award.

(a) *Protests before award.* If, after bid opening but prior to award, a protest against award has been lodged and it is necessary to make an award before the matter is resolved, the contracting officer shall obtain and place in the file the written approval of the head of the agency. Prior to making an award, the head of the agency will inform the Comptroller General of the Department's intent to award and obtain advice from the Comptroller General concerning the status of the protest in accordance with § 1–2.407–8(b) of this title.

(b) *Protests after award.* In the event of a protest after award, consideration of its merit and a determination regarding its resolution, including any required reports to the Comptroller General, shall be made by the head of the agency and, where required, that official shall obtain assistance from the Solicitor.

PART 29–3—PROCUREMENT BY NEGOTIATION

54. The table of contents for Subpart 29–3.1 is revised to delete § 29–3.101–50 entitled "Late proposals" and reads as follows:

Subpart 29–3.1—Use of Negotiation

Sec.	
29–3.100	Scope of subpart.
29–3.100–50	Other procedures applicable to negotiated procurements.
29–3.101	General requirements for negotiation.
29–3.101–50	[Reserved]
29–3.101–51	Limitations on use of requests for quotations.
29–3.103	Dissemination of procurement information.

§ 29–3.100–50 [Amended]

55. Section 29–3.100–50 is amended to correct the entry in the list of applicable sections to read "1–2.407–2—Responsible bidder—reasonableness of price."

§ 29–3.101–50 [Deleted]

56. Section 29–3.101–50 entitled "Late proposals." is deleted in its entirety.

57. Section 29–3.103(a) is amended to read as follows:

§ 29–3.103 Dissemination of procurement information.

(a) During the interval between the initiation of the request for proposals and the making of an award, the limitations on communication between DOL representatives, procurement and otherwise, and prospective suppliers shall be the same as those provided in § 29–2.202–52 of this chapter for formally advertised solicitations. Moreover, no prospective supplier shall be given an advantage over competitors of advance knowledge that proposals are to be requested.

* * * * *

58. The table of contents for Subpart 29–3.2 is revised to amend § 29–3.203 and to add new §§ 29–3.205 and 29–3.205–50, and §§ 29–3.210 and 29–3.210–50 which are redesignated and transferred from § 29–1.3. The revised table of contents reads as follows:

Subpart 29–3.2—Circumstances Permitting Negotiation

Sec.	
29–3.202	Public exigency.
29–3.203	Purchases not in excess of $10,000.
29–3.204	Personal or professional services.
29–3.204–50	Criteria for determining whether services are personal.
29–3.205	Services of educational institutions.
29–3.205–50	Limitations.
29–3.210	Impracticable to secure competition by formal advertising.
29–3.210–50	Noncompetitive procurements.
29–3.211	Experimental development, or research work.

59. Section 29–3.202 is revised to read as follows:

§ 29–3.203 Purchases not in excess of $10,000.

When determining whether or not the amount involved in any one transaction exceeds $10,000, the full or gross purchase price is controlling. Any prompt payment discount or the trade-in value of any article (to be offered to the vendor in exchange) is not to be deducted to qualify a procurement for the exception of § 1–3.203 of this title.

§ 29–3.204—50 [Amended]

60. Section 29–3.204–50 entitled "Criteria for determining whether services are personal." is amended by deleting the word "his" on line three, and by substituting the words "the contracting officer" for the word "he" on line five.

61. Section 29–3.205 is added and reads as follows:

§ 29–3.205 Services of educational institutions.

§ 29–3.205–50 Limitations.

(a) This authority shall be used only for the procurement of or the issuance of grants for specialized noncommercial services which are customarily performed by educational institutions. Use of this authority for any services other than those listed in § 1–3.205(a) of this title shall require a written determination with supporting facts by the head of the procuring activity that the particular type of service is available only from educational institutions.

(b) Proposals shall be solicited from as many educational institutions as are known to possess the required capability. This shall be consistent with § 1–3.101(c) of this title. Solicitation of a single educational institution shall require a written justification for sole source procurement in accordance with the requirements of § 29–3.210 of this chapter.

(c) Where the circumstances of both paragraphs (a) and (b) of this section pertain in the same case, the required determinations shall be combined and made by the head of the procuring activity.

62. Section 29–3.210 is added and reads as follows:

§ 29–3.210 Impracticable to secure competition by formal advertising.

§ 29–3.210–50 Noncompetitive procurements.

(a) It is a basic Department of Labor procurement policy that the selection of contractors shall be based on competition among responsible suppliers. This requirement for maximum competition exists regardless of whether the procurement is formally advertised or negotiated. However, there are circumstances where one organization or individual has exclusive or predominant capability by reason of experience, specialized facilities, or technical competence to perform the work within the time required and at a reasonable price. To insure that DOL procurements conform fully with the basic policy prescribing competitive procurement, any proposed noncompetitive procurement in excess of $10,000 must be fully justified and approved by the Assistant Secretary for Administration and Management or, in the case of research contracts of $25,000 or more, by the Assistant Secretary for Policy, Evaluation and Research. The contracting officer is responsible for assuring that proposed noncompetitive procurements below these dollar levels are in compliance with FPR requirements regarding maximum competition.

(b) The DOL recognizes that noncompetitive awards may be made where the items or services are unique; where time is of the essence and only one known source can meet the Government's needs within the required time frame; where it is impossible to draft for an invitation for bids adequate specificatons or any other adequately detailed description of the required property or services; or where it is necessary that the desired items manufactured by one source be compatible and interchangeable with existing equipment. In the event that a nonprofit, tax-exempt, or volunteer citizens' group falls within one of the preceding examples, a noncompetitive procurement may be justified. However, there is no authority justifying a sole source procurement when the factors are based solely on a firm's status as either a nonprofit organization, a tax-exempt entity, or a volunteer citizens' group. In addition, there is no authority justifying a sole source procurement on the basis that a firm can perform the services with greater ease than any other firm.

(c) Where follow-on contracts are anticipated, sufficient data should be obtained to permit competition of later contracts. In study or research contracts, where practical, the contractor's work papers shall be stipulated as a deliverable end product along with the final report. Work papers may supply sufficient background so that competition may be possible for future procurements of research effort based on a previously delivered final report of a study or research contract.

63. Section 29–3.211 is amended to delete pronouns limiting gender and reads:

§ 29–3.211 Experimental, developmental, or research work.

The determination referred to in § 1–3.211 of this title shall be made by the head of the procuring activity for requirements of $25,000 or less. Otherwise the head of the procuring activity shall forward the matter together with recommendations to the head of the agency for that official's determination.

§ 29–3.305 [Amended]

64. Section 29–3.305 is amended to correct the FPR reference on line six by substituting "§ 1–3.305" for "§ 1–2.305."

§ 29–3.404–4 [Amended]

65. Section 29–3.404–4 is amended to correct a typographical error. On line 10, the word "provide" should be substituted for the word "provides."

§ 29–3.404–7 [Amended]

66. Section 29–3.404–7 is amended to substitute the words "the individual" for the word "he" on line 19 of the section, and to substitute a semicolon for the comma on line 22.

67. Section 29–3.405–5 is revised to reorganize content, correct the title of an official, and correct typographical errors, and reads as follows:

§ 29–3.405–5 Cost-plus-a-fixed-fee contract.

(a) *Limitations.* There is no departmentwide fixed-fee ceiling schedule other than the limitations imposed in § 1–3.405–5(c)(2) of this title. Within those limitations, the head of each procuring activity may establish a fee ceiling for the activity.

(b) *Administrative limitations.* In addition to the statutory limitations described in § 1–3.405–5(c)(2) of this title, fees under cost-plus-a-fixed-fee type contracts are subject to the administrative limitations set forth below:

(1) Nine percent of the estimated cost, exclusive of the fee, for any cost-plus-a-fixed-fee contract for experimental, evaluation, developmental, or research work; or

(2) Six percent of the estimated cost, exclusive of the fee, for any other cost-plus-a-fixed-fee contract. Fixed fees within the limitations imposed by § 1–3.405–5(c)(2) of this title and in excess of those cited herein shall be submitted to the Director, Office of Grants, Procurement and ADP Management Policy, OASAM, Washington, D.C., 20210, Attn: ABA, for approval. The request for approval shall include a detailed justification setting forth the rationale supporting the proposed fee in terms of the factors prescribed in § 1–3.808–2 of this title.

(c) *Contractor's investment in work-in-process.* The head of each procuring activity has been delegated the authority to make the determination described in § 1–3.405–5(d)(1)(ix) of this title.

68. Section 29–3.405–50 is amended to correct grammatical and typographical errors, and reads:

§ 29–3.405–50 Cost-plus-award-fee contract.

(a) *Description.* The use of this type of cost-reimbursement contract is relatively new and stems from the desire on the part of the Government to introduce incentives into cost-reimbursement contracting situations where finite measures of performance necessary for cost-plus-incentive-fee contracts are absent. The use of this type of contract requires a willingness on the part of the contractor to accept a unilateral Government determination of a suitable level of fee for the performance of the contract. By terms of the contract, this determination by the Government of the fee is excluded from the scope of the Disputes clause. The contractor's performance itself is measured against criteria included in the contract. The contractor's performance relative to these criteria is a subject for discussion between the parties at various

intervals during the period of contract. The mechanics of the fee determination are unusual in that two fee elements are involved. First, there is a fee in a fixed amount or "base" fee. Second, there is a fee that is variable, the "award" fee. Maximizing the second part of the fee is the basis of the contractor's motivation to be responsive to the results of progress discussions at the periodic reviews of the contractor's performance.

(b) *Application.* The cost-plus-award-fee contract shall not be used where it is clear that a cost-plus-a-fixed-fee or cost-plus-incentive-fee contract is more appropriate.

(c) *Limitations.* The base fee shall not exceed 3 percent of the estimated cost of the contract exclusive of fee. The maximum fee (base fee plus award fee) shall not exceed the limits in §§ 1-3.405-5(c)(2) of this title, and 29-3.405-5(b).

§ 29-3.406-1 [Amended]

69. In § 29-3.406-1, line six is amended to substitute the word "are" for the word "is."

§ 29-3.409 [Amended]

70. Section 29-3.409 entitled "Indefinite delivery type contracts." is amended to correct typographical errors as follows:

(a) In line five of paragraph (a)(1), the word "exist" is substituted for the word "exists."

(b) Paragraphs (b) and (c) are amended to delete subparagraph headings and read:

(b) *Requirements contract.* This is another form of term contract wherein, for the full duration of the specific contract period, all the needs for a particular item or service are placed with a contractor by a simple order. Each order incorporates the terms and conditions of the basic requirements contract under which the order is placed. Procuring activities using this contract form shall stipulate a maximum quantity beyond which the contractor is not obligated to deliver the items that may be ordered under the contract. In addition, where possible, such contracts shall obligate the Department, by guarantee or otherwise, to order some stated minimum amount of the item in question, thus converting it to an indefinite quantity contract as defined in § 1-3.409(c) of this title. This will thereby protect the Department in the event of drastic changes in the demand or supply of the item or in the event of a technological breakthrough. In the absence of an obligation on the Department to procure a minimum quantity, funds are only obligated when a particular order is placed. The order, therefore, becomes the obligating document and must contain appropriation symbols and dollar amounts.

(c) *Indefinite quality contract.* When used, this contract can only obligate funds covering the low (i.e., the minimum or guaranteed) end of the range of quantities the Department can purchase. Where there is no obligation on the Department to procure a minimum quantity and where payment is to be made from a central revolving fund (e.g., "Working Capital Fund"), the basic contract award shall state that the appropriation data cited is not for the purpose of indicating the obligation, but rather that the money reserved for the purpose of paying invoices under the contract is being identified.

71. The table of contents for Subpart 29-3.6 is amended to add a new § 29-3.604-5 entitled "Limitations" and reads as follows:

Subpart 29-3.6—Small Purchases

29-3.602	Policy.
29-3.602-50	Purchasing authority.
29-3.603	Competition.
29-3.603-1	Solicitation.
29-3.603-2	Data to support small purchases.
29-3.604	Imprest funds (petty cash) method.
29-3.604-3	Agency responsibilities.
29-3.604-4	Use of imprest funds.
29-3.604-5	Limitations.
29-3.604-6	Procurement and payment.
29-3.604-50	Designation of cashiers.
29-3.604-51	Instructions for cashiers.
29-3.604-52	Accountability of imprest funds.
29-3.605	Purchase order forms.
29-3.605-3	Agency order forms.
29-3.605-50	Cancellation of purchase orders.
29-3.605-51	Duplicate purchase orders.
29-3.606	Blanket purchase arrangements.
29-3.606-1	General.
29-3.606-3	Establishment of account.
29-3.606-4	Documentation.

72. Paragraph (b) of § 29-3.602-50 is amended to update references and reads:

§ 29-3.602-50 Purchasing authority.

* * * * *

(b) *Delegations.* See § 29-1.401(c) of this chapter.

73. Paragraphs (a) and (c) of § 29-3.603-1 are revised to read as follows:

§ 29-3.603-1 Solicitation.

(a) Quotations or offers for purchases estimated not to exceed $5,000 may be solicited by use of written request, telegrams, telephone, or "in-person" contact, whichever is considered by the purchasing officer to be the most appropriate for the particular transaction. Quotations or offers for purchases estimated to exceed $5,000 must be in writing and in accordance with § 1-3.603-1(d) of this title and § 1-16.201 entitled "Request for Quotations."

* * * * *

(c) In the absence of urgency, and where the estimated dollar amount of the purchase is between $1,000 and $10,000, quotations shall be obtained from at least three sources of supply.

74. Section 29-3.604-4 is revised to incorporate the GSA authorization to use the imprest fund to make payments to common carriers and reads:

§ 29-3.604-4 Use of imprest funds.

Purchases made from imprest funds shall follow the policy of purchasing satisfactory merchandise at fair prices without favoritism to any vendor. The item to be purchased, its price, and the quantity involved generally govern the action to be taken. If a special item costing only a few dollars is required, a minimum amount of time and expense should be devoted to consummating the transaction. However, where feasible, purchases should be made from firms offering prices most advantageous to the Department. A vendor may be reimbursed by a payment from imprest funds for the cost of the supplies and the parcel post or other delivery charges which the vendor has already prepaid. Payments to common carriers for line haul transportation are allowable up to $100.00.

75. Section 29-3.604-5 is added and reads as follows:

§ 29-3.604-5 Limitations.

Officials responsible for small purchases should consider the use of imprest fund procedures for purchases amounting to $150 or less.

76. Section 29-3.604-6 is amended to change organization terms and correct typographical errors in paragraphs (a) through (e) which read as follows:

§ 29-3.604-6 Procurement and payment.

Purchases through use of imprest funds shall be accomplished as follows:

(a) Requisitioning offices shall submit a requisition, DOL Form D/L 1-1, to the Department's imprest fund cashier showing necessary information such as estimated cost, unit of issue, quantity, description, delivery requirements, and appropriation chargeable.

(b) The imprest fund cashier shall prepare D/L Form 1-110 showing appropriate information.

(c) If the method of purchase is cash upon delivery of merchandise, the vendor's representative will sign D/L Form 1-110 indicating receipt of cash and will be furnished a copy of the form. One copy shall be forwarded to the requisitioning office and the original and two copies shall be retained by the imprest fund cashier.

(d) If the method of purchase requires pickup of the merchandise, Form D/L 1-110 is to be signed by the DOL representative authorized to make the actual purchase upon receipt of the cash by this individual. One copy shall be retained by the imprest fund cashier. The original and three copies shall be submitted to the vendor who shall sign the four copies upon supplying the merchandise and receiving the cash. The vendor may retain one copy. The DOL representative shall return the original and two copies to the imprest fund cashier as well as cash register receipt, sales slip, or invoice, whichever shall be furnished by the vendor. Any excess funds are returned to the cashier at this time. One copy of Form D/L 1-110 shall be forwarded to the requisitioning office, and the imprest fund cashier shall retain the original and two copies.

(e) A purchase for which cash is advanced must be confirmed and the receipt returned not later than the fifth working day following the date of the advance; otherwise, the cashier shall take immediate action to recover the cash advanced.

* * * * *

77. Section 29–3.604–51 is amended to delete the pronoun limiting gender and to correct typographical errors and reads:

§ 29–3.604–51 Instructions for cashiers.

Prescribed procedures for operating an imprest fund are contained in the Treasury Department "Manual of Procedures and Instructions for Cashiers Operating under Executive Order No. 6166." This manual is furnished by the Treasury Department for use by each person who is designated as a cashier.

§ 29–3.605–50 [Amended]

78. Line eight of § 29–3.605–50 is amended by substituting the words "the vendor's" for the word "his."

§ 29–3.605–51 [Amended]

79. Line five of § 29–3.605–51 is amended by substituting the words "the vendor's" for the word "his."

§ 29–3.606–4 [Amended]

80. Line four of § 29–3.606–4 is amended by substituting the words "the vendor" for the word "him."

§ 29–3.705 [Amended]

81. In § 29–3.705, line three of paragraph (a) is amended by substituting the words "the contracting officer" for the word "he."

§ 29–3.707–50 [Amended]

82. In § 29–3.707–50, paragraph (b) is amended by deleting the word "his" from the next to the last line of that paragraph.

83. The table of contents for Subpart 29–3.8 is revised to add new entries and reads as follows:

Subpart 29–3.8—Price Negotiation Policies and Techniques

Sec.	
29–3.802	Preparation for negotiation.
29–3.805–50	Criteria for award.
29–3.805–51	Evaluation of technical proposals.
29–3.805–52	Competitive range.
29–3.805–53	Conduct of discussions.
29–3.805–54	Selection of contractor.
29–3.809	Contract audit as a pricing aid.
29–3.809–50	Procedures.

84. Section 29–3.802 is revised and reads as follows:

§ 29–3.802 Preparation for negotiation.

(a) *General.* At no time shall a prospective offeror be advised in the Request for Proposals (RFP) or otherwise furnished the Department's cost estimate or the amount of funds it has available to effect a particular procurement. In addition, RFP's shall avoid any statement which, while not indicating a specific sum, indicates a range within which that sum may be determined. Exceptions to the above policy shall be limited to the extremely unusual circumstance wherein the parameters of a study proposal are necessarily vague. In such case, the Director, Office of Grants, Procurement and ADP Management Policy, OASAM, may authorize the publication in the RFP, or otherwise, an indication of what the Department considers an estimate of either the range in costs or professional labor time (e.g., 2 to 3 work-years) which the contractor will be required to expend to perform the work contemplated. Such range will never be narrowed to the point where the maximum is less than 50 percent more than the minimum. This exception, when authorized, shall be accompanied by suitable language in the form of a disclaimer as to any guarantee of the accuracy of the Department's estimate and inviting proposals, even if they contradict the Department's estimate, with the concomitant assurance that proposals outside the estimated range of the Government's estimate will not be rejected solely for that reason.

(b) *Request for Proposals.* (1) the RFP shall require that the proposal be in two parts: a "Technical Proposal" and a "Business Proposal." Each proposal shall be separate and complete in itself so that evaluation of one may be accomplished independently of and concurrently with the other. The RFP shall provide that the "Technical Proposal" not contain any reference to cost. However, it shall provide that resource information such as data concerning labor hours and categories, materials, subcontracts, travel, and computer time shall be included in the "Technical Proposal" so that the offeror's understanding of the scope of work may be evaluated.

(2) The instructions to the offerors concerning the "Business Proposal" shall require submission of cost information in sufficient detail to allow a complete cost analysis. (See § 1–3.807–3 of this title for requirements for cost or pricing data.) Categories and amounts of labor, materials, travel, and computer time, as well as information with regard to contractor past performance (including contracts or subcontracts for like services or supplies), financial capacity, certifications and representations, and other pertinent administrative and business information should also be requested.

(3) Evaluation criteria must be developed by technical personnel at the time of initiation of the procurement request for inclusion by the contracting officer in the RFP. These criteria and their relative importance or weight require the exercise of judgment on a case-by-case basis, since the criteria must be tailored to the requirements of each particular procurement. These criteria must be submitted to the contracting officer in sufficient time to allow for this review before the issuance of the request for proposals. Since these criteria will serve as the standards against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical to the selection of a contractor.

85. Section 29–3.805–50 is revised to read as follows:

§ 29–3.805–50 Criteria for award.

(a) The RFP must set forth all significant matters which affect the opportunities of suppliers to compete on an equal basis, including any special evaluation factors. Evaluation factors are defined as (1) any minimum standards which will be required with respect to any particular element of the procurement, as well as (2) reasonably definite information as to the degree of importance to be given particular factors in relation to one another. Although a mathematical formula need not be used in the evaluation process, when the numerical rating is used, the RFP must inform the offerors of the major factors to be considered and the broad scheme of scoring to be used.

(b) An example of a mathematical evaluation process is set forth herein. The evaluation factors are examples only and should be changed to meet the particular needs of the individual request for proposals.

CRITERIA FOR AWARD

Prospective suppliers are advised that the selection of an offeror for contract award is to be made after a careful evaluation of the proposals received by a panel of specialists within the Department. Each panelist will evaluate the proposals for acceptability with emphasis on the various factors enumerated below, assigning to that factor a numerical weighting within the range shown for each of these factors. The scores will then be averaged to select an offeror or develop a list of offerors.

Negotiations will be initiated, if necessary, with one or more of the offerors within the competitive range, as the situation warrants, beginning with the head of the list, i.e., the offeror with the highest score, determined by the factors shown below:

	Points
A. Supplier's collective experience as it relates to the work required by the proposed contract	1–20
B. Educaton and experience of supplier's key personnel as they relate to the work required by the proposed contract	1–20
C. Supplier's resources and facilities	1–20
D. Planned approach in accomplishing the proposed work and its indication of the supplier's understanding of the work required	1–40

NOTE.—While proposed cost will usually not be point-scored in evaluation of proposals in response to an RFP, the overall cost proposal will be analyzed and examined relative to the decision regarding the award of the procurement. The RFP should inform offerors of the cost factor's relative importance—whether the procurement is intended to achieve a minimum standard of technical excellence at the lowest cost, or whether cost is considered secondary to technical excellence.

(c) Whenever the contract is to have a fixed price, price may not be disregarded in selecting a contractor. This is particularly true where more than one acceptable offer from technically qualified sources remains for consideration after conduct of negotiations. If a lower priced, lower scored offer meets the Government's needs, acceptance of a higher priced, higher scored offer shall be supported by a specific determination by the contracting officer that the technical superiority of the higher priced offer warrants the additional cost involved in the award of a contract to that offeror.

(d) For award of cost-reimbursement contracts, the estimated costs and proposed fees shall not be the controlling factors where offerors are not substantially equal on a technical basis. How-

ever, where offerors are substantially equal as to technical ability and resources, the price becomes the controlling factor, and the contract should be awarded to the lowest offeror. The award of cost-reimbursement contracts requires procurement personnel to exercise informed judgments as to whether submitted proposals are realistic with regard to proposed costs and technical approaches.

(e) The RFP evaluation criteria shall not be modified except by a formal amendment to the RFP.

86. Section 29-3.805-51 is added and reads as follows:

§ 29-3.805-51 Evaluation of technical proposals.

(a) The technical proposals received by the contracting officer shall be forwarded to the technical evaluators for evaluation; the business portion of the proposals shall be retained by the contracting officer for evaluation.

(b) The technical evaluators shall evaluate each proposal in strict conformity with the evaluation criteria of the RFP and shall assign each proposal a score. A technical ranking shall then be compiled. The technical evaluators shall then identify each proposal as either acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

(c) The technical evaluators shall then determine whether any proposal which has been rated as unacceptable might be considered acceptable upon the furnishing of clarifying data by the offeror, and the contracting officer will be so informed. The contracting officer will arrange for the submission of clarifying data in writing or by consultation, and furnish it to the technical evaluators for their consideration.

(d) It is essential to the competitive procurement process that all information contained in offerors' proposals be maintained in strict confidence. In no event, during the evaluation period, shall any offeror be told the number of proposals received, prices, cost ranges, or the Government cost estimate. Discussions with offerors relative to any aspect of the procurement shall be held only with the contracting officer or his authorized representative.

(e) A technical evaluation report shall be prepared and signed by the technical evaluators, furnished to the contracting officer, and maintained as a permanent record in the contract file. The report shall reflect the scoring of each proposal and the ranking of the proposals, and shall identify each proposal as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included.

87. Section 29-3.805-52 is added and reads as follows:

§ 29-3.805-52 Competitive range.

The competitive range consists of the proposals of those offerors which, based either on an evaluation by a mathematical formula or by other means, are grouped more or less at the same level and are competitive with one another. In all cases it is important that the criteria used in establishing a competitive range be meaningful and realistic and in no way arbitrary. Determining firms which are and firms which are not within a competitive range is a matter of administrative discretion which must be exercised in a reasonable manner. A determination of the limits of the competitive range requires the comparison of each proposal against the other proposals. Therefore, there is no way to predetermine the number of or percentage of proposals that will be competitive with one another. The limits of what constitutes competitive range in a particular case is a judgment matter for determination by the contracting officer. Such discretion will be reasonable and justified and shall not be exercised in an arbitrary or capricious manner.

88. Section 29-3.805-53 is added and reads as follows:

§ 29-3.805-53 Conduct of discussions.

(a) In accordance with § 1-3.805-1(a) of this title, where discussions or other negotiations are to be conducted, the contracting officer must negotiate regarding the work to be performed, the cost or price of the work, and other relevant topics with all those offerors within the competitive range.

(b) The contracting officer shall point out to each such offeror the ambiguities, uncertainties, and deficiencies, if any, in its proposal. This official shall give each offeror a reasonable opportunity (with a common cutoff date for all) to support, clarify, correct, improve, or revise its proposal. Discussions with one offeror will not identify areas in which another has apparently achieved a higher evaluation or provided more detail. Nor will information be transmitted by the Government which could give one offeror a competitive advantage over another. Cost estimates made by the Government will not be disclosed.

(c) Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may require more than one round of discussions with all of the offerors within the competitive range. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

(d) In order to terminate negotiations properly, the contracting officer shall advise each offeror within the competitive range that (1) negotiations are being conducted, (2) offerors are being asked for "best and final offer," not merely to confirm or reconfirm prior offers, and (3) any revision or modification of proposals must be submitted by the cutoff date.

89. Section 29-3.805-54 is added and reads as follows.

§ 29-3.805-54 Selection of Contractor.

After the close of discussions and the receipt of any addenda to proposals, the contracting officer shall determine whether another technical evaluation is required prior to award. The contracting officer shall then select for award the offeror or offerors whose proposal(s) offers the greatest advantage to the Government, cost or price, technical and other factors considered.

90. Section 29-3.809-50 is revised to read as follows:

§ 29-3.809-50 Procedures.

The Assistant Secretary for Administration and Management shall perform or obtain reviews of indirect cost data in the establishment of provisional and fixed overhead rates and the performance of audits as a pricing aid upon request of a head of a procuring activity. All such requests shall be in writing and shall be directed to the Director of Audit and Investigations in Washington, D.C. or to the Regional Administrator for Audit in the regions. Requests shall (a) describe the problem, (b) specify the purpose to be served by the audit, and (c) indicate the audit scope and depth desired.

91. Part 29-12 is revised to correct errors in assigned subpart and paragraph numbers, to delete pronouns limiting gender, and to update organizational information, and reads as follows:

PART 29-12—LABOR

Subpart 29-12.12—Williams-Steiger Occupational Safety and Health Act of 1970

Sec.

29-12.1250 Scope of subpart.
29-12.1251 Basic protection.
29-12.1252 Applicability.
29-12.1253 Contract clause.
29-12.1254 Notice of award.

AUTHORITY: 80 Stat. 379, 5 U.S.C. 301; sec. 207, 76 Stat. 29, 42 U.S.C. 2587; sec. 602, 78 Stat. 528, 42 U.S.C. 2942; and sec. 204(a), 81 Stat. 888, 42 U.S.C. 639.

Subpart 29-12.12—Williams-Steiger Occupational Safety and Health Act of 1970

§ 29-12.1250 Scope of subpart.

This subpart extends the standards and policies of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to persons who are receiving occupation or job training under Department of Labor contracts but who are not employees of the contractor.

§ 29-12.1251 Basic protection.

This Occupational Safety and Health Act of 1970 provides the following basic protection for employees:

(a) It requires the employer to furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees.

(b) It requires the employer to comply with occupational safety and health standards promulgated under the Act which are published in Chapter XVII of Title 29, Code of Federal Regulations.

§ 29–12.1252 Applicability.

The Department of Labor shall require its contractors providing occupational and job preparation training to persons who are not employees to protect such persons as though they were employees with respect to the provisions of Federal or State occupational safety and health standards, as applicable.

§ 29–12.1253 Contract clause.

The following clause shall be included in all contracts with the Department of Labor which provide for occupational or job preparation training (including basic education, counseling, personal and cultural development, recreational activities, and work-experience training) when the trainees are not employees of the contractor:

OCCUPATIONAL SAFETY AND HEALTH ACT

(a) In the performance of this contract, the contractor agrees to provide all trainees, who are not employees, with safety and health protection which shall be at least as effective as that which would be required under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) if the trainees were employees of the contractor thereunder.

(b) All records pertaining to injuries and illnesses of trainees who are not employees shall be maintained in accordance with the provisions of Part 1904 of Title 29 of the Code of Federal Regulations.

(c) Contractor agrees to include the substance of this clause in all subcontracts which provide for the training of persons who are not employees of the subcontractor.

(d) Failure of the contractor to comply with the provisions of this clause shall be grounds for the termination of this contract or the invocation of the "Debarred, Suspended, and Ineligible Bidders" procedures of the Federal Procurement Regulations and the Department of Labor Procurement Regulations.

§ 29–12.1254 Notice of award.

Contracting officers of the Department of Labor shall submit a notice of award of a contract containing the clause in § 29–12.1253 to the Occupational Safety and Health Administration (OSHA) Regional Administrator within the region where the contract is to be performed at the following addresses:

REGION I

Regional Administrator, OSHA, U.S. Department of Labor, John F. Kennedy Federal Building, Government Center, Room 1804, Boston, Mass. 02203.

REGION II

Regional Administrator, OSHA, U.S. Department of Labor, 1515 Broadway (1 Astor Plaza), Room 3455, New York, NY 10036.

REGION III

Regional Administrator, OSHA, U.S. Department of Labor, Suite 2100, 3535 Market Street, Philadelphia, PA 19104.

REGION IV

Regional Administrator, OSHA, U.S. Department of Labor, 1375 Peachtree Street, N.E., Suite 587, Atlanta, GA 30309.

REGION V

Regional Administrator, OSHA, U.S. Department of Labor, 230 S. Dearborn Street, Room 3263, Chicago, IL 60604.

REGION VI

Regional Administrator, OSHA, U.S. Department of Labor Room 602, 555 Griffin Square Building, Dallas, TX 75202.

REGION VII

Regional Administrator, OSHA, U.S. Department of Labor, 911 Walnut Street, Room 3000, Kansas City, MO 64106.

REGION VIII

Regional Administrator, OSHA, U.S. Department of Labor, Room 15010, 1961 Stout Street, Denver, CO 80202.

REGION IX

Regional Administrator, OSHA, U.S. Department of Labor, Room 9470, Federal Building, 450 Golden Gate Avenue, Seattle, WA 94102.

REGION X

Regional Administrator, OSHA, U.S. Department of Labor, Room 6048, 909 First Avenue, Seattle, WA 98174.

92. Section 29–26.400 is amended to correct an FPR reference and to provide for changes in organizational terms, and reads as follows:

§ 29–26.400 Scope of subpart.

This subpart prescribes the policy and procedures for execution of novation agreements and change of name agreements by a single Agency and novation or change of name agreements affecting more than one Agency. (See also § 1–30.710 of this title on assignment of claims in case of transfers of business or corporate mergers.)

93. Section 29–26.404–50 is amended to provide for changes in organizational titles and terms and reads as follows:

§ 29–26.404–50 Processing novation and change of name agreements.

(a) The Agency(ies) processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including lists of affected contracts which are required by § 1–26.402(c)(2) of this title, to the Agencies having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the addresses listed herein as appropriate:

Directorate of Administrative Programs and Services, OASAM, Attn: ACBB.
Office of Policy, Evaluation and Research, Employment and Training Administration, Attn: TP.
Office of National Programs, Employment and Training Administration, Attn: TDX.
Office of Field Operations, Employment and Training Administration, Attn: TG.
Regional Coordination Staff, OASAM, Attn: AH.
Bureau of International Labor Affairs, Attn: IA.
Bureau of Labor Statistics, Attn: BA.

(b) All novation agreements and change of name agreements, prior to execution by the Department, shall be reviewed by the Solicitor's Office for legal sufficiency.

(c) If the Agency(ies) does not object to the proposed novation agreement within 30 days after receipt of notice, the initiating Agency shall assume acceptance of the proposed agreement.

(d) When more than one Agency has outstanding contracts with the contractor or contractors, a single agreement covering all such contracts shall be executed by the Agency having the largest unsettled dollar balance with the contractor or contractors.

(e) A signed copy of the executed novation agreement or change of name agreement shall be forwarded to the contractor; a signed copy shall be retained in the Agency executing the agreement; and, where more than one Agency is involved, two conformed copies of the agreement shall be prepared for each affected Agency. In addition, there shall be attached to each of the conformed copies of the agreement for each affected Agency a summary of the agreement and a complete list of the contracts affected.

PART 29–61—PROVISIONS REGARDING AWARDS TO CONTRACTORS AND GRANTEES EMPLOYING FORMER DEPARTMENT OF LABOR EMPLOYEES

94. Part 29–61 is deleted in its entirety.

Signed at Washington, D.C., this 15th day of June 1977.

ALFRED M. ZUCK,
Assistant Secretary for Administration and Management.

[FR Doc.77–17639 Filed 6–20–77;8:45 am]

notices

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

ADMINISTRATOR, EMERGENCY NATURAL GAS ACT OF 1977

[Docket No. E77-108]

NATURAL GAS PIPELINE CO. OF AMERICA

Supplemental Emergency Order

By order issued June 3, 1977, Natural Gas Pipeline Company of America (Natural) was authorized, pursuant to Section 6 of the Emergency Natural Gas Act of 1977 (Act), Pub. L. 95-2 (91 Stat. 4 (1977)) to make, inter alia, an emergency purchase of 4.050 Bcf of natural gas from Oklahoma Natural Gas (Oklahoma).

By oral request, dated June 7, 1977, Natural requested the order be amended by adding language which would protect Oklahoma in accordance with Section 9 of the Act.[1] Upon further review of this request, I have determined to grant this request and to amend the June 3, 1977 order by adding the following language:

Natural advises and I find that the gas made available by Oklahoma will result in a commingling of interstate natural gas with Oklahoma's normal intrastate system gas supply and with volumes of gas owned by other parties. The contractual provisions between Oklahoma and its producers, transporters and other suppliers of gas prohibit the sale of natural gas in interstate commerce and the commingling of their intrastate pipeline system gas supplies with gas moving in interstate commerce. The sale, transportation and delivery of gas for which Natural seeks approval may result in some commingling of interstate natural gas with Oklahoma's normal intrastate gas supplies and with gas owned by other third parties. This order shall be considered as applying to all such commingled gas.

Under the provisions of § 9(b), (c) of Pub. L. 95-2 (91 Stat. 4,9,), the suppliers of such gas, which is so commingled, may not terminate existing contracts with Oklahoma 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 Oklahoma is selling, delivering and transporting gas for Natural pursuant to Section 6(a) of that Act. Oklahoma and any third person whose gas is commingled with Natural'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.

To the extent not inconsistent with this order, the provisions of the June 3, 1977 order 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 on Natural, Oklahoma, Paul De Cleva, Inexco, Mitchell (SPM A-4), Mesa Petroleum Company, Curtis Pryor, Taylor Operating Company, Phillips Petroleum Company, Jack Russell, Inexco, Mitchell (SPM E-1). 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 13, 1977.

[FR Doc.77-17628 Filed 6-20-77;8:45 am]

[1] Although Oklahoma Natural Gas is affiliated with Oklahoma Natural Gas Gathering Corporation, this affiliation alone does not subject it to the purisdiction of the Natural Gas Act.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

HOT SPRINGS COUNTY LIVESTOCK COMMISSION CO., INC., ET AL.

Proposed Posting of Stockyards

The Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AR-157—Hot Springs County Livestock Commission Company, Incorporated, Malvern, Arkansas.
GA-184—Telfair-Wheeler Livestock Market, Inc., McRae, Georgia.
KY-163—New Farmers Livestock Market, Somerset, Kentucky.
MN-170—Speldrich Feeder Pig Market, Belgrade, Minnesota.
SC-128—Rock Hill Auction Barn, Rock Hill, South Carolina.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the Act as provided in Section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule, may do so by filing them with the Chief, Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250, by July 21, 1977.

All written submissions made pursuant to this notice shall be made available for public inspection at such times and places in a manner convenient to the public business (7 U.S.C. 1.27(b)).

Done at Washington, D.C., this 14th day of June 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.77-17641 Filed 6-20-77;8:45 am]

RAWHIDE LIVESTOCK AUCTION, INC. ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. et seq.), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., Name, Location of Stockyard, and Date of Posting

ARIZONA

AZ-109—Rawhide Livestock Auction, Inc., Chandler, May 11, 1977.

FLORIDA

FL-124—301 Livestock Company, Thonotosassa, May 13, 1977.

MONTANA

MT-119—Billings Livestock Comm. Co., Inc., Billings, May 6, 1977.

NEW MEXICO

NM-117—Artesia Livestock Auction, Inc., Artesia, May 24, 1977.

PENNSYLVANIA

PA-151—Bell's Sales Company, York Springs, May 20, 1977.

Done at Washington, D.C., this 14th day of June, 1977.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.77-17642 Filed 6-20-77;8:45 am]

Soil Conservation Service

LOWER SALT CREEK WATERSHED PROJECT, KANSAS

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 Conservaiton Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Salt Creek Watershed Project, Lincoln, Mitchell, and Ottawa Counties, Kansas.

The environmental assessment of this Federal action indicates that this 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 K. Griffin, 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 improvement include conservation land treatment supplemented by five floodwater retarding structures.

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, 760 S. Broadway, Salina, Kansas 67401. 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 July 6, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Preevntion Program—Pub. L. 83-566, 16 U.S.C. 1001-1008.)

Dated: June 14, 1977.

JOSEPH W. HAAS,
Assistant Administrator for Water Resources, Soil Conservation Service, Department of Agriculture.

[FR Doc.77-17643 Filed 6-20-77;8:45 am]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

NATIONAL ADVISORY COMMITTEE ON AN ACCESSIBLE ENVIRONMENT

Meeting

Notice is hereby given, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) that a meeting of the National Advisory Committee on an Accessible Environment will be held on July 8-9, 1977 at 9 a.m. The July 8 meeting will be held at the Claremont Hotel, Claremont at Ashby Avenue, Oakland, California. The May 9 meeting will be held at the University of California, Berkeley Campus, Alumni House, Alumni Lounge, Barcroft and Telegraph Avenues, Berkeley, California.

The National Advisory Committee on an Accessible Environment is established under the 1974 amendments to the Rehabilitation Act, Pub. L. 93-516, 29 U.S.C. 792, et. seq. The Committee is established to provide advice, guidance, and recommendations to the Architectural and Transportation Barriers Compliance Board in carrying out its functions.

The meeting of the committee shall be open to the public. On the first day the Committee Chairman will discuss activities since the previous meeting and call for government spokespersons to report on program activities and plans of the Architectural and Transportation Barriers Compliance Board. The full Committee will then break into subcommittee meetings to discuss specific area concerns and reconvene as a full Committee to receive subcommittee recommendations at the end of the first day. On the second day, the Committee will meet to discuss the National Advisory Committee Public Awareness Session to be held that afternoon. During the second afternoon, the Committee will host a Public Awareness Session for the consumers in Region IX.

Persons interested in attending the meetings should contact Ms. Laurinda Steele, Coordinator, Architectural and Transportation Barriers Compliance Board, Mary E. Switzer Building, 330 C Street SW., Room 1010, Washington, D.C. 20201, telephone 202-245-1801.

ROBERT JOHNSON,
Acting Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc.77-17604 Filed 6-20-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-6-83; Docket 29476]

IATA

Order Denying Petition for Reconsideration

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 16th day of June, 1977.

Complaint of Donald L. Pevsner against International Air Transport Association mileage rules used in passenger fares construction.

By Order 77-2-42, dated February 8, 1977, the Board dismissed a complaint of Donald L. Pevsner, Esq. against the fare-construction rule which requires inclusion of intermediate mileages traveled by a surface mode in the computation of the total mileage of a passenger's itinerary under the mileage-based fare system established by the member carriers of the International Air Transport Association (IATA).[1]

By petition filed March 1, 1977, Mr. Pevsner requests that the Board reconsider the matter and, upon reconsideration, find the rule unlawful. The petitioner contends that disapproval of the rule will not have the dilutionary effect on carrier revenues ascribed in the Board's order but, rather, will result only in charging passengers for the mileage actually flown; and that to the extent so-called dilution might occur, such dilution would occur only in cases where an added charge is required by application of the rule. Mr. Pevsner further contends that, regardless of the shortcomings of the present mileage system, the Board cannot achieve equity by permitting continued application of the rule; that although a multi-stop passenger may receive greater value for his travel dollar than does the direct-route passenger, the multi-stop passenger does not receive these benefits free since international fares are set at high enough levels to meet fully allocated costs of such multi-stop itineraries; and that if the Board is dissatisfied with the present mileage system it should not "reform" the system by permitting the present inequity to continue but rather should reduce direct-route fares and initiate appropriate stopover charges. The petitioner further alleges that the present rule discriminates between two classes of multi-stop passenger: While both classes may travel the same itinerary and pay the surcharge for excess mileage, the multi-stop passenger using surface transport over any given sector must in addition pay the normal costs of the surface transport. Finally, petitioner states that it is unlikely that the carriers would charge the combination of local sector fares if the subject rule were eliminated because the result would be a drastic decrease in international pleasure travel.

In its reply, filed March 8, 1977, Trans World Airlines, Inc. (TWA) requests denial of the petition, contending that the Board has already found that the rule does not pose an issue of discrimination sufficient to require the relief sought by Mr. Pevsner; and that were such relief in fact granted, a situation worse than that which presently exists may be created. TWA maintains that the petition presents no new facts requiring the Board to alter its earlier disposition.

Upon consideration of the petition, the reply, and all other relevant matters, the Board has determined to deny the petition.

Mr. Pevsner's principal argument for reconsideration hinges upon inequities which are alleged to constitute unjust discrimination to the multi-stop traveler

[1] In contrast to the strictly mileage-based fare system in general use in domestic air transportation, the IATA mileage system permits routings up to 20 percent in excess of the published direct-route mileage at the direct-route fare. For each five percent increment of mileage in excess of the initial 20 percent, the system requires surcharging of the direct-route fare by five percent. When the deviation exceeds 50 percent of the direct-route mileage, the applicable fare becomes the lowest combination of the individual sector fares. The rule objected to by Mr. Pevsner requires inclusion of mileages for sectors traveled by a surface mode in the computation of the total itinerary mileage which if exceeding the above 20-percent circuitry allowance would be surcharged accordingly. Thus, were the nonflown sector mileage excluded from the mileage computation, there would be instances when circuitry would not exceed 20 percent and no surcharge levied.

who travels by surface over a segment of his total itinerary as compared with another multi-stop traveler who travels by air over the identical itinerary, the itinerary in both cases involving circuity calling for a surcharge. Although differing somewhat in emphasis, Mr. Pevsner's arguments are essentially those advanced in the original complaint and they present no new or different material not previously considered. As stated in Order 77-2-42, the multi-stop passenger who uses surface travel on a particular segment is actually well-favored by the instant rule. Rather than paying the higher combination of sector fares which would otherwise govern, the rule affords the passenger the benefits of the usually lower through fare. Moreover, as we noted in Order 77-2-42, the liberalization of the IATA circuity-mileage rule sought by Mr. Pevsner would further dilute carrier yields and increase pressure to raise fares charged single-destination, direct-routing travelers.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particuraly sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That: The petition filed by Donald L. Pevsner, Esq. for reconsideration of Order 77-2-42 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.77-17657 Filed 6-20-77;8:45 am]

[Order 77-6-84; Docket 29952]

PAN AMERICAN WORLD AIRWAYS, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 16th day of June, 1977.

Application of Pan American World Airways, Inc. for "fill-up" authority between domestic coterminals on flights operated in foreign or overseas air transportation.

As discussed in Order 77-4-153, April 29, 1977, Pan American World Airways has applied for authority to transport persons, property, and mail in interstate air transportation on flights operated in foreign or overseas air tansportation. The pleadings in this matter are discussed in Order 77-4-153 and, as stated therein, the portion of Pan American's application requesting New York-Dallas/Ft. Worth "fill-up" rights on its Route 130 was reserved for separate disposition. In this order to show cause, we are proposing to grant "fill-up" rights to Pan American over the New York-Dallas/Ft. Worth flight sector.

When American Airlines received its South Pacific authority, the fact that it already had New York-Dallas/Ft. Worth local traffic rights was a material consideration behind the Board's decision to award the South Pacific route to that carrier.[1] The assumption was that the domestic traffic would provide a substantial back up for the international route. When American's route was later transferred to Pan American,[2] however, the Board observed that American's domestic authority had never proved to be as important a source of support as had originally been anticipated. The fact remains that in laying out the South Pacific Route, the Board had hoped that domestic traffic between coterminals would aid the U.S. carrier economically by affording greater operating flexibility; the opportunity to solicit "fill-up" traffic would obviously be beneficial to the company as well; and of course filling up what would otherwise be empty aircraft space would be economically efficient.

Moreover, awarding this authority to Pan American would not have a significantly adverse effect on the carriers now serving that market. Because Pan American's New York-Dallas/Ft. Worth flights are tied to South Pacific services (and are thus subject to an effective long-haul restriction of at least 6,000 miles), the carrier is now able to schedule only one weekly New York-Dallas/Ft. Worth round trip, and, even with domestic "fill-up" rights, its potential for adding frequencies to the market is limited. By contrast, American and Braniff, the unrestricted New York-Dallas/Ft. Worth incumbents, operate 19 daily round trips.[3] Under the circumstances, a grant of "fill-up" authority to Pan American will have a minimal effect on the competitive environment in the New York-Dallas/Ft. Worth market. Accordingly, we believe that it is in the public interest to grant this "fill-up" authority.

Consequently, we tentatively find and conclude that the public convenience and necessity require that Pan American be authorized to transport persons, property, and mail in interstate air transportation between New York and Dallas/Ft. Worth on flights operated to overseas or foreign points pursuant to its certificate for Route 130.[4]

Interested persons will be given 30 days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.

During the same period prescribed above, we will expect Pan American to file with the Board an estimate, with supporting data, of the annual gross transport revenue increase for the first full year of operations to result from the award proposed herein. These data are necessary for the purpose of computing the license fee pursuant to section 389.24 (a)(2) of the Board's regulations. Also within this time period, Pan American shall file an environmental evaluation with regard to its New York-Dallas/Ft. Worth service.

Accordingly, *it is ordered*, That: 1. All interested persons be and they hereby are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein and authorizing Pan American World Airways, Inc., to transport persons, property, and mail in interstate air transportation in the New York-Dallas/Ft. Worth market on flights operated in foreign and/or overseas air transportation pursuant to its certificate for Route 130;

2. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, and certificate amendments set forth herein shall, within 30 days after the date of service of this order, file with the Board and serve upon all persons listed in Appendix A attached to Order 77-4-153, a statement of objections together with a summary of testimony, asduaanttt,tsasdil7cmcmcm
statistical data, and such evidence as is expected to be relied upon to support the state objections; answers may be filed 15 days thereafter;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or 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 case will be submitted to the Board for final action;

5. Pan American World Airways, Inc., be and it hereby is directed to file an environmental evaluation and an estimate of gross transport revenue increase in accordance with this order within 30 days of the date of service of this order; and

6. A copy of this order shall be served upon all persons served with Order 77-4-153.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-17658 Filed 6-20-77;8:45 am]

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[1] Transpacific Route Investigation (South Pacific Deferred Phase), Order 69-7-104, served July 22, 1969, at pages 5 and 6.

[2] American-Pan American Route Exchange Agreement, Orders 75-6-152, 153 and 154, served July 1, 1975.

[3] There is also one-, two-, and three-stop service in the market.

[4] We further find that Pan American is a citizen of the United States within the meaning of the Act, and is fit, willing and able to properly perform the transportation proposed herein and to conform to the provisions of the Act and the Board's rules, regulations, and requirements thereunder.

[5] All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

ADVISORY COMMITTEE ON EAST-WEST TRADE

Revised Notice of Open Meeting

FR Doc. 77-16727 appearing in the June 13 issue of the FEDERAL REGISTER, (Vol. 42, No. 113) announced the plans of the Advisory Committee on East-West Trade to hold a meeting on Wednesday, June 29, 1977, from 9:30 a.m. to 12:00 Noon and 1:00 p.m. to 3:30 p.m. in Room 4833, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Revised notice is hereby given that the aforementioned meeting will be held instead in Room 6802.

EDWARD P. KEMP,
Assistant to the Director,
Bureau of East West Trade.

[FR Doc.77-17780 Filed 6-20-77;8:45 am]

COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00110. Applicant: College of Medicine and Dentistry of New Jersey—New Jersey Dental School, 100 Bergen Street, Newark, New Jersey 07111. Applicant: Electron Microscope, Model H-500-L. Manufacturer: Hitachi Ltd., Japan. Intended use of article: The article is intended to be used for an investigation of the mineralization of dentin and the role played by odeontoblasts in the process. In addition, the article will be used to instruct graduate dental students in electron miscroscopic applications to dental research. The instruction covers electron optics, image formation, electron-specimen interaction, specimen preparation, image interpretation and dental application. Application received by Commissioner of Customs: February 7, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 23, 1977. Article ordered: December 17, 1976.

Docket Number: 77-00112. Applicant: University of Texas Medical Branch, Galveston, Texas 77550. Article: Electron Microscope, Model EM 10A and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to study the crystalline lens of the eye from a number of different animal species. The lenses will be studied under conditions where experimental cataracts have been produced and when tracer substances have been added either to the interior of the cells or to the bathing medium around the cells. Application received by the Commissioner of Customs: January 28, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 23, 1977. Article ordered: January 10, 1977.

Docket Number: 77-00117. Applicant: University of North Carolina at Chapel Hill, Department of Pathology, Preclinical Education Building 228-H, Chapel Hill, N.C. 27514. Article: Electron Microscope, Model EM 10A and Goniometer. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for ultrastructural study on normal and pathological tissues obtained from both experimental animals and human subjects with the objective of providing further understanding of pathogenesis of various disease in both animals and human subjects. In addition, the article will be used for advanced courses of special techniques in Pathology (Pathology 223) and postgraduate courses in pathology. These courses are provided graduated and post-graduated students in pathology including residency training in pathology and other bio-medical sciences. Application received by Commissioner of Customs: January 31, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 23, 1977. Article ordered: January 17, 1977.

Docket Number: 77-00127. Applicant: Wayne State University School of Medicine, Department of Pathology, 540 E. Canfield, Detroit, Michigan 48201. Article: Electron Microscope, Model EM 10A and accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used to study the fine structural physiology and pathology of the following human hematopoietic diseases: (1) The malignant lymphomas (the non-Hodgkins or lymphocytic lymphomas and Hodgkins diseases), (2) myeloid and lymphoid leukemia, (3) leukemias of rare and unknown histogenesis such as hairy cell leukemia (leukemic reticuloendotheliosis) (4) lymphocyte and plasma cell disorders, such as, Waldenstrom's macroglobulinemia and multiple myeloma, (5) anemias, and (6) red blood cell membrane disorders associated with alcoholism, hereditary abnormalities, and leukemia. The article will also be used for educational purposes as follows: (1) to train senior medical students, residents and faculty in the use of the electron microscope and (2) to demonstrate how the article is used as a research and diagnostic tool in clinical pathology. The courses is which the article will be used are: Hematopathology and The Electron Microscopy of Normal and Leukemic Blood Cells. Application received by Commissioner of Customs: February 11, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977. Article ordered: January 7, 1977.

Docket Number: 77-00135. Applicant: University of Texas Health Science Center at Houston, P.O. Box 20036, Houston, Texas 77025. Article: Electron Microscope, Model JEM 100B and accessories. Manufacturer: JOEL Inc., Japan. Intended use of article: The article is intended to be used for standard, high resolution transmission electron microscopy of sensory and organ cells, e.g., retinal photo receptors, cochlear hair cells, synaptic connections, details of specialized synapses involving photo receptors and secondary neurons, synaptic vesicles, bilayer membranes. Investigations will include histochemical studies involving sensory stimulation, incubation of tissue in vital reagents to tag and trace responding receptor cells and secondary neurons, and then histological examination at the ultrastructure level. In addition, the article will be used by graduate students working on master's and doctorate degrees in biomedical sciences in part of their thesis and dissertation research. The article will also be used in laboratory course on Techniques of Electron Microscopy in Visual and Auditory Research. Application received by Commissioner of Customs: February 25, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977. Article ordered: March 1, 1977.

Docket Number: 77-00144. Applicant: University of Colorado, Department of Buying and Contracting, Willard Administrative Center 160, Boulder, Colorado 80309. Article: Electron Microscope, Model JEM 100C with side entry goniometer and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article will be used to study the structure and biological cells and tissues. Included among these will be nerve tissues and phenomena associated with neurological diseases; tumors and comparable normal tissues; and various forms of plant cells especially valuable in displaying fundamental features of cell division. The experiments and materials studied which will vary greatly will include observing changes with macromolecular composition of the plasma membrane of nerves following the cross innervation of different muscles, comparing the membranes of nerves from dystrophic animals with those of normals, morphology of the cytoplasmic ground substance and the differences apparent between normal and malignant cells. The article will also be used in courses entitled "MCDB 490/590: Workshop in Electron Microscopy" which introduces students to standard preparative techniques for both scanning and transmission electron miscroscopy. In addition, numerous students (undergraduate and graduate), staff, postdoctoral students and faculty members will be taught to use the machine for various research projects, particularly those requiring highest resolution. Application received by Commissioner of Customs:

March 3, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977. Article ordered: February 11, 1977.

Docket Number 77-00146. Applicant: University of Texas System Cancer Center, M.D. Anderson Hospital, Department of Clinical Chemistry and Laboratory, Medicine, 6723 Bertner, Houston, Texas 77030. Article: Electron Microscope, Model Elmiskop 102 and RO-75 Haskris Water Condenser and Recrculation unit. Manufacturer: Siemens A.G., West Germany. Intended use of article: The article will be used to study human hematopoietic samples; this includes bone marrow and peripheral blood specimens. Investigations will include ultrastructural examination on normal and pathological hematopoietic tissues for: (a) diagnostic purposes and (b) the study of disease and therapy related morphological alterations in cells. The investigations will be widely varied from gross organelle organization to the molecular rearrangement of mitochondrial elementary particles. The objections of these investigations will be to precisely identify and more accurately diagnose pathological hematopoietic specimens as well as recognize disease and drug related subcellular alteration in these tissues and to detect and evaluate pathological changes which will assist in the earlier, accurate diagnosis of patients. Application received by Commissioner of Customs: March 3, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977. Article ordered: January 19, 1977.

Comments: No comments have been received in regard to any of the foregoing applications.

Decision: Aplications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for the purposes for which the articles are intended to be used, was being manufactured in the United States at the time the articles were ordered.

Reasons: Each foreign article has a specified resolving capability of equal to or better than 3.5 Angstroms. The Department of Health, Education, and Welfare advises in the respectively cited memoranda, that the additional resolving capability of the foreign aritcles is pertinent to the purposes for which each of the foreign articles to which the foregoing applications relate is intended to be used. HEW advises that it knows of no domestic instrument which could provide the pertinent feature at the time the articles were ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which were being manufactured in the United States at the time the articles were ordered.

RICHARD M. SEPPA,
Director, Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.77-17632 Filed 6-20-77;8:45 am]

COLUMBIA UNIVERSITY AND THOMAS JEFFERSON UNIVERSITY

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Departent of Commerce, Washington, D.C. 20230.

Docket Number: 77-00100. Applicant: Columbia University College of Physicians and Surgeons, 630 West 168 Street, New York, New York 10032. Article: Electron Microscope, Model EM 9S-2. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for research studies on the following:

Morphology of blood cells in relationship to their molecular organization and functional behavior—experiments will be conducted on red blood cells and white blood cells obtained from normal humans and patients with blood diseases.

(2) Ultrastructural basis of transport of macromolecular across the arterial wall—experiments will be conducted on canine common carotid arteries both under resting conditions and when subjected to periodic mechanical disturbances.

The results of these studies will elucidate the basic mechanism of arterial wall transport and help to explain the pathophysiology of arteriosclerosis. The article will also be used for the training of predoctoral students and postdoctoral fellows in the basic techniques in research on cell physiology, including electron microscopy in the courses Research in Physiology, Advanced Topics in Physiology and Biophysics. Application received by Commissioner of Customs: January 19, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 3, 1977. Article ordered: November 30, 1976.

Docket Number: 77-00120. Applicant: Thomas Jefferson University, 1025 Walnut Street, Philadelphia, Pa. 19107. Article: Electron Microscope, Model EM 9S-2 including Spare Parts. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used in research work related to cardiovascular, respiratory, muscle and metabolic experiments associated with basic physiologic and pathophysiologic mechanisms of disease states. Thus, the heart and coronary vessels will be studied in normal, ischemic and infarcted states. Also, the heart and peripheral vasculature will be studied in a variety of types of circulatory shock, particularly in hemorrhagic and cardiogenic shock. Furthermore, the lung will be studied during normal hypoxic and other stress states including pulmonary edema. Also, a variety of smooth and skeletal muscles wil be studied in the presence of a variety of metabolic substrates and hormones in order to investigate the mechanisms of action of these agents. Finally, splanchnic visceral organs (e.g., liver, pancreas) will be studied in normal and shock states to investigate lysosomal and mitochondrial ultrastructure. The major objectives of these investigations will be to determine early pathophysiologic changes in cardiovascular, respiratory and muscle tissues. An additional objective will be to determine the effects of drugs and hormones on normal tissue. A third objective is to identify the interrelationships between cellular organelles in acute cardiovascular disease processes. In addition, the article will be used in the course: "Introduction to Physiological Ultrastructure" a survey course for graduate students in physiology and will attempt to instruct the student in the basic techniques for preparation and viewing of samples by eletron microscopy. Application received by Commissioner of Customs: February 7, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 3, 1977. Article ordered: January 5, 1977.

Comments. No comments have been received in regard to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, was being manufactured in the United States at the time each foreign article was ordered.

Reasons: Each foreign article is a relatively simple, easy to operate, medium resolution electron microscope designed for confident use by beginning students with a minimum of detailed programming. Each article provides 7 Angstroms point to point resolution, an accelerating voltage of 60 kilovolts (KV), and low distortion magnifications from 140-60,000X (Magnifications of 140 to 1000X are within the normal, light microscopic range). Thus, each article covers the range of light and electron microscopy. The Department of Health, Education, and Welfare (HEW) advises

in the respectively cited memoranda that the low distortion low magnification capabilities available specifically in the optical range at 140K are pertinent to the purposes for which each foreign article is intended to be used. HEW also advises that it knows of no domestic instrument or apparatus which provided the pertinent features of the article at the time each foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which was being manufactured in the United States at the time each foreign article was ordered.

RICHARD M. SEPPA,
Director, Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.77-17629 Filed 6-20-77;8:45 am]

[File No. 26(76)-2]

ELISHA GOLDMAN, ET AL.

Order Denying Export Privileges for an Indefinite Period

In the Matter of Elisha Goldman, Megason Electronics Ltd., and B.C.R. Electronicia Ltd., 10 Shapira Street, P.O. Box 4011, Ramat Gan, Israel, respondents.

Pursuant to the provisions of the Export Administration Regulations, 15 CFR 388.15, the Director, Compliance Division, Office of Export Administration, petitioned for an Order to deny the above named parties all export privileges for an indefinite period because of failure of the parties to respond to interrogatories duly served upon them in the course of an investigation concerning the whereabouts and/or disposition of certain Co-Com controlled strategic electronic commodities of U.S. origin. Goldman is shown to be the managing agent and/or owned subsidiary of Megason. The parties will be collectively referred to as Goldman.

The Hearing Commissioner considered the petition for a denial order. His report is supported by the evidence of record and engenders the conclusion that an indefinite denial order should issue.

During the period October to December 1974, certain automatic electronic test equipment valued at approximately $377,000 was exported from the United States to Goldman. They are CoCom controlled and transfer thereto without the express permission of the U.S. is prohibited. The Compliance Division initiated an investigation after receipt of information indicating the equipment may no longer be at the address to which delivered but may have been diverted elsewhere without U.S. consent. It being impracticable to subpoena the respondents, it directed relevant and material interrogatories to Goldman which were duly served by an agency of the U.S. Government. Interrogatories were directed to the respondents concerning the present whereabouts of the commodities, i.e., whether they had been sold or otherwise transferred. Goldman failed to respond or to show cause for his failure to reply.

I find that an order denying export privileges to the respondents for an indefinite period, but not exceeding 5 years, may properly be entered in accordance with the afore cited regulation. Such an order is reasonably necessary to protect the public interest and to achieve effective enforcement of the Export Administration Regulations. Therefore, it is

ORDERED

I. All outstanding validated export licenses in which respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Bureau of East-West Trade for cancellation.

II. The respodents are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States, in whole or in part, or to be exported, or which are otherwise subject to the Export Control Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a part to any validated export license application; (b) in the preparation or filing of any export license application or reexportation authorization, or any document to be submitted therewith; (c) in the obtaining or using of any validated or general export license or other export control documents (d) in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States; and (e) in the financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. Such denial of export privileges shall extend not only to the respondents but also to their agents, employees, representatives, and partners and to any other person, firm, corporation, or business organization with which the respondents now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or services connected therewith.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Bureau of East-West Trade, shall do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondents or any related party, or whereby the respondents or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States, by, to, or for said respondents or related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation, reexportation, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. This order shall remain in effect until the respondents provide responsive answers, written information and documents in response to the interrogatories heretofore served upon them or give adequate reasons for failure to do so, or for a period of 5 years, except insofar as this order may be amended or modified hereafter in accordance with the Export Control Regulations.

VI. In accordance with the provisions of Section 388.15 of the Export Control Regulations, the respondents may move at any time to vacate or modify this Indefinite Denial Order by filing with the Hearing Commissioner, Bureau of East-West Trade, U.S. Department of Commerce, Washington, D.C. 20230, an appropriate motion for relief, supported by substantial evidence, and may also request an oral hearing thereon, which if requested shall be held before the Hearing Commissioner at the earliest convenvient date.

This order shall become effective immediately.

Dated: June 9, 1977.

RAUER H. MEYER,
Director, Office of Export Administration.

[FR Doc.77-17600 Filed 6-20-77;8:45 am]

STANFORD UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00089. Applicant: Stanford University, 851 Welch Road, Palo Alto, CA 94304. Article: Electron Microscope, Model EM 400 with High Tilt Goniometer and accessories. Manufacturer: Philips Electronics Instru-

ments, NVD, The Netherlands. Intended use of article: The article is intended to be used for experimental studies which will focus on the ultrastructural appearance of neurons and synapses in the developing visual system of chicks and developing rodents. In particular, the intracellular organelles of young neurons will be examined, and the developing synaptic junctions and intercellular attachments will be examined.

A variety of approaches will be used, including thin-sectioned electron microscopy, freeze fracture, goniometer specimen tilt for stereoscopy and close examination of the membrane modifications. In addition, the article will be used in the course, Histology (Structural) Biology (204, 205) to familiarize students with cytology and histology of human tissues in preparation for pathology, physiology.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is equipped with a high tilt goniometer stage with ±60° tilt, and a guaranteed resolution of 7 Angstroms (point to point) as well as scanning transmission attachment. The Department of Health, Education, and Welfare (HEW) in its memorandum dated May 3, 1977 that the characteristics of the article described above are pertinent to the applicant's intended purposes. HEW further advised that it knows of no domestic instrument which provided an equivalent high tilt goniometer or scanning transmission capability.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-17631 Filed 6-20-77 8:45 am]

UNIVERSITY OF CALIFORNIA, ET AL.

Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free duty entry of ultramicrotomes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301). (See especially § 301.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 77-00134. Applicant: University of California, San Francisco, 1438 South Tenth Street, Richmond, CA 94804. Article: Ultramicrotome, Model LKB 8800A and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological tissues from nervous systems of chicks, mice, and rats. These studies involve identifying the presence of histochemical or fluorescent-labeled macromolecules by light and electron microscopy and studying their migration within neurons from the axon terminals back to the cell bodies of the neurons located in the retina or brain of chicks, mice and rats. Graduate students and post-doctoral fellows will use the microtome for their own research projects. Furthermore, medical students, in the course of a summer elective of research may also use the microtome in the course of their introduction to the practical aspects of neuroanatomical research. Application received by Commissioner of Customs: February 23, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977.

Docket Number: 77-00126. Applicant: The Johns Hopkins University School of Medicine, 720 Rutland Avenue, Baltimore, Maryland 21205. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB-Produkter AB, Sweden. Intended use of article: The article is intended to be used for neuropathological studies in which a wide variety of tissues ranging from human autopsy and biopsy tissues, cell cultures, and nerve tissue derived from various experimental animals are sectioned. The article will be used by numerous investigators who are researching the role of axoplasmic transport in transporting toxic materials from the axon terminal to the neuron cell body, the types of proliferating localization of enzymes used for the synthesis of myelin, the distribution of catecholomines in the spinal cord. The objective of all these studies is to understand the role of different organelles in the normal functioning and repair of the nervous system and the role different cell types play in the normal nervous system. In addition, the article will be used for the training of Neuropathology residents and postdoctoral fellows in the Department of Neurology. Application received by Commissioner of Customs: February 10, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977.

Docket Number: 77-00132. Applicant: University of South Carolina, School of Medicine a/c Veterans Administration Hospital, Columbia, South Carolina 29201. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of renal and central nervous system tissues. Experiments to be conducted on the central nervous system will involve a baseline electron microscopic study of the development and maturation of various nuclear groups within the central nervous system. Once accomplished, a subsequent experimental study will reexamine the development and maturation of these respective nuclear groups, after their primary source of afferents has been surgically interrupted. Experiments to be conducted on the renal tissue will involve an ultrastructural study of the normal primate kidney. These findings will then be compared to sequential biopsies of renal tissue in which lesions have been induced by the passive transfer of human sera obtained following transplant nephrectomy for rejection. Application received by Commissioner of Customs: February 23, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977.

Docket Number 77-00133. Applicant: Baylor College of Medicine, 1200 Moursund, Houston, Texas 77030. Article: Model LKB 2128-010 LKB UM IV Ultrotome Ultrastable Vibration Damping Table. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to explore morphological aspects of normal and diseased ocular tissue. Specifically, the following are studies: (a) the molecular cause of retinitis pigmentosa; (b) structural variations associated with abnormal corneal functions; (c) vascular changes induced by diabetes. The research objective is to determine by thin-section, high resolution electron microscopy the normal molecular structures and causative pathological molecular deviations in various ocular tissues. Application received by Commissioner of Customs: February 23, 1977. Advice submitted by the Department of Health, Education, and Welfare on: May 24, 1977.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles for such purposes as these articles are intended to be used, is being manufactured in the United States.

Reasons: Each of the foreign articles provide a range of cutting speeds (equal to or greater than) 0.1 to 20 millimeters per second. The most closely comparable domestic instrument is the Model MT-2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT-2B has a range of cutting speeds from 0.09 to 3.2 millimeters per second. The conditions for obtaining high-quality sections that are uniform in thickness, depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials, and geometry of the block. In connection with a prior application (Docket Number 69-00665-33-46500), which relates to the duty-free entry of an article that is identical to those to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that

"Smooth cuts are obtained when the speed of cutting, (among such (other) factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior application (Docket Number 70-00077-33-46500) which also relates to an article that is identical to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that the "production of ultrathin serial sections of specimens that have a great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 millimeters per second are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments. For these reasons, we find that the Sorvall Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director, Special Import Programs Division.

[FR Doc.77-17630 Filed 6-20-77;8:45 am]

Maritime Administration

[Docket No. S-559]

AERON MARINE SHIPPING CO., ET AL.

Multiple Applications

Notice is hereby given that the following applicants, parties to long-term operating-differential subsidy agreements, have filed applications requesting certain written permissions pursuant to section 805(a) of the Merchant Marine Act, 1936, as amended, for certain domestic operations by related companies.

1. Name of Applicants:

Aeron Marine Shipping Company
American Shipping, Inc.
Aquarius Marine Shipping Company
Aries Marine Shipping Company
Atlas Marine Shipping Company
Pacific Shipping, Inc.
Worth Oil Transportation Company
Athena Marine Shipping Company
Ajax Marine Shipping Company
Achilles Marine Company

A Management Agreement has been concluded between Aquila Shipping Co., Inc. (Aquila), and Ecological Shipping Corp. (Ecological) for the management of Ecological's tanker, *St. Aquila*, formerly the *Notre Dame Victory*, an 80,000 DWT tanker built in 1973. Aquila is affiliated with the above companies which are principally owned by Mr. Leo V. Berger and Mr. Peter Constas and are known collectively as the Berger Group. Each of the above-named companies comprising the Berger Group has been granted written permission pursuant to section 805(a) for an affiliated company, Judge Oil Transport, Inc. to operate an oil barge in the coastwise trade. As a result of the relationship established between the Berger Group and Ecological through the Management Agreement, it is now necessary for the Berger Group and Ecological to obtain certain additional written permissions as described in the following paragraphs:

A. The *St. Aquila* has been time chartered to Alaska Bulk Carriers, Inc. for operation in domestic trade and may begin operation on or after July 1, 1977. The Berger Group has requested written permission under section 805(a) for operation of the *St. Aquila* in the coastwise or intercoastal trade of the United States.

B. Sun Shipbuilding and Dry Dock Company (Sun Shipbuilding) has a small minority stock interest in Ecological. Ecological, which holds an operating-differential subsidy contract which will terminate before the *St. Aquila* enters domestic service, has previously been granted written permission for certain affiliates of Sun Shipbuilding (Sun Group) to engage in the domestic intercoastal and coastwise trades of the United States, excepting trade between United States Pacific Coast ports and ports in the State of Hawaii. The domestic activities of the Sun related vessels are as follows:

The following vessels which are operated by Sun Transport, Inc., may engage in the domestic intercoastal and coastwise trades of the United States, excepting trade between United States Pacific Coast ports and ports of the State of Hawaii:

American Sun	Western Sun
Pennsylvania Sun	New Jersey Sun
Texas Sun	Delaware Sun
New England Sun	Toledo Sun
Hartford Sun	Corpus Cristi Sun
Albany Sun	Seminole Sun
Chesapeake Sun	Providence Sun
Newark Sun	Revere Sun
Eastern Sun	

The following vessels are owned or operated by a related party of Sun Transport, Inc. and may engage in the domestic intercoastal and coastwise trades of the United States, excepting trade between United States Pacific Coast ports and ports in the State of Hawaii:

Joseph D. Potts	Kee Leasing Co.
Ponce de Leon	Sun Leasing Co.
Great Land	Totem Ocean Trailer Express, Inc.
Eric Holzer	650 Leasing Co.
Sohio Intrepid	652 Leasing Co.
Sohio Resolute	653 Leasing Co.
Notre Dame Victory	660 Leasing Co.
Fortalez	663 Leasing Co.
El Taino	666 Leasing Co.
Puerto Rico	670 Leasing Co.
Caribe Sun	Puerto Rico Sun
Island Sun	Puerto Rico Sun
Puerto Rico Sun	Puerto Rico Sun
Prince William Sound	Sound Shipping, Inc.

In addition, Sun Shipbuilding & Dry Dock Company holds a 100 percent stock interest in GTS Venture Corporation which is a 50 percent participant with Export Venture Corporation in Sunexport Company, a joint venture which is bareboat charterer of the vessel, *Admiral William M. Callaghan*, subchartered to the Military Sealift Command. Sun Shipbuilding & Dry Dock Company also holds a 95 percent stock interest in TTT, Inc., which bareboat charters-in the vessel *El Taino* and bareboat subcharters the vessel *Fortaleza*, and a small minority stock interest in Ecological Shipping Corporation, which bareboat subcharters the vessel, *St. Aquila*.

Because of the Management Agreement between the Berger Group and Ecological, section 805(a)—written permission will be required on behalf of the Berger Group for the domestic operations of the Sun Group as enumerated above.

2. During such time as Ecological holds an operating-differential subsidy contract, it will be necessary for Ecological, in addition to the written permissions previously granted for the Sun Group, to be extended the same written permission previously granted to the Berger Group for Judge Oil Transport, Inc. to operate an oil barge in the coastwise trade.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in any application and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the application must, by close of business on June 27, 1977, file same with the Secretary, Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclu-

sively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By order of the Assistant Secretary for Maritime Affairs.

Date: June 17, 1977.

JAMES S. DAWSON,
Secretary.

[FR Doc.77-17697 Filed 6-20-77;8:45 am]

National Oceanic and Atmospheric Administration

OCEAN RESEARCH AND EDUCATION SOCIETY, INC.

Receipt of Application for Scientific Research and Scientific Purposes

Notice is hereby given that the following Applicant has applied for permits to take marine mammals for the purpose of scientific research under the marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and for scientific purposes under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543).

The Ocean Research and Education Society, Inc., 51 Commercial Wharf 6, Boston, Massachusetts 02110, to take, cetaceans, four species of which are listed as endangered, and to take and import materials for marine mammals found dead.

The applicant proposes to tag 15C cetaceans, as follows:

1. 50 humpback whales—(*Magaptera novaeangliae*).
2. 25 blue whales—(*Balaenoptera musculus*).
3. 25 fin whales—(*Balaenoptera physalus*).
4. 25 sperm whales—(*Physeter catodon*).
5. 25 Baird's beaked whales—(*Berardius bairdii*).

The cetaceans will be tagged by the Applicant, by means of implantable radio transmitters. The radio tagged whales will be tracked, and individually identifiable whales in the vicinity of each tagged whale will be photographed to gather information concerning group cohesivenes and migration of the stocks. The purpose of this study is to make biological, oceanographic, and environmental observations in the presence and absence of whales to collect and study information concerning the ecosystem of which the whales are part.

The radio transmitter to be used, is similar, but electronically different, from the OAR projectal tag, and is approximately ½ diameter and 8'' long, with a protruding antenna. The radio tags will be implanted by means of a modified shotgun or similar suitable launching device from a vessel, into the dorsal blubber of the whale.

The proposed project is divided into two phases—phase one beginning on January 1977, in the tropical North Atlantic Ocean and Carribean Sea, and phase two anticipated to commence in January or February 1978, in the eastern tropical Pacific Ocean, and will be of two to three years duration.

The Application for the Marine Mammal Protection Act Permits will be considered under the Regulations Governing the Taking and Importing of Marine Mammals. The application for the Endangered Species Act Permit will be considered under the Regulations Governing Endangered Fish and Wildlife Permits. Of the species requested, the Baird's beaked whale is not listed as endangered.

Documents submitted in connection with these applications are available in the following offices:

Director, National Marine Fisheries Service, Department of Commerce, 3300 Whitehaven Street NW., Washington, D.C.;
Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Gloucester, Massachusetts 01930;
Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702;
Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue, North, Seattle, Washington 98109; and
Regional Director, National Marine Fisheries Serice, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Concurrent with the publication of this notice in the FEDERAL REGISTER, the Secretary of Commerce is sending copies of the application for the Marine Mammal Protection Act permit to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or request for a public hearing on this application should be submitted to the Director, National Marine Fisheries Service, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director.

All statements and opinions contained in this notice in support of this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

ROBERT J. AYERS,
Acting Assistant Director for Fisheries Management, National Marine Fisheries Service.

JUNE 14, 1977.

[FR Doc.77-17633 Filed 6-20-77;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

SCIENTIFIC ADVISORY BOARD

Meeting

JUNE 10, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Simulation Technology will hold meetings at the Aeronautical Systems Division, Wright-Patterson Air Force Base, Ohio on July 21 and 22, 1977 from 8:30 a.m. to 5 p.m. each day.

The Committee will receive briefings and hold discussions on visual image generation and display techniques and equipments for use in flight simulators.

The meetings will be open to the public. For further information contact the SAB Secretariat at 202-697-8404.

FRANKIE S. ESTEP,
Air oFrce Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-17598 Filed 6-20-77;8:45 am]

Department of the Army

ARMED FORCES EPIDEMIOLOGICAL BOARD

Open Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

NAME OF COMMITTEE: Armed Forces Epidemiological Board.

DATE OF MEETING: 7-8 July 1977.

PLACE: Conference Room 3092, Walter Reed Army Institute of Research, Washington, D.C.

PROPOSED AGENDA: The proposed agenda will include discussion of the organization of the USA Materiel Development and Readiness Command and functions of the DARCOM surgeon; the range of human-environmental hazards encountered in development of new equipment; studies on effects of microwave and other radiation exposure on health; vaccine stockpiles for civil emergencies; reorganization of the USA Medical Research and Development Command; reports of subcommittees, and Board membership.

2. This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 1B472 Pentagon, Washington, D.C. 20310.

Dated: June 10, 1977.

DUANE G. ERICKSON,
LTC, MSC, USA,
Executive Secretary.

[FR Doc.77-17644 Filed 6-20-77;8:45 am]

ARMY, NAVY AND AIR FORCE DISCHARGE REVIEW BOARDS INDEX-DISCHARGE CASES

Amendment to Initial Index

Pages 10028 through 10030 of the FEDERAL REGISTER, Vol. 42, No. 34 of February 18, 1977, announced the establishment of a single index for all cases considered by the Discharge Review Boards of the Department of Army, Navy, and Air Force involving characterization of

discharge. This index will also be used by the Boards for Correction of Military or Naval Records to index discharge cases considered by those Boards, and in assigning index numbers to issues not appropriately covered under subject categories of the Correction Boards' Index of Non-Discharge Cases. The following are additions to the Index of Discharge Cases:

ACTIVATION FROM RESERVIST STATUS (SUFFICIENCY)

CIVIL CONVICTION

Current standards

COURTS-MARTIAL

Conviction/Special
Conviction/Summary
Due process error
Inadequate/improper counsel

HOMOSEXUALITY

Current standards

NON-JUDICIAL PUNISHMENTS

Article 15

PROMISES/THREATS/INTIMIDATION

Defense counsel

SPECIAL DISCHARGE REVIEW PROGRAM

Tour in Southeast Asia or Western Pacific
Wounded in combat
Decorated for valor/merit
Previous Honorable Discharge
Satisfactorily served 24 months prior to discharge
Completed alternate service or excused (Pres Proc 4313)
Age, aptitude, length of service at time of discharge
Education level
Deprived background
Personal distress
Waiver to enlist
Conscience
Drugs or alcohol
Good citizenship
Other factors
Discharged for act(s) of violence
Discharged for act(s) of dishonor
Discharged for desertion in or from combat theater
Discharged for offense(s) subject to civil criminal prosecution
President Ford Memo, 19 Jan 77

COLONEL WILLIAM E. WEBER,
President,
Army Discharge Review Board.

[FR Doc.77-17645 Filed 6-20-77;8:45 am]

BOARDS FOR CORRECTION OF MILITARY RECORDS

Army, Navy, and Air Force Correction Boards Index-Non-Discharge Cases; Amendment to Initial Index

Pages 9699 and 9700 of the FEDERAL REGISTER, Vol. 42, No. 33 of February 17, 1977, announced the establishment of a single index for all cases considered by the Correction Boards of the Departments of Army, Navy, and Air Force, other than those involving character of discharge. As an exception to the above, there will be some Correction Board cases in which some of the issues addressed will be more appropriately indexed using categories contained in the Index of Discharge Cases (published in the FEDERAL REGISTER, Vol. 42, No. 34 of February 18, 1977). Therefore, to adequately research a particular "Non-discharge" matter, both indexes should be consulted. The following are additions to the Index of Non-Discharge Cases:

PHYSICAL DISABILITY

Incurred while on authorized absence
Existed prior to entry/aggravated
Existed prior to entry/aggravated
Incurred while not in receipt of basic pay
Disciplinary action pending, handling of
Administrative discharge proceedings pending, handling of

RAYMOND J. WILLIAMS,
Executive Secretary, Board for Correction of Military Records.

[FR Doc.77-17646 Filed 6-20-77;8:45 am]

Office of the Secretary of Defense

DEFENSE SCIENCE BOARD TASK FORCE ON NUCLEAR PROLIFERATION

Meeting

The Defense Science Board Task Force on Nuclear Proliferation will meet in closed session on 23 August 1977 at The Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Director of Defense Research and Engineering on overall research and engineering and to provide long range guidance in these areas to the Department of Defense.

The Task Force will examine trends in nuclear proliferation that bear on our national security interests. They will examine estimates of technical capabilities, military/political intentions, and resource availability for countries that may acquire nuclear devices in the next decade.

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

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

JUNE 14, 1977.

[FR Doc.77-17599 Filed 6-20-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 727-6; OPP-50297]

AGRICULTURE DEPARTMENT, ET AL.

Issuance of Experimental Use Permits

Correction

In FR Doc. 77-13627, appearing on page 24304 in the issue of Friday, May 13, 1977, make the following changes:

1. In the second line of the second paragraph, delete the words "Department of".

2. Delete lines 8, 9, and 10 of the third paragraph, and insert instead: "ized only in the State of Illinois. The experimental use permit is effective from April 14, 1977 to April 14, 1978."

FEDERAL COMMUNICATIONS COMMISSION

CANADIAN STANDARD BROADCAST STATIONS

Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignment of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

Canadian list No. 363, May 10, 1977

Call letters	Location	Power (in kilowatts)	Antenna	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of commencement of operation
CJET (P.O. 10 kW, DA-2) (change of antenna radiation patterns).	Smiths Falls, Ont., N. 44°50'31", W. 75°58'44".	630 kHz 10	DA-2	U	III				E.I.O. 5.10.78.
CFNS (increase in RMS of day-time pattern).	Saskatoon, Saskatchewan, N. 52°15'00", W. 106°30'33".	800 kHz 10	DA-2	U	II				
CFYN (change in call letters from CJIC).	Sault Ste. Marie, Ont., N. 46°32'53", W. 84°17'28".	1050 kHz 10D/2.5N	DA-N	U	II				

Call letters	Location	Power (in kilowatts)	Antenna	Schedule	Class	Antenna height (feet)	Ground system: Number of radials	Ground system: Length (feet)	Proposed date of commencement of operation
CKXL (P.O. 10 kW, DA-N, ND-D-188, N. 50°52'30", W. 114°02'30").	Calgary, Alberta, N. 50°55'23", W. 113°49'58".	1140 kHz 50	DA-2	U	II				Do.
CKOC (P.O. 10 kW, DA-2, N. 43°10'40", W. 79°47'00").	Hamilton, Ontario, N. 43°03'04", W. 79°48'42".	1150 kHz 50	DA-2	U	III				Do.
CIRB (assignment of call letters)	Lac Etchemin, Quebec, N. 46°23'04", W. 70°27'07".	1240 kHz 1D/0.25N	ND-185	U	IV	160	120	317	E.I.O. 1.19.78.
CIHI (previous notification, 1400 kHz, 10D/1N, DA-2, N. 45°50'32", W. 66°42'42").	Fredericton, N.B., N.46°01'14", W. 66°42'02".	1260 kHz 10 ND-D-190	DA-N	U	III				5.10.78.
CKDK (change in call letters from CKOX).	Woodstock, Ontario, N. 43°06'18", W. 80°45'50".	1340 kHz 1D/0.25N ND-N-185	DA-D	U	IV	130	120	294	
CFVD (assignment of call letters)	Ville Degelis, Quebec, N. 47°31'51", W. 68°36'30".	1370 kHz 1	DA-1	U	III				E.I.O. 8.20.77.
CHOO (change of day-time antenna radiation pattern).	Ajax, Ontario, N. 43°50'00", W. 78°58'30"	1390 kHz 10	DA-2	U	III				E.I.O. 5.10.78.
CBG	Gander, Newfoundland, N. 48°57'57" W. 54°39'22".	1450 kHz 1D/0.5N	ND-190	U	IV	170	120	271	N.I.O.
CJVB (P.O. 10 kW, DA-2)	Vancouver, B.C., N. 49°11'36", W. 123°01'17".	1470 kHz 50	DA-2	U	III				E.I.O. 5.10.78.
CFPS (assignment of call letters)	Port Elgin, Ontario, N. 44°24'58", W. 81°23'31".	1490 kHz 1D/0.25N	ND-170	U	IV	[1] 75	[1] 120	[1] 264	*E.I.O. 12.31.77.*

[1] Top loaded to 60'.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau, Federal Communications Commission.

[FR Doc.77-17526 Filed 6-20-77;8:45 am]

[FCC 77-381; Docket No. 21274, File No. BRCT-166; Docket No. 21275, File No. BPCT-4804; Docket No. 21276, File No. BPCT-4879]

McCLATCHY NEWSPAPERS

Designating Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

Adopted: June 2, 1977.

Released: June 17, 1977.

By the Commission: Commissioner Quello absent.

In re Applications of McClatchy Newspapers, Fresno, California (KMJ-TV) For Renewal of License San Joaquin Communications Corporation Fresno, California. For Construction Permit for a New Television Station McClatchy Newspapers, Fresno, California (KMJ-TV) For Modification of the Facilities of an Existing Station.

1. This concerns the mutually exclusive applications of McClatchy Newspapers, for renewal of license for KMJ-TV, Channel 24, Fresno, California (BRCT-166), and San Joaquin Communications Corporation, for a construction permit for a new commercial television station on Channel 24, Fresno (BPCT-4804), which must be set for comparative hearing to determine which application, if granted, would better serve the public interest, convenience, and necessity.[1] Also before the Commission is the application of McClatchy for changes in the authorized facilities of KMJ-TV (BPCT-4879), and numerous associated pleadings.[2]

2. *The San Joaquin Communications Corporation Application.* San Joaquin Communications Corporation is legally, financially,[3] technically, and otherwise qualified to construct, own and operate the proposed television station.

3. *The McClatchy Renewal Application.* Two matters were raised earlier by SJCC in an informal objection to McClatchy's proposed pro forma assignment of all its broadcast licenses to a wholly-owned subsidiary corporation, and were deferred for later consideration by our order dismissing that objection. *McClatchy Nespapers,* FCC 77-80, released February 16, 1977, 39 RR 2d 1170. In that proceeding, SJCC raised complaints then pending before the Equal Employment Opportunity Commission and pending antitrust litigation, and con-

[1] *Ashbacker Radio Corp. v. FCC,* 326 U.S. 327, 66 St. Ct. 148, 90 L. Ed. 108 (1946).

[2] These include SJCC's "Motion to Consolidate Applications," filed September 8, 1975; McClatchy's "Motion for Ruling Regarding Processing of Applications," filed November 6, 1975; and SJCC's "Request for Expeditious Designation for Hearing," filed April 23, 1976, and oppositions, replies and errata thereto. The foregoing pleadings are specifically directed to the three applications which are the subject of this Memoradum Opinion and Order. In our earlier decision regarding the applications of McClatchy Newspapers, for consent to the assignment of licenses for its broadcast stations to a wholly-owned subsidiary corporation, FCC 77-80, released February 16, 1977, we listed (paragraph 1) a number of pleadings, by SJCC requesting consolidation of the assignment applications with the KMJ-TV renewal and the SJCC application. To the extent the issues raised in those pleadings were not disposed of in that decision, or that issues in those pleadings are relevant to these applications, those pleadings are also being considered by the Commission at this time.

[3] Because SJCC seeks to supplant the licensee of an existing television station, it is required to demonstrate the availability of sufficient funds to construct the proposed station plus operating expenses for three months. *Orange Nine, Inc.,* 7 FCC 2d 788, 9 RR 2d 1157 (1967). We make this requirement applicable to SJCC after examination of the Form 324 Annual Financial Reports for the Fresno network-affiliated stations, which reveal average annual revenues significantly in excess of the annual operating expenses estimated by SJCC. Based on information in SJCC's application, we conclude that it will require $1,649,331. This amount may be itemized as follows: Down payment on equipment, $525,000; three monthly payments on deferred equipment balance at $43,969, $131,907; land, building, etc., $20,750; other items (including legal, engineering and installation cost, other miscellaneous items), $503,800; estimated operating expenses for three months, $467,874. To meet this requirement, SJCC relies on a combination of existing capital ($187,327 in liquid current assets in excess of current liabilities); stock subscriptions receivable ($118,884, representing the commitments of Messrs. Cardenas, Hendricks and Garcia, who have available bank loans to meet the subscription price, but not including the subscription of Mr. Peard, who has not shown sufficient liquidity to meet his commitment); and a bank loan of $1,500,000 providing for a moratorium on payments of interest and principal in the first year, for a total of $1,806,211. We note that the applicant has provided alternative financial arrangements should studio and transmitter space prove not to be available as anticipated. While these are only atlernative plans, the necessary financial support, consisting of loans from principals backed by loans to those principals from lending institutions has been adequately demonstrated, as required by paragraph 4(a), Section III, FCC Form 301.

tended they raised substantial and material questions requiring further exploration in hearing. The antitrust litigation referenced by SJCC concerns the distribution operations of McClatchy's Sacramento newspaper, but SJCC has failed to allege any facts which establish a matrix between the practices under scrutiny in those proceedings and the operation of the broadcast stations.[4] The collateral exploration of the matters under consideration in the antitrust litigation would, therefore, be inappropriate in this proceeding. *Compare RKO General, Inc. (WNAC–TV)*, 20 FCC 2d 846 (1969). However, we expect this applicant to keep the Commission and the parties herein apprised of these matters as required by Section 1.65 of our rules.

4. The EEO complaints referenced by SJCC involved the operation of the Sacramento Bee in such manner that the San Francisco District Director of the EEOC found reasonable cause to believe the Civil Rights Act had been violated by McClatchy Newspapers in several particulars. A conciliation agreement resolving two EEO complaints (EEO File Nos. TSF 1–0354 and TSF 1–0891) alleging various instances of sex and race discrimination at the Bee was filed with the Commission March 16, 1976.[5] It includes a number of specific undertakings, including the use of goals and timetables, relating to the employment of minorities and women in McClatchy's workforce at the Bee. We have previously noted that EEOC "reasonable cause" findings do not, standing alone, raise a prima facie case against grant of a license application under the definitions of the Communications Act. *National Broadcasting Co., Inc.* (WRC–TV), 58 FCC 2d 319, 422 (1976), *aff'd sub nom. National Organization for Women, et al. v. F.C.C.*, D.C. Cir. Nos. 74–1853 and 75–1777 (April 11, 1977). Furthermore, our regulatory responsibilities are limited to the review of EEO policies and practices insofar as they affect the underlying goals of the Communications Act. As is the case with the pending antitrust matters discussed supra, SJCC alleges no connection between EEOC matters involving McClatchy's newspaper operations in Sacramento and the Fresno broadcast facilities' implementation of Commission EEO policies and rules. Where, as here, our sister agency's disposition of such issues does not involve the operation of a broadcast station; where the matter has been resolved by conciliation in the spirit of the Civil Rights Act; and where our own review of the applicant's broadcast employment practices yields no indication of discrimination such as would warrant a hearing, we believe that evidentiary inquiry into McClatchy's character qualifications—asurged by SJCC—is inappropriate. *NAACP v. Federal Power Commission*, 425 U.S. 662 (1976).

5. Apart from the asserted impact of the EEOC conciliation agreement on McClatchy's qualifications, however, SJCC further alleges that there is a "substantial discrepancy" between McClatchy's 1975 Annual Employment Report (Form 395) and the Fresno SMSA labor force.[6] SJCC's "Motion to Consolidate Short Form Applications," filed October 23, 1975 as part of the record in the assignment proceeding, also contends there are no minority group members in either the "officials/managers" or "sales workers" categories on that form. SJCC concedes that overall minority group employment improved from 9.7 to 12.5 percent between submission of the 1972 and 1975 reports, but complains that the male minority component of KMJ–TV in this period is "static."[7] SJCC concludes that the statistical disparity between KMJ–TV's workforce and the Fresno labor force requires a hearing, particularly as it comprises the elimination of Mexican-American women from the KMJ–TV rolls.[8] (Later 396 forms show one such full-time employee at KMJ–TV in 1976, two in 1977.)

6. Our own staff analysis of KMJ–TV's more recent Form 395 reports—including the 1977 reports filed early with the Commission—indicates the TV station employed 76 full-time workers in 1976, including 20 females (26.3%) and 10 minorities (13.2%); upper-four employees numbered 62, of whom eight (12.9%) were female and five (8.1%) were minority group members. The station now employs 77 full-time staffers, including 19 females (24.7%) and 12 minorities (15.6%). Of 65 full-time employees in the upper four job categories, nine (13.8%) are female and seven (10.8%) are minorities. Overall employment of minorities and women is hence reasonable in light of their representation in the labor force, as is their proportion of upper level jobs. The dominant minority group, Spanish-Americans (19.7% of the Fresno labor force), in 1976 constituted 5.3 per cent (four employees) of KMJ–TV's overall employment and 1.6 per cent of upper-four positions (one employee). According to the 1977 Form 395, full-time Spanish-Americans presently compose 9.1 per cent of overall employment (seven employees) and 4.6 per cent of employment in the upper four categories (three employees); these figures are reasonable when compared to the Spanish-American labor force in Fresno.[9]

7. The statistics to date indicate clearly that both radio and television facilities have long employed both minorities and women in significant numbers (both groups are also presently represented on part-time rolls). There is no allegation of overt discrimination before us, nor do the current data indicate any pattern of exclusion from more responsible positions. Accordingly, entirely apart from EEOC matters discussed supra, we find no basic qualification or comparative issue raised by the record before us. Rather, the profiles at the KMJ stations show generally acceptable EEO results, and the disparities present in 1975 and earlier years raise no issue in light of the record now before us.

8. *The McClatchy Modification Application.* McClatchy has on file with the Commission an application (BPCT–4879) to increase coverage of KMJ–TV increasing transmitter output power. SJCC has filed a "Motion to Consolidate Applications" requesting that this modification application be designated for hearing in the same proceeding with the renewal application and SJCC's application

[4] A subsequent, unrelated federal antitrust action (brought to the Commission's attention by McClatchy's amendment of January 17, 1977) alleges that McClatchy's structural media "dominance" in the central valley area of California (and in communities where it has broadcast licenses and publishes newspapers) has allowed it to, inter alia, monopolize various products and geographic markets, including Fresno and Sacramento. The effect of McClatchy's media interests under our cross-ownership rules is considered at Footnote 19.

[5] A separate individual complaint by a woman alleging sex discrimination (YSF 5–230) was administratively closed by the EEOC after the complainant received a promotion and asked that her complaint be withdrawn. The Commission was advised of this resolution by an amendment filed February 26, 1976.

[6] 1973 annual average estimates of the Fresno SMSA labor force, furnished by the California Employment Development Department, characterize the labor force as 35.9 per cent female and 26.5 per cent minority, including 19.7 per cent Spanish-American and 3.6 per cent black workers. (We have not attempted any distinction between the term "Spanish-American," which is defined by the California report as persons of either Spanish language or surname, and "Mexican-American.")

[7] While SJCC argues that by continuing its present overall rate of improvement McClatchy may reach parity for minority groups by 1994, we do not consider the pattern before us here to indicate a passive affirmative program. Shifts in the representation of various minority groups within a station's workforce are often a normal result of routine turnover and raise no issue where, as here, there is no indication of a diminished commitment to the employment of protected group members generally.

[8] SJCC asserts without specification that "approximately 10 per cent" of the Fresno labor force falls into this category, but its own statistics—based on the same California State estimates supplied to the Commission—indicate the figure is some 7.1 per cent (assuming that, as is true of the overall labor force, 35.9 per cent of its Mexican-American segment is female).

[9] While the history of protected group employment at KMJ–AM–FM is not directly at issue in this proceeding, we note that the 1976 Form 395 for those stations shows that, of 25 full-time employees, three (12.0%) were female and three (12.0%) minorities; the 23 upper-four positions included one female employee (4.3%) and two minority employees (8.7%). Presently, the 1977 Form 395 reflects that, of 25 full-time employees, four (16.0%) are female and four (16.0%) are minorities. Of 23 full-time staffers in the upper-four job categories, two (8.7%) are female and three (13.0%) are minorities. The affirmative action program at the radio facilities is clearly producing steady progress in the employment of minorities and females, has attained a reasonable profile of protected group employment, and there is no reason to believe the reasonable levels of protected group employment evidenced here will not be continued.

for a construction permit for Channel 24. Asserting status as an informal objector under Section 1.587 of the Rules, SJCC claims to show, by the statement of its consulting engineer, that predicted Grade B contour overlap already exists between KMJ–TV and commonly-owned KOVR(TV), Stockton, California which would be aggravated by a grant of the modification application.[10]

9. In its motion to consolidate the modification application in the same hearing proceeding, SJCC expressly concedes McClatchy's right to amend its renewal application prior to designation of the application for hearing [11] but, in a pleading before the Court of Appeals, complains that grant of the application would be "prejudicial to SJCC's Ashbacker rights." SJCC refers to a "comparative coverage" advantage it believes would accrue to SJCC in the comparative hearing on the basis of KMJ–TV's facilities as presently authorized and SJCC's proposed facilities.[12] SJCC states before the Court of Appeals that "McClatchy proposed to alleviate this disadvantage as to SJCC" by filing the modification application.[13]

10. "The Commission is not required * * * to maintain the status quo with respect to all facts which may be relevant to a determination of a pending application, and an applicant is not denied his *Ashbacker* rights whenever, during the pendency of his application the Commission takes action otherwise within its authority, even is one of the consequences may be to lessen the probabilities in favor of a grant of the pending application." (Citations omitted.) *Western Communications, Inc.*, 38 FCC 2d 970, 972 (1972). Therefore, to the extent SJCC's objection to and request for consolidation of the McClatchy modification application in the hearing is based on possible prejudice to SJCC's comparative position, the objection and request are denied. SJCC would create a distinction not stated or implied in Section 1.522(a) of the Rules between new applicants who might amend their applications as a matter of right and renewal applicants who could not. Since there has been no showing of bad faith, we believe the McClatchy application is one which may be considered a timely "amendment" to its renewal application, and may be granted without reference to the general Commission policy against upgrading of comparative factors after designation for hearing."

11. Turning to the alleged violation of § 73.636(a)(1), we note that there is pending an application (BALCT–635) for consent to the assignment of the license for KOVR(TV) to Multimedia, Inc., which, if approved and consummated, would moot these allegations for this proceeding. As, however, the assignment has not yet been reduced to a certainty, we believe it necessary to proceed as if the assignment were not before us.

12. It is correct that the Commission has in the past made special mention of unusually favorable terrain conditions for the propagation of UHF signals in the San Joaquin Valley wherein Fresno is located. Without unnecessary elaboration, shall only refer to the so-called Fresno and Bakersfield De-Intermixture Proceedings, 15 RR 1581 (1960) and 41 FCC 926, 938 (1961), respectively. In 1975, in a rulemaking proceeding which did not directly consider the question, the Commission acknowledged, implicitly, the special character of the Valley, which is at the heart of SJCC's claim:

> Ring [a firm of consulting engineers which submitted comments] recognized that a typically high fields exist in mid-California at ultra high frequencies because of unusual terrain conditions, but apparently failed to take into account that the conditions responsible for the abnormal signal levels at UHF are operative in the high VHF band.[14]

13. We have previously described our Grade A and B contours as "convenient measures of TV station service for a variety of purposes * * * in the absence of any more realistic or usable standard * * *."[15] Thus, the selection of a standard based on Grade B contours is a decision with pragmatic as well as policy dimensions:

> If the Grade B contour were a wall within which all service * * * were confined, the determination of its location by the most precise means available could well be worth whatever complication might be involved. However, since this and other contours are primarily administrative tools, it seems clear they should be located by means which promote the most efficient administration—by a relatively simple procedure which produces a speedy and unequivocal result.[17]

Section 73.636(a)(1), the "duopoly rule," is an excellent example of the use of predicted contours as administrative tools. The prior formulation of the rule prohibited licensing of commonly-owned television stations serving "substantially the same area." In adopting the present rule, the Commission noted that,

> The results achieved through case by case adjudication do not, in public interest terms, justify the effort expended. We agree * * * that no fixed rule can be justified on the basis of administrative convenience, but we also believe that a fixed rule is entirely justified if it is a more efficient way to reach a result no less in the public interest than that achieved through case by case adjudication * * *. [W]e do not believe that there is, today, any great *need* for retention of the time-consuming processes involved in the *ad hoc* method. Report and Order *In the matter of Amendment of the Multiple Ownership Rules* (Docket 14711), 45A FCC 1476, 1480 (1964).

14. A related justification is expressed in the Notice of Proposed Rulemaking which initiated the proceeding cited above:

> It has been our experience that this type of regulation has worked well. It has provided the public and the industry with a firm base upon which they can cogently plan * * * present or future operations * * * and has facilitated the Commission's application of the rule. We think that there would be comparable benefits if the * * * rules dealing with overlap were cast in similar terms of specific limitation. FCC 62–747, 27 F.R. 6846, 6847.

15. The case for administrative convenience has most recently been made in the *Report and Order on Field Strength Curves, supra*, at 869:

> * * * [R]esolution [of a duopoly question] can be reached much more simply, expeditiously and finally if the pertinent contours are determined only by prediction. The nature of the determination involved does not, in the consistent successful application of the pertinent rules, require such greater degree of exactitude which field strength measurements may provide.
>
> Therefore, we are not amending Section 73.636(a) in any way which would allow, as a matter of right, the determination of contour locations by means of field strength measurements.

While rejecting the presentation of measurements *as a matter of right* to establish more accurate contour locations, we have also noted that [o]ccasionally there may be instances when the location of TV contours, as determined by prediction, are obviously in gross error, and measurements will produce a result which, by any standard, is more realistic." *Id.* The rules, therefore, provide for such a showing in individual cases "on request of the Commission." Section 73.636(a).

16. We are reluctant to state that our prediction methods in the KMJ–TV instance are characterized by "gross error." We note that, for the time being, we are

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[10] Section 73.636(a)(1) prohibits issuance of licenses to commonly-owned television stations with overlapping Grade B contours.

[11] See Section 1.522(a) of the Rules concerning pre-designation amendments.

[12] See *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393.

[13] SJCC's allegations concern in part the use of field strength curves adopted in Docket 16004, 53 FCC 2d 955 (1975). While, as pointed out below, there is some question whether these curves are appropriate for this case, there should be no question as to their applicability, as they were adopted three months before, and became effective one month before, the filing of the McClatchy application. SJCC claims that there is "actual overlap" of the Grade B contours of KMJ–TV and KOVR(TV) without the proposed modification application. For reasons described below, we (a) do not accept SJCC's method for locating the "actual" Grade B contours, and (b) reject an ad hoc approach of special engineering showings for that purpose. For these reasons we take notice only that no predicted overlap exists either under the Docket 16004 curves or the old curves.

[14] SJCC suggests the failure of McClatchy to report the pendency of the modification application in its renewal application constitutes a violation of Section 1.65 of the Rules. There is no requirement on the renewal of license application form, Form 303, that such applications be reported. As to matters outside the application form, Rule 1.65 requires the reporting of "substantial changes as to any other matter which may be of decisional significance * * *." Were we to find a violation of the rule, it would be extremely technical in nature; there is no concealment, no prejudice to SJCC, and the purpose of the rules, i.e., to inform the Commission and other interested parties, has not been compromised hence, no issue will be specified. *WPIX, Inc.*, 33 FCC 2d 782 (Rev. Bd. 1972).

[15] *In the matter of Amendment of Field Strength Curves for FM and TV Broadcast Stations, etc. (Docket 16004, et al)*, 53 FCC 2d 855, 862 (1975).

[16] Id., at 860.

[17] Id., at 869.

without any sanctioned alternative prediction technique which recognizes special terrain characteristics. The "terrain roughness factor" adopted in the 1975 Field Strength Curve proceeding has been suspended and remains suspended, and further rulemaking is being considered. *In the matter of Temporary Suspension of Certain Portions of the Commission's Regulations*, FCC 77-304, released May 9, 1977.

17. Although the "terrain roughness" factor is suspended, "parties are free to file supplemental showings under Section 73.684(f) of the rules," where the accuracy of predicted contours is in doubt. *Id.* That section of rules recites that "[i]n cases where the terrain in one or more directions from the antenna site departs widely from the average elevation of the 2 to 10 mile sector, the prediction method may indicate contour distances that are different from what may be expected in practice." This statement fairly describes the predominant terrain feature in the San Joaquin Valley, a nearly uniformly level valley floor extending for substantial distances from an elevated antenna location. (KMJ-TV's authorized antenna height is 3,677 feet above sea level, and, in the direction of Merced, California, the direction of the alleged overlap, the average elevation is 1090 feet above sea level over 2–10 miles and 420 feet over 10–85 miles from the transmitter/antenna location.)

18. Thus, while the administrative framework permits comparison of the practical consequences of the average terrain conditions, as assumed by our regular prediction methods, and the special conditions known to exist in the San Joaquin Valley, we are faced with a situation where the question has been raised in a manner not sanctioned by the Rules. SJCC's showing is based on purported field meaurements—only some of which were made by SJCC—with no demonstration that the measurements were made in the manner described in detail in the Rules. (This ignores for the purpose of discussion that the measurements were made without "request of the Commission.") Moreover, the SJCC pleading hardly amounts to a "supplemental showing" of the location of the contour, which must necessarily be extrapolated from a mere two points and gives no assurance that the line thereby described actually represents a median field strength value.

19. While we could, therefore, reject SJCC's allegations, based on the deficiencies of its engineering showing, we need not, necessarily, reject the basic question raised. We have, in the past, as noted above, made note of unique conditions in the area which, incidentally, McClatchy makes no effort to deny. Recognizing, therefore, the importance of the question raised by SJCC, a staff engineering study has been performed using a method [18] which indicates that there are areas in which KOVR (TV) and KMJ-TV, as modified, would both provide signals in excess of that defined by the Rules as "Grade B" field intensity.[19] This study does not purport to draw new "contours" for the stations, but has been made only for the purpose of determining whether arguable support exists for SJCC's allegations beyond the general statements in previous proceedings. Having concluded that such support for the proposition exists, i.e., there is a substantial and material question whether KMJ-TV, as modified, and KOVR(TV) would provide common areas with signals of at least Grade B intensity, we further conclude that the KMJ-TV modification application must be designated for hearing.

20. Espousal of "simple, expeditious, and final" resolution of problems should not obscure the importance of the duopoly rule. The Commission's "policy against duopoly" has been described as of "over-riding decisional significance." *In the Matter of Amendment of the Multiple Ownership Rules, supra*, at 1480. We have stated that the Rules "embody considerations of fundamental importance," e.g., competition and diversity of viewpoints. Id., at 1479. It should also be noted that the duopoly rule is a "particularized" statement of our general concern with undue concentration of control of the communications media. E.g., *Notice of Proposed Rulemaking in the Matter of Amendment of the Multiple Ownership Rules, supra*, at paragraph 3. Thus, the absence of a "clear-cut" violation of the duopoly standard should not preclude further inquiry.

21. In our Order denying a petition by the Justice Department to deny the renewals of the KMJ stations, we found Fresno "not egregiously concentrated" and, hence, * * * [without] basis under our rules for designating these applications for hearing solely on a showing of ownership structure." *McClatchy Newspapers*, 61 FCC 2d 279, 38 RR 2d 980 (1976). This standard is that set forth in the *Second Report and Order In the Matter of Amendment of the Multiple Ownership Rules* (Docket No. 18110), the broadcast-newspaper cross-ownership proceeding, 50 FCC 2d 1046, 1088 (1975), and is consistent with "grandfathering" of existing market combinations in that order and its predecessor, the *First Report and Order* in Docket 18110, 22 FCC 2d 306, 18 RR 2d 1735 (1970), wherein we adopted the "one-to-a-market" portion of our broadcast Multiple Ownership Rules. However, finding that the Fresno market was not so "egregiously concentrated" as to require divestiture or non-renewal of the McClatchy licenses is not the same as finding that the public interest would be served by an extension of the facilities of KMJ-TV into areas allegedly already receiving a McClatchy broadcast service.[20]

22. We, therefore, have determined, in view of our concern for diversity and competition, to designate the McClatchy modification application for hearing. The purpose of the hearing will not be to determine whether operation of KMJ-TV as proposed would violate the duopoly rule, but to determine the impact of the proposed operation on competition and diversity of viewpoints in the areas allegedly served by the two McClatchy television stations. We reject the duopoly standard because of the difficulty (some would say, the impossibility) of constructing an actual Grade B signal intensity contour and the absence of a generally accepted or administratively prescribed method of predicting alternaitve contours under atypical terrain conditions. To attempt to enforce a fixed standard without acceptable tools violates the principle of predictability which the standard embodies. The burden will be on SJCC to establish by competent evidence the areas served in common by KOVR(TV) and KMJ-TV operating as proposed in the modification application and to come forward with evidence demonstrating any inimical effects on competition and diversity resulting from such common service areas, i.e., an undue concentration of control of the communcations media.

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[18] This study is based on a method published as National Bureau of Standards Technical Note 101, rev. May 1, 1966. A summary of the study, including the assumptions on which it is based, and the findings, will be made a part of the docketed file in this proceeding, for the examination of interested parties. We note that there is some belief in the engineering community that this method "may be less than satisfactory in yielding realistic estimates of UHF fields occurring at distances of less than 50 to 60 miles from the transmitter." See Report and Order *In the Matter of Amendment of Field Strength Curves, supra*, at 865. That objection should not apply to this instance, where the distances considered are more than 60 miles from the transmitter.

[19] For Channels 2–6, 47 dBu; for Channels 7–13; for UHF channels, 64 dBu.

[20] McClatchy is the licensee of AM stations in Sacramento, Modesto, and Fresno, and FM stations in Modesto and Fresno, as well as the television stations discussed in this Order. In addition, it publishes daily newspapers in Sacramento, Modesto, and Fresno. It is conceivable that, by the alternative method described above, common areas of service would be found between KMJ-TV, as modified, and the McClatchy aural services in Modesto. There is no need to inquire whether this would violate the spirit of the new rule on regional concentration of control, which prohibits, generally, "common ownership of three broadcast stations where any two are within 100 miles of the third if there * * * will be primary service contour overlap of any of these related stations." *In the matter of Amendment of the Multiple-Ownership Rules* (Docket 20548), ——— FCC 2 ———, 40 RR 2d 23, 28 (1977), because Fresno and Modesto are more than 100 miles apart. Evidence of other McClatchy services, both broadcast and print, may be relevant, however, on the designated issue.

23. If, during the course of this hearing, the assignment of KOVR(TV) is approved and consummated, the Administrative Law Judge may give summary decision as to this issue, as the most that will result is the replacement of one McClatchy service with another.

24. Accordingly, *It is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications of McClatchy Newspapers for renewal of license, and San Joaquin Communications Corporation for construction permit, and the application of McClatchy Newspapers for modification of the facilities of KMJ-TV, are designated for hearing in a consolidated proceeding, at a time and place to be fixed in a subsequent Order, upon the following issues:

(1) To determine, with respect to the application of McClatchy Newspapers for modification of facilities of KMJ-TV,

(a) The areas and populations which would receive service from KOVR(TV) and KMJ-TV, operating as proposed.

(b) In the light of the evidence on the above issue, whether operation of KMJ-TV in the manner proposed would result in undue concentration of control of the communications media inconsistent with the public interest.

(c) In the light of the evidence on the above issue, whether a grant of the application would serve the public interest, convenience and necessity.

(2) To determine, with respect to the applications of McClatchy Newspapers and for renewal of license, and San Joaquin Communications Co-poration for construction permit, which application, on a comparative basis, if granted, would better serve the public interest, convenience and necessity.

(3) To determine, in the light of the evidence on the above issue (2), which of the applications should be granted.

25. *It is further ordered*, That the burden of proceeding with the introduction of evidence on issue (1) shall be on San Joaquin Communications Corporation and the burden of proof on said issue shall be on McClatchy Newspapers.

26. *It is further ordered*, That "Motion to Consolidate Applications" filed by San Joaquin Communications Corporation is granted to the extent indicated above, and is denied in all other respects.

27. *It is further ordered*, That the "Motion for Ruling Regarding Processing of Applications or Other Relief" filed by McClatchy Newspapers *is granted* to the extent indicated above, and is denied in all other respects.

28. *It is further ordered*, That, in the event of a grant of the license renewal of McClatchy Newspapers for KMJ-TV, such grant shall be without prejudice to any subsequent Commission action resulting from resolution of the following pending antitrust actions:

(a) *Sacramento Union Corporation, et al.* v. *McClatchy Newspapers, Inc., et al.* (No. C-77-0050 SC), filed January 7, 1977, in the U.S. District Court for the Northern District of California.

(b) *Naify, et al.* v. *McClatchy Newspapers, et al.* (No. C-76117 SW), filed in the U.S. District Court for the Northern District of California.

(c) *Noble et al.* v. *McClatchy Newspapers, et al.* (No. C-51624 SC), filed in the U.S. District Court for the Northern District of California and reversed and remanded by the Ninth Circuit (Nos. 72-2021, *et al.*, 1975).

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

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

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-17625 Filed 6-20-77;8:45 am]

RADIO CICERO, INC.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: June 9, 1977.

Released: June 20, 1977.

In re applications of Radio Cicero, Inc., Cicero, Illinois; Docket No. 21247, File No. BP-20,041; Req: 1450 kHz, 250 W, 1 kW-LS, U. Migala Enterprises, Inc., Cicero, Illinois; Docket No. 21248, File No. BP-20,127; Req: 1450 kHz, 250 W, 1 kW-LS, U. Cicero Radio Corporation, Cicero, Illinois; Docket No. 21249, File No. BP-20,129; Req: 1450 kHz, 250 W, 1 kW-LS, U. The Board of Trustees of the University of Illinois, Cicero, Illinois; Docket No. 21250, File No. BP-20,131; Req: 1450 kHz, 250 W, 1 kW-LS, U. Metropolitan Broadcasting, Company, Inc., Cicero, Illinois; Docket No. 21251, File No. BP-20,134; Req: 1450 kHz, 250 W, 1 kW-LS, U. Nationwide Broadcasting Company, Cicero, Illinois; Docket No. 21252, File No. BP-20,135; Req: 1450 kHz, 250 W, 1 kW-LS, U. Midway Broadcasting Corporation, Cicero, Illinois; Docket No. 21253, File No. BP-20,137; Req: 1450 kHz, 250 W, 1kW-LS, U, for construction permits.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration, the above-captioned applications for construction permits for standard broadcast stations at Cicero, Illinois. These mutually exclusive applications are for the deleted facilities of Station WVON, formerly licensed to Globe Communications, Inc. On October 25, 1974, the Commission approved the transfer of station WNUS, Chicago, Illinois, from the McLendon Broadcasting Corporation to Globe Communications, Inc. (BAPL-438). As a result of Globe's commencement of operations with its new facilities, it abandoned its Cicero, station, and these facilities became available to be applied for by other interested parties. The Commission also has for consideration a petition for assignment of new file number, filed May 26, 1977, by Midway Broadcasting Corporation (Midway), directed against the application of Migala Enterprises, Inc., (Migala).

2. In its petition, Midway alleges that changes in ownership of Migala stock after expiration of the November 7, 1975 cut-off date for the lead application resulted in Joseph Migala acquiring positive control of the applicant. The following table summarizes the percentage of stock ownership in Migala as filed and as amended:

Name	Original percentages	Amended percentages [1]
Joseph Migala	29	80
Estelle Migala	29	5
George Migala	14	5
Diana Maria Migala	14	5
Barbara Holtzinger	14	5

[1] On May 31, 1977, Migala tendered a further amendment to reflect that Joseph Migala and Estelle Migala's percentages of ownership are now 78 pct and 7 pct, respectively. Subsequently, Migala filed an opposition to Midway's petition.

(Joseph Migala and Estelle Migala are husband and wife and the remaining stockholders are their children). Midway maintains that Joseph Migala's acquisition of positive control of the applicant requires the assignment of a new file number and the return of the application to the processing line under § 1.571(j)(2). This rule provides for the assignment of a new file number when an application for a new station is amended so as to result in an assignment or transfer of control for which an existing station would have to file a "long form" application (FCC Forms 314, 315, or 345). While § 1.571(j)(2) is subject to the exceptions contained in § 1.540 of the Rules which permits the filing of an application for voluntary assignment or transfer of control on the so-called "short form" (FCC Form 316), Midway asserts that the Migala transaction does not fall within any of the noted exceptions. The Commission concludes that in these circumstances, the assignment of a new file number is not required. In *Gaffney Broadcasting Corporation*, 35 RR 2d 1607 (1976), the Commission had before it a petition for reconsideration of its grant of an application for transfer of control. There, petitioner alleged that the applicant had improperly filed its application on FCC Form 316. In that case, a husband and wife owning fifty percent of the transferee stock acquired the remaining fifty percent from the other stockholders. Before the transaction, the husband owned forty-nine percent of the

stock and the wife owned one percent; subsequently, their interests were increased to ninety-eight percent and two percent respectively. The Commission, citing *Barnes Enterprises, Inc.*, 55 FCC 2d 721, 35 RR 2d 174 (1975), held that the transfer was filed properly on FCC Form 316 since the husband and wife as a "family group" held negative (50 percent) control and were merely acquiring positive control. In the present case, Joseph Migala and Estelle Migala, as a "family group" already held positive (58 percent) control of Migala Enterprises, Inc., and the amendments in question reflect only an increase in their pre-existing positive control. Accordingly, the assignment of a new file number to Migala's application is not required.

3. Radio Cicero, Inc. (Radio Cicero) has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1501 (1971) (*Primer*) in several significant respects. Question and Answer 11(a) of the *Primer* requires that consultations with community leaders be conducted by principals, management-level employees, or, in the case of newly formed applicants, by prospective management-level employees. Radio Cicero states only that its community leader consultations were conducted by "the president of the corporation or other officer or key employees of the corporation." Because of its failure to identify by name or position, other than the president of the applicant corporation, those persons who conducted its community leader survey, the Commission is unable to determine whether or not the survey was completed in compliance with Question and Answer 11(a). *Maranatha, Inc.*, 56 FCC 2d 194, 34 RR 2d 423 (Rev. Bd. 1975), *Mel-Lin, Inc.*, 48 FCC 2d 1207, 31 RR 2d 819 (Rev. Bd. 1974). Also, it does not appear that Radio Cicero has consulted with leaders of all significant groups that reflect the composition of Cicero, as required by Question and Answer 13(a) of the *Primer*. *Voice of Dixie, Inc.*, 45 FCC 2d 1027, 29 RR 2d 1124 (1974). For example, Radio Cicero's list of community leaders consulted includes no student or youth leaders, no public law enforcement or safety leaders, and no leaders of certain ethnic groups. With respect to the latter, Cicero is described by Radio Cicero as "generally a melting pot of foreign population." It indicates that the largest ethnic groupings are Italian, Czechoslovak, Polish, German, Lithuanian, and Latino. Of these, Radio Cicero has failed to consult with leaders of Cicero's Czechoslovak-American, German-American, Lithuanian-American, Polish-American, and Latino-American communities.

4. Question and Answer 29 of the *Primer* requires that an applicant list the broadcast matter which is proposes in response to ascertained problems and needs. For each proposed program, an applicant must state the anticipated time segment, duration, and frequency of broadcast, and the problem or problems to which each will be responsive. Radio Cicero has not complied fully with these requirements in that it has not indicated the time segments and/or frequency of broadcast for several of its proposed programs, i.e., "The Forum," "The Reply," "Cicero Dialogue," and "We Challenge." For the foregoing reasons, a general ascertainment issue will be specified against Radio Cicero.

5. Metropolitan Broadcasting Company, Inc. (Metropolitan) has not shown that it is financially qualified to construct and operate as proposed. Analysis of Metropolitan's financial documentation, as amended, indicates that it will require $314,647 to construct its proposed facility and operate for one year without reliance upon anticipated revenues, itemized as follows:

Equipment	$114,790
Building	10,000
Miscellaneous	18,500
Bank loan—repayment of principal	42,857
Bank loan—repayment of interest	28,500
Working capital (first year)	100,000
Total	314,647

To meet this requirement, Metropolitan relies upon a bank loan and existing capital. Metropolitan has submitted a letter from the First National Bank of Chicago expressing that institution's willingness to lend $300,000 for purposes of construction and operation of the proposed broadcast station. The loan commitment is contingent, in part, upon the receipt of personal guarantees from the applicants' stockholders and contemplates the assignment of certain assets of the corporate applicant and its stockholders individually. While the stockholders have submitted their personal guarantees, there is no indication of stockholder agreement to the collateralization requirement. Therefore, the Commission is unable to find that the proposed loan is available. Moreover, even if the proposed loan was available, the Commission notes that Metropolitan would be able to demonstrate the availability of only $304,900, consisting of the $300,000 loan and $4,900 in net current and liquid corporate assets, to meet a requirement of $314,647. Accordingly, a financial issue will be specified against Metropolitan.

6. Also, Metropolitan has failed to comply with the Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, *supra*. Question and Answer 9 of the *Primer* requires that applicants show that they have determined the composition of their communities by submitting "such data as is necessary to indicate the minority, racial, or ethnic breakdown of the community, its economic activities, governmental activities, public service organizations, and any other factors or activities that make the particular community distinctive." Although Metropolitan has provided some demographic data, we are provided with insufficient information relative to the "minority, racial, and ethnic" breakdown of Cicero. Thus, while Metropolitan states that 35.8 percent of Cicero's residents are of foreign stock, and that Italy is the leading country of origin, followed by Czechoslovakia, Poland, Germany, Lithuania, and Spanish-speaking countries, it has not indicated the percentages of the overall population that each minority, racial, or ethnic group comprises. In addition, it has not indicated whether or not there are any members of racial (as distinguished from nationality) minorities, residing in Cicero. Inasmuch as Metropolitan has failed to submit sufficiently detailed information about Cicero's composition, it is impossible to determine whether Metropolitan's list of community leaders interviewed includes representatives of all significant groups, as required by the *Primer*.

7. Evaluation of Metropolitan's list of community leaders in light of the demographic information submitted shows that not all significant groups have been consulted. *Voice of Dixie, Inc., supra*. For example, Metropolitan has consulted with no leaders of Italian, German, Latino, or Lithuanian organizations even though it has indicated the presence of large numbers of these ethnic groups in Cicero. In this regard, it is noted that Metropolitan has shown some of its community leaders to be members of racial or ethnic groups, but not leaders. However, for purposes of community ascertainment, we have distinguished between those persons who are racial or ethnic group leaders and those persons (who may be community leaders in their own right) who are merely members of a particular racial or ethnic group. *A. V. Bamford*, 48 FCC 2d 1155, 31 RR 2d 790 (Rev. Bd., 1974), affirmed *Bamford v. FCC*, 175 U.S. App. D.C. 250, 535 F. 2d 78 (1976). See also, *Dale A. Owens*, 56 FCC 2d 482, 35 RR 2d 508 (Rev. Bd. 1975). In light of the foregoing, an ascertainment issue will be specified against Metropolitan.

8. Nationwide Broadcasting Company (Nationwide) has failed to show that it possesses the necessary financial qualifications to be a Commission licensee.[2] Analysis of Nationwide's financial documentation indicates that it will require $688,231 to construct its proposed facility and operate for one year, without reliance upon anticipated revenues, itemized as follows:

Equipment	[1] $44,683
Miscellaneous	36,000
Estimated repayment of principal	70,000
Estimated repayment of interest	37,625
Working capital (first year)	499,923
Total	688,231

[1] Nationwide proposes to purchase certain new equipment from RCA totalling $44,683. We note, however, that the RCA equipment proposal expired in December 1975 and that there is no indication whether the proposal has been extended.

[2] Prior to preparation of this hearing order, each application was reviewed by the Commission's staff. Each applicant was sent a letter noting any financial or legal deficiencies discovered, and each was given an opportunity to amend. Of the seven applicants, only Nationwide failed to submit any amendatory material in response to the Commission's letter. Thus, issues specified against Nationwide are based on its application as filed originally.

To meet this requirement, it plans to rely upon $15,000 in existing capital, $285,000 in stock subscriptions[3] and a $350,000 bank loan.

9. With regard to Nationwide's stock subscriptions, the Commission finds that only $28,500 of the $285,000 total has been shown to be available in accordance with its standards. The subscriptions of Messrs. Lewis, Johnson, Collins and Lafontant are not acceptable because their balance sheets do not indicate existence of current and liquid assets in excess of current liabilities by amounts sufficient to support each of their respective commitments. The balance sheets for Messers. Lewis, Johnson, and Lafontant include among their assets "stocks listed on national exchanges," and "other negotiable securities and bonds." However, since none of these securities, nor the markets on which they are traded are identified, we cannot determine whether they qualify as current and liquid assets as contemplated by Section III, page 3, paragraph 4(b) of the application. An applicant wishing to rely upon marketable securities must identify the securities by name as well as the number of shares held and the exchange where listed, so that an independent and current determination can be made as to their market values. *Southern Minnesota Supply Company*, 12 FCC 2d 66 (1968), *Vista Broadcasting Company, Inc.*, 18 FCC 2d 636, 16 RR 2d 838 (Rev. Bd. 1969).

10. Nationwide has submitted a letter from the Bank of Commerce and Industry stating that while the bank cannot make a firm commitment, its loan committee would "look with favor" upon Nationwide's request for a line of credit not to exceed $350,000 to help finance its proposed broadcast station. Further, the letter states that if the bank did lend funds to Nationwide, it would do so only in compliance with certain conditions including the execution of personal guarantees by the stockholders and their spouses. None of these conditions have been accepted or met. In addition, the letter fails to specify the loan's repayment schedule. Therefore, the Commission is unable to conclude that Nationwide has reasonable assurances of the availability of the proposed loan. Accordingly, an issue will be specified to determine whether it is financially qualified.

11. At Section V–A of its application, Nationwide states that it proposes to locate its main studio in Chicago, Illinois at a site to be determined. Nationwide has proopsed to locate its studio in Chicago despite the fact that its proposed community of license is Cicero. This is inconsistent with Section 73.30(a) of the Commission's Rules which requires that a standard broadcast station's main studio be located in its community of license unless it is located at the transmitter site. Since no waiver of Section 73.30(a) has been requested by Nationwide, an issue will be included to determine whether a waiver is warranted.

12. Furthermore, at Exhibit IV–A–1, page 1 of its application Nationwide states as follows:

> This application is for the former WVON facilities. WVON, while licensed to Cicero, served the Chicago area Black community. Applicant will seek to provide service to its entire service area. The focus of its service, however, will be the substantial Black population within its service area.

Nationwide's application includes detailed and extensive exhibits of its efforts to ascertain the problems and needs of Chicago. However, its community ascertainment virtually ignores Cicero, its porposed community of license. Hence, it does not appear that Nationwide has complied with the requirement of the *Primer* to ascertain the problems and needs of its proposed community of license, Cicero. See Questions and Answers 3 and 6. Therefore, an ascertainment issue will be specified.

13. Circero Radio Corporation (CRC) has failed to show the availability of sufficient funds to construct and operate as proposed. Analysis of CRC's financial material indicates that it will require $431,275 to construct its proposed facility and operate for one year, itemized as follows:

Payment for equipment option	$ 1,000
Payment for equipment	100,000
Down payment on new studio equipment	2,322
Monthly payments on new studio equipment	6,703
Building	17,000
Miscellaneous	33,000
Working capital (first year)	175,000
Principal paymetns on bank loan	70,000
Interest payments on bank loan	26,250
Total	431,275

To meet this requirement, CRC plans to rely on $5,500 in existing capital, $375,000 in stock subscriptions and a $350,000 bank loan. With regard to the Stock subscriptions, the Commission is able to find that only four of the stockholders (Messrs. Gitles, Falk, Heiman and Mayfield) have submitted balance sheets that support their ability to meet their subscription agreements. Furthermore, the Commission is unable to find that the loan commitment from the American National Bank and Trust Company of Chicago is available to CRC. This commitment was issued to Cicero Radio Partnership or its ten named general partners. Subsequently, the partnership amended its application to reflect a modification of its legal status from a general partnership to a corporation. However, CRC failed to submit an amended commitment letter indicating the bank's willingness to lend the funds to CRC. Similarly, the letter of dererred credit from CRC's equipment supplier, Systems Marketing Corporation, is addressed to the partnership and cannot be considered to be available at this time. Therefore, CRC has shown the availability of only $155,000 to meet a requirement of $431,275, and an issue will be specified regarding the availability of the bank loan and deferred credit on its equipment.

14. There appear to be substantial differences between the proposed programming formats of these applicants. Radio Cicero, Migala Enterprises, Inc., Cicero Radio Corporation, and Metropolitan all propose programming directed toward the particular ethnic groups residing in Cicero, while Nationwide Broadcasting Company proposes programming service to Chicago's Black community. Midway Broadcasting Corporation states that its programming will be directed towards Cicero as well as to Chicago's Black population. In addition, the Board of Trustees of the University of Illinois has applied for a noncommercial educational station and thus proposes a format of educational programming. Therefore, the relative need for these different types of programming will be considered under the standard comparative issue. *Ward L. Jones*, FCC 67–82 (1967).

15. Except as indicated by the issues specified below, each of the applicants is legally, financially, technically, and otherwise qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

16. Accordingly, *It is ordered*, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications, are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine the efforts made by Radio Cicero, Inc. to ascertain the community problems and needs of the area to be served and the means by which it proposes to meet those problems.

2. To determine with respect to the application of Metropolitan Broadcasting Company:

(a) Whether the stockholders of the applicant can meet the terms of their bank loan commitment;

(b) Assuming the aforementioned bank loan is available, whether the applicant has additional funds in excess of $304,900 to meet its $314,647 requirement; and

(c) Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified to construct and operate as proposed.

3. To determine the efforts made by Metropolitan Broadcasting, Inc. to ascertain the community problems and needs of the area to be served and the means by which it proposes to meet those problems.

4. To determine whether the proposal of Nationwide Broadcasting Company is in compliance with Section 73.30(a) of the Commission's Rules with respect to the location of the main studio, and if

[3] Nationwide has submitted stock subscriptions totalling $285,000 from its five stockholders, itemized as follows:

Thomas P. Lewis	$114,000
John E. Johnson	57,000
Ernest T. Collins	28,500
H. Ernest Lafontant	57,000
Harold J. Green	28,500
Total	285,000

not, whether circumstances exist which warrant a waiver of said section.

5. To determine whether Nationwide Broadcasting Company is financially qualified to construct and operate its proposed station.

6. To determine the efforts made by Nationwide Broadcasting Co. to ascertain the community problems and needs of the area to be served and the means by which it proposes to meet those problems.

7. To determine, with respect to the application of Cicero Radio Corporation:

(a) Whether its purported bank loan is available;

(b) Whether it has available deferred credit from its equipment supplier; and

(c) Whether, in light of the evidence adduced pursuant to (a) and (b) above, the applicant is financially qualified to construct and operate as proposed.

8. To determine which of the proposals would, on a comparative basis, best serve the public interest.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues which, if any, of the applications should be granted.

17. *It is further ordered*, That, the petition for assignment of new file number, filed by Midway Broadcasting Corporation, is denied.

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

19. *It is further ordered*, That, the applicants herein shall, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, give notice of the hearing, either individually or, if feasible and consistent with the Rules, jointly, within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
PAUL WM. PUTNEY,
Acting Chief,
Broadcast Bureau.

[FR Doc.77-17626 Filed 6-20-77;8:45 am]

[FCC 77-387; Docket No. 21278, File No. BR-1465; Docket No. 21279; File No. BRH-643]

TIDEWATER RADIO SHOW, INC.

Designating Applications for Consolidated Hearing on Stated Issues; Memorandum Opinion and Order

Adopted: June 2, 1977.

Released: June 16, 1977.

By the Commission: Commissioner Lee absent.

In re applications of Tidewater Radio Show, Inc. for renewal of license of WPCE, Portsmouth, Virginia, and Willis Broadcasting Corporation for renewal of license of WOWI-FM, Norfolk, Virginia.

1. The Commission has before it for consideration the above-captioned license renewal applications and its inquiries into the operation of Stations WPCE and WOWI-FM, Portsmouth and Norfolk, Virginia, respectively.

2. Information before the Commission raises serious questions as to whether the applicants possess the qualifications to remain licensees of the captioned stations. In view of these questions, the Commission is unable to find that a grant of the renewal applications would serve the public interest, convenience and necessity, and must, therefore, designate the applications for hearing.

3. Accordingly, *It is ordered*, That the captioned applications are designated for consolidated hearing pursuant to Section 309(e) of the Communications Act of 1934, as amended, at a time and place to be specified in a subsequent Order, upon the following issues:

(a) To determine all the facts and circumstances surrounding the sales-related conduct of one James Dulaney while employed as sales manager for the subject stations with specific regard to:

(1) Whether James Dulaney used coercion, threats of physical violence, and other improper tactics as part of his sales activities;

(2) Whether and to what extent the principals of the licensees were aware of these sales practices of James Dulaney;

(3) Whether the principals of the licensees exercised the required degree of supervision and control over the sales activities of James Dulaney;

(4) In light of the foregoing information, to determine the effect such evidence has on the subject licensees' character qualifications to remain licensees of the Commission.

(b) To determine whether Stations WPCE and WOWI-FM have broadcast information concerning lotteries in violation of Section 1304 of Title 18 of the United States Code and of Section 73.1211 of the Commission's Rules.

(c) To determine whether the broadcast by Stations WPCE and WOWI-FM of programs or announcements which advertised articles such as a "Prosperity Package" and a "prayer cloth" or the services of a Madame Gray or Reverend Sister Bishop or which offered to give three-digit numbers to be used for "financial blessings" constituted false, misleading, or deceptive advertising.

(d) To determine all the facts and circumstances surrounding Willis Broadcasting Corporation's failure to timely notify the Commission of its corporate name change or of a dissolution of its corporate charter by the Commonwealth of Virginia in June 1975.

(e) To determine all the facts and circumstances surrounding Rev. Levi E. Willis, Sr.'s, participation in the operation of Radio Station WBLU, Salem, Virginia, and to determine whether Rev. Willis, Sr., assumed control of radio Station WBLU in violation of Section 310(d) of the Communications Act of 1934, as amended.

(f) To determine whether, in light of all the evidence adduced under the preceding issues, the licensees of WPCE and WOWI-FM possess the requisite qualifications to remain licensees of the Commission and whether a grant of the captioned applications would serve the public interest, convenience, and necessity.

4. *It is further ordered*, That if it is determined that the hearing record does not warrant an order denying the captioned applications for renewal of license of Stations WPCE and WOWI-FM, it shall also be determined whether the applicants have repeatedly or willfully violated Section 73.1211 of the Commission's Rules. If so, it shall also be determined whether an Order of Forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, in the amount of $10,000 or less should be issued for violations which occurred within one year preceding the issuance of the Bill of Particulars in the matter.

5. *It is further ordered*, That this document constitutes a Notice of Apparent Liability to Tidewater Radio Show, Inc., and Willis Broadcasting Corporation for forfeiture for violations of the Commission's Rules set out in paragraph 4 above. The Commission has determined that, in every case designated for hearing involving revocation or denial of renewal of license for alleged violations which also come within the purview of Section 503(b) of the Act, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since this procedure is thus a routine or standard one, we stress that inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

6. *It is further ordered*, That the Chief of the Broadcast Bureau is directed to serve upon the captioned applicants within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) through (e) inclusive.

7. *It is further ordered*, That the Broadcast Bureau proceed with the initial presentation of the evidence with respect to issues (a) through (e) and the applicants then proceed with its evidence and have the burden of establishing that it possesses the requisite qualifications to remain a licensee and that a grant of the application would serve the public interest, convenience, and necessity.

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

9. *It is further ordered*, That the applicants herein, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, shall give notice of the hearing within the time and in the

manner prescribed in such Rule and shall advise the Commission thereof as required by Section 1.594(g) of the Rules.

10. *It is further ordered*, That the Chief Administrative Law Judge assign the same Administrative Law Judge to conduct this hearing who is assigned to conduct the revocation hearing ordered this day to determine whether the licensee of Station WBLU possesses the requisite qualifications to be and remain a licensee of the Commission, and that the said Administrative Law Judge shall take cognizance, with respect to each proceeding, of any findings of fact in the other proceeding which bear upon the qualifications of the licensee in that proceeding with particular regard to issue (e) of this Hearing Order.

11. *It is further ordered*, That the Secretary of the Commission send a copy of this Order by Certified Mail—Return Receipt Requested to Tidewater Radio Show, Inc., licensee of Radio Station WPCE, Portsmouth, Virginia, and to Willis Broadcasting Corporation, licensee of Radio Station WOWI-FM, Norfolk, Virginia.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.77-17623 Filed 6-20-77;8:45 am]

FEDERAL MARITIME COMMISSION

[Docket No. 77-4; Agreements Nos. 9902-3, 9902-4, 9902-5 and 9902-6]

MODIFICATIONS OF EURO-PACIFIC JOINT SERVCE AGREEMENT

Intent to Make an Energy and Environmental Assessment

Correction

In FR Doc. 77-17321, appearing at page 30899 in the issue of Friday, June 17, 1977, the docket number should read as set forth in the headings above.

FEDERAL POWER COMMISSION

[Project No. 1490]

BRAZOS RIVER AUTHORITY

Application for Amendment of License Changing Project Boundary

JUNE 13, 1977.

Public notice is hereby given that an application for Commission approval of an amendment of license changing project boundary was filed on April 26, 1977, under the Federal Power Act (16 U.S.C. 791a-825r) by the Brazos River Authority (Correspondence to: Mr. Thomas P. Brown, III, 5530 Wisconsin Avenue, Washington, D.C. 20015) for the Morris Sheppard Project, FPC No. 1490, located on the Brazos River in Palo Pinto, Young, and Stephens Counties, Texas.

Applicant requests Commission approval to alter the existing project boundary to exclude from the project certain lands currently leased as cottage sites, and which are now considered unnecessary for project purposes. In order to ensure adequate control of the project shoreline, Applicant proposes a buffer zone that would be fixed as the lesser in width of (1) those lands at or below elevation 1007 feet m.s.l., and (2) those lands lying 25 horizontal feet inland from the high water elevation contour of 1000 feet m.s.l. The width of the buffer zone would be further reduced, in some instances, to exclude those lands upon which existing non-project improvements are located.

Applicant requests the use of the shortened procedures pursuant to § 1.32 (b) of the Commission's Rules and Regulations.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR § 1.8 or § 1.10). All such petitions or protests should be filed on or before July 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. 825g, 825h) and the Commission's Rules of Practice and Procedure, specifically § 1.32(b) (18 CFR 1.32(b)), (1976), a hearing may be held without further notice before the Commission on its application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for applicant to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-17636 Filed 6-20-77;8:45 am]

[Docket Nos. G-2801, CI72-50; G-10020, CI71-722]

GETTY OIL CO., AND PHILLIPS PETROLEUM CO., (OPERATORS), ET AL.

Order on Rehearing

JUNE 10, 1977.

On April 13, 1977, the Commission issue an Order Rejecting Settlement in the instant docket. The proposed settlement with regard to Phillips would have divided the total interest of Phillips Petroleum in the Erath Field one-third to Columbia, one-third to Trunkline, and one-third to Trunkline for redelivery to Phillips. With respect to the Getty proceeding, the settlement would have divided Getty's interest 50 percent to Columbia and 50 percent to Transcontinental Gas Pipeline Corporation. In the April 13 order, the Commission determined that both settlement agreements would have to meet the requirements of the so-called "La Gloria Field" case.[1] The Commission further determined that the record before it was insufficient to allow "La Gloria Field" determination to be made.

On May 13, 1977, applications for rehearing of the April 13 order were filed by Phillips Petroleum Company and Transcontinental Gas Pipeline Corporation. On the same date a motion for reconsideration of the April 13 order was filed by Getty Oil Company.

In its pleading Transco argues that the Commission erred in rejecting a unanimous settlement agreement that would resolve all the issues in the Getty proceedings and further that the Commission erred in concluding that the record evidence was insufficient to satisfy the dictates of the La Gloria Field decision. Transco cites our January 19, 1977, Order on Remand in *Hilda B. Weinert and Jane W. Blumberg, et al.*, Docket No. G-2730, *et al.* with respect to the legal test to be utilized in evaluation of settlement offers. Transco quotes from *Placid Oil Company* v. *FPC*, 483 F.2d 880 at 893 that:

> If a proposal enjoys the unanimous support from all of the immediate parties, it could certainly be adopted as a settlement agreement if approved in the general interest of the public. But even if there is a lack of unanimity, it may be adopted as a resolution *on the merits* if FPC makes an independent finding supported by "substantial evidence on the record as a whole" that the proposal will establish "just and reasonable rates for the area."[2]

Transco further argues that the Commission need not engage in the complete and detailed analysis requested by the court in the "La Gloria Field" case where, as here, there is a "unanimously supported settlement proposal". In support of this position, Transco again cites *Hilda W. Weinert and Jane Blumberg, et al. (supra)*.

In its pleading, Getty Oil Company argues that the Commission's rejection of the settlement and remand of the matter to the Presiding Judge would likely result in a long and drawn out hearing which Getty had hope to prevent by a settlement. The Company also suggests that the settlement "strikes a balance between the two pipelines as to their respective rights to Getty's share of the Erath production with each pipeline getting 50 percent."[3] Getty contends interest and discourages future settlement which is supported by all of the parties involved is contrary to the public interest and discourages further settlements. It is also suggested that approval of the settlement by the Commission would dispose of the proceeding in a manner which is satisfactory to all

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[1] *Transcontinental Gas Pipeline Corporation* v. *FPC*, 488 F.2d, 1325 (D.C. Cir. 1973).

[2] Application of Transco at 5 (emphasis in original).

[3] Application of Getty at 2.

parties and "which is in the public interest".[4]

Phillips Petroleum Company suggests that the Commission erred in finding the Phillips-Columbia-Trunkline settlement not to be in the public interest. It notes that the current settlement was supported by all interested parties and was opposed by no customer of either Trunkline or Columbia but only by the Commission Staff. Phillips maintains that the settlement proposal is supported by uncontroverted evidence which was fully subjected to cross-examination and "is more than adequate to support a finding that the public convenience and necessity permits partial abandonment of Phillips' sale to Columbia in order to effectuate the proposed settlement on its merits".[5] Phillips further suggests that it too has high priority need for the natural gas at its Texas Gulf Cost facilities far in excess of that involved in the instant proceeding. Phillips contends that it is being discriminated against in favor of other producers by the Commission's action which will deny "Phillips the right to receive any of its own working interest production in the Erath Field pursuant to a valid reservation which has previously been certificated and found to be in the public interest".[6] The Company cites Opinions 789, 727, and 743 wherein it contends the Commission has authorized deliveries of preserved gas volumes to producers in question. "There can be no meaningful distinction between the uses of gas to be made by producers under Opinion No. 789 and the high priority requirements of Phillips which are far in excess of the volumes involved in this proceeding. Such discriminatory treatment is in violation of the anti-discrimination provisions of sections 4 and 5 of the Natural Gas Act".[7]

Phillips cites § 1.18 of the Commission's Rules of Practice and Procedure which expressly encourage the use of settlement proceedings. Yet, according to Phillips, the April 13 order effectively destroys the usefulness of settlement procedures in abandonment cases. The Commission's apparent evidentiary requirements are simply unrealistic, according to Phillips in the context of a settlement unanimously supported by all *interested* parties. In support of this position, Phillips cites *Hilda B. Weinert and Jane W. Blumberg, et al.(supra)*. The final point advanced by Phillips is that in the April 13 order the Commission misconstrued the 1971 Phillips Trunkline contract and our December 31, 1971 certificate order based upon that contract. According to Phillips, "the contract provided for the sale to Trunkline, subject to ordinary field production reservations and subject to the reservation of volumes contractually committed to Columbia under the contract which expired on November 1, 1974. The 1971 contract clearly was not restricted to only those volumes attributable to Phillips' interest in Erath Field production in excess of 100,000 Mcf/d".[8]

[4] *Id.* at 3.
[5] Application of Phillips at 1-2.
[6] *Id.* at 3.
[7] Ibid.

Discussion

We turn first to the question of the authortiy of the Commission to reject a settlement agreement proffered by all of the interested parties. This Commission is not required to accept a settlement which meets with the approval of all interested parties if such a settlement in the Commission's opinion, is not in the public interest. The Commission's opinions and court decisions which are cited by the parties do not require a different result. Even the *Placid*[9] case by its very language does not require the Commission to adopt unanimous settlements. The Commission could, in the court's langauge approve such agreements if they are in the general public interest.[10]

Indeed in two other Federal circuits this result has been reached. In *Amoco Production Company* v. *FPC*[11] the Tenth Circuit Court of Appeals stated:

> Indeed, the Federal Power Commission, as the guardian of the public interest, has been held to be charged, in every proceeding, and without regard to the absence, protest, or applications for intervention in opposition, to determine whether the matter before it upon application is in the public interest or calls for some other disposition.[12]

Even more clearly put is the statement of the District of Columbia Circuit that,

> The whole purpose of the informal settlement provision is to eliminate the need for often costly and lengthy formal hearings in those cases where the parties are able to reach a result of their own *which the appropriate agency finds compatible with the public interest.*[13]

Where as in the instant proceedings the proffered settlement appears not to be in the public interest, and is not unanimous—here, objected to by the Commisson Staff—this Commission has the right, responsibility, and even the duty to reject the agreement.

The determination that the Commission can reject a settlement agreement supported by all interested parties and opposed by the Commisison Staff leads to the next consideration of whether the instant settlement was correctly rejected. In the "La Gloria Field" case, the D.C. Circuit set out at some length the Commission's duties in a proceeding such as this. Here, one interstate pipeline will in effect be abandoned to the benefit of another interstate pipeline. In such circumstances, the court requires, "a searching and comprehensive inquiry by the Commission into all factors relevant to determining the overall public interest in this abandonment proceeding".[14] Specifically the court suggested that,

> Primary importance must be given to a broadly conceived comparison of the needs of the two natural gas systems and the public markets they served. Additionally, the Commission should consider the environmental effects of its decision; the economic effect on the pipelines and their consumers, the presumption in favor of continued service and the relative diligence of the respective pipelines in providing for adequate natural gas supplies.[15]

No party contests the applicability of the *Transcontinental* (La Gloria Field) decision. Transco is the only party which seeks to challenge our earlier determination that this test had not been met. In doing so, however, Transco relies exclusively on the *Hilda B. Weinert, et al.* language which we have addressed *supra*. To the extent that it has not been made clear before, we will state that *Hilda B. Weinert, et al.* is distinguishable from the instant proceeding since in that proceeding Staff took no position on the proffered settlement. In addition, that decision does not, nor could it, stand for the proposition that this Commission is unable to reject a settlement where, as here there is virtually no evidence to meet the *Transcontinental* (La Gloria Field) requirements.

Notwithstanding the arguments of Phillips, there is insufficient evidence in the record now before us to allow the Commission to make the findings required by "La Gloria Field". There is, certainly, evidence that Phillips has a need for the subject gas. This is, however, but one of many facts the Commission must find. Absent a more complete record dealing with the issues of concern to the court in "La Gloria Field" we cannot properly find the settlement in the public interest.

For the foregoing reasons we are disinclined to modify our April 13 Order Rejecting Settlement. The parties have not shown it to be erroneous, or ill-conceived. With respect, however, to Phillips' contention that the Commission has misconstrued its 1971 contract with Trunkline, we do confess error. At page four of the April 13 order, we stated, "a more appropriate construction of that certificate for the sale to Trunkline is that it allowed the *excess* of Phillips' interest not committed to Columbia to be sold to Trunkline". Phillips is correct in stating that the 1971 contract "clearly was not restricted to those volumes *attributable to Phillips' interest* in Erath Field production in excess of 100,000 Mcf/d". (Emphasis added) That contract was for Phillips' *production* in excess of its Columbia commitments. This confession of error, however, does not in any way change the result of our April 13 order. On rehearing, we conclude that our Order Rejecting Settlement in the instant dockets

[8] Ibid. at 4.
[9] 43 F.2d 880 (5th Cir. 1973).
[10] *Id.* at 893.
[11] 465 F.2d 1350 (10th Cir. 1972).
[12] Id. at 1355.
[13] *Pennsylvania Gas and Water Co* v. *FPC*, 463 F.2d 1242 (D.C. Cir. 1972). (Emphasis added).
[14] *Transcontinental Gas Pipe Line Corporation* v. *FPC*, 488 F.2d 1325, 1329 (D.C. Cir. 1973).
[15] *Id.* at 1330.

issued April 13, 1977, should not be modified.

The Commission orders: The order rejecting settlement in the instant dockets, issued April 13, 1977, is hereby affirmed and adopted on rehearing.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-17637 Filed 6-20-77;8:45 am]

[Docket No. E-9563]

INTERIOR DEPARTMENT, BONNEVILLE POWER ADMINISTRATION

Order Conditionally Confirming and Approving Rate Schedules, Providing for Hearing, and Establishing Other Procedures

JUNE 10, 1977.

Federal rates: Conditional Confirmation and Approval of Rates. Before commissioners: Richard L. Dunham, Chairman; Don S. Smith, John H. Holloman III, and James G. Watt.

On July 30, 1976, pursuant to the Federal Columbia River Transmission System Act (93 Stat. 454), the Secretary of the Interior (Interior) on behalf of the Bonneville Power Administration (BPA), filed with the Commission, a request for the confirmation and approval of the following rate schedules which apply to the transmission of non-Federal electric power and energy over BPA's transmission facilities:

Schedule FPT-1. Available for the firm transmission of electric power and energy for another entity over Federal electric transmission system facilities. The rate is designed for transmitting power from non-Federal hydro and existing thermal plants to load centers over Federal facilities where specific facilities used may not be readily determined.

Schedule UFT-1. Available for the transmission of electric power and energy for another entity over specified Federal transmission system facilities. The basic monthly charge shall be one-twelfth of the sum of the products of the annual cost of each element of the specific facilities per kilowatt of capacity rating and the transmission demand.

Schedule ET-1. Available for the incidental transmission of electric energy for another entity using excess capacity of the Federal transmission system.

Public notice of Interior's filing was issued August 11, 1976, with protests or petitions to intervene due on or before Docket No. E-9563.

September 10, 1976. Petitions to intervene were filed by the Idaho Power Company, Montana Power Company, Pacific Power & Light Company, Public Utility Commissioner of Oregon, Portland General Electric Company, Puget Sound Power & Light Company, Public Power Council, City of Seattle, Washington, and Washington Water Power Company. By order issued October 5, 1976, the Commission granted intervention to the above-listed parties.

Interior's filing of July 30, 1976, is the first made pursuant to the Federal Columbia River Transmission Act (ACT). Section 10 of the Act states that "the recovery of the cost of the Federal transmission system shall be equitably allocated between Federal and non-Federal Power utilizing such system."

The proposed rates would result in an overall increase in revenue of some $5.6 million or 25 percent based on an estimated 1978 test year. The following table summarizes the categories of transmission revenues under the current and proposed transmission rates as contained in the filing.

Expected revenues for operating year 1978 [1]

[Amounts in thousands]

Category	Current rates	Proposed rates	Dollar increase	Percentage change
Formula transmission	$11,400	$15,300	$3,900	34
Secondary to Pacific Southwest	1,100	1,800	700	64
New thermal	2,400	3,400	1,000	42
Subtotal	14,900	20,500	5,600	38
Columbia storage power exchange and supplemental	2,700	2,700	0	0
Use of facilities and miscellaneous	5,000	5,000	0	0
Subtotal	7,700	7,700	0	0
Total transmission and miscellaneous	22,600	28,200	5,600	25

[1] July 1, 1977, to June 30, 1978.

To demonstrate that the transmission costs are equitably allocated between Federal and non-Federal users, BPA submitted five methods of determining the non-Federal portion of system costs as a test of the reasonableness of the method used in the filing. The allocated costs generated by the five tests for equity are compared to the amount of revenue forecasts under BPA's proposed Formula Power Transmission rate schedule in the following table:

Summary of BPA equity studies

[Dollars in millions]

Methods	Allocated costs [1]
I. Dollars per kilowatt, forecasted demands, total system.	26.4
II. Dollars per kilowatt, power flows, main and secondary systems.	26.4
III. Mills per kilowatt hour, forecasted energy, total system.	21.1
IV. Power flow allocation Federal/non-Federal system (with staff adjustments).	26.9 24.6
V. Contract flow allocation, Federal system only.	24.8
VI. Revenue forecast [2]	22.4

[1] For main and secondary systems only.

Based on data provided by BPA in response to Staff requests regarding the actual 12 month coincidental demand for 1976, Staff's preliminary estimate of the portion of cost of the main and secondary systems attributable to non-Federal customers is approximately 40 percent. When this allocation factor is applied to BPA's estimated test year cost of such facilities ($76.1 million), the non-Federal revenue requirement amounts to considerably more than the $22.4 million revenue forecast under the proposed rates.

The intervenors in this proceeding have adopted the position that BPA has failed to demonstrate that it equitably allocated costs between Federal and non-Federal users of the system. One group of intervenors, known as the Intercompany Pool,[1] and the City of Seattle, have retained consultants to review BPA's filing. Requests have been made to BPA by the Commission Staff and the intervenors' consultants for data to support BPA's filing. To date, BPA has not responded to all of the requests.

Review of the BPA filing shows that it does not provide documentation in sufficient detail to permit a comprehensive analysis of the proposed rates. As a result, the intervenors and Staff have requested that BPA provide additional information needed to perform the required analysis. By way of example, Staff has not yet ascertained if the allocation factor (40%) derived from the data provided by BPA accurately reflects the non-Federal use of the transmission system. Similarly, BPA's estimated test year transmission system costs have not been confirmed as reasonable. These facts coupled with numerous questions regarding rate design, treatment of transmission losses and system reserves, functionalization of expenses between transmission and generation, and use of contract demands rather than actual demands of non-Federal customers, make it clear that a substantial amount of additional analysis is required before the Commission can fully review BPA's proposed transmission rates.

In an effort to clarify administrative procedures and to provide a forum for the resolution of issues presented by BPA's filing, conferences were held on October 21, October 27, and November 23, 1976, in this docket. It was anticipated that the utilization of such procedures would obviate the need for the conduct of an administrative hearing. However, since the informal procedures have not resulted in a resolution of the issues the Commission finds it necessary to order a hearing before an administrative law judge. Such action will assist the Commission in meeting its responsibilities under Section 9 of the Act. Section 9 provides that BPA's transmission

[1] Idaho Power Company, Montana Power Company, Pacific Power & Light Company, Portland General Electric Company, Puget Sound Power & Light Company, Washington Water Power Company.

rates shall become effective upon Commission approval and shall be established (1) to encourage the widest possible diversified use of electric power at the lowest possible rates to consumers consistent with solid business principles, (2) to recover the costs of producing and transmitting such electric power, including the amortization of the capital investment allocated to power over a reasonable period of years (3) at levels to produce such additional revenues as required, to assist payment of principal, premiums, discounts, and expenses in connection with the issuance of and interest on all bonds issued and outstanding pursuant to the Act.

On January 19, 1977, Interior submitted an amendment to the filing requesting confirmation and approval of the proposed rates to be effective immediately on an intermediate basis, subject to retroactive confirmation, or subject to retroactive adjustment higher or lower with interest in accordance with such amended or modified rates hereafter submitted by Interior and approved by the Commission. Interior maintains that each day of delay in adoption of the new rates causes a loss of approximately $15,000 in revenue to the United States.

Public notice of Interior's amendment to filing was issued February 8, 1977, with comments due on or before February 23, 1977. On February 23, 1977, intervenor City of Seattle filed comments opposing BPA's request for conditional approval of rates. It stated that "BPA's delays in responding to our data requests, together with its own tardiness in undertaking cost of service analysis" should not justify interim rate relief.

On February 24, 1977, the Intercompany Pool filed comments stating that:

(1) If the Commission put the proposed rates into effect subject to refund, it would be acting contrary to its earlier position that Bonneville support its rate filings with complete cost studies.

(2) There is a question as to whether the Act permits interim relief.

The Intercompany Pool, as a result, objected to BPA's request for interim relief.

On February 25, 1977, the Public Power Council filed comments supporting BPA's request for interim relief based on the fact that a considerable portion of any losses must be borne by BPA's existing preference customers.

It appears to the Commission that there is sufficient justification to permit the proposed rates to go into effect subject to adjustment. The revenue forecast is less than the preliminary estimate of the non-Federal revenue requirement or BPA's equity tests. It should be noted that this is the initial filing under the Act, which does not attempt to delineate detailed filing requirements. Codified filing requirements and historical precedent, important factors in facilitating proper documentation of rate increases, were not available to assist BPA in the preparation of its transmission rate filing.

The Commission finds: (1) Review of BPA's proposed transmission rate filing indicates that it does not provide documentation in sufficient detail to demonstrate that the rates are in conformity with the requirements of the Federal Columbia River Transmission System Act.

(2) Good cause exists for the Commission to conditionally confirm and approve BPA's proposed transmission rates through June 30, 1978. The rates should be subject to retroactive adjustment with interest in accordance with such amended or modified rates as are hereafter submitted and approved by the Commission.

(3) The Commission requires a hearing record to discharge its duties under the Federal Columbia River Transmission System Act. It is therefore necessary and appropriate to order a hearing as hereinafter provided.

The Commission orders: (A) The Commission conditionally confirms and approves BPA's proposed transmission rates submitted herein through June 30, 1978. The rates shall be subject to retroactive adjustment with interest in accordance with such amended or modified rates as are hereafter submitted and approved by the Commission.

(B) A public hearing shall be convened in this proceeding to determine if BPA's proposed transmission rates are consistent with the Federal Columbia River Transmission Act.

(C) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge, shall preside at the hearing in this proceeding, shall prescribe necessary procedures not provided for in this order, and shall otherwise conduct the hearing in accordance with the Commission's Rules of Practice and Procedure.

(D) The Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall conduct a prehearing conference within 30 days of the issuance of this order at 825 North Capitol Street, NE., Washington, D.C. 20426, to establish appropriate procedural dates for the conduct of this hearing.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-17638 Filed 6-20-77;8:45 am]

[Docket No. CP76-517]

NATURAL GAS PIPELINE CO. OF AMERICA

Certification of Proposed Settlement

JUNE 14, 1977.

Take notice that on June 6, 1977, Presiding Administrative Law Judge Allen C. Lande certified to the Commission a proposed Stipulation and Agreement together with the record herein. The agreement proposed by Natural Gas Pipeline Company of America (Natural) would dispose of all issues in the proceeding and permit the expansion of Natural's storage fields in Iowa and Illinois, as more fully described in record on file with the Commission and available for public inspection.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before July 1, 1977. Comments will be considered by the Commission in determining the appropriate action to be taken.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-17634 Filed 6-20-77;8:45 am]

[Docket No. CP77-410]

SEA ROBIN PIPELINE CO.

Application

JUNE 9, 1977.

Take notice that on May 25, 1977, Sea Robin Pipeline Company (Sea Robin) filed in Docket No. CP77-410, an application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act, as amended, authorizing the transportation of natural gas for Texas Eastern Transmission Corporation (Texas Eastern). Sea Robin states, that pursuant to a gas transportation agreement, it proposes to transport volumes of natural gas from Block 333, Eugene Island Area, offshore Louisiana to a delivery point onshore located at the terminus of Sea Robin's pipeline near Erath, Vermilion Parish, Louisiana. Sea Robin further states that the gas purchased by Texas Eastern in the Block 333 Field will be transported through facilities Sea Robin has been authorized to construct as a result of its certificate of public convenience and necessity issued in Docket No. CP76-428 and that it, upon completion of such facilities, will have capacity to transport such gas for Texas Eastern, all as more fully described in the application which is 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 application, on or before June 27, 1977, should file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commimssion by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a

grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-17635 Filed 6-20-77;8:45 am]

GENERAL SERVICES ADMINISTRATION

PRIVACY ACT OF 1974

Proposed Changes to a System of Records

On September 8, 1976, there was published in the FEDERAL REGISTER (41 FR 38088 through 38145) annual notices of systems of records pursuant to the provisions of the Privacy Act of 1974, Public Law 93-579, 5 U.S.C. 552a. This notice proposes changes to the system of records identified as "Employee related files GSA/NARS-10," system identification number 23-00-0055, 41 FR 38113. The changes will (1) add records containing military service data on National Personnel Records Center (St. Louis) employees and their relatives, (2) allow the disclosure of the military service data to officials of the U.S. Army Reserve Components Personnel and Administration Center, and (3) add personnel type records on volunteers and uncompensated workers performing services in the National Archives and Records Service (NARS) facilities.

A report on the altered system was filed with the Speaker of the House, the President of the Senate, the Office of Management and Budget, and the Privacy Protection Study Commission on May 26, 1977.

Any person interested in commenting on the revised routine use portions of the system of records contained in this notice may do so by submitting comments in writing to General Services Administration (BR), Washington, D.C. 20405. Comments must be submitted on or before July 21, 1977.

The full text of the amended notice of the system of records "Employee related files" is as follows:

23-00-0055 (GSA/NARS-10)

System name:

Employee related files, GSA/NARS.

System location:

The system is located in the National Archives Building, Presidential libraries, Washington National Records Center, National Personnel Records Center, Federal records centers, Federal archives and records centers, and NARS regional headquarters' offices. The addresses are listed in 41 FR 38114.

Categories of individuals covered by the system:

Employees, former employees, and volunteer and uncompensated workers of the National Archives and Records Service and relatives of employees of the National Personnel Records Center.

Categories of records in the system:

Documents accumulated by operating officials in administering personnel matters for or about employees, including but not limited to, name, home address, telephone number, work location and telephone number, social security number, date of birth, date of entry on duty, salary, grade, promotions, within grade increases, age, education, experience, biographical data, military service data, attendance, tardiness, issuance of passes and keys, work assignments, performance, work measurement, counseling, disciplinary actions, adverse actions, conduct, promotion evaluations, equal employment opportunity, labor relations, grievances, alcoholism, security clearances, letters of reference, and pictures. Documents accumulated by operating officials in administering personnel matters for or about volunteer and uncompensated workers, including but not limited to, name, home address, telephone number, work location and telephone number, social security number, date of birth, dates of service, age, education, experience, biographical data, attendance, tardiness, issuance of passes and keys, work assignments, performance, conduct, security clearances, letters of reference, and pictures. Documents which include military service data on employees of the National Personnel Records Center and their relatives accumulated by operating officials in administering the records security program at the Center. Records are primarily used by officers and employees of GSA who have a need for the records in the performance of their duties to monitor and document personnel actions; determine qualifications for promotion, related positions, and specific work assignments; for the convenience of the NARS Personnel Branch and supervisors in overseeing employee activities; to evaluate and rate performance of employees; to document disciplinary actions; to monitor grievance proceedings and EEO complaints; to prepare for adverse actions; to prepare statistical reports to measure overall performance and productivity of all employees; to conduct counseling sessions; to prepare EEO reports; to prepare staffing patterns and determine manpower requirements; to administer the use of voluntary and uncompensated personal services in NARS facilities; to administer the records security program at the National Personnel Records Center; and for use as a general management tool to oversee personnel administration of the organization.

Authority for maintenance of the system:

5 U.S.C., Part III.

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

The routine uses of records as defined in 5 U.S.C. 552a(a)(7) and provided for in 5 U.S.C. 552a(b)(3) include disclosing information to other agencies about employees seeking new employment and releasing biographical sketches about employees to other agencies when an employee activity is being publicized as well as the routine uses described in 41 FR 38114. Additionally, U.S. Army military service data relating to National Personnel Records Center (St. Louis) employees and their relatives may be disclosed to United States Army Reserve Components Personnel and Administration Center officials when required for the operation of their record security program.

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

Storage:

Paper records in card files and file folders, magnetic tape, and disks.

Retrievability:

Filed alphabetically at each location by name of individual.

Safeguards:

Buildings employ security guards and records are maintained in areas accessible only to authorized personnel of NARS.

Retention and disposal:

Records are reviewed annually, documents are updated, and irrelevant documents destroyed. Records are retained until employees are separated, then destroyed. These procedures are in accordance with the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

System manager(s) and address:

The agency official with overall responsibility for the system of records is the Archivist of the United States, National Archives Building, Eighth and Pennsylvania Avenue NW., Washington, D.C. 20408. Officials responsible for the geographically dispersed system of records are the Chief, NARS Personnel Branch, at the National Archives Building or supervisors of the employees, former employees, or volunteers at all locations. The addresses were published in 41 FR 38114.

Notification procedure:

Individuals included in this system of records may obtain information from their current supervisor or from the Chief, NARS Personnel Branch, at the appropriate address listed in 41 FR 38114.

Records access procedure:

Requests from individuals included in this system of records should be directed to their current supervisor or to the

Chief, NARS Personnel Branch, at the appropriate address listed in 41 FR 38114. Individuals making written requests should provide full name, address, and telephone number, and approximate dates and places of employment or service. For personal visits individuals should provide some acceptable form of identification such as a driver's license. Only general inquiries may be made by telephone.

Contesting record procedures:

GSA rules for access to records and for contesting the contents and appealing initial determinations are found in 41 CFR 105–64.

Records source categories:

Employees, volunteers, and supervisors.

Dated at Washington, D.C. on June 14, 1977.

PAUL S. CARTER,
Acting Director of Administration

[FR Doc.77–17597 Filed 6–20–77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Federal Council on The Aging

COUNCIL MEETING

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92–463 that the Federal Council on the Aging will meet on July 12, 1977 from 9:30 a.m. to 5 p.m. in Room 5051, HEW-North Building, 330 Independence Ave., S.W., Washington, D.C. 20201. The agenda will consist of: Evaluation of the Federal Council on the Aging.

This meeting will be open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245–0441.

CLEONICE TAVANI,
Executive Director, Federal Council on the Aging.

JUNE 14, 1977.

[FR Doc.77–17617 Filed 6–20–77;8:45 am]

TASK FORCE ON THE FRAIL ELDERLY

Meeting

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93–29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92–463 that the Council's Task Force on the Frail Elderly will meet on July 11 and July 13, 1977 from 9:00 a.m. to 5:00 p.m. in Room 303–305A, HEW-South Portal Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

The agenda will consist of: Status report on frail elderly sessions at the annual meeting of the Gerontological Society; Administrative location of services to the frail elderly; Comments from national provider organizations on FCA frail elderly proposals; Status report on FCA minority research project; and Work plan for 1977.

This meeting will be open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: (202) 245–0441.

CLEONICE TAVANI,
Executive Director, Federal Council on the Aging.

JUNE 13, 1977.

[FR Doc.77–17616 Filed 6–20–77;8:45 am]

Food and Drug Administration

[Docket No. 76N–0338; DESI 11525]

INDOCYANINE GREEN INJECTION

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice

AGENCY: Food and Drug Administration (FDA).

ACTION: Notice.

SUMMARY: This notice sets forth the conditions for marketing indocyanine green injection for the indications for which it is regarded as effective. The drug is used as a diagnostic agent.

DATES: Supplements to approved NDA's due on or before August 22, 1977.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 11525, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements (identify with NDA number): Division of Cardio-Renal Drug Products (HFD–110), Rm. 16B–30, Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Requests for the report of the National Academy of Sciences-National Research Council: Public Records and Document Center (HFC–18), Rm. 4–62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD–501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Herbert Gerstenzang, Bureau of Drugs (HFD–32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857 (301–443–3650).

SUPPLEMENTARY INFORMATION: In a notice (DESI 11525) published in the FEDERAL REGISTER of July 30, 1970 (35 FR 12231), the Food and Drug Administration announced its conclusions that the drug product described below is (1) effective for measurement of hepatic blood flow and for measurement of cardiac output; and (2) probably effective for use in determining hepatic function. On March 8, 1974, Hynson, Wescott & Dunning Inc., holder of the new drug application for the product, submitted data concerning the drug. While the data did not provide substantial evidence of effectiveness of the drug in determining hepatic function, other data available to the Bureau of Drugs do support that use. On May 2, 1974, the firm supplemented its new drug application to provide for the indication ophthalmic angiography. The data submitted were evaluated and determined to provide substantial evidence of effectiveness for that indication. This notice announces those conclusions and the conditions under which the drug may be marketed for the indications for which it is now regarded as effective.

Accordingly, the July 30, 1970 notice is amended as follows:

NDA 11–525; Cardio-Green Sterile Powder for Injection containing indocyanine green; Hynson, Westcott & Dunning, Inc., Charles and Chase Sts., Baltimore, MD 21201.

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the holder(s) of the new drug application(s) specifically named above, this notice applies to all persons who manufacture or distribute a drug product, not the subject of an approved new drug application, that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product he manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes that may be identical, related, or similar to a drug product named in this notice by writing to the Food and Drug Administration, Division of Drug Labeling Compliance (HFD–310).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications listed in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug is in sterile powder form suitable, after reconstitution, for parenteral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

For determining cardiac output, hepatic function, and liver blood flow, and for ophthalmic angiography.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued *provided*, That, on or before August 22, 1977, the holder of the application submits, if he has not previously done so, (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such product. Marketing prior to approval of a new drug application will subject such products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70) (recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)).

Dated: June 6, 1977.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc.77-17584 Filed 6-20-77;8:45 am]

PHILIPS ROXANE, INC.

Hexederm, Derma-Hex, and Fun-Jex Sprays; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document withdraws approval of a new animal drug application (NADA) providing for use of certain anti-infective sprays as an aid in treating certain skin disorders of dogs, cats, and horses.

EFFECTIVE DATE: June 21, 1977.

FOR FURTHER INFORMATION CONTACT:

Walter L. Sessions, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857 (301-443-4093).

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84, formerly 21 CFR 5.29 prior to recodification published in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553)), the following notice is issued:

NADA 12-915V held by Philips Roxane, Inc., St. Joseph, MO 64502, provides for the use of Hexederm, Derma-Hex, and Fun-Jex Sprays on dogs, cats, and horses as an aid in the treatment of ringworm, otitis externa, primary and secondary skin infections caused by or complicated by susceptible bacteria and fungii, as well as nonspecific skin infections.

Philips Roxane, Inc., has requested, by letter dated March 7, 1977, that approval of the NADA be withdrawn and has waived an opportunity for a hearing because the product is no longer being marketed.

Therefore, in accordance with § 514.115 (21 CFR 514.115), notice is given that approval of NADA 12-915V and all supplements and amendments thereto are hereby withdrawn, effective June 21, 1977.

Dated: June 13, 1977.

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

[FR Doc.77-17583 Filed 6-20-77;8:45 am]

Office of Education

NATIONAL ADVISORY COMMITTEE ON BLACK HIGHER EDUCATION AND BLACK COLLEGES AND UNIVERSITIES

Establishment

The Secretary of Health, Education, and Welfare has determined the establishment of the National Advisory Committee on Black Higher Education and Black Colleges and Universities, as identified hereinafter, to be in the public interest, and necessary and appropriate to provide advice to the Secretary and Commissioner of Education. The Committee is established in accordance with and will be governed by the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

1. *Designation*—National Advisory Committee on Black Higher Education and Black Colleges and Universities.

2. *Establishment date and date of termination.*—The Committee was established December 22, 1976, and will terminate two years from that date unless renewed by appropriate action prior to its expiration.

3. *Purpose.*—To examine all approaches to higher education of black Americans as well as the needs of historically black colleges and universities.

4. *Membership.*—The Committee will be composed of 15 members knowledgeable about higher education of blacks, the historically black colleges and universities, and/or the economics, educational, societal, and political realities in which public policy is made. At least five shall be presidents of black colleges and at least one shall be from the businesss sector.

5. *Meetings.*—Notice of all meetings, to be held not less than four times each year, will be given to the public in accordance with the Federal Advisory Committee Act.

ANN V. BAILEY,
Committee Management Officer, Office of Education.

[FR Doc.77-16759 Filed 6-20-77;8:45 am]

Office of the Secretary

NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

Request for Nomination of Members

As a result of the June 10, 1977, decision of the Secretary to stagger membership of the National Professional Standards Review Council, there are now four vacancies existing on the Council and request is hereby made for nomination of members to fill those vacancies.

The National Professional Standards Review Council was established in 1973 pursuant to Section 1163 of Pub. L. 92-603 (5 U.S.C. 101 *et seq.*). Section 1163 (a) and (b) of the Law require that the Council be composed of the following: eleven physicians of recognized standing and distinction in the appraisal of medical practice, not otherwise in the employ of the United States; a majority of which shall have been recommended by national organizations recognized by the Secretary as representing practicing physicians; including physicians recommended by consumer groups and other health care interests. Members are appointed for three years and are eligible for reappointment.

Any interested organization or individual may, therefore, nominate one or more qualified persons for membership to the Council. A complete curriculum vitae on the nominee must be included. Nominations shall state that the nominee is aware of the nomination and is willing to serve as a member of the Council.

Nominations should be submitted to Mr. William D. Coughlan, Staff Director, National Professional Standards Review Council, Room 16A-09, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-4990, no later than June 30, 1977.

Dated: June 17, 1977.

JAMES F. DICKSON III,
Acting Assistant Secretary for Health.

[FR Doc.77-17760 Filed 6-20-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 978]

CHOCOLATE MOUNTAIN AERIAL GUNNERY RANGE, SAN BERNARDINO MERIDIAN, CALIF.

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

JUNE 13, 1977.

The U.S. Navy, Department of Defense filed application Serial No. CA 978 on January 21, 1974, for a withdrawal in relation to the following described lands:

CHOCOLATE MOUNTAIN AERIAL GUNNERY RANGE

SAN BERNARDINO MERIDIAN, CALIFORNIA

T. 9 S., R. 16 E.,
Sec. 20, S½NW¼SW¼, SW¼SW¼, W½
Secs. 22, 24, and 26, All;
Sec. 28, E½ and E½W½;
Sec. 34, All.
T. 9 S., R. 17 E.,
Sec. 20 S½NW¼SW¼, SW¼SW¼, W½ SE¼SW¼, and SE¼SE¼SW¼;
Sec. 26, All;
Sec. 28, NE¼NE¼, S½NE¼, and S½;
Secs. 30, 32, and 34, All.
T. 10 S., R. 15 E.,
Sec. 22, SE¼;
Secs. 24 and 26, All;
Sec. 28, E½ and SW¼;
Sec. 28 E½ and SW¼;
Sec. 34, All.
T. 10 S., R. 16 E.,
Sec. 8, NE¼, E½NW¼, SW¼NW¼, and S½;
Secs. 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, and 34, All.
T. 10 S., R. 17 E.,
Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, and 34, All.
T. 10 S., R. 18 E.,
Secs. 6, 8, 18, 20, 22, 26, 28, 30, 32, and 34, All.
T. 10 S., R. 19 E.,
Sec. 32, All.
T. 11 S., R 15 E.,
Secs. 2 and 12, All.
T. 11 S., R. 16 E.,
Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, and 34, All.
T. 11 S., R. 17 E.,
Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, and 34, All.
T. 11 S., R. 18 E.,
Secs. 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, and 34, All.
T 11 S., R. 19 E.,
Secs. 4, 6, 8, 10, 14, 18, 20, 22, 26, 28, 30, 32, and 34, All.
T. 12 S., R. 16 E.,
Secs. 2 and 12, All.
T. 12 S., R. 17 E.,
Secs. 2, 4, 6, 8, 10, 12, 13, and 14, All;
Sec. 15, S½;
Sec. 17, S½;
Secs. 18, 20 21, 22, 23, 24, 25, 26, 27, 28, and 35, All.
T. 12 S., R. 18 E.,
Secs. 2, 4, 6, 8, 10, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, All.
T. 12 S., R. 19 E.,
Secs. 2, 4, 6, 8, and 10, All;
Sec. 15, N½SW¼, SE¼SW¼, and SE¼;
Sec. 17, S½;
Secs. 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34, All.
T. 13 S., R. 18 E.,
Secs. 1, 2, 3, 4, 5, and 6, All;
Sec. 8, E½;
Secs. 9, 10, and 11, All.
T. 13 S., R. 19 E.,
Sec. 5, N½;
Sec. 6, N½.

The above described area contains approximately 133,148 acres of national resource land. The lands are located in the Chocolate Mountains, Imperial County, California.

Within this withdrawal there is 117,-763.00 private acreage, making a total of approximately 250,911.00 lands.

The applicant desires the continued use of the land to provide for aerial gunnery range facilities for the training of fleet air craft units.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on July 15, 1975, pages 29737 and 29738, FR Doc. 75–18248.

Pursuant to sec. 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing to the State Director, Bureau of Land Management, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, on or before July 25, 1977. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before July 25, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws (30 U.S.C. Ch. 2), and the mineral leasing laws, and disposal of material under the Act of July 31, 1947, as amended (61 Stat. 681; 30 U.S.C. 601–604), to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc.77–17649 Filed 6–20–77;8:45 am]

IDAHO

Redelegation of Authority

Pursuant to the authority contained in section 1.1(a) of BLM Order 701, dated July 23, 1964, as amended, I hereby redelegate to the District Managers, State of Idho, certain functions of section 1.2(j) of the above cited order.

District Managers may take necessary action for the protection from fire (prevention, presuppression, and suppression) on the public lands within their area of jurisdiction. This authority includes entering into supplemental agreements within the framework of the master agreements between the State Director, the State of Idaho, and Region 1 and 4, U.S. Forest Service.

The District Managers may provide emergency fire protection within their respective district boundaries under the regulations in 43 CFR, Part 28.

This authority may be redelegated and must be published in the FEDETAL REGISTER.

WILLIAM L. MATHEWS
State Director.

Approved: June 13, 1977.
GEORGE L. TURCOTT,
Associate Director.

[FR Doc.77–17652 Filed 6–20–77;8:45 am]

MOUNT DIABLO MERIDIAN, CALIF.

[CA 977]

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

JUNE 10, 1977.

The Forest Service, U.S. Department of Agriculture, filed application Serial No. CA 977 on January 28, 1974, for a withdrawal in relation to the following described lands:

MOUNT DIABLO MERIDIAN, CALIFORNIA

T. 20 N., R. 11 W.,
Beginning at a point on the East line of Sec. 1, T. 20 N., R. 11 W., M.D.M., which point lies approximately 3,500 feet North of the Southeast corner of Sec. 1, thence westerly through Lot 7 of said Sec. 1 to a point on the West line of Lot 7, which point lies approximately N. 38°30' E., 4,040 feet from the Southwest corner of Sec. 1. (Parcel 1)
Beginning at a point on the South line of Lot 5 of Sec. 1, T. 20 N., R. 11 W., M.D.M., which point lies approximately N. 23°00' E., 4,050 feet from the Southwest corner of Sec. 1, thence northerly through Lot 5 of said section to a point on the South line of Lot 3, which point lies approximately S. 77°30' E., 2,000 feet from the Northwest corner of Sec. 1, thence northwesterly through said Lot 3 to a point on the North line, which point lies approximately East, 1,750 feet from the Northwest corner of said section. (Parcel 2)

The area described aggregates 6 acres in Mendocino County, California.

The applicant desires the land for a road right-of-way to provide safe vehicle access to approximately 8,500 acres of public lands. About 4,700 acres of the total are timber producing lands and logs from these lands will be hauled to milling points over this road. The road also provides access to recreationists.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on November 29, 1974, page 41557, FR Doc. 74–27885.

Pursuant to Sec. 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a

written request for a hearing to the State Director, Bureau of Land Managament, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, on or before July 20, 1977. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before July 20, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws nor disposal of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604), as amended, for the purpose of granting easements for road rights-of-way as authorized by Section 2 of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532, 533), to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc.77–17650 Filed 6–20–77;8:45 am]

MOUNT DIABLO MERIDIAN, CALIF.

[R 4583]

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

JUNE 10, 1977.

The Sacramento District, Corps of Engineers, U.S. Department of the Army, Sacramento, California, filed application Serial No. R 4583 on December 28, 1971, for a withdrawal in relation to the following described lands:

MOUNT DIABLO MERIDIAN, CALIFORNIA

A parcel of land situated in the SE¼SE¼ of Sec. 7, T. 26 S., R. 33 E., M.D.M., California, described as follows:

Beginning at the section corner common to Secs. 7, 8, 17, and 18, said township and range, marked by a found 3-inch x 3-inch Redwood Hub in a rock mound; Thence, westerly along section line common to Secs. 7 and 18, 749.32 feet to the easterly right-of-way line of State Highway No. 155 as recorded with the Bureau of Land Management as Parcel 63628 to Department of Public Works, State of California; Thence, along said easterly right-of-way line N. 10°18' E., 465.99 feet; Thence, N. 13°52'35" E., 400.78 feet; Thence, N. 07°17'53" E., 477.39 feet to the intersection of said easterly line and the northerly line of the SE¼SE¼ of said Sec. 7; Thence, leaving said easterly right-of-way, east along said northerly line of said SE¼SE¼ 508.43 feet to the northeast corner of said SE¼SE¼; Thence, S. 00°02'07" E., along the section line common to said Secs. 7 and 8, 1321.08 feet to the point of beginning, containing 18.82 acres, more or less, in Kern County.

The applicant desires the land for its use in connection with the Boulder Gulch Recreation Area at Isabella Lake in Kern County, California.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on January 20, 1972, page 887, FR Doc. No. 72–829.

Pursuant to Sec. 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing to the State Director, Bureau of Land Management, E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, on or before July 20, 1977. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before July 20, 1977.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws (30 U.S.C., Ch. 2), to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Lands and Minerals Operations.

[FR Doc.77–17648 Filed 6–20–77;8:45 am]

[NM 30834]

NEW MEXICO

Application

JUNE 13, 1977.

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

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 28 N., R. 6 W.
Sec. 20, NW¼NE¼.

This pipeline will convey natural gas across 0.045 of a mile of public land in Rio Arriba County, New Mexico.

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

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

STELLA V. GONZALES,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77–17653 Filed 6–20–77;8:45 am]

[Oil and aGs Lease Sale No. 47]

OUTER CONTINENTAL SHELF OFF LOUISIANA AND TEXAS

Withdrawal of Tracts

JUNE 23, 1977.

On May 23, 1977, at 42 FR 26250, announcement was published for Oil and Gas Lease Sale No. 47 on Outer Continental Shelf lands off Louisiana and Texas. The sale is to take place June 23, 1977, in New Orleans. A correction notice was published May 25, 1977, at 42 FR 26705, dealing with certain printing errors made in the May 23, 1977, publication.

Both those notices are hereby amended to delete the following two tracts:

1. Tract 47–197.
2. Tract 47–230.

Bids on these two tracts will not be considered.

ARNOLD E. PETTY,
Acting Associate Director, Bureau of Land Management.

Approved: June 16, 1977.

HEATHER ROSS,
Acting Deputy Assistant, Secretary of the Interior.

[FR Doc.77–17668 Filed 6–17–77;9:40 am]

QUALIFIED JOINT BIDDERS AT OCS SALES

Supplemental List

On May 5, 1977, the Director, Bureau of Land Management (BLM), published

in the FEDERAL REGISTER at 42 FR 22939 a list of all the persons who had timely filed appropriate Statements of Production in accordance with 43 CFR 3302.3–2 (a) which had qualified them to bid jointly at OCS oil and gas lease sales held during the bidding period May 1, 1977, through October 31, 1977.

Subsequently, on May 17, 1977, an announcement appeared in the FEDERAL REGISTER at 42 FR 25385 to the effect that the Director (BLM) would accept as timely any appropriate Statement of Production for the applicable production period which was filed before the close of business on June 14, 1977. It was stated that such Statement would qualify the person filing to bid jointly at all OCS oil and gas lease sales held between May 1, 1977, and October 31, 1977. The following companies and individuals have filed acceptable Statements during that extension of time and are now qualified to be added to the list published on May 5, 1977:

Aminoil Development, Inc.
Aminoil U.S.A., Inc.
Anadarko Production Co.
Aztec Oil and Gas Company
Belco Petroleum Corporation
Clark Oil Producing Co.
Colorado Oil Company, Inc.
Cypher Energy Corporation
Eason Oil Company
Elizabethtown Gas Company
Energy Ventures, Inc.
Equity Oil Company
Freeport Petroleum Company
Gas Producing Enterprises, Inc.
Halbouty Alaska Oil Company
Hudbay Exploration, Inc.
Juniper Petroleum Corporation
Kewanee Oil Company
Offshore Company, The
OKC Corporation
Pan Eastern Exploration Company
Rio Bravo Oil Co., Inc.
Robert F. Walker
Ronald C. Eddington
Rutherford Oil Corporation
Southland Royalty Company

GEORGE L. TURCOTT,
Associate Director,
Bureau of Land Management.

JUNE 16, 1977.

[FR Doc.77-17669 Filed 6-17-77;9:40 am]

[CA 3653]

SHASTA-TRINITY NATIONAL FOREST, SHASTA MUDFLOW NATURAL AREA, MOUNT DIABLO MERIDIAN, CALIF.

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

JUNE 10, 1977.

The Forest Service, U.S. Department of Agriculture, filed application Serial No. CA 3653 on April 22, 1976, for a withdrawal in relation to the following described lands:

SHASTA-TRINITY NATIONAL FOREST

SHASTA MUDFLOW NATIONAL AREA, MOUNT DIABLO MERIDIAN, CALIF.

T. 40 N., R. 2 W., M.D.M.,
Sec. 8, W½W½NE¼, W½, and W½SE¼;
Sec. 16, SW¼NW¼, W½SW¼, SE¼SW¼, and S½SW¼SE¼;
Sec. 17, E½SE¼;
Sec. 20, E½E½;
Sec. 21, NW¼NE¼NE¼, S½NE¼NE¼, W½E½, W½, and SE¼SE¼;
Sec. 22, SW¼NW¼, SW¼SE¼NW¼, SW¼, S½SW¼SE¼, NW¼SW¼SE¼, and SW¼NW¼SE¼;
Sec. 27, W½NE¼NE¼, NW¼NE¼, SW¼NE¼, NW¼SE¼NE¼, NW¼ NE¼SW¼, NW¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼, and NW¼NW¼SE¼;
Sec. 28, All;
Sec. 29, E½;
Sec. 32, NE¼;
Sec. 33, N½;
Sec. 34, W½W½NW¼.
The area aggregates 3,530 acres of land in Siskiyou County, California.

The applicant desires the land to protect the Shasta Mudflow Research Natural Area within the Shasta-Trinity National Forest.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on May 27, 1976, page 21655, FR Doc. No. 76–15398.

Pursuant to Sec. 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written resuest for a hearing to the State Director, Bureau of Land Management, E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, on or before July 20, 1977. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before July 20, 1977.

The above described lands are temporarily segregated from all forms of location and entry under the mining laws (30 U.S.C., Ch. 2), to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with Section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the undersigned, Bureau of Land Management, Department of the Interior, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

JOAN B. RUSSELL,
Chief, Lands Section, Branch of Minerals Operations.

[FR Doc.77-17651 Filed 6-20-77;8:45 am]

[Wyoming 59406]

WYOMING

Application

JUNE 13, 1977.

Notice is hereby given that pursuant to the Act of May 24, 1928, 49 U.S.C. 211–214, Robert B. Yates has applied for an airport lease for the following national resource lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 52 N., R. 94 W.,
Tracts 48–A, –B, –C, –D, and 50–A.
T. 52 N., R. 95 W.,
Tracts 50–B and –C.
The lands described contain 235.03 acres.

The purpose of this notice is to inform the public that the filing of this application segregates the described lands from all other forms of use or disposal under the public laws.

Interested persons desiring to express their views should promptly send their comments together with their name and address to the District Manager, Bureau of Land Management, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

DELMAR D. VAIL,
Acting State Director.

[FR Doc.77-17593 Filed 6-20-77;8:45 am]

[Wyoming 59423]

WYOMING

Application

JUNE 13, 1977.

Notice is hereby given that pursuant to Section 28 of the Minerals Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct an 8" O.D. pipeline for the purpose of transporting natural gas across the following described national resource lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

Sec. 6, lot 11, S½N¼, NE¼SE¼,
T. 18 N., R. 97 W.,

The pipeline will transport natural gas from an existing well located in the SW¼ of Section 5, T. 18 N., R. 97 W. to the point of connection with an existing natural gas line in Section 1, T. 18 N., R. 98 W., all in Sweetwater County, Wyoming.

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

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

HAROLD G. STINCHCOMB,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-17594 Filed 6-20-77;8:45 am]

National Park Service

[Order No. 8]

ADMINISTRATIVE OFFICER AND GENERAL SUPPLY SPECIALIST, MAMMOTH CAVE NATIONAL PARK, KY.

Delegation of Authority Regarding Execution of Contracts for Construction, Supplies, Equipment, and Services

1. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts and issue purchase orders not in excess of $100,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. Orders to GSA Centers and sources under established Federal Supply Schedules of Contracts or to other Federal agencies may exceed this amount.

2. *General Supply Specialist.* The General Supply Specialist may execute, approve, and administer contracts and issue purchase orders not in excess of $100,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to the availability of appropriated funds. Orders to GSA Centers and sources under established Federal Supply Schedules of Contracts or to other Federal agencies may exceed this amount.

3. *Redelegation.* The authority delegated in this Order No. 8 may not be redelegated.

4. *Revocation.* This order supersedes Order No. 7, dated July 23, 1975 (40 FR 55372) and published November 28, 1975. (National Park Service Order No. 77 (38 FR 7478) as amended; Southeast Region Order No. 5 (37 FR 7721) as amended.)

Dated: March 1, 1977.

ALBERT A. HAWKINS,
Superintendent,
Mammoth Cave National Park.

[FR Doc.77-16748 Filed 6-20-77;8:45 am]

[Order 7]

ASSISTANT SUPERINTENDENT, ET AL., GREAT SMOKY MOUNTAINS NATIONAL PARK, TENNESSEE-NORTH CAROLINA

Delegation of Authority

SECTION 1. *Assistant Superintendent.* The Assistant Superintendent may execute, approve, and administer contracts not in excess of $500,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the Assistant Superintendent in behalf of any office or area administered by the Great Smoky Mountains National Park.

SEC. 2. *Administrative Officer.* The Administrative Officer may execute, approve, and administer contracts not in excess of $500,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the Administrative Officer in behalf of any office or area administered by the Great Smoky Mountains National Park.

SEC. 3. *General Supply Officer.* The General Supply Officer may execute, approve and administer contracts not in excess of $500,000 for construction, supplies, equipment, and services in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds. This authority may be exercised by the General Supply Office in behalf of any office or area administered by the Great Smoky Mountains National Park.

SEC. 4. *General Supply Assistant.* The General Supply Assistant may issue purchase orders not in excess of $10,000 for supplies and equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 5. *Supply Clerk.* The Supply Clerk may issue purchase orders not in excess of $2,000 for supplies and equipment in conformity with applicable regulations and statutory authority and subject to availability of appropriated funds.

SEC. 6. *Revocation.* This order supersedes Order No. 6 issued July 18, 1975 and published in 40 FR 30295. (National Park Service Order No. 77 (38 FR 7478), published March 22, 1973, as amended, and Order No. 5, Superintendents, et al., Southeast Region (37 FR 7721) as amended.)

BOYD EVISON,
Superintendent, Great Smoky
Mountains National Park.

JANUARY 20, 1977.

[FR Doc.77-16749 Filed 6-20-77;8:45 am]

BIGHORN CANYON NATIONAL RECREATION AREA, MINING PLAN OF OPERATION

Availability

Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, American Colloid Company has filed a plan of operation in support of proposed mining activities on lands embraced by mining claim locations within the Bighorn Canyon National Recration Area. This plan is available for public inspection during normal business hours at the Bighorn Canyon National Recreation Area Headquarters, 5 Avenue B, Fort Smith, Montana.

Dated: May 17, 1977.

HOMER L. ROUSE,
Superintendent, Bighorn Canyon
National Recreation Area.

[FR Doc.77-16744 Filed 6-20-77;8:45 am]

[Order 91]

CHIEF, OFFICE OF ARCHEOLOGY AND HISTORIC PRESERVATION

Redelegation of Authority

SECTION 1. *Redelegation.* The Chief, Office of Archeology and Historic Preservation, National Park Service, Washington, D.C., hereby redelegates to the Keeper of the National Register the authority to expand and maintain a national register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture, known as the National Register, with authority to make determinations as to the eligibility of districts, sites, buildings, structures, and objects for inclusion in such register.

SEC. 2. The authority redelegated by this order is retroactive to April 13, 1977, the date of National Park Service Order 90, which was published April 21, 1977 (42 FR 20682).

Dated: May 31, 1977.

JERRY L. ROGERS,
Chief, Office of Archeology
and Historic Preservation.

[FR Doc.77-16745 Filed 6-20-77;8:45 am]

GREEN SPRINGS HISTORIC DISTRICT, LOUISA COUNTY, VIRGINIA

Negative Declaration for Acceptance of Preservation Easements

By publication in the FEDERAL REGISTER on May 18, 1977, notice was given of the policies and procedures of the Department of the Interior for consideration of acceptance of a donation of preservation easements connected with certain lands located within the Green Springs Historic District, Louisa County, Virginia. Among other matters, such policies and procedures call for an environmental assessment of such action and subsequent promulgation of either an environmental impact statement or notice of negative declaration as appropriate. The Office of Archeology and Historic Preservation, National Park Service, has completed the environmental assessment and upon review thereof has determined that an environmental impact statement on the proposed action is not required.

Basically, the environmental assessment states that the proposed action is to accept a donation of existing preservation easements applicable to some 6,100 of the district's 14,000 acres. The easements generally call for continuation of existing land uses and preservation of existing structures. Upon acceptance, the Department would administer and enforce the easements pursuant to their terms. Alternatives considered in the assessment are (1) not to accept the easements and (2) to encourage the easements to be donated to a State or private agency rather than the Federal government. The assessment and review

consider the nature of the resource, alternatives, mitigating factors and adverse effects.

The environmental assessment and review are on file and available upon request from the Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, Washington, D.C. 20240. Anyone desiring to comment upon the proposed action, the environmental assessment or environmental review, should put their comments in writing and send them to the Chief, Office of Archeology and Historic Preservation at the above address prior to or at a public meeting, notice of which is hereby given and which is scheduled to be held on July 27, 1977, at an hour and place to be announced. The intent of the meeting is to receive oral comments on the assessment and to discuss with interested persons the issues involved. The decision of the Secretary on the acceptance of the donation of easements will not be made until after the public meeting and the review of oral and written comments received.

Dated: June 16, 1977.

REX C. WILSON,
Chief, Office of Archeology and Historic Preservation.

[FR Doc.77-16741 Filed 6-20-77;8:45 am]

KLONDIKE GOLD RUSH NATIONAL HISTORIC PARK

Site Selection

Notice is hereby given that, pursuant to provisions of Public Law 94-323(a), 94th Congress S. 98, June 30, 1976, the site for the Seattle Unit of Klondike Gold Rush National Historical Park is at 117 South Main Street, Seattle, Washington, within the Pioneer Square Historic District in Seattle as depicted on a drawing entitled "Pioneer Square Historic District," numbered 20,010-B and dated May 19, 1973, on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The site is the location of the Union Trust Annex building, in which structure the Seattle Unit of Klondike Gold Rush National Historical Park occupies by lease agreement approximately 3,500 square feet of the first, or ground level floor.

Information about the Seattle Unit of Klondike Gold Rush National Historical Park may be obtained by writing to Seattle Unit, Klondike Gold Rush National Historical Park, % Pacific Northwest Regional Office, National Park Service, 601 Fourth and Pike Building, Seattle, Washington 98101. The environmental impacts of this action were considered and are described in a Final Environmental Statement filed with the Council on Environmental Quality on December 14, 1974.

EDWARD J. KURTZ,
Acting Regional Director, Pacific Northwest Region.

[FR Doc.77-16743 Filed 6-20-77;8:45 am]

MINUTE MAN NATIONAL HISTORICAL PARK

Establishment of Visiting Hours

It has been determined that the establishment of visiting hours is necessary for the protection of the area and the safety and welfare of visitors and property.

Therefore, in accordance with the authority delegated to me by § 2.6(a), Title 36 Code of Federal Regulations, visiting hours have been established for Minute Man National Historical Park, as follows: All areas within the Park are open to the public between the hours of 5 a.m. and 10 p.m. Appropriate signs advising visitors have been posted.

Dated: April 13, 1977.

ROBERT NASH,
Superintendent, Minute Man National Historical Park.

[FR Doc.77-16747 Filed 6-20-77;8:45 am]

NATIONAL HISTORIC LANDMARKS PROGRAM

Boundary Establishment

In the May 5, 1977, issue of the FEDERAL REGISTER (42 FR 22941), the National Park Service published a notice advising interested persons that specfic boundaries are being established for national historic landmarks designated prior to 1970. Interested persons were given until June 4, 1977, to submit written comments. All comments submitted with respect to the establishment of national historic landmark boundaries were given due consideration.

The purpose of this notice is to advise interested persons that specific boundaries have now been established for the following national historic landmarks. Any individual wishing to obtain information concerning the specific boundaries may write to the Chief, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, Washington, D.C. 20240.

National historic landmarks for which specific boundaries have been established are:

CONNECTICUT

Barnard, Henry, House, 118 Main Street, Hartford, Hartford County.
"Charles W. Morgan," Mystic Seaport, Mystic, New London County.
Connecticut Agricultural Experiment Station, 123 Huntington Street, New Haven, New Haven County.
Connecticut Hall, Yale University, Bounded by High, Chapel, Elm, and College Streets, New Haven, New Haven County.
Dana, James Dwight, House, 24 Hillhouse Avenue, New Haven, New Haven County.
Marsh, Othniel C., House, 360 Prospect Street, New Haven, New Haven County.
Old Statehouse, Main Street at Central Row, Hartford, Hartford County.
Remington, Frederick, House, Ridgefield, Fairfield County.
Rogers, John, Studio, 10 Cherry Street, New Canaan, Fairfield County.
Trumbull, John, Birthplace (Governor Jonathan Trumbull House), The Common, Lebanon, New London County.
Twain Mark, Home, 351 Farmington Avenue, Hartford, Hartford County.
Webb, Joseph, House, 211 Main Street, Wethersfield, Hartford County.
Webster, Noah, Birthplace, 227 S. Main Street, West Hartford, Hartford County.

DELAWARE

Aspendale, 1 mile west of Kenton on Del. 300, Kent County.
Corbit-Sharp House, southwest corner of Main and 2nd Streets, Odessa, New Castle County.
New Castle Historic District, bordered by Harmony Street, The Strand, Third and Delaware Streets, New Castle, New Castle County.

ILLINOIS

Old Kaskaskia Village, 4 miles west of Ottawa on U.S. 6, La Salle County.

IOWA

Phipps Site, 3 miles north of Cherokee, Cherokee County.
Toolesboro Mound Group, north of Toolesboro, Louisia County.

MARYLAND

Accokeek Creek Site, opposite Mount Vernon on the Potomac River, west of Piscataway Park, Accokeek vicinity, Prince Georges County.
Brice House, 42 East Street, Annapolis, Anne Arundel County.
Chase-Lloyd House, 22 Maryland Avenue, Annapolis, Anne Arundel County.
Colonial Annapolis Historic District, district boundaries approximate the city boundaries surveyed in 1695, Annapolis, Anne Arundel County.
Ellicott City Station, just south of the Patapsco River Bridge, Ellicott City, Howard County.
Hammond-Harwood House, Maryland Avenue and King George Street, Annapolis, Anne Arundel County.
His Lordship's Kindness, 3.5 miles west of Rosaryville, Prince Georges County.
London Town Publik House, northeast of Woodland Beach at the end of Londontown Road, Anne Arundel County.
Maryland Statehouse, State Circle, Annapolis, Anne Arundel County.
Peale's Baltimore Museum, 225 N. Holliday Street, Baltimore City.
Poe, Edgar Allan, House, 203 Amity Street, Baltimore City.
St. Marys City Historic District, bounded by St. Marys River, St. Inigoes Creek, Broome Creek, and Chancellor's Creek, St. Marys County.
Star Spangled Banner Flag House, 844 E. Pratt Street, Baltimore City.
Thomas Viaduct, Baltimore and Ohio Railroad, over the Patapsco River between Relay and Elkridge, Baltimore and Howard Counties.
Tulip Hill, 2.5 miles west of Galesville on Owensville Road, Anne Arundel County.
U.S.S. Constellation, Pier 1, Pratt Street, Baltimore City.
Whitehall, off St. Margaret's Road, Annapolis, Anne Arundel County.

MASSACHUSETTS

American Antiquarian Society, 185 Salisbury Street, Worcester, Worcester County.
Bowditch, Nathaniel, Home, North Street, Salem, Essex County.
Buckman Tavern, Hancock Street, on the east side of Lexington Green, Lexington, Middlesex County.
Coffin, Jethro, House, Sunset Hill, Nantucket, Nantucket County.
Elmwood (James Russell Lowell Home), Elmwood Avenue, Cambridge, Middlesex County.
Emerson, Ralph Waldo, Home, Lexington Road and Cambridge Turnpike, Concord, Middlesex County.

French, Daniel Chester, Home and Studio (Chesterwood), 2 miles west of Stockbridge, Berkshire County.
Gray, Asa, House, 88 Garden Street, Cambridge, Middlesex County.
Lexington Green, Massachusetts and Hancock Streets, Lexington, Middlesex County.
Massachusetts Statehouse, Beacon Hill, Boston, Suffolk County.
Mission House, Main Street, Stockbridge, Berkshire County.
Nantucket Historic District, Nantucket Island, Nantucket County.
Orchard House, Lexington Road, Concord, Midlesex County.
Walden Pond, 1.5 miles south of Concord, Middlesex County.
Whittier, John Greenleaf, Home, 86 Friend Street, Amesbury, Essex County.
Wright's Tavern, Lexington Road, opposite the Burying Ground, Concord, Middlesex County.

MICHIGAN

Fair Lane (Henry Ford Estate), 4901 Evergreen Road, Dearborn, Wayne County.
Fort Michilimackinac, near Mackinac Bridge, at the terminus of U.S. 31, Mackinaw City, Cheboygan County.
Norton Mound Group, 2 miles south of Grand Rapids on Indian Mound Drive, Kent County.

NEW YORK

Boughton Hill, 1.25 miles south of Victor, Ontario County.
Lamoka, 2 miles west of Tyrone at northern edge of Lamoka Lake, Schuyler County.

OHIO

Beginning Point of the U.S. Public Land Survey, on the Ohio-Pennsylvania boundary, East Liverpool, Columbiana County.
Fort Ancient, 7 miles southeast of Lebanon on Ohio 350, Fort Ancient State Memorial, Warren County.
Hopeton Earthworks, near Mound City Group National Monument on U.S. 23, Hopeton vicinity, Ross County.
Miami and Erie Canal (Deep Cut), 2 miles south of Spencerville on Ohio 66, Allen County.
Newark Earthworks, Mound Builders State Memorial, Newark, Licking County.
Serpent Mound, 5 miles northwest of Locust Grove on Ohio 73, Adams County.

PENNSYLVANIA

American Philosophical Society Hall, Independence Square, Philadelphia, Philadelphia County.
Augustus Lutheran Church, 7th Avenue East and Main Street, Trappe, Montgomery County.
Bartram, John, House, 54th Street and Eastwick Avenue, Philadelphia, Philadelphia County.
Carpenters' Hall, 320 Chestnut Street, Philadelphia, Philadelphia County.
Chew House (Cliveden), Germantown Avenue, between Johnson and Cliveden Streets, Philadelphia, Philadelphia County.
Christ Church, 2nd Street, between Market and Filbert Streets, Philadelphia, Philadelphia County.
Colonial Germantown Historic District, Germantown Avenue, between Windrim Avenue and Upsal Street, Philadelphia, Philadelphia County.
Eakins, Thomas, House, 1729 Mount Vernon Place, Philadelphia, Philadelphia County.
Eastern State Penitentiary, 21st Street and Fairmount Avenue, Philadelphia, Philadelphia County.
Graeme Park, Keith Valley Road, Horsham vicinity, Montgomery County.
Institute of the Pennsylvania Hospital, 111 N. 49th Street, Philadelphia, Philadelphia County.
Mount Pleasant, Fairmount Park, Philadelphia, Philadelphia County.
Old West, Dickinson College, Dickinson College campus, Carlisle, Cumberland County.
Peale, Charles Wilson, House (Belfield), 2100 Clarkson Avenue Philadelphia, Philadelphia County.
Pennsylvania Hospital, The, 8th and Spruce Streets, Philadelphia, Philadelphia County.
Printzhof, The, Taylor Avenue and 2nd Street, Essington, Delaware County.
Reynolds-Morris House, 225 South 8th Street, Philadelphia, Philadelphia County.
Stiegel-Coleman House, Pa. 501 and U.S. 322, Brickerville, Lancaster County.
Sully, Thomas, Residence, 530 Spruce Street, Philadelphia, Philadelphia County.
U.S.S. Olympia, Pier 40, at the foot of Chestnut Street, Philadelphia, Philadelphia County.
Walnut Street Theatre, 9th and Walnut Streets, Philadelphia, Philadelphia County.
West, Benjamin, Birthplace, Swarthmore College campus, Swarthmore, Delaware County.
Woodford, East Fairmount Park, Philadelphia, Philadelphia County.
Woodlands, The, 40th Street and Woodland Avenue, Philadelphia, Philadelphia County.

RHODE ISLAND

Arnold, Eleazer, House, Great Road, Lincoln, Providence County.
Brick Market, Thames Street and Washington Square, Newport, Newport County.
Brown, John, House, 52 Power Street, Providence, Providence County.
First Baptist Meetinghouse, N. Main Street, between Thomas and Waterman Streets, Providence, Providence County.
Hunter House, 54 Washington Street, Newport, Newport County.
Redwood Library, 50 Bellevue Avenue, Newport, Newport County.
Stuart, Gilbert, Birthplace, Gilbert Stuart Road, Saunderstown, Washington County.
Trinity Church, 141 Spring Street, Newport, Newport County.
University Hall, Brown University campus, Providence, Providence County.
Vernon House, 46 Clarke Street, Newport, Newport County.
Wanton-Lyman-Hazard House, 17 Broadway, Newport, Newport County.

VERMONT

Marsh, Geroge Perkins, Boyhood Home, 54 Elm Street, Woodstock, Windsor County.
Robbins and Lawrence Armory and Machine Shop, South Main Street, Windsor, Windsor County.
Ticonderoga, The, Shelburne Museum, Chittenden County.
Willard, Emma, House, Middlebury College campus, Middlebury, Addison County.

VIRGINIA

Brandon, west bank of James River at the end of Route 611, Brandon vicinity, Prince George County.
Bruton Parish Church, Duke of Gloucester Street, Williamsburg City.
Cape Henry Lighthouse, Atlantic Avenue at U.S. 60, Virginia Beach City.
Carter's Grove, 0.2 mile southeast of intersection of Routes 60 and 667, Williamsburg vicinity, James City County.
Cedar Creek Battlefield and Belle Grove, on Int. 81 between Middletown and Strasburg, Frederick and Warren Counties.
Confederate Capitol (Virginia State Capitol), Capitol Square, Richmond City.
Five Forks Battlefield, 12 miles west of Petersburg on County Route 627 at Church Road, Dinwiddie County.
Gadsby's Tavern, 128 N. Royal Street, Alexandria City.
Jackson's, Stonewall, Headquarters, 415 N. Braddock Street, Winchester City.
Kenmore, 1201 Washington Avenue, Fredericksburg City.
Lee Chapel, Washington and Lee University, Washington and Lee University campus, Lexington City.
Marlbourne (Edmund Ruffin Plantation), 11 miles northeast of Richmond on U.S. 360, Hanover County.
Marshall, John, House, 9th and Marshall Streets, Richmond City.
McCormick, Cyrus, Farm and Workshop, 18 miles south of Staunton on U.S. 11 and County Route 606 at Walnut Grove, Rockbridge County.
Melchers, Gari, Home (Belmont), Falmouth, County.
Monroe, James, Law Office, 908 Charles Street, Fredericksburg City.
Montpelier (James Madison House), 4 miles west of Orange on Va. 20, Orange County.
Mount Airy, 1 mile west of Warsaw on U.S. 360, Richmond County.
Randolph, Peyton, House, intersection of Nicholson and north England Streets, Williamsburg City.
Rising Sun Tavern, 1306 Caroline Street, Fredericksburg City.
St. John's Episcopal Church, East Broad Street between 24th and 25th Streets, Richmond City.
St. Luke's Church, Benn's Church, Isle of Wight County.
Scotchtown (Patrick Henry House), 10 miles northwest of Ashland on Va. 685, Hanover County.
Semple, James, House, south side of Francis Street between Blair and Walker Streets, Williamsburg City.
Thoroughgood, Adam, House, 4 miles east of Norfolk on Lynnhaven River, Virginia Beach City.
Tuckahoe, on the James River southeast of Manakin via secondary roads, Goochland County.
Westover, 7 miles west of Charles City on Va. 5, Charles City County.
White House of the Confederacy, Clay and 12th Streets, Richmond City.
Wilson, Woodrow, Birthplace, North Coalter Street, between Beverly and Frederick Streets, Staunton City.
Wren Building, College of William and Mary campus, Williamsburg City.
Wythe House, west side of the Palace Green, Williamsburg City.

WEST VIRGINIA

GRAVE CREEK MOUND, Tomlinson and 9th Streets, Moundsville, Marshall County.

WISCONSIN

Oconto Site, Copper Culture State Park, Oconto, Oconto County.

Dated: June 8, 1977.

WILLIAM J. MURTAGH,
Acting Chief, Office of Archeology and Historic Preservation.

[FR Doc.77-16742 Filed 6-20-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[AA1921-164]

ROUND HEAD STEEL DRUM PLUGS FROM JAPAN

Determination of No Injury or Likelihood Thereof

On March 14, 1977, the United States International Trade Commission received advice from the Department of the Treasury that round head steel drum plugs from Japan are being, or are likely

to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on March 23, 1977, the Commission instituted investigation No. AA1921–164 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established by reason of the importation of such round head steel drum plugs into the United States.

Notice of the institution of the investigation and of a public hearing to be held in connection therewith was duly given by posting copies thereof in the Office of the Secretary, United States International Trade Commission, Washington, D.C., and at the Commission's New York Office, and by publishing the notice in the FEDERAL REGISTER of March 30, 1977 (42 FR 16875). On May 3, 1977, a hearing was held in accordance with the notice, and all persons who requested the opportunity were permitted to appear by counsel or in person.

In arriving at its determination, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission has unanimously determined that an industry in the United States is not being and is not likely to be injured, and is not prevented from being established, by reason of the importation of round head steel drum plugs from Japan that are being, or are likely to be sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Issued: June 14, 1977.

STATEMENT OF REASONS FOR NEGATIVE DETERMINATION

On March 23, 1977, the U.S. International Trade Commission instituted investigation No. AA1921–164 under section 201(a) of the Antidumping Act, 1921, as amended. This investigation was made to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of round head steel drum plugs from Japan which the Department of the Treasury has determined are being, or are likely to be, sold at less than fair value (LTFV) within the meaning of the act. In order to find affirmatively, the Commission must find two conditions satisfied in this investigation. First, it must find that an industry in the United States is being or is likely to be injured or is prevented from being established.[1] Second, any injury or likelihood of injury must be by reason of the importation into the United States of the class or kind of foreign merchandise which the Treasury has determined is being, or is likely to be, sold at LTFV.

LTFV SALES

The Department of the Treasury investigated U.S. imports of round head steel drum plugs from Japan during the period January 1–June 30, 1976. Fair-value comparisons were made on 100 percent of the subject merchandise sold in the United States during the period of investigation. Margins ranging from 86 percent to 119 percent were found on 100 percent of the sales compared. The weighted average margin on all sales was 94 percent.

THE ARTICLE AND THE DOMESTIC INDUSTRY

Drum plugs are threaded closures on drums that are typically used as containers for the transportation, marketing, or storage of a diverse array of products. The plugs are made of several different types of materials, including plastic, zinc alloys, and steel, and are of two principal types: round head and hexagon head. Round head steel drum plugs, the subject of the LTFV determination by the Department of the Treasury, accounted for over one-half of total domestic production of drum plugs in 1976. Round head steel drum plugs are sold principally to two different users, original-equipment manufacturers (OEM's) and drum reconditioners.

Although there are three manufacturers of drum plugs in the United States, only two of these firms manufacture round head steel drum plugs. One of the firms producing round head steel drum plugs sells almost exclusively to OEM's, while the other sells almost exclusively to reconditioners of drums. Whether the domestic industry is defined to include all three producers of drum plugs or, more narrowly, to include only the two producers of round head steel drum plugs, the record of this investigation does not demonstrate recognizable injury by reason of LTFV imports no matters how the domestic industry is defined.[2]

NO INJURY OR LIKELIHOOD OF INJURY BY REASON OF LTFV SALES

In 1974, production of drum plugs in the United States was exceptionally high, approximately 94 million units, reflecting the peak of a 10-year cycle within the industry, when an unusually high number of drums were sold. Domestic production of round head steel drum plugs was also exceptionally high in 1974. In 1975, domestic production of drum plugs declined to approximately 60 million units, and that of round head steel drum plugs also declined. A number of reasons were cited for the decline, including the recession, the release of 3 million to 4 million drum plugs held in inventory by the U.S. Government, and the relocation of the facilities of one of the two domestic producers of such drum plugs.

In 1976, domestic consumption of drum plugs increased to approximately 70 million units; that of round head steel drum plugs also increased. In 1975 and 1976 there were only * * * shipments of drum plugs from Japan. In 1975, * * * units, valued at * * *, were imported; in 1976, * * * units, valued at * * *, were imported. During the period examined by the Department of the Treasury, imports of round head steel drum plugs from Japan were valued at $18,844.

Thus, the ratio of imports of round head steel drum plugs from Japan to U.S. consumption of drum plugs was 0.55 percent in 1976. The ration of such imports to consumption of round head steel drum plugs was less than 1 percent in 1976. Although the ratio of imports to consumption was somewhat higher during the period examined by the Department of the Treasury, since all three of the shipments in 1976 occurred during that period, it was still only 1.08 percent of consumption of all drum plugs and less than 2 percent of consumption of round head steel drum plugs.

With the increase in domestic consumption of drum plugs in 1976, domestic production of such articles increased to approximately 72 million units. Domestic production of round head steel drum plugs in that year increased by about 15 percent over the 1975 level. Moreover, during the first 6 months of 1976, which was the period of LTFV sales examined by Treasury, round head steel drum plug production was about 15 percent higher than it was in the corresponding period of 1975. The number of production and related workers engaged in the production of round head steel drum plugs increased between 1975 and 1976 and was greater during the first 6 months of 1976 than it was in the corresponding period of 1975. Man-hours worked by these employees increased in a similar fashion.

The prices of domestically produced round head steel drum plugs remained relatively steady during 1975 and the first three quarters of 1976, but were relatively higher than in 1974, the year of greatest demand. In general, prices for such drum plugs rose in the last quarter of 1976 and again in the first quarter of 1977.

Although there are only two domestic producers of round head steel drum plugs, their net operating profits on their round head steel drum plug operations in 1976 were quite different. The producer which sells almost exclusively to OEM's, a market not served by imports, had less favorable operating results than did the petitioner, which sells almost exclusively to the reconditioner market, where most imported plugs are sold. The petitioner greatly increased its net profit between 1975 and 1976 and achieved a very favorable return on sales during the later year. The petitioner's performance, in terms of profit and return on sales, was comparatively better during the first 6 months of 1976 than for the entire year.

[1] Prevention of the establishment of an industry is not an issue in the instant case and will not be discussed further.

[2] Chairman Minchew and Commissioner Moore are of the opinion that the relevant U.S. industry consists of the production facilities in the United States devoted to the manufacture of drum plugs.

During the Commission's investigation, the petitioner alleged that it lost eight sales of round head steel drum plugs, valued at less than $50,000. In six of these alleged instances it was determined that round head steel drum plugs imported from Japan were purchased. The record indicated that several of these purchases were made by users who were attempting to diversify their sources of supply. However, even if there had been no imports and the domestic industry had sold this additional volume, the loss would have amounted to less than one-half of 1 percent of net sales of round head steel drum plugs by the domestic industry in 1976. If the petitioner's allegations are accepted and all the alleged lost sales had been made instead by the round head steel plug producers, and they were operating at the same ratios of net operating profit to net sales as they did in 1976, the total profit before taxes of such producers would have increased by less than $3,000 in that year. Such alleged loss of profits, even if they could be demonstrated to have occurred, is not of a magnitude which would warrant a finding of injury.

There have been no imports of round head steel drum plugs from Japan since the second quarter of 1976. There is no evidence in the record of this proceeding which demonstrates additional or unused capacity for producing this product in Japan, which would be likely to induce significant quantities of LTFV imports. The expansion of the Japanese economy would be likely to increase demand for drum plugs in that country and limit the quantity for export. The outlook for U.S. producers of round head steel drum plugs has further improved; e.g., prices increased in the last quarter of 1976 and again in the first quarter of 1977.

CONCLUSION

On the basis of the factors set forth above, we have determined that an industry in the United States is not being or is not likely to be injured by reason of the importation of round head steel drum plugs from Japan which the Department of the Treasury has determined are being, or are likely to be, sold at LTFV.

By order of the Commission.

Issued: June 16, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc.77-17656 Filed 6-20-77;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

CONTROLLED SUBSTANCES IN SCHEDULE II

Proposed 1977 Revised Aggregate Production Quota, Thebaine

Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On November 11, 1976, a notice of the final aggregate production quota for thebaine was published in the FEDERAL REGISTER (41 FR 49873-74). This quota was based upon consideration of 1975 production, usage, and year end inventory data for this substance.

Pursuant to Title 21 Code of Federal Regulations, § 1303.23(c), the Administrator of the Drug Enforcement is required to adjust individual manufacturing quotas allocated for each year based upon updated end of year inventory figures, disposition data, and other information which becomes available after the finalization of the initial quota for each substance each year.

Based upon consideration of the end of year inventory figures and actual production and disposition data submitted by quota applicants for 1976, as well as estimates of domestic and export needs for thebaine for 1977 and in conformity with the Drug Enforcement Administration's statement of policy regarding the production of thebaine in the United States, as published in the FEDERAL REGISTER June 25, 1976 (41 FR 26235-36), DEA has determined that an increase of the preivously finalized quota for thebaine for 1977 is required. This quota will reflect the amount of thebaine required to meet domestic as well as export requirements for 1977.

Quantities of thebaine occur naturally during the processing of opium, poppy straw, and concentrate of poppy straw. The opium processing firms can do little to avoid building up inventories of this substance in excess of production quota limitations other than destroying the thebaine which is produced. Thebaine is considered to be a valuable commodity, as it is used to derive Schedule II controlled substances with a medical use in the United States. The possible development of new medicinal substances in the United States will require greater quantities of thebaine to be utilized than are currently being utilized. To provide for these future needs, it has been and continues to be the policy of the Drug Enforcement Administration not to require the destruction of quantities of this substance which are derived in excess of established quotas for a given year.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations does hereby propose the following change to the aggregate production quota for thebaine for 1977 expressed in grams in terms of anhyrdous base:

Basic class	Previously finalized 1977 aggregate production quota	Proposed revised 1977 aggregate production quota
Thebaine (for sale)	2,380,000	3,824,500

All interested persons are invited to submit their comments and objections in writing regarding this proposal. The comments or objections should state with particularity the issues concerning which the person desires to be heard. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received by July 18, 1977. If a person believes that one or more issues raised by him warrants a full adversary-type hearing, he should so state and summarize the reasons for his belief.

In the event that comments of objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrants a full adversary-type hearing, the Administrator shall order a public hearing in the FEDERAL REGISTER summarizing the issues to be heard and setting the time for the hearing.

Dated: June 10, 1977.

PETER B. BENSINGER,
Administrator.

[FR Doc.77-17586 Filed 6-20-77;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-1326]

AETNA PIPE PRODUCTS CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1326: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received November 30, 1976 which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel tubing and steel pipe nipples at the Chicago, Illinois plants of Aetna Pipe Products Company. Aetna has two plants in Chicago, Illinois.

The Notice of Investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54552). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Aetna Pipe Products Company, its customers, the U.S. Department of Commerce, the U.S. In-

ternational 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.

Without regard to whether the other criteria have been met the investigation has revealed that criterion (2) and criterion (4) have not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Average annual employment at Aetna Pipe Products Company declined 26.8 percent in 1975 from 1974. Average employment increased 22.0 percent in 1976 from 1975. Pursuant to the requirements of 29 CFR 90.2 total separations must be the equivalent to a total unemployment of five percent or 50 workers, whichever is less.

Evidence developed in the Department's investigation revealed that total separations which occurred during the period of possible coverage, November 1, 1975 to the present, amounted to more than five percent of the workforce employed at the Aetna plants.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Total sales by Aetna Pipe Products adjusted to 1974 dollars declined 23.0 percent in 1975 from 1974. Sales increased 23.1 percent in 1976 from 1975. Sales increased in every quarter of 1976 compared to the like periods in 1975.

Production approximates sales as Aetna Pipe Products produces on customers' orders.

INCREASED IMPORTS

A. *Carbon Steel Tubing.* The carbon steel tubing produced by Aetna Pipe Products is included in the TSUSA Schedule category "Carbon Steel Pipe and Tubing". Imports of carbon steel pipe and tubing fluctuated in the 1972–1976 period. In 1972, imports were 1,768.1 thousand short tons. Imports declined to 1,574.6 thousand short tons in 1973, then increased to 1,781.5 thousand short tons in 1974. Imports declined to 1,542.5 thousand short tons in 1975. In 1976 imports increased by 18.0 percent to 1,820.7 thousand short tons. The ratio of imports to domestic shipments declined from 28.6 percent in 1972 to 20.3 percent in 1973. The ratio increased in every year thereafter, and was 35.8 percent in 1976.

B. *Steel Pipe Fittings.* Pipe nipples manufactured at Aetna Pipe Products are included in the TSUSA Schedule category "Steel Pipe Fittings". Imports of steel pipe fittings increased from 75.0 million pounds in 1971 to 79.9 million pounds in 1972. Imports declined to 64.8 million pounds in 1973. In 1974, imports increased to 114.1 million pounds, and in 1975, to 185.9 million pounds.

In the first nine months of 1976, imports were 88.9 million pounds, a 39.7 percent decline from the January–September period in 1975. The ratio of imports to domestic production increased from 21.4 percent in 1971 to 24.0 percent in 1972, then declined to 20.3 percent in 1973. The ratio increased to 29.2 percent in 1974 and to 45.3 percent in 1975. In the first nine months of 1976, the imports to production ratio was 48.2 percent, an increase over the ratio of 45.3 percent in the like period of 1975.

CONTRIBUTED IMPORTANTLY

A survey was conducted among Aetna's largest customers of steel tubing and pipe nipples. All customers stated they purchased no imports of either product. Most customers reported that Aetna was their sole or largest supplier of steel tubing or pipe nipples.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with carbon steel tubing and steel pipe nipples produced at the Chicago, Illinois plants of Aetna Pipe Products Company did not contribute importantly to the total or partial separation of workers at the plants.

Signed at Washington, D.C., this 10th day of June 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-17595 Filed 6-20-77;8:45 am]

[TA-W-1,356T]

DE LAVAL TURBINES, INC.

Investigation Regarding Termination of Certification of Eligibility To Apply for Worker Adjustment Assistance

Following a Department of Labor investigation under Section 222 of the Trade Act of 1974 ("the Act") and in accordance with Section 223 of the Act, on March 31, 1977 the Department of Labor issued a certification of eligibility to apply for adjustment assistance applicable to workers and former workers of Trenton, New Jersey plant of De Laval Turbines, Incorporated, Delroyd Worm Gear Division engaged in employment related to the production of worm gears and speed reducers. The notice of certification was published in the FEDERAL REGISTER on April 12, 1977 (52 FR 19180); Notice of Correction published May 20, 1977 (42 FR 25938).

Pursuant to Section 223(d) of the Act and 29 CFR 90.17(a), the Director of the Office of Trade Adjustment Assistance has instituted an investigation to determine whether the total or partial separations of the certified workers of De Laval Turbines, Inc., continue to be attributable to the conditions specified in Section 222 of the Act and 29 CFR 90.16(b).

Pursuant to 29 CFR 90.17(b) the group of workers or any other persons showing a substantial interest in the proceedings may request a public hearing or may make written submissions to show why the certification should not be terminated, provided, that such request or submission is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, no later than July 5, 1977.

The record of the certification (TA-W-1,356), containing non-confidential information is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 3rd Street and Constitution Ave., N.W., Washington, D.C. 20210.

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

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-17596 Filed 6-20-77;8:45 am]

[TA-W-1695]

FAITH SHOE CO.

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-1695: 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 2, 1977, in response to a worker petition received on February 22, 1977, which was filed on behalf of workers and former workers producing women's and children's shoes at the Wilkes-Barre, Pennsylvania, plant of the Faith Shoe Company. The petition was expanded to include the Brooklyn, Pennsylvania, stitching facility.

The notice of investigation was published in the FEDERAL REGISTER on March 11, 1976 (42 FR 13627). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Faith Shoe 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 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 that workers' firm,

or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separation, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that all four of the above criteria have been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

Employment at the Faith Shoe Company decreased 9.1 percent in 1975 compared to 1974 and decreased 1.7 percent in 1976 compared to 1975. Employment decreased 6.2 percent during the fourth quarter of 1976 compared to the same quarter of 1975 and decreased 19.5 percent during the first quarter of 1977 compared to the same quarter in 1976. Average weekly hours worked decreased 5.8 percent in 1976 compared to 1975 and decreased 9.4 percent in the first quarter of 1977 compared to the same quarter in 1976.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales increased in value 8.5 percent in 1975 compared to 1974 and decreased 7.3 percent in 1976 compared to 1975.

Production decreased in quantity 5.2 percent in 1975 compared to 1974 and decreased 11.2 percent in 1976 compared to 1975.

INCREASED IMPORTS

Imports of women's nonrubber footwear increased from 192.9 million pairs in 1972 to 206.2 million pairs in 1973 then declined to 179.8 million pairs in 1974 before increasing to 183.5 million pairs in 1975. Imports were recorded at 183.8 million pairs in 1976, an increase of 0.2 percent compared to 1975. The percentages of imports to domestic production increased from 107.6 percent in 1974 to 119.1 percent in 1975 then declined to 108.8 percent in 1976.

Imports of children's nonrubber footwear, except athletic shoes, have decreased steadily each year from 17.0 million pairs in 1972 to 11.1 million pairs in 1975. Imports increased to 15.8 million pairs in 1976, an increase of 42.3 percent compared to 1975. The percentages of imports to domestic production have been increasing from 59.2 percent in 1974 to 60.0 percent in 1975 to 72.1 percent in 1976.

CONTRIBUTED IMPORTANTLY

Customers of the Faith Shoe Company indicated that they had increased imports of both women's and children's shoes while decreasing their purchases from the subject firm. Price and style were the factors that influenced these customers to import.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with women's and children's shoes produced at the Wilkes-Barre and Brooklyn, Pennsylvania, plants of the Faith Shoe Company contributed importantly to the separations of workers of that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers producing women's and children's shoes at the Wilkes-Barre, Pennsylvania, and Brooklyn, Pennsylvania, plants of the Faith Shoe Company who became totally or partially separated from employment on or after February 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 27th day of May 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-17640 Filed 6-20-77;8:45 am]

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

COPYRIGHT LAW AND PROCEDURE

Report to President Concerning Recommended Changes

The National Commission on New Technological Uses of Copyrighted Works (CONTU) is in the process of preparing its report to the President and Congress concerning recommended changes in copyright law and procedure with respect to the use of copyrighted works in conjunction with computers and photocopying machines. In compliance with Pub. L. 93-573 such recommendations are designed "to assure * * * access to copyrighted works, and to provide recognition of the rights of copyright owners." Chairman Stanley H. Fuld designated four Committees of the Commission to prepare preliminary reports in the following areas: Computer software, automated data bases, works created with computer assistance, and photocopying. The reports of the Software and Data Base Committees are now available for public comment.

These reports reflect the views of the subcommittees only and have not been adopted by the entire Commission. They are accompanied by the comments of individual commissioners with differing views at this time.

The Report of the Software Committee recommends that the Copyright Act of 1976 (Pub. L. 94-553) be amended by deleting the present section 117—which exempts computer uses of copyrighted works from the coverage of the Act of 1976 after that law takes effect on January 1, 1978—and replacing it with a section designed to make explicit the rights and obligations, under copyright, of proprietors and users of computer programs. The proposed new section, if adopted, would provide that rightful possessors of computer programs could use those programs and, to the extent such use required the preparation of a copy of the program, such copying would not infringe the copyright in that program. No other copies could be made, unless authorized by agreement between the parties, without infringing that copyright.

The Report of the Data Base Committee recommends that the new copyright Act with section 117 deleted would deal effectively with most of the questions involving the storage, processing, retrieval, and transmission of copyrighted data bases and other works which might be input to computer systems. If this recommendation were adopted the Committee believes that the placing of such works into a computer system would constitute "copying." Because computer data bases are similar to other works such as compilations, long protected by copyright, the existing body of copyright law can serve as a basis for determining the extent of both users' and proprietors' rights in such works.

The Commission's final recommendations will be based upon public response to these and other preliminary reports, the reports of several organizations which are examining economic and public interest questions for the Commission, and future hearings. Copies of both reports and accompanying comments are available from Carol Risher, Information Officer, National Commission on New Technological Uses of Copyrighted Works, Washington, D.C. 20558.

ARTHUR J. LEVINE,
Executive Director, National Commission on New Technological Uses of Copyrighted Works.

[FR Doc.77-17592 Filed 6-20-77;8:45 am]

POSTAL SERVICE

PRIVACY ACT OF 1974

Routine Use of Systems of Records

Correction

In FR Doc.77-16699 appearing at page 30259 in the issue for Monday, June 13, 1977, under SUPPLEMENTARY INFORMATION, in the list of USPS systems of records, insert the system number "010.-040" in its appropriate numerical order.

TRANSIENT RATE MATTER AND PHASED POSTAGE RATES

Effective Dates of Certain Changes in Classification and Rates

Notice is hereby given that, effective 12:01 a.m. on July 6, 1977, a change in the classification, and rates, for the present transient rate second class category will be implemented, pursuant to Resolution No. 77-5 of the Board of Governors of the Postal Service following approval by the Governors of the Postal Service of a recommended change in the

classification schedule issued by the Postal Rate Commission in its Docket No. MC 76–2. That change establishes a new rate element for publisher's commingled sample copies mailed in excess of the 10 percent allowance for sample copies, when such copies are sorted and commingled with subscriber copies. The new rate for this category is 4.5 cents per piece plus 13.6 cents per pound. New rates for other transient rate matter are 10 cents for the first two ounces and 6 cents for each succeeding ounce, or fraction thereof, or the appropriate fourth-class rate, whichever is lower.

Notice is also given that, effective 12:01 a.m. on July 6, 1977, the sixth step of phased postage rate increases will be placed in effect for the following classes of mail: second-class; controlled circulation; third-class bulk mail for qualified nonprofit organizations; special fourth-class and library-rate fourth-class. This action represents the next step of scheduled rate increases for the designated classifications of mail to be phased in over a period of 8 or 16 years, depending on the particular mail classification involved. The phasing period was extended to 8 and 16 years by Act of Congress effective June 30, 1974 (Pub. L. 93–328).

The rates of postage to be established, effective 12:01 a.m. on July 6, 1977, are set forth in column (3) of the schedule published below.

(39 U.S.C. 101(d), 401, 403, 404, 3623–3626.)

ROGER P. CRAIG,
Deputy General Counsel.

Schedule of phased postage rates, July 6, 1977

Mail class	Postage rate unit	Postage rate (cents)
(1)	(2)	(3)
SECOND CLASS		
In county:		
Pound rate matter:		
Per-pound charge	Pound	2.1.
Per-piece charge [1]	Piece	0.7.
Per-copy rate matter	Copy	1.8 or 2.9.
Outside county:		
Nonprofit:		
Nonadvertising	Pound	4.2.
Advertising: [2]		
Zones:		
1 and 2	do	6.7.
3	do	7.4.
4	do	8.9.
5	do	10.5.
6	do	11.7.
7	do	12.6.
8	do	13.5.
Per-piece charge [1]	Piece	1.1.
Classroom:		
Nonadvertising	Pound	3.3.
Advertising:		
Zones:		
1 and 2	do	4.2.
3	do	4.9.
4	do	6.1.
5	do	7.8.
6	do	9.8.
7	do	11.1.
8	do	12.9.
Per-piece charge [1]	Piece	0.8.
Regular rate:		
Nonadvertising	Pound	8.0.
Advertising:		
Zones:		
1 and 2 (science of agriculture)	do	6.7.
1 and 2	do	10.7
3	do	11.5.
4	do	13.0.
5	do	14.9.
6	do	16.9.
7	do	18.7.
8	do	20.9.
Per-piece charge [1 3]	Piece	2.8.
Per piece [1 4]	do	0.9.
Transient rate:		
Excess sample copies commingled with subscriber copies:		
Per-piece [1]	do	4.5.
Per pound	Pound	13.6.
Other [5]	1st 2 oz	10.0.
	Each additional ounce or fraction.	6.0.
CONTROLLED CIRCULATION		
Per pound	Pound	11.7.
Per piece	Piece [4]	3.6.
3D CLASS		
Nonprofit bulk rate:		
Circulars:		
Per pound	Pound	14.0.
Minimum per piece	Piece	2.1.
Book, catalogs, etc.:		
Per pound	Pound	11.0.
Minimum per piece	Piece	2.1.
4TH CLASS		
Special rate:		
1st pound:		
Single piece	Pound	30.0.
5-digit presort	do	27.9.
3-digit presort	do	28.4.
Each additional pound through 7 lb.	do	11.0.
Each additional pound	do	8.0.
Library rate:		
1st pound	do	11.0.
Each additional pound	do	4.0.

[1] The per-piece charge is in addition to the pound rate.
[2] Not applicable to publications containing 10 pct or less advertising content.
[3] Publications mailing 5,000 or more copies per issue outside county of publication.
[4] Publications mailing fewer than 5,000 copies per issue outside county of publication.
[5] Or the appropriate 4th-class rate, whichever is lower.

[FR Doc.77-17542 Filed 6-20-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–13624; File No. SR–Amex–77–12]

AMERICAN STOCK EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 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 23, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The American Stock Exchange, Inc. ("Amex") proposes to amend Rule 922 relating to the supervision of option accounts. (Brackets indicate words to be deleted; italics indicates words to be added.)

SUPERVISION OF ACCOUNTS

Rule 922. In addition to the requirements of Rule 411, every member organization shall provide for the diligent supervision [by a general partner or officer of the member organization who is a Registered Options Principal] of all of its customer accounts, and all orders in such accounts, to the extent such accounts and orders relate to options contracts, *by a general partner (in the case of a partnership) or officer (in the case of a corporation) of the member organization who is a Registered Options Principal and who has been specifically identified to the Exchange as the member organization's Senior Registered Options Principal.*

COMMENTARY

.01 [A] *The Senior* Registered Options Principal in meeting his responsibility for supervision of customer accounts and orders, may delegate to qualified employees *including other Registered Options Principals*, responsibility and authority for supervision and control of each branch office handling transactions in option contracts, provided that [the] *such Senior* Registered Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees.

.02 In meeting their supervisory responsibilities, every member organization shall establish, maintain, and enforce written procedures governing the conduct of options accounts.

Rule 922 expands the requirements for diligent supervision of all customer accounts under Amex Rule 411 by requiring supervision of a member organization's option activity by a Registered Options Principal ("ROP") who is a general partner or officer of the member organization.

Although Rule 922 does not explicitly mandate that member organizations designate one such ROP to be in charge of overall supervision of customer option accounts, the Amex has long interpreted this rule to include such a requirement. In its 1974 publication entitled "Regulatory Guidelines for Conducting a Public Business in Amex Listed Options" ("Guidelines") the Amex stated: "A member organization employing more than one ROP must assign responsibility for the overall supervision of its public options business to a "senior" ROP who is a general partner or officer. As interest in options trading has grown, many member firms which conduct a public business have had more than one individual qualify as an ROP. While such multiple registration has had the positive effect of qualifying a large number of people who are capable of functioning in a supervisory capacity, the Amex believes that the designation of one Senior ROP is necessary to eliminate the blurring of supervisory authority within a member firm. Such a requirement would be not only consistent with the Amex's policy since the inception of its options program but would permit the recording of this policy in Exchange rules.

Likewise, the Exchange has also interpreted Rule 922 to require that member organizations establish written supervisory procedures concerning its options business with the public. As noted in the Guidelines, "In meeting their supervisory responsibilities, member organizations should establish written supervisory procedures governing the conduct of their options activities."

Accordingly, the Amex proposes to amend Rule 922 to require member firms conducting a public options business to designate a Senior ROP and to establish written supervisory procedures detailing the methods used to supervise customer options accounts.

The basis for the proposed rule change is found in Section 6(b)(5) of the Securities Exchange Act of 1934 ("the 1934 Act"), as amended, which provides, in pertinent part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

The proposed amendment to Rule 922 was considered and approved by the Options Committee of the Amex which is composed of Amex members and representatives of Amex member organizations.

The Amex has determined that the proposed amendment will not impose any burden on competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, 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 change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 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 21, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

JUNE 14, 1977.

[FR Doc.77-17613 Filed 6-20-77;8:45 am]

[Release No. 34-13628; File No. SR-CBOE-1977-12]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 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 June 2, 1977, the above-mentioned self-regulatory organization filed with the Secrities and Exchange Commission a proposed rule change as follows:

CBOE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

FEE REVISIONS

Pursuant to Rule 2.22 of the Rules and Regulations of the Chicago Board Options Exchange, Incorporated ("CBOE"), the CBOE has determined to establish an application fee of $250.00 for each limited partner processed as part of a partnership which applies to become a Member Organization of the Chicago Board Options Exchange, Incorporated.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The new fee will permit the CBOE to establish equitable charges for the administrative services involved in the processing of applications if limited partners of prospective Member Firm Organizations.

The CBOE believes that it is consistent with Section 6(b)(4) for the CBOE to implement the new application fee as set forth above. The costs incurred in processing limited partnership applications has been equitably allocated among those who benefit therefrom.

Comments were not and are not intended to be solicited with respect to the proposed rule change.

No burden on competition will be imposed through the implementation of the fee schedule proposed above.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submission 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 12, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

JUNE 14, 1977.

[FR Doc.77-17614 Filed 6-20-77;8:45 am]

[Release No. 13629; File No. SR-NYSE-77-15]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Rule Change Submitted by New York Stock Exchange, Inc. Relating to Stock Certificates

JUNE 14, 1977.

On May 1, 1977, the New York Stock Exchange, Inc., 11 Wall Street, New York, New York 10005, submitted, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (the "Act") a proposed change to the *NYSE Company Manual*, pp. A-227, 228, which would permit the share denomination on a single denomination stock certificate to be inscribed by maceration.

In accordance with Section 19(b) of the Act and Rule 19b-4 thereunder, notice of the proposed rule change was published in the FEDERAL REGISTER (42 FR 23897, May 11, 1977), and the public was invited to comment thereon. Notice of the filing and an invitation for comments also appeared in Securities Exchange Act Release No. 34-13499, May 2, 1977. One letter of comment was received.

The Commission finds that the proposed change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered securities exchanges.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed change contained in File No. SR-NYSE-77-15 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc.77-17611 Filed 6-20-77;8:45 am]

[Release No. 34-13631; File No. SR-OCC-77-5]

OPTIONS CLEARING CORP.

Self-Regulatory Organization; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 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 15, 1977, the above-mentioned self-regulatory organization withdrew a proposed rule change (File No. SR-OCC-77-3) which was announced in Securities Exchange Act No. 34-13506 (May 4, 1977), and has filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change would change the commencement time for option contracts to three hours after the settlement time for the transactions in which they were purchased and would modify OCCs procedures for accepting or rejecting Exchange transactions in the event of non-payment of the applicable premiums.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to improve OCC's procedures for dealing with a Clearing Member's pending purchase transactions when the Clearing Member fails to make timely payment of the applicable premiums.

The proposed amendment to Article I, Section 1(cc) of the By-Laws would change the "commencement time" for an Exchange transaction (i.e. the point at which the transaction is accepted by OCC) from one hour after settlement time to three hours after settlement time. Its purpose is to give OCC additional time in which to determine whether to accept pending transactions of a defaulting Clearing Member. Such a determination is difficult to make within a period of one hour because it requires a preliminary determination that the Clearing Member will not meet its settlement obligations (which OCC may not be able to make for some period after the settlement time, because solvent Clearing Members are sometimes late in effecting settlements for mechanical reasons), followed by a review of the Clearing Member's account records (to determine whether the status of any account is such that it would be in the best interest of OCC to reject some or all of the unaccepted purchase transactions in that account). The proposed amendment to the definition of "commencement time" would give OCC two additional hours in which to make the necessary determinations.

The proposed amendment to Article VI, Section 8 of the By-Laws would make it clear that OCC may reject a Clearing Member's pending transactions at any time after the Clearing Member misses settlement. The present language of that provision may be construed as requiring OCC to wait until the commencement time before rejecting pending transactions. OCC will not reject pending transactions until it has concluded to its satisfaction that the purchasing Clearing Member will not effect settlement. However, once it has reached that conclusion, OCC should be in a position to take prompt action in rejecting pending transactions, so as to permit the writers to close out the rejected transactions as promptly as possible.

The proposed amendment to OCC's stated policy on the acceptance of Exchange transactions would revise that policy to provide that OCC will accept all pending purchase transactions (whether opening or closing) in accounts of defaulting Clearing Members except to the extent that OCC's President determines that it would be in the best interest of OCC to reject particular transactions.

The primary change effected by the proposed amendment is in the treatment of opening purchase transactions. OCC's present policy is to reject such transactions. However, OCC's President has the authority to accept an opening purchase transaction if he determines that (i) OCC holds sufficient excess liquid assets of the defaulting Clearing Member to cover the applicable premiums, or (ii) the other party to the transaction was engaging in an opening writing transaction to which an exercise notice has been assigned.

In many instances, however, an account in which an opening purchase transaction is executed will include uncovered short positions (i.e., short positions for which cash margin, rather than the underlying stock has been deposited) in the same series of options. In that situation, it would ordinarily be in the best interest of OCC to accept the opening purchase transaction, notwithstanding the unavailability of excess funds in the account. The margin on deposit in respect of the uncovered short positions would ordinarily give OCC sufficient cash to cover the applicable premiums, and the long positions resulting from the acceptance of the opening purchase transactions (on which positions OCC would have a lien pursuant to Article VI, Section 8 of its By-Laws) would eliminate OCC's exposure with respect to the uncovered short positions in the event of an increase in the price of the underlying security, thus permitting OCC to effect a more orderly liquidation of open positions.

If the situation described in the preceding paragraph were to be added to the existing exceptions to OCC's policy of rejecting opening purchase transactions, OCC believes that as a practical matter, it would in most instances be accepting opening purchase transactions rather than rejecting them. The proposed rule change would revise the wording of OCC's stated policy accordingly, so as to indicate that rejection will be the exception rather than the rule.

In addition's OCC's stated policy, as currently in effect, specifically enumerates those circumstances in which OCC's President is authorized to make exceptions to the general policy. While OCC does not currently envision any other circumstances under which exceptions would be appropriate, such circumstances may arise, and OCC believes that its stated policy should be flexible enough to permit its officers to take appropriate action. Accordingly, the proposed rule change would permit OCC's President to make exceptions to OCC's general policy of accepting all pending purchase transactions whenever he deemed it in the best interest of OCC to do so.

The proposed rule change contributes to the protection of investors and the public interest by providing safer and more efficient procedures for the disposition of pending transactions of defaulting Clearing Members.

Comments were not and are not intended to be solicited with respect to the proposed rule change.

OCC does not believe that the proposed rule change imposes any burden on competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, 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 change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 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 at 1100 L Street NW., Washington, D.C. Copies of the 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 12, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

JUNE 15, 1977.

[FR Doc.77-17615 Filed 6-20-77;8:45 am]

[Release No. 13625; SR-PSE-77-8]

PACIFIC STOCK EXCHANGE INC.

Order Approving Proposed Rule Change

JUNE 14, 1977.

On April 1, 1977, the Pacific Stock Exchange Incorporated, 618 South Spring Street, Los Angeles, California 90014, 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 clarifies the floor broker's due diligence responsibilities in executing market orders and establishes new procedures to be followed in effecting a single price opening during opening rotations.

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. 13484, April 28, 1977), and by publication in the FEDERAL REGISTER (42 FR 23900, May 11, 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 registered 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 1, 1977, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc.77-17612 Filed 6-20-77;8:45 am]

[Rel. No. 20070; 70-6019]

CONNECTICUT LIGHT & POWER CO.

Proposed Acquisition of Utility Assets by Operating Subsidiary

JUNE 13, 1977.

Notice is hereby given that Connecticut Light and Power Company ("CL&P"), an electric and gas utility subsidiary of Northeast Utilities ("Northeast"), a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 9 (a) and 10 of the Act as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

It is stated that CL&P and Southern Connecticut Gas Company ("Southern") have entered into an agreement, subject to the approval of this Commission and the State of Connecticut Public Utilities Control Authority, dated as of March 1, 1977 ("Storage Agreement") with respect to, among other matters, the storage by Southern in its storage tank of a quantity of CL&P's liquefied natural gas ("LNG"). Pursuant to the provisions of the Storage Agreement CL&P has agreed to purchase, a 12'' natural gas pipeline ("Interconnection") constructed and owned by Southern and extending approximately 1.2 miles from Southern's gas distribution system in the Town of Stratford, Connecticut to connect with CL&P's gas distribution system in the Town of Shelton, Connecticut, and acting as a pipeline interchange between the two systems. The Interconnection was constructed by Southern in 1973 and 1974 pursuant to a letter agreement between Southern and Northeast Utilities Service Company ("NUSCO"), an associate company of CL&P. Under the terms of this agreement, which was signed by Southern on April 9, 1973, and by NUSCO on May 9, 1973, NUSCO agreed to lease a quantity of space in the LNG Tank, Southern agreed to construct the Interconnection, and both parties agreed to execute, at a later date, a contract delineating the specific terms and conditions of the storage arrangement. Negotiations leading to this agreement had been in progress since 1971, and it was understood that NUSCO would reimburse Southern for its construction of the Interconnection, either directly or by means of storage and delivery charges set at sufficiently high levels to enable Southern to recover its Interconnection costs over the life of the storage contract. It is stated that implementation of the Storage Agreement is important to CL&P to insure the provision of economical service to its customers during periods of peak use. It is contemplated that LNG stored in the LNG Tank, or its vaporized equivalent delivered by Southern through the Interconnection, will supplement CL&P's pipeline supplies during such periods, and will make it unnecessary for CL&P to purchase equivalent quantities of propane, a more expensive supplement.

Pursuant to the Storage Agreement, Southern will provide CL&P with storage capacity for a substantial quantity of CL&P's LNG for an initial term of three years from August 1, 1977, through July 31, 1980, and for an additional period extending, upon CL&P's continued compliance with certain specified requirements, up to July 31, 1987. LNG stored by CL&P pursuant to the Storage Agreement will be stored in Southern's LNG storage tank ("LNG Tank") located in the Town of Milford, Connecticut. CL&P will deliver its LNG to the LNG Tank by truck. At CL&P's request, Southern will either deliver CL&P's LNG directly out of storage in the LNG Tank to CL&P's trucks, or will provide CL&P with an equivalent quantity of gas in vaporized form through the Interconnection. It is anticipated that most of the gas delivered by Southern to CL&P and charged to CL&P's account in the LNG Tank will be delivered through the Interconnection. Although not covered by the terms of the Storage Agreement, it is also contemplated that, from time to time, and under a separate agreement, CL&P may deliver a portion of its pipeline gas to Southern through the Interconnection, which gas would be liquified by Southern and stored in the LNG Tank for CL&P's account.

The Storage Agreement further provides that CL&P is obligated to reimburse Southern directly for Southern's construction of the Interconnection. The principal amount of the cost of the Interconnection to be reimbursed by Southern is $311,273.21, which consists of (1) construction expenses actually incurred by Southern during 1973 and 1974 and (2) interest on such expenses accrued through January 31, 1977. CL&P is to reimburse Southern in twenty semi-annual payments, the first of which was made on February 1, 1977. The unpaid balance of the principal amount of the cost of the Interconnection will bear interest at the prime rate charged by Citibank of New York, New York, or any successors thereto, as such rate may change from time to time. It is contemplated that title to the Interconnection will be transferred by Southern to CL&P on or before August 1, 1977. At the time title is transferred, Southern will convey to CL&P such rights, to the extent legally permissible, as may be necessary to allow CL&P to own, operate and maintain the Interconnection. It is stated that acquisition of title by CL&P to the Interconnection is desirable for the following reasons: (1) the Interconnection is an integral and essential part of the storage and delivery arrangement provided for in the Storage Agreement and use of the Interconnection will enable CL&P to deliver into its distribution system gas charged to its account in the LNG Tank more quickly and economically, in most instances, than would be possible if it were compelled to remove LNG directly from the LNG Tank and to vaporize such LNG at its own vaporization facilities, and (2) such acquisition of title will insure that CL&P will have the use, control and enjoyment of the Interconnection throughout its useful life, both during and after the term of the Storage Agreement and, as owner of the Interconnection, will be able to use and/or dispose of the Interconnection, following the termination of the Storage Agreement, as the interests of its customers may require.

It is contemplated that Southern will operate and maintain the Interconnection until such time as title thereto is conveyed to CL&P, and CL&P will reimburse Southern for all expenses incurred in such operation and maintenance. Upon conveyance of title to CL&P, CL&P will have the option either itself to operate and maintain the Interconnection or to request Southern to continue such operation and maintenance at CL&P's expense.

It is stated that Southern will apply to the Connecticut Public Utilities Control Authority ("PUCA") for approval of the sale of the Interconnection to CL&P, and Southern and CL&P will apply to the PUCA for such approval of the Storage Agreement as may be necessary. It is further stated that no other State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees, commissions and expenses to be paid or incurred, directly or indirectly, in connection with the acquisition by CL&P of title to the Interconnection are presently estimated at approximately $2,500 in legal fees, plus an estimated payment of $1,000 to Northeast Utilities Service Company ("NUSCO") for expenses incurred by NUSCO in connection with the acquisition.

Notice is further given that any interested person may, not later than July 7, 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 of 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 (air mail if the person being served is located more than 500 miles from the point of mailing) 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.77-17610 Filed 6-20-77;8:45 am]

DEPARTMENT OF STATE

Agency for International Development

[Delegation of Authority No. 38 (Revised)]

ASSISTANT ADMINISTRATORS

Delegation of Authority Relating to Project Agreements, Trust Fund Agreements, and Grant Agreements

Pursuant to the Authority delegated to me by Declaration of Authority No. 104, as amended, from the Secretary of State dated November 3, 1961 (26 FR 10608), I hereby delegate authority as follows:

1. To Assistant Administrator for Latin America, the Asistant Administrator for Near East, the Assistant Administrator for Asia, the Assistant Adminitrator for Africa, I delegate the authority to negotiate, execute, and implement: (a) All project grant agreements; (b) all project implementation orders-technical services (PI/PA); (c) all trust fund agreements; (d) all grant agreements; with foreign governments, foreign government agencies, and international organizations having a membership consisting primarily of such foreign governments for projects, programs, and activities primarily for the benefit of countries within the responsibility of the Assistant Administrator. The authorities enumerated in this section may be redelegated as appropriate.

2. To such Assistant Administrators I delegate authority to negotiate, execute, and implement all amendments of, and ancillary agreements to, the agreements enumerated in Section 1 above as the Assistant Administrator my deem necessary or desirable, provided that the foregoing authority may not be utilized to approve amendments which would exceed the maximum total amount authorized for an agreement. The authority to negotiate, execute and implement those agreements and amendments referred to in this section may be redelegated as appropriate.

3. Section 1.A(1)b. and Section 1.B. of Delegation of Authority No. 99, August 23, 1976 (41 FR 39355), are hereby revoked.

4. Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

5. This Delegation of Authority amends and supersedes Delegation of Authority No. 38, as amended through October 12, 1975.

6. This Delegation of Authority is effective immediately.

Dated: June 3, 1977.

JOHN J. GILLIGAN,
Administrator.

[FR Doc.77-17654 Filed 6-20-77;8:45 am]

PRIVACY ACT OF 1974

Additional Routine Use

AGENCY: Agency for International Development.

ACTION: Additional routine use of systems of records.

SUMMARY: To include state employment security agencies and the U.S. Department of Labor as routine users to our systems of records AID-1 and AID-2. Information was received from the U.S. Department of Labor that disclosure was required from these systems under 5 U.S.C. 8506. Disclosure of employment, wage and separation data is necessary for unemployment compensation purposes.

EFFECTIVE DATE: Thirty (30) days after publication in FEDERAL REGISTER (July 21, 1977) if no comments are received. Comments should be addressed to Department of State, Agency for International Development, 320 21st Street NW., Washington, D.C. 20523, Attn: Privacy Liaison Office on or before July 21, 1977.

FOR FURTHER INFORMATION CONTACT:

James L. Harper, Department of State, Agency for International Development, Office of Personnel and Manpower, Washington, D.C. 20523.

SUPPLEMENTARY INFORMATION: On September 13, 1976, our annual publication of systems of records appeared in the FEDERAL REGISTER (41 FR 38900). At this time, additional amendments were proposed and interested persons were invited to submit written comments. No comments were received within the thirty (30) days time limit and the amendments were adopted and republished at 42 FR 10816 (February 23, 1977). Subsequent comments were received from the U.S. Department of Labor relative to additional routine uses of our systems of records AID-1, "Foreign Service Employee Personnel Records Systems", and AID-2, "Civil Service Employee Office Personnel Records Systems". It was suggested that state employment security agencies and the Secretary of Labor be included as routine users for these systems for employment, wage and separation data for unemployment compensation purposes as required under 5 U.S.C. 8506. We agree.

Therefore, pursuant to 5 U.S.C. 552 a(e)(11) we propose to add the following routine use to our systems of records AID-1 and AID-2:

To state employment security agencies and to the U.S. Department of Labor, upon request, employment, wage and separation data of former AID employees, to determine eligibility for unemployment compensation.

JOHN J. GILLIGAN,
Administrator.

[FR Doc.77-17621 Filed 6-20-77;8:45 am]

PRIVACY ACT OF 1974

Relocation of Systems of Records

AGENCY: Agency for International Development.

ACTION: Notice of relocation of systems of records.

SUMMARY: To give notice of the relocation of the Office of Personnel and Manpower and the systems of records maintained by that office. Also to change the addresses of systems managers, notification procedure, and record access procedures.

EFFECTIVE DATE: March 28, 1977.

FOR FURTHER INFORMATION CONTACT:

James L. Harper, Department of State, Agency for International Development, Office of Personnel and Manpower, Washington, D.C. 20523.

SUPPLEMENTARY INFORMATION: At the completion of the relocation of the Office of Personnel and Manpower on March 28, 1977, the address of the records, managers, notification procedures and access procedures was changed from 1601 N. Kent Street, Arlington, Virginia to 515 22nd Street, N.W., Washington, D.C. The systems affected by this move are as follows: AID-1, "Foreign Service Employee Personnel Records"; AID-2, "Civil Service Employee Office Personnel Records; AID-4, "Position Classification Records"; AID-7, "Foreign Service Personnel Evaluation Records"; AID-10, "Employees Relations Records"; AID-11a, "Employee Conduct and Discipline Records" (for active records). (The location of the records maintained by the Office of the General Counsel remains the same); AID-14, "Awards and Incentives Records"; AID-15c, "Employee Payroll Records" (Alimony and child support garnishment files); AID-20, "Claims Records" (central records for allowance and health benefits claims); and AID-25, "Privacy Act Implementation Records".

JOHN J. GILLIGAN,
Administrator.

[FR Doc.77-17622 Filed 6-20-77;8:45 am]

RESEARCH ADVISORY COMMITTEE

Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a)(2), Pub. L. 92-463, Federal Advisory Committee

Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on July 14 and 15, 1977, at the Pan American Health Organization Building, 23d Street and Virginia Avenue NW., Conference Room "C", to review, appraise, and make recommendations to the Administrator, Agency for International Development, concerning projects proposed for A.I.D. central research funding in the fields of food and nutrition and health and population. The meeting will begin at 9 a.m. and adjourn at 5:30 p.m. each day. The meeting is open to the public. Dr. Erven J. Long, Associate Assistant Administrator, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Erven J. Long, 1601 N. Kent Street, Arlington, Va., 22209, or call area code 202–235–9001.

ERVEN J. LONG,
Agency for International Development, Research Advisory Committee.

JUNE 9, 1977.

[FR Doc.77–17655 Filed 6–20–77;8:45 am]

TENNESSEE VALLEY AUTHORITY

PRIVACY ACT OF 1974

Systems of Records

On Wednesday, November 10, 1976, the Tennessee Valley Authority published in the FEDERAL REGISTER (41 FR 49688) two proposed revisions to the routine uses in TVA's annual Notice of Systems of Records. An opportunity for the public to comment on the proposed routine uses was given. No comment was received. The routine uses are adopted by TVA as proposed.

The third routine use described in system TVA–11 (Payroll Records) is intended and has been interpreted by TVA to cover releases of payroll deduction information to charitable institutions and agencies in connection with the Combined Federal Campaign. The revision made by this document clarifies this intent and interpretation. TVA is also adding a routine use to system TVA–2 (Personnel Files) to enable TVA to transfer limited information from these records to local school districts to aid them in qualifying for assistance under Pub. L. 81–874 and other laws.

TVA is also revising by this document the "Categories of Records" paragraph for system TVA–9 (Medical Records) to show that TVA will begin to keep medical records of a few employees of TVA contractors who work on TVA property and may need emergency medical services from TVA doctors. This revision is effective immediately.

Effective date: This notice shall be effective June 21, 1977.

Dated: June 13, 1977.

LYNN SEEBER,
General Manager.

In FR Doc. No. 76–26199 appearing at pages 49064–49078 in the FEDERAL REGISTER of Friday, November 5, 1976, the following revisions are made:

1. On page 49065, the following additional routine use is included for system TVA–2 (Personnel Files) and is listed at the end of the routine use paragraph for this system. The routine use reads as follows: "To provide pertinent information to local school districts and other government agenices in order to study TVA project impacts and to aid school districts in qualifying for assistance under Pub. L. 81–874 and other laws."

2. On page 49070, the third routine use in system TVA–11 (Payroll Records) which presently reads "To transmit payroll deduction information to financial institutions and employee organizations" is revised to read "To transmit payroll deduction information to financial institutions, employee organizations, and charitable institutions and agencies in connection with the Combined Federal Campaign."

3. On page 49069, the last category of individuals in the categories of individuals paragraph of system TVA–9 (Medical Records) which presently reads "employees of other Federal agencies examined under contract" is revised to read "employees of TVA contractors and other Federal agencies who are examined under contract."

[FR Doc.77–17591 Filed 6–20–77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

EXEMPTION APPLICATION

Correction

In FR Doc. 77–16238 appearing on page 30260 in the issue of Monday, June 13, 1977, the following entries in the table should read as follows:

Application No.	Applicant	Renewal of special permit or exemption
*	* * * *	*
6939–X	Warren Petroleum Co., Tulsa, Okla.	6939
*	* * * *	*
6909–P	Edwin Cooper, Inc., St. Louis, Mo.	6909
6949–P	Stauffer Chemical Co., Westport, Conn.	6949
*	* * * *	*

[Docket No. 77–7W]

TRANS-ALASKA CRUDE OIL PIPELINE

Petition for Waiver of Girth Weld Defects

On May 24, 1977, the Alyeska Pipeline Service Company (Alyeska) delivered to the Department of Transportation (DOT) a request for a waiver of the DOT regulations governing the acceptability of liquid pipeline girth welds (49 CFR 195.226 and 49 CFR 195.228). More specifically, Alyeska seeks the waiver for all trans-Alaska crude oil pipeline girth welds containing irregularities interpreted as not complying with the DOT's requirements but which are within the parameters of the fracture mechanics decision curves contained in the DOT's November 26, 1976, decision on a similar but more limited request (41 FR 52933, December 2, 1976). Alyeska would have this new requested waiver apply to girth welds currently known to contain such irregularities as well as those that may be revealed by any current or future review or audit.

In the November 26 decision cited by Alyeska in support of its current request, the DOT, after careful consideration of the issues and the technical advice provided by its experts and consultants, determined that—

> Fracture mechanics analysis is acceptable as a basis for granting exemptions from existing standards in appropriate circumstances, if such analysis produces a convincing and conservative estimate of structural integrity.

The specific criteria for applying this determination to the task of accepting or rejecting individual girth welds were set forth in the form of four decision curves in an appendix to the decision.

Originally Alyeska had requested a waiver for 612 of the approximately 30,000 field girth welds performed during the 1975 construction season. That number was reduced to 34 as repairs to the 1975 welds were completed during the construction season of 1976. In all, there are aproximately 100,000 main line girth welds in the pipeline—30,000 field welds performed during each of the 1975 and 1976 construction seasons and 40,000 "double joint" shop welds performed at the pipe storage facilities in Fairbanks and Valdez joining two sections of pipe before transporting them to construction sites. Concerns about the quality of girth welds and the adequacy of the quality control system had prompted Alyeska to audit the radiographic records of the 1975 field girth welds during the winter of 1975–76. It was that audit which led to Alyeska's first girth weld waiver request.

With respect to the 34 unrepaired girth weld defects then known to exist, the DOT further determined that those having dimensions which fell below the decision curve for the type of defect concerned "do not constitute a risk of failure at those connecting points during the expected lifetime of the pipeline." The DOT found that 24 of the 34 welds were acceptable on the basis of fracture mechanics analysis. A waiver was granted for only three welds located under the Middle Fork of the Koyukuk River inasmuch as repair efforts on the other 21 were then well on their way to completion.

Shortly after the DOT's November 26, 1976, decision on that request, a new series of questions arose concerning the quality of girth welds that had been performed in the shops at Valdez and Fairbanks. These questions were the subject of hearings before the Subcommittee on Energy and Power of the House of Representatives' Committee on Interstate and Foreign Commerce on December 14, 1976.

DOT Girth Quality Sampling Program

Because of concerns about the total girth weld population and because of the energy and environmental significance of the trans-Alaska crude oil pipeline, the DOT, as indicated during the hearings on December 14, 1976, undertook a statistical sample of the 1975 and 1976 field welds and double joint welds made in the Fairbanks and Valdez shops. A sample consisting of the radiographs for 500 randomly selected welds was chosen from each of the above three categories for a total sample size of 1500. Beginning in March 1977, the radiographs were interpreted by three DOT radiographic specialists. In order to minimize any dependent bias in the interpretation, each of the three radiographic specialists independently reviewed each of the radiographs from a listing of the approximately 100,000 girth welds against the DOT regulatory standard of acceptability as specified in 49 CFR 195.226 and .228. In each case where at least two specialists interpreted a radiograph as indicating an arc burn or a defect, related narrative records and documentation were examined and, two indepenednt radiographic experts reviewed the specialists' findings. The two radiographic experts,[1] are employees of Rockwell International Corporation under contract to the Energy Research and Development Administration (ERDA).

The ERDA experts, employing a technology used in dealing with the earlier waiver request, determined the depth and length of each defect they confirmed. A detailed report of the three DOT radiographic specialists' and the ERDA experts' findings and measurements has been made a part of this docket. In summary, the results were as shown in Tables I and II.

TABLE I.—*Welds containing defects identified by DOT specialists* [1]

Type of defects	1975 welds	1976 welds	Shop welds	Total welds
Arc burns	78	28	21	127
Planar	15	6	5	26
Nonplanar	35	9	0	44
Total welds [2]	88	37	24	149

[1] This does not include indications of external undercuts. The depth of external undercuts which are often detectable by radiography cannot be evaluated by that technique. For this reason Alyeska, as is the standard practice in pipeline construction, employed visual external inspection to gage the depth of external undercuts and require repair when their dimensions exceeded DOT limits.

[2] The sums of the addends are less than the totals because some welds contain more than 1 class of defect.

TABLE II.—*Welds containing defects identified by DOT specialists: Confirmed and measured by ERDA experts*

Type of defects	1975 welds	1976 welds	Shop welds	Total welds
Arc burns	70	23	18	111
Planar	13	5	1	19
Nonplanar	31	9	0	40
Total welds	72	28	18	118

[1] The sums of the addends are less than the totals because some welds contain more than 1 class of defect.

Fracture Mechanics Analysis

As indicated in the DOT's November 26, 1976, decision on Alyeska's earlier waiver request, fracture mechanics is the study of the effects of defect size and orientation on the ability of a structure containing cracks to resist fracture. It permits quantitative estimation of the growth of cracks during the lifetime of the structure and is currently used in the design of aircraft and space vehicles, electrical power generating equipment including nuclear pressure vessels and ship cargo tanks used to carry liquefied natural gas. More recently it has been recognized by Lloyd's Register of Shipping (London, England) and Det Norshe Veratas (Oslo, Norway) to resolve critical questions relative to pipeline safety.

It was after a comprehensive review of all relevant material assembled during consideration of that earlier waiver request and following extensive consultation with its experts and consultants including a panel of distinguished public experts that the DOT concluded in November 1976, that fracture mechanics could serve as a basis for granting waivers from existing DOT standards without compromising pipeline integrity.

Using the measurements (length and depth) of each confirmed defect as determined by the ERDA experts and applying them to the fracture mechanics decision curves contained in the DOT's November 26, 1976, decision, the results are as shown in Table III.

TABLE III.—*Analysis of confirmed defects in 1,500 randomly selected girth welds based on November 26, 1977 decision curves*

Type of defects	Welds analyzed	Welds not acceptable			Welds found acceptable
		1975	1976	Shop	
Arc burns	111	3	0	0	108
Planar	19	0	0	0	19
Nonplanar	40	5	0	0	35
Total welds [1]	118	8	0	0	110

[1] The sums of the addends are less than the totals because some welds contain more than 1 class of defect.

Although the question before the DOT on Alyeska's earlier waiver request concerned only a portion of the total main line girth welds, the conclusions reached and the accompanying decision curves developed for worst possible case situations are no less valid and applicable for the total pipeline. For this reason, I have decided to extend the applicability of that earlier decision to cover the entire 800-mile main line of the trans-Alaska crude oil pipeline and thereby grant the requested exemption from compliance with DOT welding standards (49 CFR 195.226 and 195.228).

Welds Not Acceptable Under November 26, 1976 Fracture Mechanics Decision Curves

Being convinced of the adequacy and structural integrity of all girth welds meeting fracture mechanics criteria as represented by the November 26, 1976, decision curves, there remains, however, a question as to those welds containing defects which pass neither the DOT standards nor the decision curve criteria. The weld quality sampling program results list eight such welds all performed during the 1975 construction season.

The true value of any sample lies in its utility as evidence of the quality or character of the whole or entire lot. Thus, using the results of the girth weld sampling program, it is possible to make certain estimations regarding the total number of girth welds containing defects which fall beyond the limits of the November 26, 1976, decision curves. Applying statistical sampling formulae calculated to provide a 99 percent level of confidence, leads to an estimate that 0.1 to 0.9 percent (0.5% ±0.4%) of all girth welds fall into this category.

Moreover, the individual sample defect length and depth measurements made by the ERDA experts, when displayed on the decision curves, provide an indication of the probable range of deviation and the maximum likely deviation of all such defects above the acceptable fracture mechanics determined sizes.

As noted in the November 26, 1976, decision, Figures 5 and 6, several sets of decision curves were proposed for evaluating the acceptability of planar and non-planar flaws. The curves selected for use as part of that decision were the most conservative choices although the panel of five national experts convened by the DOT in October 1976 recom-

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[1] Wayne D. Stump, manager of nondestructive testing, at the Rocky Flats Plant of Rockwell International (Prime U.S. ERDA contractor), where he has been employed for 25 years, holds a BS in Physics from the University of Denver and is a registered professional engineer in Colorado. Mr. Stump is a 25 year member and fellow of the American Society for Non-destructive Testing and has held several section offices in the Society. He is a certified ASNDT Level III in several test methods including radiography, and serves on the National Certification Panel for Level III personnel. He also holds membership in the American Society of Metals and the National Management Association.

John L. Summers, nondestructive testing area manager, at the Rocky Flats Plant, Rockwell International (Prime U.S. ERDA contractor), where he has been employed for the past 25 years, holds an associate degree of Science from Mascatine Junior College and has completed additional studies at the University of Colorado. Mr. Summers is a 22 year member and fellow of the American Society for Nondestructive Testing, having held several section offices in the Society. He is a certified ASNDT Level III in several test methods including radiography, and has served on the select Ad Hoc committee for Level III certification and is currently on the National Certification Panel for Level III personnel. He has been nominated as a National Director for ASNDT. Mr. Summers also holds membership in the American Society of Metals and the National Management Association and is a registered professional engineer in the State of California.

mended otherwise. The panel in its November 8, 1976, report noted that the least conservative curves (i.e., the Irwin curves) "will most closely predict actual failures of non-crack defects." Moreover, in the decision itself, it was pointed out that while all DOT and outside experts agreed that fracture mechanics can serve as a basis for granting waivers, there are differences among those experts as to the degree of conservatism required, specifically as regards the choice of analytical models and factors of safety. Notwithstanding the technical merits of any particular model, it was the most conservative model that was chosen to carry out the November 26 decision.

To assist the DOT in evaluating this information and determining its significance to the structural integrity of the pipeline, on June 6, 1977, the DOT reconvened the panel of five experts first convened in October 1976, in connection with the initial consideration of fracture mechanics technology. The panel of experts and their areas of expertise were: Dr. Herbert T. Corten, Professor of Theoritical and Applied Mechanics, University of Illinois (expert in fracture mechanics analysis); Dr. Matthew Creager, President of Del West Associates (expert in fracture mechanics analysis and testing); Dr. Robert C. McMaster, Regents Professor of Welding and Electrical Engineering, Ohio State University (expert in metallurgy, welding, nondestructive testing and radiography); Dr. Warren F. Savage, Professor of Metallurgy and Director of Welding Research, Rensselaer Polytechnic Institute (expert in metallurgy and welding); and Edward Criscuolo, Naval Surface Weapons Center (expert in welding and radiography).

That panel of experts concluded that:

1. The successfully concluded hydrostatic test, while useful in testing longitudinal welds and serviceability is not a significant test of the girth welds;

2. The sampling program met the objective of determining with a high level of confidence whether or not the quality of welds meets DOT standards;

3. The November 26, 1977, decision curves, as they had previously noted, contain more than adequate safety factors;

4. None of the eight welds containing defects, which are only marginally outside the acceptable range of the November 26 decision curves, pose any threat to the structural integrity of the pipeline through its anticipated life;

5. Girth weld failures, which are generally an unlikely source of potential problems, will be even less so in the case of the trans-Alaska pipeline considering the superior materials and weld systems employed;

6. In view of the strong evidence that the 1976 field welds and the shop welds do not contain any defects which exceed the limits of the November 26 fracture mechanics decision curves, further review of these welds is not warranted; and

7. Since the defect indications of the 1975 field welds are of neither sufficient size or number to be of concern with regard to structural integrity, further review of the radiographs of these welds will not furnish any additional useful information or increase the structural reliability of the pipeline.

A complete report of the panel's evaluation and recommendations has been placed in the public docket.

On the basis of the results of the sampling program, the technical analysis of those results by the panel and DOT experts, and the application of fracture mechanics analysis to these results, I have concluded that there is no more than an extremely remote risk of loss of pipeline integrity.

Accordingly, I have determined that further DOT review of the girth weld radiographs and related documentation will not serve any useful purpose and that any program to seek out and repair any girth welds would certainly prove costly and quite possibly environmentally disruptive with no perceptible likelihood of enhancing the structural integrity of the pipeline.

(18 U.S.C. 831-835, Section 6(e)(4) of the Department of Transportation Act (49 U.S.C. 1655(e)(4)) and Section 203 of the Trans-Alaska Pipeline Authorization Act (Pub. L. 93-153).)

Issued in Washington, D.C. on June 17, 1977.

ALAN A. BUTCHMAN,
Certifying Officer, OPSO.

MARGARET E. HAMMOND,
Deputy Secretary of Transportation.

[FR Doc.77-17685 Filed 6-17-77;11:16 am]

DEPARTMENT OF THE TREASURY

Customs Service

LEATHER HANDBAGS FROM COLOMBIA

Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: Customs Service, U.S. Treasury.

ACTION: Initiation of investigation.

SUMMARY: This notice is to advise the public that a petition has been received and as a result an investigation is being started for the purpose of determining whether or not benefits are granted by the Government of Colombia to manufacturers or exporters which constitute a bounty or grant.

A preliminary determination will be made not later than October 22, 1977, and a final determination not later than April 22, 1978.

EFFECTIVE DATE: April 22, 1977.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: A petition was received in satisfactory form on April 22, 1977, alleging that payments or bestowals, conferred by the Government of Colombia upon the exportation of leather handbags from Colombia constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

Imports covered by this investigation are classifiable under item 706.0820, Tariff Schedules of the United States (TSUS).

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Department of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of the statute within 6 months of the receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant and a final decision within 12 months of the receipt of such petition.

Therefore, a preliminary determination on this petition will be made no later than October 22, 1977, as to whether or not alleged payments or bestowals conferred by the Government of Colombia upon the manufacture, production, or exportation of the above described merchandise constitute a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than April 22, 1978.

This notice is published pursuant to section 303(a)(3), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and section 159.47(c), Customs Regulations (19 CFR 159.47(c)).

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: May 23, 1977.

HENRY C. STOCKELL, Jr.,
Acting General Counsel.

[FR Doc.77-17476 Filed 6-20-77;8:45 am]

LEATHER HANDBAGS FROM URUGUAY

Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: Customs Service, U.S. Treasury.

ACTION: Initiation of investigation.

SUMMARY: This notice is to advise the public that a petition has been received and as a result an investigation is being started for the purpose of determining whether or not benefits are granted by the Government of Uruguay to manufacturers or exporters which constitute a bounty or grant.

A preliminary determination will be made not later than October 22, 1977, and a final determination not later than April 22, 1978.

EFFECTIVE DATE: April 22, 1977.

FOR FURTHER INFORMATION CONTACT:

Vincent Kane, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: A petition was received in satisfactory form on April 22, 1977, alleging that payments or bestowals, conferred by the Government of Uruguay upon the exportation of leather handbags from Uruguay con-

stitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

Imports covered by this investigation are classifiable under item 706.0820, Tariff Schedules of the United States (TSUS).

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Department of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of the statute within 6 months of the receipt, in satisfactory form, or a petition alleging the payment or bestowal of a bounty or grant and a final decision within 12 months of the receipt of such petition.

Therefore, a preliminary determination on this petition will be made no later than October 22, 1977, as to whether or not alleged payments or bestowals conferred by the Government of Uruguay upon the manufacture, production, or exportation of the above described merchandise constitutes a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than April 22, 1978.

This notice is published pursuant to section 303(a)(3), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and section 159.47(c), Customs Regulations (19 CFR 159.47(c)).

JOHN A. HENLEY,
Acting Commissioner of Customs.

Approved: May 23, 1977.

HENRY C. STOCKELL, Jr.,
Acting General Counsel.

[FR Doc.77-17477 Filed 6-20-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 417]

ASSIGNMENT OF HEARINGS

JUNE 16, 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.

MC 114211 (Sub-No. 296), Warren Transport, Inc., now being assigned pre-hearing conference July 6, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 31533 (Sub-No. 14), South Bend Freight Lines, Inc., now assigned July 19, 1975, at Chicago, Ill., hearing canceled, and the application is dismissed.

MC 139495 (Sub-No. 187), National Carriers, Inc., now being assigned July 26, 1977 (1 day), at Atlanta, Ga., in a hearing room to be later designated.

MC 106674 (Sub-No. 220), SchilliMotor Lines, Inc., now being assigned July 27, 1977, at Atlanta, Ga. (1 day), in a hearing room to be later designated.

MC 2900 (Sub-No. 293), Ryder Truck Lines, Inc., now being assigned for continued hearing on the 15th day of August 1977 (1 week), at Savannah, Ga., and will be held at the De Sota Hilton, Buss and Liberty Streets.

MC 109397 (Sub-No. 347), Tri-State Motor Transit Co., now being assigned July 28, 1977 (1 day), at Atlanta, Ga., in a hearing room to be later designated.

MC 138157 (Sub-No. 33), Southwest Equipment Rental, Inc., d.b.a. Southwest Motor Freight, now being assigned July 29, 1977 (1 day), at Atlanta, Ga., in a hearing room to be later designated.

MC 140010 (Sub-No. 7), Joseph Moving & Storage Co., d.b.a. Joseph Motor Lines, now being assigned August 1, 1977 (1 day), at Atlanta, Ga., in a hearing room to be later designated.

MC 128273 (Sub-No. 243), Midwestern Distribution, Inc., now being assigned August 2, 1977 (2 days), at Atlanta, Ga., in a hearing room to be later designated.

MC 139468 (Sub-No. 4), International Contract Carrier, Inc., now being assigned August 4, 1977 (2 days), at Atlanta, Ga., in a hearing room to be later designated.

MC 2860 (Sub-No. 151), National Freight, Inc., now being assigned July 27, 1977, at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 29613 (Sub-No. 8), Jayne's Motor Freight, Inc., now assigned June 29, 1977, at New York, N.Y., will be held at the Court of Claims, Room No. 238, Court Room A, 26 Fereral Plaza, instead of Room 2839.

MC 141084 (Sub-No. 6), National Freight Lines, Inc., now assigned July 6, 1977, at Washington, D.C., is postponed to September 28, 1977, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 52979 (Sub-No. 17), Hunt Truck Lines, Inc., now assigned July 18, 1977, at Des Moines, Iowa, is postponed to October 11, 1977 (9 days), at Des Moines, Iowa, Room 113, Federal Building, 210 Walnut Street.

MC 2860 (Sub-No. 152), National Freight, Inc., now assigned July 13, 1977, at Washington, D.C., is advanced to July 8, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 121470 (Sub-No. 9), Tanksley Transfer Co., now being assigned September 22, 1977 (2 days), at Nashville, Tenn., in a hearing room to be later designated.

MC 125808 (Sub-No. 1), AAACon Auto Transport, Inc.—Petition Seeking Modification of Permit (Certificate), now assigned July 11, 1977, at New York, N.Y., has been postponed to September 26, 1977 (1 week), at New York, N.Y., in a hearing room to be later designated.

MC 134772 (Sub-No. 3), George Lange Trucking, Inc., now assigned September 7, 1977, At San Francisco, Calif., is canceled, application dismissed.

MC 52979 (Sub-No. 17), Hunt Truck Lines, Inc., now assigned July 18, 1977, at Des Moines, Iowa, is postponed to October 11, 1977 (9 days), in Room 113, Federal Building, 210 Walnut Street, Des Moines, Iowa.

MC 110410 (Sub-No. 19), Benton Bros. Film Express, Inc., now assigned July 19, 1977, at Atlanta, Ga., is canceled and application dismissed.

MC 142239 (Sub-No. 3), Washington Transportation Co., now assigned July 7, 1977, at Omaha, Nebr., is canceled and application dismissed.

MC 123048 (Sub-No. 349), Diamond Transportation System, Inc., now being assigned August 8, 1977 (1 day), at Lexington, Ky., in a hearing room to be later designated.

MC 140484 (Sub-No. 20), Lester Coggins Trucking, Inc., now being assigned August 9, 1977 (1 day), at Lexington, Ky., in a hearing room to be later designated.

MC 109533 (Sub-No. 78), Overnite Transportation Co., now being assigned continued hearing August 10, 1977 (3 days), in the Campbell House Inn, 135 Harrodsburg Road, Lexington, Ky.

AB 18 (Sub-No. 18), Chesapeake and Ohio Railway Co. Abandonment Portion Greenbrier Branch Between North Caldwell and Durbin, in Greenbrier and Pocahontas Counties, W. Va., and FD 28108, Western Maryland Railway Co.—Lease and Operate—Chesapeake and Ohio Railway Co. Between Durbin and Bartow in Pocahontas County, W. Va., now assigned July 25, 1977, at Marlinton, W. Va., is postponed to August 15, 1977 (1 week), at Marlinton, W. Va., in a hearing room to be later designated.

MC 2232 (Sub-No. 11), Creger Freight Lines, Inc., now being assigned for continued hearing on the 6th day of July 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-17662 Filed 6-20-77;8:45 am]

[Section 5a Application 63 (Supplemental Amendment 2)]

BULK CARRIER CONFERENCE, INC. AND GROVE, JASKIEWICZ, GILLIAM, AND COBERT

Bulk Carriers, Agreement

JUNE 7, 1977.

The Commission is in receipt of a supplemental application in the above-entitled proceeding for approval of an amendment to the agreement therein approved.

Filed May 27, 1977 by:

Joseph M. Harrison, General Manager, Bulk Carrier Conference, Inc., 2341 Jefferson Davis Highway, Arlington, Virginia 22202.

Leonard A. Jaskiewicz, Edward J. Kiley, Grove, Jaskiewicz, Gilliam, and Cobert, 1730 M St. NW., Suite 501, Washington, D.C. 20036. Attorneys for Applicants.

The Amendment involves: Changes in the definition of motor common carriers eligible for membership in Bulk Carrier Conference, Inc., so as not to prohibit or limit the membership of any carrier which specializes in the transportation of commodities in bulk, which otherwise qualifies, for the reason that such carrier is also authorized to transport identical commodities in bags or packages.

The complete application may be inspected at the Office of the Commission, in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing on or before July 21, 1977. As provided by the General Rules of Practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise, the Commission, in its

discretion, may proceed to investigate and determine the matters involved in such application, without further or formal hearing.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-17663 Filed 6-20-77;8:45 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 15, 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 July 6, 1977.

FSA No. 43382—*Joint Water-Rail Container Rates—Pacific Far East Line, Inc.* Filed by Pacific Far East Line, Inc. (No. 14), for itself and interested rail carriers.

Rates on general commodities, from rail stations on the U.S. Pacific and Gulf Seaboard, to Egyptian, Mediterranean, Middle Eastern, Greek, and Turkish ports.

Grounds for relief—Water competition.

FSA No. 43383—*Malt Liquors from Fort Worth, Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-678), for interested rail carriers.

Rates on liquors, malt: ale, beer, beer tonic, cereal beverages, porter or stout, in straight or mixed carloads, as described in the application, from Fort Worth, Texas, to specified points in eastern territory.

Grounds for relief—Rate relationship.

Tariff—Supplement 137 to Southwestern Freight Bureau, Agent, tariff 35-B, I.C.C. No. 4906. Rates are published to become effective on July 13, 1977.

FSA No. 43384—*Rubber to Johnson City, Tennessee.* Filed by Southwestern Freight Bureau, Agent (No. B-687), for interested rail carriers.

Rates on rubber, artificial, neoprene, or synthetic, crude, rubber compounds, NOIBN, loose or in packages, in carloads, as described in the application, from Addis and Port Allen, Louisiana, to Johnson City, Tennessee.

Grounds for relief—Rate relationship.

Tariff—Supplement 62 to Southwestern Freight Bureau, Agent tariff 13-F, I.C.C. No. 5209.

Rates are published to become effective on July 13, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-17661 Filed 6-20-77;8:45 am]

[Notice 180]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before July 21, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-77036, filed March 16, 1977. Transferee: EAST ENTERPRISES, INC., doing business as ACE LINES INC., 4143 East 43rd Street, Des Moines, Iowa 50317. Transferor: Ace Lines, Inc., 4143 East 43rd Street, Des Moines, Iowa 50317. Applicants' representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, Iowa 50309. Authority sought for purchase by transferee of all of the operating rights held by transferor as set forth in Certificate No. MC 61231 and subs thereunder, issued on various dates between December 7, 1955 and May 4, 1977, as follows: General commodities and other specified commodities over specified regular routes and irregular routes from, to, and between points in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming. Transferee presently holds no authority from this Commission; application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77148, filed May 23, 1977. Transferee: BARNEY'S MOVING & HAULING SERVICE, INC., 2117 South Clinton Avenue, Trenton, New Jersey 08611. Transferor: Julius Frank Barany, doing business as Barney's Moving & Hauling Service, 2117 South Clinton Avenue, Trenton, New Jersey 08611. Applicant's representative: Edward Hunter, Attorney-at-Law, 1510 Pennington Road, Trenton, New Jersey 08618. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-7547, issued November 1, 1967, as follows: Household goods between Philadelphia, Pa., on the one hand, and, on the other, points in New Jersey, Delaware, and Maryland and a specified portion of New York State. Transferee presently holds no authority from this Commission; application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-77157, filed June 2, 1977. Transferee: HILLMAN BULK SERVICE OF NEW JERSEY, INC., 67 Esther St., Newark, N.J. 07105. Transferor: Hillman Bulk Service, Inc., 67 Esther St., Newark, N.J. 07105. Applicants' representative: John R. Simms, Jr., Attorney-at-Law, 915 Pennsylvania Building, 423 13th St. NW., Washington, D.C. 20004. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 119725, issued September 6, 1962, as follows: castor beans, salt, fuller's earth, pumice, linseed cake, bags, vegetable oils, and damaged, defective, or returned shipments of vegetable oils, from and to specified points in New York, New Jersey, Connecticut, Rhode Island, Massachusetts, Pennsylvania, Delaware, Maryland, and the District of Columbia. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a (b) of the Act.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-17660 Filed 6-20-77;8:45 am]

[No. 36583]

OKLAHOMA INTRASTATE FREIGHT RATES AND CHARGES, 1977

Petition for Investigation

Petitioners, 14 common carriers by railroad[1] subject to Part I of the Inter-

[1] The Arkansas Western Railway Company; the Atchison, Topeka and Santa Fe Railway Company; Beaver, Meade and Englewood Railroad Company; Chicago, Rock Island and Pacific Railroad Company; Fort Smith and Van Buren Railway Company; Hollis & Eastern Railroad Company; the Kansas City Southern Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri Pacific Railroad Company; St. Louis-San Francisco Railway Company; Sand Springs Railway Company; Texas, Oklahoma & Eastern Railroad Company; The Texas and Pacific Railway Company; Tulsa-Sapulpa Union Railway Company.

state Commerce Act and also operating in intrastate commerce in the State of Oklahoma, filed a joint petition under section 13(3) of the Interstate Commerce Act on May 13, 1977, requesting that this Commission institute an investigation of Oklahoma intrastate freight rates and charges under sections 13 and 15a(2) of the Interstate Commerce Act in which petitioner seek an order authorizing them to increase such rates and charges by the same amounts approved for interstate application by this Commission in Ex Parte No. 330, Increased Freight Rates, West and Interterritorial, 1976, and Ex Parte No. 336, Increased Freight Rates and Charges, 1977.

Petitioners sought to make the increases granted in Ex Parte Nos. 330 and 336, supra, applicable to Oklahoma intrastate commerce by tariffs filed with the Corporation Commission of the State of Oklahoma on October 14, 1976 and January 10, 1977, respectively. The increases were suspended insofar as they applied on certain commodities but no hearing has ever been held with respect to the suspended rates.

Petitioners contend that present interstate freight rates from, to, and within Oklahoma are just and reasonable and that the proposed intrastate rates will not exceed a just and reasonable level; that transportation conditions for intrastate traffic in Oklahoma are not more favorable than for interstate traffic; that traffic moving under present Oklahoma interstate rail freight rates and charges fails to provide its fair share of earnings; and that the present Oklahoma intrastate rail freight rates and charges create undue and unreasonable advantage, preference, and prejudice between persons and localities in intrastate commerce within Oklahoma and interstate and foreign commerce, and result in undue, unreasonable, and unjust discrimination against and an undue burden on interstate commerce in violation of sections 13 and 15a(2) of the Interstate Commerce Act, among others, to the extent that they do not include the increases authorized in Ex Parte Nos. 330 and 336, supra.

Under section 13(5) of the Interstate Commerce Act, where the petitioning railroads have first filed a change in intrastate rates with the appropriate state regulatory body and that regulatory body has not acted finally on the change within 120 days of filing, this Commission has exclusive jurisdiction to institute an investigation into the lawfulness of intrastate rail freight rates and charges for the purpose of adjusting such rates and charges to those charged on similar traffic moving in interstate or foreign commerce. This Commission may act notwithstanding the laws or constitution of any State, or the pendency of any proceeding before any State court or other State authority.

Wherefore, and good cause appearing therefor:

It is ordered, That the petition be, and it is hereby, granted; and that an investigation under section 13 and 15a of the Interstate Commerce Act be, and it is hereby, instituted to determine whether the Oklahoma intrastate rail freight rates in any respect cause any unjust discrimination against or any undue burden on interstate or foreign commerce, or cause undue or unreasonable advantage, preference, or prejudice as between interstate or foreign commerce, or are otherwise unlawful, by reason of the failure of such rates and charges to include the full increases authorized for interstate application by this Commission in Ex Parte Nos. 330 and 336, supra; and to determine if any rates or charges or maximum or minimum charges, or both, shall be prescribed to remove any unlawful advantage, preference, discrimination, undue burden, or other violation of law found to exist.

It is further ordered, That all common carriers by railroad operating in the State of Oklahoma subject to the jurisdiction of this Commission, be, and they are hereby, made respondents in this proceeding.

It is further ordered, That all persons who wish to actively participate in this proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before July 6, 1977. Although individual particpation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. The Commission desires participation of only those who intend to take an active part in the proceeding.

It is further ordered, That as soon as practicable after the date of indicating a desire to participate in the proceeding has passed, the Commission will serve a list of names and addresses of all persons upon whom service of all pleadings must be made and that thereafter this proceeding will be assigned for oral hearing or handling under modified procedure.

And it is further ordered, That a copy of this order be served upon each of the petitioners and respondents herein; that the state of Oklahoma be notified of the proceeding by sending copies of this order and of the instant petition by certified mail to the Governor of the State of Oklahoma and the Corporation Commission of the State of Oklahoma; and that further notice of this proceeding be given to the public by depositing a copy of this order in the Office of the Secretary of the Interstate Commerce Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

This is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 9th day of June, 1977.

By the Commission, Commissioner Hardin.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-17581 Filed 6-20-77;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: Federal Deposit Insurance Corporation.

TIME AID DATE: 10:30 a.m., June 27, 1977.

PLACE: Room 6135, FDIC Building, 550 17th Street, NW., Washington, D.C.

MATTERS TO BE CONSIDERED:

Applications or requests pursuant to section 19 of the Federal Deposit Insurance Act for the Corporation's consent to service of persons convicted of offenses involving dishonesty or a breach of trust as directors, officers, or employees of insured banks: Names of persons and of banks authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Recommendations regarding liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,089-L—First State Bank of Northern California San Leandro, California
Case No. 43,092-SR—Sharpstown State Bank Houston, Texas
Case No. 43,094-L—Franklin National Bank New York, New York
Case No. 43,095-L—Northeast Bank of Houston Houston, Texas
Case No. 43,099-NR—United States National Bank San Diego, California
Case No. 43,100-L—American City Bank & Trust Company, National Association Milwaukee, Wisconsin
Case No. 43,102-L—The Hamilton National Bank of Chattanooga Chattanooga, Tennessee

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.: Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-702-77 Filed 6-17-77;12:18 pm]

2

AGENCY HOLDING THE MEETING: Federal Deposit Insurance Corporation.

TIME AND DATE: 10:45 a.m., June 27, 1977.

PLACE: Room 6135, FDIC Building, 550, 17th Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance: The People's Bank of Holly Pond, to be located in Holly Pond, Cullman County, Alabama.

Pine River Valley Bank, to be located at One Colorado Drive, Bayfield, La Plata County, Colorado.

Nisswa State Bank, to be located at the intersection of County Road 18 and Cullen Lake Road, Nisswa, Crow Wing County, Minnesota.

City Bank and Trust, to be located at Tremont Square, Claremont, Sullivan County, New Hampshire.

American Bank and Trust, to be located at 19 South Jefferson Avenue, Cookeville, Putnam County, Tennessee.

Applications for consent to establish branches: Totalbank, Miami, Florida, at 1730 Biscayne Boulevard, Miami, Dade County, Florida.

Dry Dock Savings Bank, New York (Manhattan), New York, at 1340 Third Avenue (a/k/a 176 East 77th Street), New York (Manhattan), New York County, New York.

Application for consent to establish a remote service facility: St. Joseph Valley Bank, Elkhart, Indiana, at 317 West Lusher Avenue, Elkhart, Elkhart County, Indiana.

Application for consent to the issuance of a convertible subordinated capital debenture as an addition to capital structure and for advance consent to its conversion to common stock as provided in the debenture: Case State Bank, Stonewall, Pontotoc County, Oklahoma.

Application for consent to merge: Hawkeye Bank and Trust, Burlington, Iowa, a State nonmember insured bank, for consent to merge with Burlington Bank Realty Company, Burlington, Iowa, its wholly-owned bank premises subsidiary, under the charter and title of Hawkeye Bank and Trust.

Applications for consent to merge and establish branches: Southwest Bank, Vista, California, a State nonmember insured bank, for consent to merge with Mission Bank, El Toro, California, also a State nonmember insured bank, under the charter and title of Southwest Bank, and to establish the three offices of Mission Bank as branches of the resultant bank.

Northfield Savings Bank, New York (P.O. Port Richmond), New York, an insured mutual savings bank, for consent to merge with Mutual Savings and Loan Association of Richmond County, New York (P.O. Port Richmond), New York, under the charter and title of Northfield Savings Bank, and to establish the two offices of Mutual Savings and Loan Association of Richmond County as branches of the resultant bank.

Recommendations regarding liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,088-L—International City Bank and Trust Company, New Orleans, Louisiana
Case No. 43,090-SR—Sharpstown State Bank, Houston, Texas
Case No. 43,091-SR—American Bank & Trust Company, New York, New York
Case No. 43,096-NR—United States National Bank, San Diego, California
Case No. 43,098-L—State Bank of Clearing, Chicago, Illinois
Case No. 43,101-SR—American Bank & Trust Company, New York, New York
Case No. 43,103-L—The Hamilton Bank and Trust Company, Atlanta, Georgia
Memorandum re: Birmingham Bloomfield Bank, Birmingham, Michigan

Recommendations with respect to the initiation of cease-and-desist proceedings or termination-of-insurance proceedings against certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(10)).

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-703-77 Filed 6-17-77;12:19 pm]

3

AGENCY HOLDING THE MEETING: Federal Deposit Insurance Corporation.

TIME AND DATE: 11 a.m., June 27, 1977.

PLACE: Board Room, Sixth Floor, FDIC Building, 550, 17th Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed purchase and assumption transaction: First National Bank of Moline, Illinois, and Uptown National Bank of Moline, Moline, Illinois.

Request by the Board of Governors of the Federal Reserve System for report on the competitive factors involved in a proposed consolidation: Shepherd State Bank, Shepherd, Michigan, with Isabella Bank and Trust, Mount Pleasant, Michigan.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities: Cooley, Shrair, Alpert & Labovitz, Springfield, Massachusetts, in connection with the liquidation of Chicopee Bank and Trust Company, Chicopee, Massachusetts.

Kaye, Scholar, Fierman, Hays & Handler, New York, New York, in connection with the liquidation of The Bank of Bloomfield, Bloomfield, New Jersey.

Casey, Lane & Mittendorf, New York, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Taback & Hyams, Jericho, New York, in connection with the liquidation of Franklin National Bank, New York, New York.

Meredith, Donnell & Edmonds, Corpus Christi, Texas, in connection with the liquidation of First State Bank & Trust Company, Rio Grande City, Texas.

Recommendations with respect to the amendment of regulations and general notices: Memorandum and resolution proposing amendments to Part 310 of the Corporation's rules and regulations, entitled "Safeguarding Personal Information," and the adoption of a "Notice of new Systems and Changes to Existing System of Records."

Memorandum and resolution with reference to Part 309 of the Corporation's rules and regulations that provides the procedures for public disclosure of FDIC records and information and delegates the authority for the release of certain confidential information. The revision is intended to accomplish two things: (1) to simplify and update the procedures followed by the FDIC in disclosing records it maintains; and (2) to clarify and provide greater authority at the divisional level of the FDIC for disclosure which presently require the authorization of the Chairman of the FDIC's Board of Directors.

Recommendation with respect to the appointment of an agent for Service of Process in the State of New Jersey.

Recommendations with respect to the execution or amendment of leases: Acquisition of additional space for the Rosalyn Training Center facility. Acquisition of additional space for the San Francisco Regional Office.

Reports of committees and officers: Minutes of the actions approved by the Committee on Liquidations, loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports with respect to security transactions authorized by the Chairman.

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-704-77 Filed 6-17-77;12:20 pm]

4

AGENCY HOLDING THE MEETING: Federal Election Commission.

DATE AND TIME: Thursday, June 23, 1977 at 10 a.m.

PLACE: 1325 K Street, NW., 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. Advisory opinions AO 1977-16, AO 1977-24.
IV. Waiver of reporting requirements.
V. Pending legislation.
VI. Appropriations and budget OMB budget estimate outlays.
VII. Agency Job classifications.
VIII. Liaison with other Federal agencies.
IX. Routine Administrative Matters.

PORTIONS CLOSED TO THE PUBLIC

X. Executive session. A. Compliance and audit referral No. 19. B. Personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, Phone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-698-77 Filed 6-17-77;8:45 am]

5

AGENCY: HOLDING THE MEETING: Federal Election Commission.

FEDERAL REGISTER: S-698-77, June 16, 1977.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 23, 1977, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

CHANGE IN THE MEETING: Please remove from the open meeting: AO 1977-16.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-700-77 Filed 6-17-77;10:13 am]

6

AGENCY HOLDING THE MEETING: Federal Home Loan Mortgage Corporation.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 42, No. 114, page 30467, Tuesday, June 14, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m., June 16, 1977.

PLACE: 320 First Street, NW., Room 630, Washington, D.C.

STATUS: Closed Meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Henry Judy, 202-624-7107.

CHANGES IN THE MEETING: The following item will be discussed at a closed meeting following the open meeting previously announced: Appointment of Corporate Officer.

No. 35, June 15, 1977.

RONALD A. SNIDER,
Assistant Secretary.

[S-699-77 Filed 6-17-77;8:45 am]

7

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 30743, June 16, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: June 22, 1977—10 a.m.

CHANGES IN THE MEETING: Addition of the following item to the closed session:

3. Civil Penalty Compromise Guidelines.

[S-701-77 Filed 6-17-77;11:39 am]

8

AGENCY HOLDING MEETING: Federal Power Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 30467.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 16, 1977, 2 p.m.

CHANGES IN THE MEETING: Addition of Item G-16, Docket Nos. CP77-29

and CP74–286, Natural Gas Pipeline Company of America.

KENNETH F. PLUMB,
Secretary.

[S–696–77 Filed 6–16–77;2:21 pm]

9

AGENCY HOLDING MEETING: Federal Power Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 30467.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 16, 1977, 2 p.m.

CHANGES IN THE MEETING: Addition of Item G–15, Docket No. CP77–439, Tennessee Gas Pipeline Company.

KENNETH F. PLUMB,
Secretary.

[S–697–77 Filed 6–16–77;2:21 am]

10

AGENCY HOLDING THE MEETING: Postal Rate Commission.

TIME AND DATE: 9:30 a.m., Wednesday, June 22, 1977.

PLACE: Conference Room, Room 500, 2000 L St., NW., Washington, D.C.

STATUS: Items 1 and 2 open; Items 3 and 4 closed.

MATTERS TO BE CONSIDERED:

OPEN SESSION

1. Draft Notice Changing Commission Rules of Practice, 39 C.F.R. Section 3001.102; PRC Forms 102 and 103.

2. Report on Postal Service A/P8.

CLOSED SESSION

3. Tentative Decision Concerning MOAA Proposals to Create a Rate Bridge Between Third-Class Catalogs and Fourth-Class Bound Printed Matter, Docket Nos. MC76–3 and MC76–4.

4. Tentative Decision Concerning Proposals for Local and Nationwide Subclasses Within First-Class Mail, Docket No. MC76–1.

Authority to conduct closed meeting: 5 U.S.C. 552 b(c)(10).

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone 202–254–5614.

[S–708–77 Filed 6–17–77;4.01 pm]

11

AGENCY HOLDING THE MEETING: Securities and Exchange Commission.

FEDERAL REGISTER CITATION OF THE PREVIOUS ANNOUNCEMENT: June 16, 1977 (42 FR 30742).

PREVIOUS ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., June 16, 1977.

STATUS: Open meeting.

CHANGES IN THE MEETING: Deletion of item on the open meeting agenda.

The Commission's consideration of the publication for comment of a proposed amendment to Rule 3–07 of Regulation S–X to substantially eliminate the practice of accounting for certain transactions as adjustments of prior period earnings has been postponed until further notice.

Chairman Williams, Commissioners Loomis, Evans, and Pollack determined that commission business required additional consideration of this matter and that no earlier notice thereof was possible.

JUNE 15, 1977.

[S–693–77 Filed 6–16–77;11:44 am]

12

AGENCY HOLDING THE MEETING: Civil Service Commission.

TIME AND DATE OF MEETING: 9 a.m., June 28, 1977.

PLACE: Commissioners' Meeting Room, Room 5H09 (fifth floor), 1900 E Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: (1) Continuation of discussion of Recommendations of the Task Force on Merit Staffing Review Recommendations. (2) Qualification requirements in filling higher level positions within the Civil Service Commission.

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–714–77 Filed 6–20–77;10:11 am]

federal register

TUESDAY, JUNE 21, 1977
PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

BASE FLOOD ELEVATIONS

Proposed Determinations

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2960]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Clackamas County, Oreg.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the County of Clackamas, Oregon, in accordance with Section 11 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. George D. Poppen, County Clerk, Clackamas County Courthouse, 8th and Main Streets, Oregon City, Oregon 97045.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Clackamas County Courthouse, 8th and Main Streets, Oregon City, Oregon 97045.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clackamas River...	Bakers Bridge [1].....	102
	Barton Bridge.....	164
	Confluence of Eagle Creek.	206
Molalla River.....	Southern Pacific Railroad Bridge.	172
	Highway No. 213 Bridge.	237
	Highway No. 211 Bridge.	323
	Confluence with Cedar Creek.	460
Kim Creek.....	Molalla Forest Road Bridge.	138
	Highway No. 213 Bridge.	204
Sandy River.....	Sleepy Hollow Bridge [1].	982
	Confluence of Zig Zag River.	1,379
	Truman Road Bridge [1].	1,455
Zig Zag River.....	do.[1].....	1,398
	Road 20 Bridge.....	1,640
Salmon River.....	New Highway 26 Bridge.	1,053
	Bridge at Welches.....	1,292
Still River.....	Road 10 Bridge.....	1,584
	Road 20 Bridge.....	1,722

[1] Upstream.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 24, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-17166 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2926]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Hampton, Allegheny County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Township of Hampton, Allegheny County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Hampton, Allegheny County, Pennsylvania in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the bulletin board in the lobby, Hampton Township Municipal Building, 3101 McCully Road, Allison Park, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations, should immediately notify the Honorable Joseph M. Wink, Mayor of Hampton Township, Hampton Township Municipal Building, 3101 McCully Road, Allison Park, Pennsylvania 15101.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Pine Creek	Downstream corporate limit.	838
	Pennsylvania Route 8.	844
	Duncan Ave	851
	Royal Blvd	855
	B. & O. RR	860
	Royal View Dr. (extended).	887
	Sample Rd	888
Gourdhead Run	Naylor Ave	847
	Duncan Ave	852
	Old Route 8	861
	Pennsylvania Route 8.	867
	Clearview Rd	873
	Confluence with McCaslin Run.	890
	1,200 ft downstream from Lee Dr.	900
	Lee Dr	920
Harts Run	Confluence with Gourdhead Run.	929
	950 ft upstream from mouth.	935
	1,500 ft upstream from mouth.	944
Crouse Run	Royal View Dr	891
	Sample Rd	902
	Pioneer Rd	1,011
	Florence Dr. (extended).	1,017
	West Barkoner Rd. (extended).	1,020
	Pioneer Rd	1,039
Crouse Run Tributary.	Confluence with Crouse Run.	1,013
	Pennsylvania Route 8.	1,025
	Hickory Dr	1,027

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974.)

Issued: May 24, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–17167 Filed 6–20–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2922]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Borough of Sylvania, Bradford County, Pennsylvania

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Borough of Sylvania, Bradford County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872; Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Sylvania, Bradford County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Sylvania Borough Hall, Route 6, Sylvania, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Frank W. Webster, Mayor of Sylvania, R.D. No. 1, Troy, Pennsylvania 16947.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Sugar Creek	Eastern corporate limits.	1,234
	Roosevelt Highway and Porter Rd.	1,246
	Mill St	1,268
	Austinville Rd	1,277
	Confluence with Morgan Creek.	1,288
Morgan Creek	Cottage Ave. (extended).	1,296
Spring Creek	Austinville Rd	1,288

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 25, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77–17168 Filed 6–20–77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI–2919]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Wysox, Bradford County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Township of Wysox, Bradford County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Wysox, Bradford County, Pennsylvania in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more strin-

gent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the office of Mr. James W. Ward, Township Secretary of Wysox, Ward Building, Wysox, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. James W. Ward, Township Secretary of Wysox, Ward Building, Wysox, Pennsylvania.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Susquehanna River.	Downstream corporate limits.	708
	Confluence with Wysox Creek.	710
	Arlium St.	711
	U.S. Route 6.	721
Laning Creek	Confluence with Susquehanna River.	712
	Masonite Rd.	733

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 20, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17169 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2962]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Lower Yoder, Cambria County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Lower Yoder, Cambria County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. William Sladki, Chairman of the Board of Lower Yoder, 119 Norton Road, Johnstown, Pennsylvania 15906.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the office in the Municipal Building, 119 Norton Road, Johnstown, Pennsylvania.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
St. Clair Run	Northeast corporate limits.	1,229
	City Line St.	1,259
	Private road at tributary near St. Theresa's Cemetery.	1,299
	St. Clair Rd.	1,377
	Falcon Dr.	1,403
Elk Run	Township line at D St.	1,193
	D St. crossing	1,241
	Norton St.	1,296

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: May 20, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17170 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2965]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Borough of Emporium, Cameron County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Emporium, Cameron County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Augustus A. Zito, Borough Manager of Emporium, Municipal Building, Emporium, Pennsylvania 15834.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any

time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Municipal Building, Emporium, Pennsylvania.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Driftwood branch, Sinnemahoning Creek.	Downstream corporate limits.	1,013
	Broad St.	1,025
	Con Rail.	1,032
	State Route 120.	1,034
	Upstream corporate limits.	1,044
Sinnemahoning Portage Creek.	Downstream corporate limits.	1,013
	Con Rail.	1,016
	State Route 120.	1,022
West Creek.	Confluence with Driftwood Branch, Sinnemahoning Creek.	1,029
	Upstream corporate limits.	1,055

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: May 24, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17171 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2964]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Shippen, Cameron County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Shippen, Cameron County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Fred E. Brown, Chairman of Shippen, R.D. 1, Clear Creek, Emporium, Pennsylvania.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Township Office, R.D. 1, Emporium, Pennsylvania.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Driftwood branch.	Sinnemahoning Creek, eastern corporate limits.	1,000
	Broad St. (downstream).	1,025
	Emporium corporate limits (downstream).	1,029
	Con Rail tracks.	1,032
	Route 120 (upstream).	1,034
	Route 120 at Route 46 (upstream).	1,078
	Route 120 Bridge at John's Run.	1,115
	Farm Bridge near Bobby Run.	1,177
Sinnemahoning Portage Creek.	Con Rail tracks.	1,016
	Route 120 (upstream).	1,023
	Route 155 (upstream).	1,009
	Corporate limits.	1,123
West Creek.	Emporium corporate limits.	1,056
	Big Run Confluence (Truman).	1,216

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: May 20, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17172 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2924]

PROPOSED FLOOD ELEVATION DETERMINATIONS

City of Uniontown, Fayette County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Uniontown, Fayette County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Uniontown, Fayette County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies estab-

lished by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Uniontown Municipal Building, 75 West South Street, Uniontown, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Robert E. Jones, Jr., Mayor of Uniontown, Uniontown Municipal Building, Uniontown, Pennsylvania 15401.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Redstone Creek	Confluence with Coal Lick Run.	905
	North Beeson Ave	969
	East Main St	976
	East Fayette St	980
	Grant St	990
Coal Lick Run	Pittsburgh St	967
	West Main St	975
	Berkley Ave	979
	U.S. corporate limits	989

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 24, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17173 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2961]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Borough of Reynoldsville, Jefferson County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Reynoldsville, Jefferson County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Honorable John C. Millerin, Mayor of Reynoldsville, 332 North 5th Street, Reynoldsville, Pennsylvania 15851.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Reynoldsville Municipal Building, Main Street, Reynoldsville, Pennsylvania.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Sandy Lick Creek	Upstream corporate limits	1,371
	5th St	1,368
	ConRail Bridge	1,366
Soldier Run	14th St	1,378
	10th St	1,368
	Confluence of Sandy Lick Creek	1,368

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: May 24, 1977.

J. ROBERT HUNTER,
Acting Federal Insurance Administrator.

[FR Doc.77-17174 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2966]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Fermanagh, Juniata County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Fermanagh, Juniata County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. J. Allen Vendt, Township Secretary of Fermanagh, Township Building, Star Route, Mifflintown, Pennsylvania 17059.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional en-

tities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations are available for review at the Township Building, Township Secretary, Township building, Star Route, Mifflintown, Pennsylvania.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Juniata River	Downstream corporate limit.	442
	Confluence with Schweyer Run.	444
	Confluence with Lost Creek.	446
	Confluence with Horning Run.	447
Schweyer Run	Confluence with Juniata River.	444
	Cross St.	459
	Route 22 Culvert	478
	Farmers Rd.	491
Lost Creek	Confluence with Juniata River.	446
	Oakland Mill Rd.	447
	Township Road/LR 34074.	467
	Jericho Rd.	536
	Corporate limits	549
Horning Creek	Confluence with Horning Creek.	447
	T 525	477
	Slim Valley Rd. (downstream).	486
	Miner Town Rd.	514
	Slim Valley Rd. (upstream).	573

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 8, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: May 24, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17175 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2963]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Borough of Mifflin, Juniata County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: The Federal Insurance Administrator hereby gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Mifflin, Juniata County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Blair D. Drimmel, Mayor of Mifflin, Licking Street, Mifflin, Pennsylvania 17058.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Proposed base flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Council Meeting Room, Borough Building, 106 Tuscarora Street, Mifflin, Pennsylvania.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Juniata River	South corporate limits.	443
	Main St.	444
	North corporate limits.	444
Tributary to Juniata River.	Mower St.	444
	Summit St.	450
	North corporate limits.	450

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by (39 FR 2787, January 24, 1974).)

Issued: May 20, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17176 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2925]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Borough of Elizabethtown, Lancaster County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Borough of Elizabethtown, Lancaster County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Elizabethtown, Lancaster County, Pennsylvania in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by Section 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management

requirements. The Community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Elizabethtown Borough Office, 59 North Market Street, Elizabethtown.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Kenneth Reighard, Elizabethtown Borough Office, 59 North Market Street, Elizabethtown, Pennsylvania 17022.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Conoy Creek	Con Rail	414
	Bainbridge St.	417
	Poplar St. (downstream).	419
	West High St.	421
	Poplar St. (upstream).	423
	Market St.	425
	Cherry Alley	427
	Spruce St.	428
	Mount Joy St.	433
	East Willow St.	435
	Hickory Lane	443
	Beechwood Dr	448
	Upstream corporate limits.	449

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 24, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17177 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2923]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Keating, McKean County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Township of Keating, McKean County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Keating, McKean County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the bulletin board in the meeting room, Keating Township Municipal Building, Rt. 446, East Smethport, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Albert Prosser, Chairman of the Keating Board of Supervisors, P.O. Box 103, East Smethport, Pennsylvania 16730.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Potato Creek	Intersection of northern corporate limit of Smethport and Potato Creek.	1,467
	U.S. Route 6 bridge.	1,469.5
	Intersection of southern corporate limit of Smethport and Potato Creek.	1,474.5
Miller Brook	Confluence with Potato Creek.	1,471
	Abandoned Railroad bridge.	1,473
	Upstream of Route 46 culvert.	1,505

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 25, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17178 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2921]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Borough of Smethport, McKean County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Borough of Smethport, McKean County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator

gives notice of the proposed determinations of base flood elevations (100-year flood) for the Borough of Smethport, McKean County, Pennsylvania in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Smethport Borough Building, 412 West Water Street, Smethport, Pennsylvania 16749.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mrs. Carolyn G. Dougherty, Secretary-Treasurer of Smethport Borough, 412 West Water Street, Smethport, Pennsylvania 16749.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Potato Creek	Upstream corporate limits.	1,474
	Confluence of Marvin Creek.	1,471
	Route 6	1,470
	Downstream corporate limits.	1,467
Marvin Creek	Upstream corporate limits.	1,486
	Marvin St	1,481
	Mechanic St	1,474
	Confluence of Potato Creek.	1,471

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 25, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17179 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2920]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Juniata, Perry County, Pennsylvania

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Township of Juniata, Perry County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Juniata, Perry County, Pennsylvania in accordance Act of 1968 (Title XIII of the Housaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirments on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Juniata Township Election House, Route 849, Newport, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Lester E. Flasher, Chairman of the Juniata Board of Supervisors, R.D. No. 3, Newport, Pennsylvania 17074.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Buffalo Creek	Downstream corporate limits.	421
	Route 849 (downstream crossing).	441
	Old Mill Dam	442
	Route 849 (downstream of Walnut Grove).	512
	Route 849 (at Walnut Grove).	524
	Route 849 (upstream of Walnut Grove).	531
	Upstream corporate limits.	534

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 25, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17180 Filed 6-20-77;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2918]

PROPOSED FLOOD ELEVATION DETERMINATIONS

Township of Gaines, Tioga County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Township of Gaines, Tioga County, Pennsylvania.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comments will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Township of Gaines, Tioga County, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change and existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Gaines Post Office, Main Street, Gaines, Pennsylvania.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. John L. Leinbach, Chairman of the Board of Supervisors, Box 69, R.D. No. 1, Gaines, Pennsylvania 16921.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pine Creek	Downstream corporate limits.	1,188
	Pine Creek Rd.	1,196
	Township 328.	1,221
	Confluence with Long Run.	1,224
	Legislative Route 478 (extended).	1,235
	Confluence with Elk Run.	1,258
	W. A. & G. RR.	1,260
	Confluence with Phoenix Run.	1,273
	Upstream corporate limits.	1,278
Phoenix Run	Confluence with Pine Creek.	1,273
	Legislative Route 102.	1,275
	Confluence with unnamed tributary (approximately 5,000 ft above mouth of Phoenix Run).	1,319

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: May 25, 1977.

HOWARD B. CLARK,
Acting Federal Insurance Administrator.

[FR Doc.77-17181 Filed 6-20-77;8:45 am]

federal register

TUESDAY, JUNE 21, 1977

PART III

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

■

ANIMAL WELFARE: DEFINITION OF TERMS

Standards and Regulations for Transportation, Handling, Care and Treatment in Connection therewith, of Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates and Certain Other Warmblooded Animals

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

DEFINITION OF TERMS, REGULATIONS AND STANDARDS

Standards and Regulations for Transportation, Handling, Care and Treatment in Connection Therewith, of Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates and Certain Other Warmblooded Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations and standards under the Animal Welfare Act concerning the transportation in commerce and the handling, care, and treatment in connection therewith, of certain warmblooded animals. This action is required by the Animal Welfare Act Amendments of 1976 and is intended to assure the humane handling, care, and treatment of certain animals transported in commerce.

EFFECTIVE DATE: September 19, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782 (301-436-8271).

SUPPLEMENTARY INFORMATION: On March 18, 1977, the Animal and Plant Health Inspection Service (APHIS) published proposed changes and additions to Parts 1, 2, and 3 of Subchapter A, Chapter 1, Title 9 of the Code of Federal Regulations (42 FR 15210) to (1) amend the regulations under the Act (9 CFR 1.1) to add new definitions for "primary conveyance" and "transporting device"; (2) provide new and revised standards (9 CFR 3.1 et seq.) regarding transportation, and handling, care, and treatment in connection therewith, of certain warmblooded animals, in commerce, and (3) to amend the regulations (9 CFR 2.100) to require carriers and intermediate handlers to comply with the standards governing transportation of certain warmblooded animals, in commerce, and in their handling, care, and treatment in connection therewith.

A total of 172 comments were received within the comment period. Most comments received were from three major interest groups, i.e., pet animal breeders, carriers and intermediate handlers, and humane groups. Many of the comments raised questions or made suggestions which, because of their validity, warranted a number of changes from the proposed regulations and standards. Certain other editorial changes were also made for accuracy and clarification.

Discussion of Comments

CONSIGNMENTS TO CARRIERS AND INTERMEDIATE HANDLERS

APHIS proposed that dogs, cats, rabbits, guinea pigs, hamsters, nonhuman primates, and certain other warmblooded animals not be accepted for transportation in commerce by intermediate handlers and carriers more than 4 hours before the scheduled departure of their primary conveyance in order to minimize the total time an animal is confined in its shipping container or primary enclosure used for transportation.

A great number of comments received viewed the 4-hour limit on the time of tender for such animals as too restrictive. Many argued that consignors of animals would be required to make several trips instead of one trip to the terminal facilities of carriers and intermediate handlers to deliver animal shipments, in order to meet the 4-hour time of tender proposal, according to the scheduled departure of their primary conveyances. These complaints were based on situations where the consignor is located great distances from the terminal facilities and additional delivery trips would result in added costs for fuel and labor. Several comments received pointed out that although present Civil Aeronautics Board (C.A.B.) rules and regulations require the shipper to tender animal shipments to the carrier not more than 4 hours prior to the scheduled departure of a flight, an exception of up to 6 hours, by mutual agreement of the carrier and the consignor, to accommodate specific shipment delivery schedules is allowed.

On the other hand, two comments received argued that 2 hours would be ample time for an animal to be held in the unfamiliar surroundings of a terminal with its loud noises that cause stress to the animal.

APHIS believes that any measures which will assure efficient and timely transportation of such animals to their destinations is paramount. The primary purpose of a restricted time of tender rule is to prevent terminal facilities from becoming a long term storage area for animals awaiting commercial transportation. It is recognized that a rigid time of tender rule imposes certain hardships and additional operating expenses. Therefore, APHIS is providing for a 6-hour time of tender rule, if mutually agreeable to both parties and if specific prior scheduling of the animal shipment to destination has been made. APHIS believes that this flexibility allows the consignor to deliver several animal shipments consigned to different destinations at one time, and, by prearranged scheduling, to choose the fastest and most direct route to a destination with a minimum number of transfers or layovers for each shipment. Such specific prearranged scheduling of animal shipments would effectively reduce the time an animal is in transit with an accompanying decrease in the stress to which it is subjected.

APHIS proposed extensive standards for primary enclosures used to transport animals in commerce. However, one comment received indicated that there was no method or responsible person indicated for preventing the use of substandard shipping containers for transporting animals. To clarify this matter, APHIS is adding a new subsection to the transportation standards concerning consignments to carriers and intermediate handlers which prohibits any carrier or intermediate handler from accepting for transportation or transporting, in commerce, any live animal in a primary enclosure which does not conform to the standards for primary enclosures used to transport such live animal. APHIS is also changing the wording regarding the standards for primary enclosures used to transport live animals to prohibit dealers, research facilities, exhibitors, and operators of auction sales from transporting or offering for transportation, in commerce, any live animal in a primary enclosure that does not conform to the standards for primary enclosures used to transport such live animals.

APHIS proposed that carriers and intermediate handlers transporting an animal on a C.O.D. type basis, attempt to notify the consignee at least once in every 6-hour period following the arrival of a live animal at destination. Several comments received questioned the lack of a maximum period for consignee notification and claim pickup for live animals transported in commerce on other than a C.O.D. basis.

There is nothing in the legislative history of the Animal Welfare Act Amendments of 1976 to indicate that there is any problem concerning the notification of consignees and claims of prepaid live animal shipments consigned to carriers and intermediate handlers. Congress was aware of the problems concerning C.O.D. shipments of animals and specifically provided in section 13(d) of the Animal Welfare Act that there would be a 48-hour maximum claim period for live animals shipped in commerce by any carrier or intermediate handler on any C.O.D. basis. APHIS is not aware of any problem concerning the notification of consignees and the claims of prepaid live animal shipments transported in commerce by carriers and intermediate handlers. Since no claim period for such prepaid live animal shipments was proposed, it cannot be promulgated at this time. However, if APHIS finds that problems do exist concerning the notification of consignees and the claims of such live animal shipments, APHIS will consider an appropriate amendment of the standards.

One comment was received which asked that notification to the consignee of the arrival of live animal shipments be initiated within 90 minutes of the arrival of the primary conveyance transporting the animal.

Although most primary conveyances, such as planes and trains, have scheduled arrivals at specific terminals, the actual arrival time of such primary convey-

ances would, in most cases, probably be unknown to the person responsible for notification and delivery of live animal shipments to consignees. It is unreasonable to expect such persons to know in all instances the exact arrival time of the primary conveyance carrying each live animal shipment, especially at a busy terminal facility, such as a large metropolitan airport. Employees of carriers and intermediate handlers responsible for notifying consignee must be allowed a reasonable time to initiate consignee notification once animal shipments are brought to the animal holding area of the terminal facility. Available information indicates that carriers and intermediate handlers notify consignees of live animal shipments as soon as possible; therefore, APHIS finds no basis to change the consignee notification requirement of at least once every 6 hours. However, APHIS is clarifying this matter by revising the standards to provide that the time for notification of consignees of live animal shipments begins when such shipment arrives at the animal holding area of the terminal facility, and requiring that the time, date, and method of each attempted notification and the final notification and the name of the person making such notification or attempted notification be recorded on the copy of the shipping document retained by the carrier or intermediate handler, and on a copy of the shipping document accompanying the animal shipment.

Comments from air carriers indicated that attempts to notify consignees of animal shipments between the hours of 12 a.m. and 6 a.m. would not be within the normal working hours maintained by most businesses and suggested that the hours between 12 a.m. and 6 a.m. be exempted from the 6-hour consignee notification requirement. Available information indicates that a number of consignees, particularly research facilities, employ personnel on a 24-hour basis, who are available to pickup animal shipments at any time once notification is received. Additionally, many consignees whose business hours range from 9 a.m. to 9 p.m. indicated a desire for notification upon arrival of animal shipments, regardless of business hours, and will provide an alternate means for such notification to occur, e.g., residence telephone numbers. APHIS therefore finds no basis for exempting the hours of 12 a.m. to 6 a.m. from the 6-hour consignee notification requirement.

PRIMARY ENCLOSURES

Two comments received indicated that the language used to describe requirements for the structural strength of a primary enclosure to be vague and inadequate in its scope. These comments were specifically critical of the phrase "withstand the normal rigors of transportation" and suggested that primary enclosures be constructed and certified to meet tests whereby the container will withstand a top load of 250 pounds and withstand being dropped from a specified height onto concrete. To meet such tests would require specific construction standards mandating precise government specifications to be met by all live animal container manufacturers. Such live animal containers would have to be identified as meeting specific construction standards. In view of the projected resulting increase in the cost of warmblooded animal containers and lack of any evidence that such construction standards would result in any significant benefits to the live animals transported therein over the presently available containers, APHIS finds no basis for changing the standard for the structural strength of primary enclosures used to transport live animals.

The proposed standards provide that ventilation openings of primary enclosures be located on both ends and such ventilation openings be at least 8 percent of the total surface area of such end. Several comments were received which complained that requirements for the ventilation openings on primary enclosures were insufficient in total ventilation opening area and inappropriately placed to provide adequate airflow or ventilation to all levels inside the primary enclosure. Information was presented indicating that ventilation openings located only on the ends of the primary enclosure, which are the smaller of the four walls of a primary enclosure, and comprising 8 percent of the total surface area of each such end would not provide sufficient ventilation. APHIS agrees that the proposed ventilation openings would not provide sufficient ventilation and has concluded that the ventilation openings must be at least 16 percent of the total surface area of each of two opposite walls, except where ventilation is provided on all four walls of the primary enclosure. Almost all commercial primary enclosures used for transporting dogs and cats have ventilation openings which comprise at least 8 percent of each wall, if they are located on all four walls. APHIS meant to propose that ventilation openings comprise at least 16 percent of each of two opposite walls if there were not ventilation openings on all four walls of the primary enclosure used for transporting dogs or cats. Therefore, the standards have been changed to require that ventilation openings must be at least 8 percent of the total surface area of each of four walls or 16 percent of each of two opposite walls.

Several comments were critical of APHIS for failing to indicate requirements for the location of ventilation on the walls of the primary enclosure used to transport live animals. These comments pointed out that without provision for some ventilation openings on both the upper and lower halves of the shipping container, inadequate ventilation would be provided to the animals contained therein. APHIS is, therefore, requiring that at least one-third of the total area providing ventilation for the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing ventilation for the primary enclosure shall be located on the upper one-half of the primary enclosure.

APHIS proposed requirements regarding food and water for animals shipped in commerce. However, several commenters pointed out that there were no provisions requiring a method of administering food and water or receptacles to receive and contain such necessary food and water. APHIS agrees that such a requirement would seem to be beneficial so that carriers and intermediate handlers would have a means of administering any food or water required for an animal while being transported in commerce without having to open such an animal's primary enclosure. However, APHIS does not have sufficient information at this time concerning the impact of such a requirement on the industry upon which to base such a standard.

Adequate space in the primary enclosure used to transport warmblooded animals is based on the size of the animal relative to the size of the enclosure. Because of individual, as well as species differences, animals vary diversely in size and stature. The proposed space requirements for primary enclosures used to transport dogs and cats specify that each dog or cat shall have sufficient space to turn about freely in a standing position, to stand and sit erect and to lie in a natural position. Comments received indicate that the space requirements for dogs and cats were vague and lacking in sufficient explanation, particularly, regarding the phrase "sufficient space to turn about freely in a standing position" as it relates to width requirements for the primary enclosure.

Some people believe that if an animal can turn around in its enclosure, regardless of the body contortions which may be required, there would be compliance with the proposed space requirements for dogs and cats cited in Section 3.12 of the standards. To further clarify space requirements for dogs and cats, the standards are being changed by adding the phrase "using normal body movements" to the phrase "to turn about freely in a standing position" in Section 3.12(c).

The proposed standards allow an exception to the space requirements for coursing hounds transported in commerce and which are subject to injury to their vertebral column in the course of transportation if allowed sufficient space to turn about. Two commenters provided information from published scientific data indicating that only coursing hounds with a spinal arch, which are greyhounds, whippets, borzois, and Italian greyhounds, were subject to spinal injury from turning around within a confined space. Based upon this information, the standards are being amended to allow an exception to the space requirements for primary enclosures used for transporting coursing hounds only if they have a spinal arch, and to require that such primary enclosure be narrow enough to prevent such dogs from turning around in their pri-

mary enclosures during transportation in commerce.

The proposed standards provide that the interior height of primary enclosures used to transport live guinea pigs be at least 20.3 centimeters (8 inches). Producers of guinea pigs and the biomedical community provided information which indicates that guinea pigs up to 500 grams in weight can be transported in a container with an interior height of not more than 6 inches and that breeder guinea pigs weighing over 500 grams can be transported in a container with an interior height of not more than 7 inches without affecting the health and safety of the animals. APHIS believes that the information and data presented are reasonable and, therefore, the standards are being amended to require that the interior height of primary enclosures used to transport guinea pigs shall be at least 15.2 centimeters (6 inches) for guinea pigs weighing up to 500 grams and at least 17.8 centimeters (7 inches) for guinea pigs weighing over 500 grams.

The proposed standards provide that space requirements for primary enclosures used to transport nonhuman primates be large enough to ensure that each nonhuman primate contained therein has sufficient space to turn about freely in a stance whereby both feet and hands are on the floor and can sit in an upright position and lie in a natural position. Two comments received indicated that healthy nonhuman primates do not normally lie down when resting or sleeping. APHIS acknowledges the validity of these comments, and section 3.86(c) of the standards are changed to remove the phrase "and lie in a natural position."

APHIS proposed limitations in the standards on the number of dogs and cats which may be transported in one primary enclosure based on the age and size of the dogs and cats. Specific limitations include a maximum of one live dog or cat over 6 months of age to be transported in a primary enclosure and a maximum of two puppies or kittens, 8 weeks to 6 months of age, but not weighing over 20 pounds and of comparable size, to be transported in one primary enclosure. However, as one comment pointed out, there is no provision for transporting a puppy, 8 weeks to 6 months of age and weighing over 20 pounds. However, in view of the size of such animal, it was the intent of APHIS to require the same limitation as provided for dogs over six months of age. Therefore, APHIS is clarifying this point by providing in the standards that only one puppy, 8 weeks to 6 months of age and weighing over 20 pounds, may be transported in a primary enclosure or shipping container.

A provision was proposed which would allow puppies or kittens that are less than 8 weeks of age and littermates accompanied by their dam to be transported in one shipping container to research laboratories only. Several commenters sharply criticized the requirement for the dam to accompany the puppies or kittens less than 8 weeks of age shipped to research laboratories, in order to provide the young frequent nourishment. It was pointed out that many puppies and kittens less than 8 weeks of age are weaned and subsequently do not need their mother as a source of nourishment during transportation. Information was also provided which shows that weaned puppies and kittens less than 8 weeks of age do need social contact to reduce the stress of transportation, but that such animals need not be littermates as long as the group of puppies or kittens are of comparable size to foster compatibility within the confines of the shipping container. APHIS has reconsidered this matter and agrees that weaned live puppies or kittens of less than 8 weeks of age and of comparable size, need not be accompanied by their dam when shipped in the same primary enclosure to research laboratories. The standards are revised to reflect this change.

One commenter requested that provisions within the standards be made for primary enclosures which are affixed within a primary conveyance, such as are found in many trucks or other motor vehicles used to transport live animals in commerce by dealers, research facilities, exhibitors and operators of auction sales. APHIS acknowledges that certain standards for primary enclosures which are pertinent to (1) the location, quantity, and area of ventilation openings, (2) requirements for projecting rims or other devices to prevent the blocking of ventilation openings, (3) requirements for handholds or other devices for lifting the primary enclosure, and (4) identification of the primary enclosure's contents and markings indicating the primary enclosure's correct upright position are inappropriate when they are permanently affixed in the animal cargo space of the primary conveyance. Obviously, such a permanently affixed primary enclosure in the animal cargo space of a primary conveyance is not going to be handled by carriers and intermediate handlers with other general cargo so that it needs to be identified as containing a live animal or need handholds or other devices for lifting. Since such a primary enclosure is permanently affixed within the animal cargo space it would also not be subject to possible turning so that its correct upright position need be identified. Likewise, since such a permanently affixed primary enclosure is not subject to being loaded in various positions with other cargo so that its ventilation openings may be blocked by other cargo or a conveyance wall, it would not need rims or other devices to prevent such blockage. However, if the front of such a permanently affixed primary enclosure is the only means of ventilation for such primary enclosure it should be as large as possible to provide maximum ventilation and still be structurally sound and open directly to the outside or to an unobstructed aisle or passageway within the animal cargo space to ensure such maximum possible ventilation. APHIS believes that if the front of a permanently affixed primary enclosure is the only means of ventilating such a primary enclosure in the animal cargo space of a primary conveyance, that it must be at least 90 percent of the front wall of such a primary enclosure in order to assure adequate ventilation to any animal contained therein. APHIS, therefore, provides that when a primary enclosure is permanently affixed to the animal cargo space of a primary conveyance so that the front opening of the primary enclosure is the only source of ventilation, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. APHIS is also requiring that the front ventilation opening of such primary enclosures shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh, or smooth expanded metal. APHIS is also excepting such permanently affixed primary enclosures used for transportation of animals from the requirements for projecting rims, handholds, or other devices for lifting and markings indicating that it contains a live or wild animal and the primary enclosure's correct upright position.

PRIMARY CONVEYANCES

The proposed standards provide that the animal cargo space in a primary conveyance be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases. Comments received from carriers indicated that during unloading or loading of primary conveyances, particularly aircraft, some engine exhaust fumes could enter the passenger compartments as well as the cargo compartments of the primary conveyance. It was pointed out that exposure to such minimal amounts of engine exhaust fumes and gases would not be detrimental to either humans or animals. APHIS acknowledges that the animal cargo space cannot be constructed to entirely prevent the entry of some amounts of engine exhaust gases, especially during loading and unloading procedures and normal engine exhaust fumes and gases from sources other than the primary conveyance, such as occur along major highways, at large airports and other terminal facilities. Therefore, the standards are revised to require that the animal cargo space shall be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases from the primary conveyance during transportation in commerce.

A great number of comments were received regarding the proposal that primary enclosures be positioned in the primary conveyance in such a manner that in an emergency the animals can be removed from the primary conveyance within a five minute time period. Comments received criticized the proposal as lacking a definition for "emergency" since, in the event of a fire, as opposed to a mechanical malfunction of the primary conveyance, there is a sharp difference in the urgency to remove animals as well as human passengers from the primary conveyance. From a practical

point of view, all primary enclosures containing live animals would have to be positioned adjacent to cargo doors in order to exit animals within a five minute time period. Comments received also pointed out that requiring the unloading of animals within five minutes may have to be accomplished in an inhumane fashion, such as by tossing the shipping containers free of the primary conveyance. APHIS recognizes the validity of such comments in some situations and, therefore, will require that primary enclosures be positioned in the primary conveyance in such a manner that animals can be removed from the primary conveyance as soon as possible.

The proposed standards include a requirement that live animals shall not be transported with any material, substance, or device which may be injurious to the health and well-being of the animals unless proper precaution is taken to prevent such injury. Comments indicated that the terms "material", "substances", and "device" were vague and that specific materials and substances which may be injurious to the animals being transported should be identified. One of the most common materials or substances used in shipping perishable commodities, which is extremely dangerous to animals enclosed in a small space with it, is dry ice. As dry ice evaporates, it releases carbon dioxide which builds up to such a point that it suffocates any animals in a small area with it in a relatively short period of time. Therefore, APHIS is including dry ice as an example of such a potentially injurious material or substance.

One comment received labeled the term "device" as potentially all cargo within proximity of the animal shipping containers and even the primary conveyance or parts thereof, should an accident occur causing structural damage or destruction of the animal cargo area. While APHIS acknowledges the fact that the term "device" is potentially all cargo within the proximity of any primary enclosure containing an animal, APHIS believes such animals should not be needlessly exposed to dangers that may be avoided through the exercise of reasonable care by taking proper precautions to prevent such injuries. If an accident did occur which caused damage to the animal cargo area of a primary conveyance and such damage may be injurious to the animals contained therein, such damage should be repaired or other precaution taken to prevent any such injury to the animals contained therein.

Another comment received requested that the term "knowingly" be added so that the provision would read that live animals "* * * shall not knowingly be transported with any material, substance or device which may be injurious * * *" because carriers would have to meticulously examine all other cargo placed with any live animal if such a strict liability standard were adopted. While APHIS believes that the applicability of this section as proposed may be strict as to carriers, APHIS believes that the suggested standard of "knowingly" is not strict enough. Therefore, APHIS has decided to add the phrase "reasonably be expected to" immediately after "may" and before "be injurious" in such provision of the standards.

FOOD AND WATER REQUIREMENTS

The proposed standards provide that dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and certain other warmblooded animals be offered potable water within 4 hours prior to being transported or offered for transportation to any carrier or intermediate handler and every 12 hours thereafter. One comment indicated that no person was indicated as responsible for offering potable water to animals within 4 hours prior to being offered for transportation in commerce. APHIS is clarifying this matter by requiring in the standards that any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government offering live animals for transportation in commerce is responsible for offering potable water to such animals within 4 hours prior to being so offered for transportation.

One comment pointed out that the proposed standards require the feeding of adult animals once in each 24-hour period and young animals once in every 12-hour period during transportation. The comment further indicated that such time periods for feeding shall apply to carriers and intermediate handlers after acceptance of such animals for transportation, but that the proposed standards do not indicate when such time periods for feeding are applied to USDA licensees and registrants which transport animals in their own primary conveyances. APHIS acknowledges the ambiguity present in such standard as to persons subject to the Act other than carriers and intermediate handlers, especially when it is read in conjunction with the general requirements as to feeding and watering. APHIS is aware that is a common, accepted practice to fast many animals, such as dogs, prior to being transported to minimize motion sickness, nausea, and vomiting and to provide a cleaner environment for such animals during the course of their transportation. Such short fasts are not detrimental to the health and well-being of such animals. Therefore, APHIS has rewritten the feeding standard for live dogs, cats, and nonhuman primates during transportation to require dealers, research facilities, exhibitors, and operators of auction sales to feed adult animals once in every 24-hour period after transportation is initiated and young animals once in every 12-hour period after transportation is initiated in their own primary conveyances.

Carriers and intermediate handlers commented that the wording of the proposed standards for feeding and watering live animals in transit would require the carrier or intermediate handler to provide both potable water and food to such animals at the end of specified time periods following acceptance of the animals for transportation in commerce. These comments indicated that the carriers and intermediate handlers can provide potable water, but are not in a position to provide appropriate food for animals of different species, breeds, and ages. APHIS believes it is important that when animals in transit are required to be fed, that they be fed an appropriate quantity and quality of food. Carriers and intermediate handlers are not, and should not be required to be, animal nutrition experts. Therefore, APHIS is requiring that dealers, exhibitors, research facilities and operators of auction sales offering any live animal, except a guinea pig, hamster or rabbit, for shipment in commerce to any carrier or intermediate handler shall affix to the outside of the primary enclosure used to transport such animal written instructions concerning the food and water requirements of such animal while being so transported. APHIS is also requiring that carriers and intermediate handlers not accept any live animal, except a guinea pig, hamster or rabbit, for shipment in commerce unless such written instructions concerning its food and water requirements is affixed to the outside of its primary enclosure.

Producers of guinea pigs, hamsters and rabbits and representatives of the biomedical community commented that the proposed standards relative to food and water requirements for guinea pigs, hamsters, and rabbits transported in commerce would restrict the foodstuffs which satisfy food and water needs to only fruits and vegetables. Information and data was provided which showed that other shipping diets and newly developed leakproof water container-dispensers are available to fulfill the required food and water needs of such animal in transit. APHIS has reconsidered the standards for food and water requirements for guinea pigs, hamsters, and rabbits and will require that when such animals are to be fed or watered during transportation that the shipper of such animals shall provide food and water or a type of food which provides the requirements for food and water in quantity and quality sufficient to satisfy their food and water needs during such transportation.

CARE IN TRANSIT

A great number of comments were received regarding the proposed standard that live animals be inspected in transit at least every 2 hours for the purpose of determining whether veterinary care is needed. Comments received argued that the 2-hour inspection would require stopping surface transportation vehicles at inconvenient and often dangerous points in route and require the driver or employee to inspect each animal to determine the need for veterinary care. Such procedures were indicated as costly, ineffective, and inhumane in that such delays would slow the transportation of animals to their destination. Comments

from carriers and intermediate handlers indicated that compliance with the proposed 2-hour inspection of animals transported by air, wherein the cargo area is accessible during flight, would increase the flight crew's workload and require periodic absences from the cockpit with possible resulting adverse effect on the aircraft's safety. Carriers and intermediate handlers argued further that the determination for need of veterinary care would place the responsibility for judgements in the area of veterinary medicine on employees which are not trained or otherwise qualified to make such decisions. After considering the comments received, APHIS has concluded that personnel employed by carriers and intermediate handlers are not generally qualified to inspect an animal and determine its need for veterinary care. APHIS does believe that animals should be visually inspected as frequently as circumstances may dictate, but at least every 4 hours. Circumstances may dictate that more frequent inspections are warranted, such as if an air conditioning unit breaks down during transportation on a hot day or if a leak in the exhaust system develops which may cause a build up of engine exhaust fumes in the animal cargo area of the primary conveyance. APHIS also believes that employees of carriers can tell if an animal is in obvious physical distress which would require prompt veterinary attention such as a failure to respond to external stimuli, labored breathing, bloody diarrhea or unconsciousness. While APHIS believes that animals should be visually observed during transportation at least every 2 hours during extremes of temperatures and other adverse conditions, APHIS recognizes the validity of the comments received if there are no such adverse conditions. APHIS does not believe, however, that even under optimum conditions that animals being transported in commerce should be visually observed any less than at least every 4 hours. APHIS, therefore, is requiring in the standards that during surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live animals as frequently as circumstances may dictate, but not less than every 4 hours, to assure that such animals are receiving sufficient air for normal breathing, their ambient temperature is within the prescribed limits, all other applicable standards are being complied with and to determine if any of the animals are in obvious physical distress and provide any needed veterinary care as soon as possible. In the course of air transportation, live animals shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than every 4 hours, if the animal cargo space is accessible during flight and whenever the animals are loaded and unloaded and whenever the animal cargo space is otherwise accessible if it is not accessible during flight. Any needed veterinary care shall be provided as soon as possible in order to maintain the animals in a healthy condition. APHIS recognizes the validity of some of the comments received, but believes this requirement to be the minimum amount of inspection necessary to insure the humane treatment of animals being transported in commerce.

TERMINAL FACILITIES

The proposed standards provided that a specific area be designated as an indoor animal holding area in terminal facilities for which fresh air and ventilation is provided, and ambient temperatures are controlled to prevent excessive changes in temperature. Comments received from carriers indicated that they did not believe that their terminal facilities should have to meet the same temperature requirements as a dealer, exhibitor, or research facility does for housing animals over a long period of time. APHIS recognizes that a terminal facility is part of the transportation process, and as such, it cannot regulate temperatures as effectively as a housing facility built specifically for housing a certain type of animal. General cargo is constantly being loaded and unloaded from various types of conveyances for which large doors must be opened for access to and from the terminal facility. At the same time, however, APHIS believes that a terminal facility should not be allowed the same latitude in extremes of temperatures as some primary conveyances, such as an airplane where there is a problem with heat build up on hot days in the cargo hold with little or no air exchange between loading and take off. Therefore, APHIS is requiring that the animal holding area of the terminal facilities of carriers and intermediate handlers not allow the temperatures to fall below a minimum of 7.2° C. (45° F.) nor exceed 29.5° C. (85° F.) for more than 4 hours and never exceed a maximum of 35° C. (95° F.), except in the case of guinea pigs, hamsters, and rabbits which cannot tolerate such warm temperatures, as was required by the standards for animals being transported by dealers, exhibitors and research facilities.

The proposed standards also prescribed requirements for the cleanliness and sanitation of the animal holding area to prevent a disease hazard, accumulation of trash, debris, or excreta, or vermin infestation. Comments indicated that the required animal holding area in terminal facilities would be responsible for increasing the cost of transporting animals in the major construction is required in some terminal facilities, and modification of present facilities in other terminals and the cost of such investments by the carriers and intermediate handlers will be passed on to the general public. Comments received also argued that since compliance with the standards is required, effective 90 days after publication of such standards, there is the possibility that carriers and intermediate handlers will not be able to complete necessary modifications to present terminal facilities to provide an acceptable animal holding area.

APHIS is not requiring major construction at any terminal facility. Simple modifications of existing structures in most terminal facilities would meet the standards for an animal holding area. Some terminal facilities may require the construction of simple rooms such as with 2 x 4's and painted plywood or paneling to control the temperature within the prescribed limits. However, in most cases the designation of an area which can be kept clean and where all animal shipments shall be kept will suffice. APHIS believes it important to provide for a designated animal holding area within terminal facilities and that minimum modifications in terminal facilities, where it is required, can be completed in 90 days.

HANDLING

To minimize physical and emotional trauma to warmblooded animals transported in commerce, APHIS proposed that care be exercised in handling the primary enclosures to avoid tossing, dropping, or needlessly tilting the primary enclosures or stacking the primary enclosures in a manner which may result in their falling. One commenter criticized the phrase "shall not be stacked in a manner which may result in their falling", in connection with the handling of primary enclosures, as vague in that any container on top of another "may fall". Therefore, the phrase "shall not be stacked in a manner which may reasonably be expected to result in their falling" is substituted in the standards required for handling primary enclosures used to transport live animals in commerce.

AMBIENT TEMPERATURES

Standards were proposed for the range of ambient temperatures which would be allowed within primary enclosures used to transport live animals in commerce. The proposed ambient temperatures within a primary enclosure used to transport guinea pigs and hamsters was not to exceed 20.5° C. (85° F.) for a period of more than 45 minutes nor fall below 15.5° C. (60° F.) for a period of more than 45 minutes. Information provided by guinea pig and hamster producers and research facilities with guinea pig and hamster colonies indicates that both guinea pigs and hamsters are capable of tolerating an ambient temperature down to 7.2° C. or 45° F. without endangering the health of these animals. Information also indicated that the maximum ambient temperature which guinea pigs and hamsters could tolerate was 20.5° C. (85° F.) for short periods of time such as 45 minutes. Such information appears accurate and reasonable and APHIS, therefore, provides that the ambient temperature within primary enclosures used to transport live guinea pigs and hamsters shall not exceed 20.5° C. (85° F.) for a period of more than 45 minutes nor fall below 7.2° C. (45° F.) for a period of more than 45 minutes.

Based on the information provided by producers and research facilities raising

quinea pigs and hamsters regarding temperature extremes tolerated by these animals, APHIS will require in section 3.40 (b) (iii) that transporting devices shall be covered to provide protection from cold weather for live guinea pigs and hamsters when the atmospheric temperature falls below 10° C. (50° F.).

OTHER COMMENTS

A number of comments were received which were beyond the scope of the proposed rulemaking. Many other comments received provided no supporting evidence for the criticism indicated or the suggested changes to the standards. Without the basis for such comments being enunciated, they could not be evaluated as to their ability to provide more humane care, treatment, and handling of the animals during their transportation in commerce. Therefore, they were not able to be considered in this rulemaking proceeding.

Accordingly, the regulations and standards under the Animal Welfare Act (9 CFR 1.1 et seq.) are amended in the following respects:

PART 1—DEFINITION OF TERMS

1. Section 1.1 of the regulations (9 CFR 1.1) is amended by adding new paragraphs (qq) and (rr) to the end thereof as follows:

§ 1.1 Definition.

* * * * *

(qq) "Primary conveyance" means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship, or train.

(rr) "Transporting device" means an interim vehicle or device, other than man, used to transport an animal between the primary conveyance and the terminal facility or in and around the terminal facility of a carrier or intermediate handler.

PART 2—REGULATIONS

2. Section 2.100 of the regulations (9 CFR 2.100) is amended by designating the present regulation as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 2.100 Compliance with standards.

* * * * *

(b) Each carrier and intermediate handler shall comply in all respects with the standards set forth in Part 3 of the subchapter setting the standards for the humane transportation of animals, in commerce, and their handling, care, and treatment in connection therewith.

PART 3—STANDARDS

3. The Table of Contents cited in Part 3—Standards is amended to read as follows:

Subpart A—Specifications for the Humane Handling, Care, Treatment, and Transportation of Dogs and Cats

FACILITIES AND OPERATING STANDARDS

Sec.
3.1 Facilities, general.
3.2 Facilities, indoor.
3.3 Facilities, outdoor.
3.4 Primary enclosures.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

3.5 Feeding.
3.6 Watering.
3.7 Sanitation.
3.8 Employees.
3.9 Classification and separation.
3.10 Veterinary care.

TRANSPORTATION STANDARDS

3.11 Consignments to carriers and intermediate handlers.
3.12 Primary enclosures used to transport live dogs and cats.
3.13 Primary conveyances (motor vehicle, rail, air, and marine).
3.14 Food and water requirements.
3.15 Care in transit.
3.16 Terminal facilities.
3.17 Handling.
3.18 Ambient temperature.

Subpart B—Specifications for the Humane Handling, Care, Treatment, and Transportation of Guinea Pigs and Hamsters

FACILITIES AND OPERATING STANDARDS

3.25 Facilities, general.
3.26 Facilities, indoor.
3.27 Facilities, outdoor.
3.28 Primary enclosures.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

3.29 Feeding.
3.30 Watering.
3.31 Sanitation.
3.32 Employees.
3.33 Classification and separation.
3.34 Veterinary care.

TRANSPORTATION STANDARDS

3.35 Consignments to carriers and intermediate handlers.
3.36 Primary enclosures used to transport live guinea pigs and hamsters.
3.37 Primary conveyances (motor vehicle, rail, air, and marine).
3.38 Food and water requirements.
3.39 Care in transit.
3.40 Terminal facilities.
3.41 Handling.
3.42 Ambient temperature.

Subpart C—Specifications for the Humane Handling, Care, Treatment, and Transportation of Rabbits

FACILITIES AND OPERATING STANDARDS

3.50 Facilities, general.
3.51 Facilities, indoor.
3.52 Facilities, outdoor.
3.53 Primary enclosures.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

3.54 Feeding.
3.55 Watering.
3.56 Sanitation.
3.57 Employees.
3.58 Classification and separation.
3.59 Veterinary care.

TRANSPORTATION STANDARDS

3.60 Consignments to carriers and intermediate handlers.
3.61 Primary enclosures used to transport live rabbits.
3.62 Primary conveyances (motor vehicle, rail, air, and marine).
3.63 Food and water requirements.
3.64 Care in transit.
3.65 Terminal facilities.
3.66 Handling.
3.67 Ambient temperature.

Subpart D—Specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates

FACILITIES AND OPERATING STANDARDS

3.75 Facilities, general.
3.76 Facilities, indoor.
3.77 Facilities, outdoor.
3.78 Primary enclosures.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

3.79 Feeding.
3.80 Watering.
3.81 Sanitation.
3.82 Employees.
3.83 Classification and separation.
3.84 Veterinary care.

TRANSPORTATION STANDARDS

3.85 Consignments to carriers and intermediate handlers.
3.86 Primary enclosures used to transport live nonhuman primates.
3.87 Primary conveyances (motor vehicle, rail, air, and marine).
3.88 Food and water requirements.
3.89 Care in transit.
3.90 Terminal facilities.
3.91 Handling.
3.92 Ambient temperature.

Subpart E—Specifications for the Humane Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, and Nonhuman Primates

FACILITIES AND OPERATING STANDARDS

3.100 Facilities, general.
3.101 Facilities, indoor.
3.102 Facilities, outdoor.
3.103 Space requirements.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

3.104 Feeding.
3.105 Watering.
3.106 Sanitation.
3.107 Employees.
3.108 Separation.
3.109 Veterinary care.
3.110 Handling.

TRANSPORTATION STANDARDS

3.111 Consignments to carriers and intermediate handlers.
3.112 Primary enclosures used to transport live animals.
3.113 Primary conveyances (motor vehicle, rail, air, and marine).
3.114 Food and water requirements.
3.115 Care in transit.
3.116 Terminal facilities.
3.117 Handling.
3.118 Ambient temperature.

AUTHORITY: Secs. 12 and 13, 80 Stat. 351 and 352, as amended: 7 U.S.C. 2142 and 2143.

3. Section 3.11 of the standards (9 CFR 3.11) is amended to read as follows:

§ 3.11 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any live dog or cat

presented by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government for shipment, in commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported: *Provided, however,* That the carrier or intermediate handler and any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government may mutually agree to extend the time of acceptance to not more than 6 hours if specific prior scheduling of the animal shipment to destination has been made.

(b) No carrier or intermediate handler shall accept for transportation or transport, in commerce, any live dog or cat in a primary enclosure which does not conform to the requirements set forth in § 3.12 of the standards.

(c) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live dog or cat at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

4. § 3.12 of the standards (9 CFR 3.12) is amended to read as follows:

§ 3.12 Primary enclosures used to transport live dogs and cats.

No dealer, research facility, exhibitor, or operator of an auction sale shall offer for transportation or transport, in commerce, any live dog or cat in a primary enclosure which does not conform to the following requirements:

(a) Primary enclosures, such as compartments, transport cages, cartons, or crates, used to transport live dogs and cats shall be constructed in such a manner that (1) the structural strength of the enclosure shall be sufficient to contain the live dogs and cats and to withstand the normal rigors of transportation; (2) the interior of the enclosure shall be free from any protrusions that could be injurious to the live dogs or cats contained therein; (3) the openings of such enclosures are easily accessible at all times for emergency removal of the live dogs or cats; (4) except as provided in paragraph (h) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total area providing ventilation for the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing the ventilation for the primary enclosure shall be located on the upper one-half of the primary enclosure; (5) except as provided in paragraph (h) of this section, projecting rims or other devices shall be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings and to provide a minimum air circulation space of 1.9 centimeters (.75 inches) between the primary enclosure and any adjacent cargo or conveyance wall; and (6) except as provided in paragraph (h) of this section, adequate handholds or other devices for lifting shall be provided on the exterior of the primary enclosure to enable the primary enclosure to be lifted without tilting and to ensure that the person handling the primary enclosure will not be in contact with the dog or cat.

(b) Live dogs or cats transported in the same primary enclosure shall be of the same species and maintained in compatible groups. Puppies or kittens shall not be transported in the same primary enclosure with adult dogs or cats, other than their dams.

(c) Primary enclosures used to transport live dogs and cats shall be large enough to ensure that each animal contained therein has sufficient space to turn about freely in a standing position using normal body movements, to stand and sit erect, and to lie in a natural position: *Provided, however,* That the primary enclosure for a coursing hound with a spinal arch (greyhound, whippet, borzoi, and Italian greyhound) must be narrow enough to prevent the animal from turning around in its enclosure.

(d) A maximum of one live dog or cat, 6 months or more of age, or a maximum of one live puppy, 8 weeks to 6 months of age and weighing over 9 kilograms (20 pounds), shall be transported in a primary enclosure. Two live puppies and kittens, 8 weeks to 6 months of age, but not weighing over 9 kilograms (20 pounds) each and of comparable size, may be carried in the same primary enclosure. Weaned live puppies or kittens less than 8 weeks of age and of comparable size, or puppies or kittens which are less than 8 weeks of age and littermates accompanied by their dam, may be shipped in the same primary enclosure to research laboratories.

(e) Primary enclosures used to transport live dogs and cats as provided in this section shall have solid bottoms to prevent leakage in shipment and shall be cleaned and sanitized in a manner prescribed in § 3.7 of the standards, if previously used. Such primary enclosures shall contain clean litter of a suitable absorbent material, which is safe and nontoxic to the dogs and cats, in sufficient quantity to absorb and cover excreta, unless the dogs or cats are on wire or other nonsolid floors.

(f) Primary enclosures used to transport live dogs and cats, except where such primary enclosures are permanently affixed in the animal cargo space of the primary conveyance, shall be clearly marked on top and on one or more sides with the words "Live Animals" in letters not less than 2.5 centimeters (1 inch) in height, and with arrows or other markings, to indicate the correct upright position of the container.

(g) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment.

(h) When a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh or smooth expanded metal.

(5) § 3.13 of the standards (9 CFR 3.13) is amended to read as follows:

§ 3.13 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used in transporting live dogs and cats shall be designed and constructed to protect the health, and ensure the safety and comfort of the dogs and cats contained therein at all times.

(b) The animal cargo space shall be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases from the primary conveyance during transportation in commerce.

(c) No live dog or cat shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo space in such a manner that each dog or cat has access to sufficient air for normal breathing.

(d) Primary enclosures shall be positioned in the primary conveyance in such a manner that in an emergency the live dogs and cats can be removed from the primary conveyance as soon as possible.

(e) The interior of the animal cargo space shall be kept clean.

(f) Live dogs and cats shall not be transported with any material, substance (e.g., dry ice) or device which may reasonably be expected to be injurious to the health and well-being of the dogs and cats unless proper precaution is taken to prevent such injury.

(6) § 3.14 of the standards (9 CFR 3.14) is amended to read as follows:

§ 3.14 Food and water requirements.

(a) All live dogs or cats shall be offered potable water within 4 hours prior to

being transported in commerce. Any live dogs or cats less than 16 weeks of age being offered to any carrier for transportation in commerce shall be offered at least 60 cubic centimeters (ccs.) (approximately 2 ounces) of potable water within 4 hours prior to being so offered for transportation in commerce. Dealers, exhibitors, research facilities and operators of auction sales shall provide potable water to all live dogs and cats transported in their own primary conveyance at least every 12 hours after such transportation is initiated, and carriers and intermediate handlers shall provide potable water to all live dogs and cats at least every 12 hours after acceptance for transportation in commerce.

(b) Each live dog and cat over 16 weeks of age shall be fed at least once in each 24 hour period. Live puppies and kittens less than 16 weeks of age shall have food made available to them at least every 12 hours. The time periods provided for in this paragraph shall apply to carriers and intermediate handlers after acceptance of any live dog or cat for transportation, in commerce, and shall apply to dealers, exhibitors, research facilities, and operators of auction sales who transport live dogs and cats in their own primary conveyance after such transportation is initiated.

(c) Any dealer, research facility, exhibitor or operator of an auction sale offering any live dog or cat to any carrier or intermediate handler for transportation in commerce shall affix to the outside of the primary enclosure used for transporting such dog or cat, written instructions concerning the food and water requirements of such dog or cat while being transported.

(d) No carrier or intermediate handler shall accept any live dog or cat for transportation in commerce unless written instructions concerning the food and water requirements of such dog or cat while being so transported is affixed to the outside of its primary enclosure.

7. A new § 3.15 (9 CFR 3.15) is added to the standards as follows:

§ 3.15 Care in transit.

(a) During surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live dogs or cats as frequently as circumstances may dictate, but not less than once every 4 hours, to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any of the live dogs or cats are in obvious physical distress and to provide any needed veterinary care as soon as possible. When transported by air, live dogs and cats shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier shall visually observe the live dogs or cats whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any such live dogs or cats are in obvious physical distress. The carrier shall provide any needed veterinary care as soon as possible. No dog or cat in obvious physical distress shall be transported in commerce.

(b) During the course of transportation, in commerce, live dogs or cats shall not be removed from their primary enclosures unless placed in other primary enclosures or facilities conforming to the requirements provided in this subpart.

8. A new § 3.16 (9 CFR 3.16) is added to the standards as follows:

§ 3.16 Terminal facilities.

(a) *Indoor facilities.* Carriers shall provide a designated indoor animal holding area which shall not be used for general cargo, but may be located within the general cargo area. The indoor animal holding area shall be provided with fresh air by means of windows, doors, vents, or air conditioning and shall be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. The ambient temperature shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) for more than 4 hours and shall not exceed 35° C. (95° F.) at any time. The indoor animal holding area shall be cleaned and sanitized in a manner prescribed in § 3.7 of the standards often enough to prevent an accumulation of debris or excreta, minimize vermin infestation and to prevent a disease hazard.

(b) *Outdoor facilities.* Carriers and intermediate handlers in transporting any live dog or cat from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(i) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live dogs and cats from the direct rays of the sun.

(ii) *Shelter from rain or snow.* Live dogs and cats shall be provided protection to allow them to remain dry during rain or snow.

(iii) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live dogs and cats when the atmospheric temperature falls below 10° C. (50° F.).

9. A new § 3.17 (9 CFR 3.17) is added to the standards as follows:

§ 3.17 Handling.

(a) Carriers and intermediate handlers shall move live dogs and cats from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facilities as expeditiously as possible.

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live dog or cat contained therein.

(c) Primary enclosures used to transport any live dog or cat shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

10. A new § 3.18 (9 CFR 3.18) is added to the standards as follows:

§ 3.18 Ambient temperature.

The ambient temperature within primary enclosures used to transport live dogs or cats shall not exceed 35° C. (95° F.) for a period of more than 45 minutes and shall not fall below 7.2° C. (45° F.) for a period of more than 45 minutes unless the person transporting such live dog or cat knows that such live dog or cat is acclimated to lower temperatures.

11. § 3.35 of the standards (9 CFR 3.35) is amended to read as follows:

§ 3.35 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any live guinea pig or hamster presented by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government for shipment, in commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported: *Provided, however,* That the carrier or intermediate handler and any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government may mutually agree to extend the time of acceptance to not more than 6 hours if specific prior scheduling of the animal shipment to destination has been made.

(b) No carrier or intermediate handler shall accept for transportation or transport, in commerce, any live guinea pig or hamster in a primary enclosure which does not conform to the requirements set forth in § 3.36 of the standards.

(c) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live guinea pig or hamster at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

12. Section 3.36 of the standards (9 CFR 3.36) is amended to read as follows:

§ 3.36 Primary enclosures used to transport live guinea pigs and hamsters.

No dealer, research facility, exhibitor, or operator of an auction sale shall offer for transportation or transport, in commerce, any live guinea pig or hamster in a primary enclosure which does not conform to the following requirements:

(a) Primary enclosures, such as compartments, transport cages, cartons, or crates, used to transport live guinea pigs or hamsters shall be constructed in such a manner that (1) the structural strength of the enclosure shall be sufficient to contain the live guinea pigs or hamsters and to withstand the normal rigors of transportation; (2) the interior of the enclosure shall be free from any protrusions that could be injurious to the live guinea pigs or hamsters contained therein; (3) the inner surfaces of corrugated fiberboard, cardboard, or plastic containers shall be covered or laminated with wire mesh or screen where necessary to prevent escape of the animals; (4) the openings of such enclosures are easily accessible at all times for emergency removal of the live guinea pigs or hamsters; (5) except as provided in paragraph (i) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total area providing ventilation for the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing the ventilation for the primary enclosure shall be located on the upper one-half of the primary enclosure; (6) except as provided in paragraph (i) of this section, projecting rims or other devices shall be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings and to provide a minimum air circulation space of 1.9 centimeters (.75 inches) between the primary enclosure and any adjacent cargo or conveyance wall; and (7) except as provided in paragraph (i) of this section, adequate handholds or other devices for lifting shall be provided on the exterior of the primary enclosure to enable the primary enclosure to be lifted without tilting and to ensure that the person handling the primary enclosure will not be in contact with the guinea pigs or hamsters.

(b) Live guinea pigs or hamsters tranported in the same primary enclosure shall be of the same species and maintained in compatible groups.

(c) Primary enclosures used to transport live guinea pigs or hamsters shall be large enough to ensure that each animal contained therein has sufficient space to turn about freely and to make normal postural adjustments.

(d) Not more than 15 live guinea pigs shall be transported in the same primary enclosure. No more than 50 live hamsters shall be transported in the same primary enclosure.

(e) In addition to the other provisions of this section, the following requirements shall also apply to primary enclosures used to transport live guinea pigs or hamsters:

(1) *Guinea pigs.* (i) The interior height of primary enclosures used to transport live guinea pigs weighing up to 500 grams shall be at least 15.2 centimeters (6 inches) and the interior height of primary enclosures used to transport live guinea pigs weighing over 500 grams shall be at least 17.8 centimeters (7 inches).

(ii) Each live guinea pig transported in a primary enclosure shall be provided a minimum amount of floor space in accordance with the following table:

Minimum space per live guinea pig

Weight (grams)	Square centimeters	Square inches
Up to 350	193.6	30
350 to 600	290.3	45
Over 600	354.8	55

(2) *Hamsters.* (i) The interior height of primary enclosures used to transport live hamsters shall be at least 15.2 centimeters (6 inches) except that in the case of dwarf hamsters such interior height shall be at least 12.7 centimeters (5 inches).

(ii) Each live hamster transported in a primary enclosure shall be provided a minimum amount of floor space in accordance with the following table:

Minimum space per live hamster

Age	Dwarf		Other	
	Square centimeters	Square inches	Square centimeters	Square inches
Weaning to 5 weeks	32.2	5.0	45.2	7
5 to 10 weeks	48.3	7.5	71.0	11
Over 10 weeks	58.1	9.0	96.8	15

(f) Primary enclosures used to transport live guinea pigs or hamsters as provided in this section shall have solid bottoms to prevent leakage in shipment and shall be cleaned and sanitized in a manner prescribed in § 3.31 of the standards, if previously used. Such primary enclosures shall contain clean litter of a suitable absorbent material, which is safe and nontoxic to the guinea pigs or hamsters, in sufficient quantity to absorb and cover excreta, unless the guinea pigs or hamsters are on wire or other nonsolid floors.

(g) Primary enclosures used to transport live guinea pigs or hamsters, except where such primary enclosures are permanently affixed in the animal cargo space of the primary conveyance, shall be clearly marked on top and on one or more sides with the words "Live Animals" in letters not less than 2.5 centimeters (1 inch) in height, and with arrows or other markings, to indicate the correct upright position of the container.

(h) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment.

(i) When a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh or smooth expanded metal.

13. Section 3.37 of the standards (9 CFR 3.37) is amended to read as follows

§ 3.37 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used in transporting live guinea pigs and hamsters shall be designed and constructed to protect the health, and ensure the safety and comfort of the live guinea pigs and hamsters at all times.

(b) The animal cargo space shall be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases from the primary conveyance during transportation in commerce.

(c) No live guinea pig or hamster shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo space in such a manner that each live guinea pig or hamster has access to sufficient air for normal breathing.

(d) Primary enclosures shall be positioned in the primary conveyance in such a manner that in an emergency the live guinea pigs or hamsters can be removed from the primary conveyance as soon as possible.

(e) The interior of the animal cargo space shall be kept clean.

(f) Live guinea pigs and hamsters shall not be transported with any material, substance (e.g., dry ice) or device which may reasonably be expected to be injurious to the health and well-being of the guinea pigs and hamsters unless proper

precaution is taken to prevent such injury.

14. § 3.38 of the standards (9 CFR 3.38) is amended to read as follows:

§ 3.38 Food and water requirements.

(a) If live guinea pigs or hamsters are to be transported for a period of more than 6 hours, the animals shall have access to food and water or a type of food, which provides the requirements for food and water in quantity and quality sufficient to satisfy their food and water needs, during transit.

(b) Any dealer, research facility, exhibitor or operator of an auction sale offering any live guinea pig or hamster to any carrier or intermediate handler for transportation, in commerce, shall provide an adequate supply of food or type of food, which provides the requirements for food and water, within the primary enclosure to meet the requirements of this section.

(c) No carrier or intermediate handler shall accept for transportation, in commerce, any live guinea pig or hamster without an adequate supply of food or type of food, which provides the requirements for food and water, within the primary enclosure to meet the requirements of this section.

15. A new § 3.39 (9 CFR 3.39) is added to the standards as follows:

§ 3.39 Care in transit.

(a) During surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live guinea pigs or hamsters as frequently as circumstances may dictate, but not less than once every 4 hours, to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any of the live guinea pigs or hamsters are in obvious physical distress and to provide any needed veterinary care as soon as possible. When transported by air, live guinea pigs and hamsters shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier shall visually observe the live guinea pigs or hamsters whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any such live guinea pigs or hamsters are in obvious physical distress. The carrier shall provide any needed veterinary care as soon as possible. No guinea pig or hamster in obvious physical distress shall be transported in commerce.

(d) During the course of transportation, in commerce, live guinea pigs or hamsters shall not be removed from their primary enclosures unless placed in other primary enclosures or facilities conforming to the requirements provided in this subpart.

16. A new § 3.40 (9 CFR 3.40) is added to the standards as follows:

§ 3.40 Terminal facilities.

(a) *Indoor facilities.* Carriers shall provide a designated indoor animal holding area which shall not be used for general cargo, but may be located within the general cargo area. The indoor animal holding area shall be provided with fresh air by means of windows, doors, vents, or air conditioning and shall be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. The ambient temperature shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time. The indoor animal holding area shall be cleaned and sanitized in a manner prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, minimize vermin infestation and to prevent a disease hazard.

(b) *Outdoor facilities.* Carriers and intermediate handlers in transporting any live guinea pig or hamster from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(i) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live guinea pigs and hamsters from the direct rays of the sun.

(ii) *Shelter from rain or snow.* Live guinea pigs and hamsters shall be provided protection to allow them to remain dry during rain or snow.

(iii) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live guinea pigs and hamsters when the atmospheric temperature falls below 10° C. (50° F.).

17. A new § 3.41 (9 CFR 3.41) is added to the standards as follows:

§ 3.41 Handling.

(a) Carriers and intermediate handlers shall move live guinea pigs and hampsters from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility as expeditiously as possible.

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live guinea pigs or hamsters contained therein.

(c) Primary enclosures used to transport any live guinea pig or hamster shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

18. A new § 3.42 (9 CFR 3.42) is added to the standards as follows:

§ 3.42 Ambient temperature.

The ambient temperature within primary enclosures used to transport live guinea pigs or hamsters shall not exceed 20.5° C. (85° F.) for a period of more than 45 minutes nor fall below 7.2° C. (45° F.) for a period of more than 45 minutes.

19. § 3.60 of the standards (9 CFR 3.60) is amended to read as follows:

§ 3.60 Consignments to carrier and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any live rabbit presented by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government for shipment, in commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported: *Provided, however,* That the carrier or intermediate handler and any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government may mutually agree to extend the time of acceptance to not more than 6 hours if specific prior scheduling of the animal shipment to destination has been made.

(b) No carrier or intermediate handler shall accept for transportation or transport, in commerce, any live rabbit in a primary enclosure which does not conform to the requirements set forth in § 3.61 of the standards.

(c) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live rabbit at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

20. § 3.61 of the standards (9 CFR 3.61) is amended to read as follows:

§ 3.61 Primary enclosures used to transport live rabbits.

No dealer, research facility, exhibitor, or operator of an auction sale shall offer for transportation or transport, in commerce, any live rabbit in a primary enclosure which does not conform to the following requirements:

(a) Primary enclosures, such as compartments, transport cages, cartons, or crates, used to transport live rabbits shall be constructed in such a manner that: (1) The structural strength of the enclosure shall be sufficient to contain the live rabbits and to withstand the

normal rigors of transportation; (2) The interior of the enclosure shall be free from any protrusions that could be injurious to the live rabbits contained therein; (3) The openings of such enclosures are easily accessible at all times for emergency removal of the live rabbits; (4) Except as provided in paragraph (h) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however*, That at least one-third of the total area providing ventilation for the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing the ventilation for the primary enclosure shall be located on the upper one-half of the primary enclosure; (5) Except as provided in paragraph (h) of this section, projecting rims or other devices shall be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings and to provide a minimum air circulation space 1.9 centimeters (.75 inch) between the primary enclosure and any adjacent cargo or conveyance wall; and (6) Except as provided in paragraph (h) of this section, adequate handholds or other devices for lifting shall be provided on the exterior of the primary enclosure to enable the primary enclosure to be lifted without tilting and to ensure that the person handling the primary enclosure will not be in contact with the rabbit.

(b) Live rabbits transported in the same primary enclosure shall be maintained in compatible groups and shall not be transported in the same primary enclosure with other species of animals.

(c) Primary enclosures used to transport live rabbits shall be large enough to ensure that each rabbit contained therein has sufficient space to turn about freely and to make normal postural adjustments.

(d) Not more than 15 live rabbits shall be transported in the same primary enclosure.

(e) Primary enclosures used to transport live rabbits as provided in this section shall have solid bottoms to prevent leakage in shipment and shall be cleaned and sanitized in a manner prescribed in § 3.56 of the standards, if previously used. Such primary enclosures shall contain clean litter of a suitable absorbent material which is safe and nontoxic to the rabbits, in sufficient quantity to absorb and cover excreta, unless the rabbits are on wire or other nonsolid floors.

(f) Primary enclosures used to transport live rabbits, except where such primary enclosures are permanently affixed in the animal cargo space of the primary conveyance, shall be clearly marked on top and on one or more sides with the words "Live Animal" in letters not less than 2.5 centimeters (1 inch) in height, and with arrows or other markings, to indicate the correct upright position of the container.

(g) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment.

(h) When a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh or smooth expanded metal.

21. Section 3.62 of the standards (9 CFR 3.62) is amended to read as follows:

§ 3.62 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used in transporting live rabbits shall be designed and constructed to protect the health, and ensure the safety and comfort of the rabbits contained therein at all times.

(b) The animal cargo space shall be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases from the primary conveyance during transportation in commerce.

(c) No live rabbit shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo space in such a manner that each rabbit has access to sufficient air for normal breathing.

(d) Primary enclosures shall be positioned in the primary conveyance in such a manner that in an emergency the live rabbits can be removed from the primary conveyance as soon as possible.

(e) The interior of the animal cargo space shall be kept clean.

(f) Live rabbits shall not be transported with any material, substance (e.g., dry ice) or device which may reasonably be expected to be injurious to the health and well-being of the rabbits unless proper precaution is taken to prevent such injury.

22. Section 3.63 of the standards (9 CFR 3.63) is amended to read as follows:

§ 3.63 Food and water requirements.

(a) If live rabbits are to be transported for a period of more than 6 hours, they shall have access to food and water or a type of food, which provides the requirements for food and water in quantity and quality sufficient to satisfy their food and water needs, during transit.

(b) Any dealer, research facility, exhibitor or operator of an auction sale offering any live rabbit to any carrier or intermediate handler for transportation, in commerce, shall provide an adequate supply of food or type of food, which provides the requirements for food and water, within the primary enclosure to meet the requirements of this section.

(c) No carrier or intermediate handler shall accept for transportation, in commerce, any live rabbit without an adequate supply of food or type of food, which provides the requirements for food and water, within the primary enclosure to meet the requirements of this section.

23. A new § 3.64 (9 CFR 3.64) is added to the standards as follows:

§ 3.64 Care in transit.

(a) During surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live rabbits as frequently as circumstances may dictate, but not less than once every 4 hours, to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any of the live rabbits are in obvious physical distress and to provide any needed veterinary care as soon as possible. When transported by air, live rabbits shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than once every 4 hours, if the cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier shall visually observe the live rabbits whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any such live rabbits are in obvious physical distress. The carrier shall provide any needed veterinary care as soon as possible. No rabbit in obvious physical distress shall be transported in commerce.

(b) During the course of transportation, in commerce, live rabbits shall not be removed from their primary enclosures unless placed in other primary enclosures or facilities conforming to the requirements provided in this subpart.

24. A new § 3.65 (9 CFR 3.65) is added to the standards as follows:

§ 3.65 Terminal facilities.

(a) *Indoor facilities.* Carriers shall provide a designated indoor animal holding area which shall not be used for general cargo, but may be located within the general cargo area. The indoor animal holding area shall be provided with fresh air by means of windows, doors, vents, or air conditioning and shall be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and mois-

ture condensation. The ambient temperature shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time. The indoor animal holding area shall be cleaned and sanitized in a manner prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, minimize vermin infestation and to prevent a disease hazard.

(b) *Outdoor facilities.* Carriers and intermediate handlers in transporting any live rabbit from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(i) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live rabbits from the direct rays of the sun.

(ii) *Shelter from rain or snow.* Live rabbits shall be provided protection to allow them to remain dry during rain or snow.

(iii) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live rabbits when the atmospheric temperature falls below 10° C. (50° F.).

25. A new § 3.66 (9 CFR 3.66) is added to the standards as follows:

§ 3.66 Handling.

(a) Carriers and intermediate handlers shall move live rabbits from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility as expeditiously as possible.

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live rabbits contained therein.

(c) Primary enclosures used to transport any live rabbit shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

26. A new § 3.67 (9 CFR 3.67) is added to the standards as follows:

§ 3.67 Ambient temperature.

The ambient temperature within primary enclosures used to transport live rabbits shall not exceed 20.5° C. (85° F.) for a period of more than 45 minutes nor fall below 7.2° C. (45° F.) for a period of more than 45 minutes unless the person transporting such live rabbits knows that such live rabbits are acclimated to lower temperatures.

27. Section 3.85 of the standards (9 CFR 3.85) is amended to read as follows:

§ 3.85 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any live nonhuman primate presented by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government for shipment, in commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported: *Provided, however,* That the carrier or intermediate handler and any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government may mutually agree to extend the time of acceptance to not more than 6 hours if specific prior scheduling of the animal shipment to destination has been made.

(b) No carrier or intermediate handler shall accept for transportation or transport, in commerce, any live nonhuman primate in a primary enclosure which does not conform to the requirements set forth in § 3.86 of this part.

(c) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live nonhuman primate at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

28. Section 3.86 of the standards (9 CFR 3.86) is amended to read as follows:

§ 3.86 Primary enclosures used to transport live nonhuman primates.

No dealer, research facility, exhibitor, or operator of an auction sale shall offer for transportation or transport, in commerce, any live nonhuman primate in a primary enclosure which does not conform to the following requirements:

(a) Primary enclosures, such as compartments, transport cages, cartons, or crates, used to transport live nonhuman primates shall be constructed in such a manner that (1) the structural strength of the enclosure shall be sufficient to contain the live nonhuman primate and to withstand the normal rigors of transportation; (2) the interior of the enclosure shall be free from any protrusions that could be injurious to the live nonhuman primate contained therein; (3) no part of the live nonhuman primate will be exposed outside of the primary enclosure which may cause injury to the animal or to persons who are nearby or who handle the primary enclosure; (4) the openings of such enclosures are easily accessible at all times for emergency removal of the live nonhuman primates; (5) the openings which provide access into the primary enclosure shall be secured with locking devices capable of preventing accidental openings; (6) except as provided in paragraph (h) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total area providing ventilation for the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing the ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure; (7) except as provided in paragraph (h) of this section, projecting rims or other devices shall be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings and to provide a minimum air circulation space of 1.9 centimeters (.75 inches) between the primary enclosure and any adjacent cargo or conveyance wall; and (8) except as provided in paragraph (h) of this section, adequate handholds or other devices for lifting shall be provided on the exterior of the primary enclosure to enable the primary enclosure to be lifted without tilting and to ensure that the person handling the primary enclosure will not be in contact with the nonhuman primate.

(b) Live nonhuman primates transported in the same primary enclosure shall be of the same species and maintained in compatible groups. Nonhuman primates which have not reached puberty shall not be transported in the same primary enclosures with adult nonhuman primates other than their dams. Any female nonhuman primate in season (estrus) shall not be transported in the same primary enclosure with any male nonhuman primate.

(c) Primary enclosures used to transport live nonhuman primates shall be large enough to ensure that each animal contained therein has sufficient space to turn about freely in a stance whereby both feet and hands are on the floor and can sit in an upright position: *Provided, however,* That certain larger species may be restricted in their movements according to professionally acceptable standards when such freedom of movement would constitute a danger to the live nonhuman primates, their handlers, or other persons.

(d) No more than ten live nonhuman primates shall be transported in a primary enclosure.

(e) Primary enclosures used to transport live nonhuman primates as provided in this section shall have solid bottoms to prevent leakage in shipment and shall be cleaned and sanitized in a manner prescribed in § 3.81 of this part, if previously used. Such primary enclosures shall contain clean litter of a suitable absorbent material, which is safe and nontoxic to nonhuman primates, in sufficient quantity to absorb and cover excreta, unless the nonhuman primates are on wire or other nonsolid floors.

(f) Primary enclosures used to transport live nonhuman primates, except where such primary enclosures are permanently affixed in the animal cargo space of the primary conveyance, shall be clearly marked on top and on one or more sides with the words "Wild Animals" in letters not less than 2.5 centimeters (1 inch) in height, and with arrows or other markings, to indicate the correct upright position of the container.

(g) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment.

(h) When a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh or smooth expanded metal.

29. § 3.87 of the standards (9 CFR 3.87) is amended to read as follows:

§ 3.87 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used in transporting live nonhuman primates shall be designed and constructed to protect the health, and ensure the safety and comfort of the nonhuman primates contained therein at all times.

(b) The animal cargo space shall be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases from the primary conveyance during transportation in commerce.

(c) No live nonhuman primate shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo space in such a manner that each nonhuman primate has access to sufficient air for normal breathing.

(d) Primary enclosures shall be positioned in the primary conveyance in such a manner that in an emergency the live nonhuman primates can be removed from the primary conveyance as soon as possible.

(e) The interior of the animal cargo space shall be kept clean.

(f) Live nonhuman primates shall not be transported with any material, substance (e.g., dry ice) or device which may reasonably be expected to be injurious to the health and well-being of the nonhuman primates unless proper precaution is taken to prevent such injury.

30. § 3.88 of the standards (9 CFR 3.88) is amended to read as follows:

§ 3.88 Food and water requirements.

(a) All live nonhuman primates shall be offered potable water within 4 hours prior to being transported in commerce. Dealers, exhibitors, research facilities and operators of auction sales shall provide potable water to all live nonhuman primates transported in their own primary conveyance at least every 12 hours after such transportation is initiated, and carriers and intermediate handlers shall provide potable water to all live nonhuman primates at least every 12 hours after acceptance for transportation in commerce.

(b) Each live adult nonhuman primate over 1 year of age shall be fed at least once in each 24 hour period. Live nonhuman primates less than 1 year of age shall have food made available to them every 12 hours. The time periods provided for in this paragraph shall apply to carriers and intermediate handlers after acceptance of any live nonhuman primates for transportation, in commerce, and shall apply to dealers, exhibitors, research facilities, and operators of auction sales who transport live nonhuman primates in their own primary conveyance after such transportation is initiated.

(c) Any dealer, research facility, exhibitor or operator of an auction sale offering any live nonhuman primate to any carrier or intermediate handler for transportation in commerce shall affix to the outside of the primary enclosure used for transporting such nonhuman primate, written instructions concerning the food and water requirements of such nonhuman primate while being so transported.

(d) No carrier or intermediate handler shall accept any live nonhuman primate for transportation in commerce unless written instructions concerning the food and water requirements of such nonhuman primate while being so transported is affixed to the outside of its primary enclosure.

31. A new § 3.89 (9 CFR 3.89) is added to the standards as follows:

§ 3.89 Care in transit.

(a) During surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live nonhuman primates as frequently as circumstances may dictate, but not less than once every 4 hours, to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any of the live nonhuman primates are in obvious physical distress and to provide any needed veterinary care as soon as possible. When transported by air, live nonhuman primates shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier shall visually observe the live nonhuman primates whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any such live nonhuman primates are in obvious physical distress. The carrier shall provide any needed veterinary care as soon as possible. No nonhuman primate in obvious physical distress shall be transported in commerce.

(b) During the course of transportation, in commerce, live nonhuman primates shall not be removed from their primary enclosures unless placed in other primary enclosures of facilities conforming to the requirements provided in this subpart.

32. A new § 3.90 (9 CFR 3.90) is added to the standards as follows:

§ 3.90 Terminal facilities.

(a) *Indoor facilities.* Carriers shall provide a designated indoor animal holding area which shall not be used for general cargo, but may be located within the general cargo area. The indoor animal holding area shall be provided with fresh air by means of windows, doors, vents, or air conditioning and shall be ventilated or air circulated by means of fans, blowers, or an air conditioning system so to minimize drafts, odors, and moisture condensation. The ambient temperature shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) for more than 4 hours and shall not exceed 35° C. (95° F.) at any time. The indoor animal holding area shall be cleaned and sanitized in a manner prescribed in § 3.81 of the standards often enough to prevent an accumulation of debris or excreta, minimize vermin infestation and to prevent a disease hazard.

(b) *Outdoor facilities.* Carriers and intermediate handlers in transporting any live nonhuman primate from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(i) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live nonhuman primates from the direct rays of the sun.

(ii) *Shelter from rain or snow.* Live nonhuman primates shall be provided protection to allow them to remain dry during rain or snow.

(iii) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live nonhuman primates when the atmospheric temperature falls below 10° C. (50° F.).

33. A new § 3.91 (9 CFR 3.91) is added to the standards as follows:

§ 3.91 Handling.

(a) Carriers and intermediate handlers shall move live nonhuman primates from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary

conveyance to the indoor animal holding area of the terminal facilities as expeditiously as possible.

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live nonhuman primate contained therein.

(c) Primary enclosures used to transport any live nonhuman primates shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

34. A new § 3.67 (9 CFR 3.67) is added to the standards as follows:

§ 3.67 Ambient temperature.

The ambient temperature within such primary enclosures used to transport live nonhuman primates shall not exceed 35° C. (95° F.) for a period of more than 45 minutes, and shall not fall below 7.2° C. (45° F.) for a period of more than 45 minutes unless the person transporting such live nonhuman primates knows that such live nonhuman primate is acclimated to lower temperatures.

35. Section 3.111 of the standards (9 CFR 3.111) is amended to read as follows:

§ 3.111 Consignments to carriers and intermediate handlers.

(a) Carriers and intermediate handlers shall not accept any live animals presented by any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government for shipment, in commerce, more than 4 hours prior to the scheduled departure of the primary conveyance on which it is to be transported: *Provided, however,* That the carrier or intermediate handler and any dealer, research facility, exhibitor, operator of an auction sale, or other person, or any department, agency, or instrumentality of the United States or any State or local government may mutually agree to extend the time of acceptance to not more than 6 hours if specific prior scheduling of the animal shipment to destination has been made.

(b) No carrier or intermediate handler shall accept for transportation or transport, in commerce, any live animals in a primary enclosure which does not conform to the requirements set forth in § 3.112 of this part.

(c) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live animals at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

36. § 3.112 of the standards (9 CFR 3.112) is amended to read as follows:

§ 3.112 Primary enclosures used to transport live animals.

No dealer, research facility, exhibitor, or operator of an auction sale shall offer for transportation or transport, in commerce, any live animal in a primary enclosure which does not conform to the following requirements:

(a) Primary enclosures, such as compartments, transport cages, cartons, or crates, used to transport live animals shall be constructed in such a manner that (1) the structural strength of the enclosure shall be sufficient to contain the live animals and to withstand the normal rigors of transportation; (2) the interior of the enclosure shall be free from any protrusions that could be injurious to the live animals contained therein; (3) the openings of such enclosures are easily accessible at all times for emergency removal of the live animals; (4) except as provided in paragraph (g) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total area providing ventilation for the primary enclosures shall be located on the lower one-half of the primary enclosure and at least one-third of the total area providing the ventilation for the primary enclosure shall be located on the upper one-half of the primary enclosure; (5) except as provided in paragraph (g) of this section, projecting rims or other devices shall be on the exterior of the outside walls with any ventilation openings to prevent obstruction of the ventilation openings and to provide a minimum air circulation space of 1.9 centimeters (.75 inch) between the primary enclosure and any adjacent cargo or conveyance wall; and (6) except as provided in paragraph (g) of this section, adequate handholds or other devices for lifting shall be provided on the exterior of the primary enclosure to enable the primary enclosure to be lifted without tilting and to ensure that the person handling the primary enclosure will not be in contact with the animal.

(b) Live animals transported in the same primary enclosure shall be of the same species and maintained in compatible groups. Live animals that have not reached puberty shall not be transported in the same primary enclosure with adult animals other than their dams. Socially dependent animals (e.g., sibling, dam, and other members of a family group) must be allowed visual and olfactory contact. Any female animal in season (estrus) shall not be transported in the same primary enclosure with any male animal.

(c) Primary enclosures used to transport live animals shall be large enough to ensure that each animal contained therein has sufficient space to turn about freely and to make normal postural adjustments: *Provided, however,* That certain species may be restricted in their movements according to professionally acceptable standards when such freedom of movement would constitute a danger to the animals, their handlers, or other persons.

(d) Primary enclosures used to transport live animals as provided in this section shall have solid bottoms to prevent leakage in shipment and shall be cleaned and sanitized in a manner prescribed in § 3.106 of the standards, if previously used. Such primary enclosures shall contain clean litter of a suitable absorbent material, which is safe and nontoxic to the live animals contained therein, in sufficient quantity to absorb and cover excreta, unless the animals are on wire or other nonsolid floors.

(e) Primary enclosures used to transport live animals, except where such primary enclosures are permanently affixed in the animal cargo space of the primary conveyance, shall be clearly marked on top and on one or more sides with the words "Live Animal" or "Wild Animal", whichever is appropriate, in letters not less than 2.5 centimeters (1 inch) in height, and with arrows or other markings, to indicate the correct upright position of the container.

(f) Documents accompanying the shipment shall be attached in an easily accessible manner to the outside of a primary enclosure which is part of such shipment.

(g) When a primary enclosure is permanently affixed within the animal cargo space of the primary conveyance so that the front opening is the only source of ventilation for such primary enclosure, the front opening shall open directly to the outside or to an unobstructed aisle or passageway within the primary conveyance. Such front ventilation opening shall be at least 90 percent of the total surface area of the front wall of the primary enclosure and covered with bars, wire mesh or smooth expanded metal.

37. Section 3.113 of the standards (9 CFR 3.113) is amended to read as follows:

§ 3.113 Primary conveyances (motor vehicle, rail, air, and marine).

(a) The animal cargo space of primary conveyances used in transporting live animals shall be designed and constructed to protect the health, and ensure the safety and comfort of the live animals contained therein at all times.

(b) The animal cargo space shall be constructed and maintained in a manner to prevent the ingress of engine exhaust fumes and gases from the primary conveyance during transportation in commerce.

(c) No live animal shall be placed in an animal cargo space that does not have a supply of air sufficient for normal breathing for each live animal contained therein, and the primary enclosures shall be positioned in the animal cargo space in such a manner that each live animal has access to sufficient air for normal breathing.

(d) Primary enclosures shall be positioned in the primary conveyance in such a manner that in an emergency the live animals can be removed from the primary conveyance as soon as possible.

(e) The interior of the animal cargo space shall be kept clean.

(f) Live animals shall not be transported with any material, substance (e.g., dry ice) or device which may reasonably be expected to be injurious to the health and well-being of the animals unless proper precaution is taken to prevent such injury.

38. Section 3.114 of the standards (9 CFR 3.114) is amended to read as follows:

§ 3.114 Food and water requirements.

(a) All live animals shall be offered potable water within 4 hours prior to being transported in commerce. Dealers, exhibitors, research facilities and operators of auction sales shall provide potable water to all live animals transported in their own primary conveyance at least every 12 hours after such transportation is initiated, and carriers and intermediate handlers shall provide potable water to all live animals at least every 12 hours after acceptance for transportation in commerce: *Provided, however*, That except as directed by hibernation, veterinary treatment or other professionally accepted practices, those live animals which, by common accepted practices, require watering more frequently shall be so watered.

(b) Each live animal shall be fed at least once in each 24 hour period, except as directed by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices. Those live aimals which, by common accepted practice, require feeding more frequently shall be so fed.

(c) A sufficient quantity of food and water shall accompany the live animal to provide food and water for such animals for a period of at least 24 hours, except as directed by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

(d) Any dealer, research facility, exhibitor or operator of an auction sale offering any live animal to any carrier or intermediate handler for transportation in commerce shall affix to the outside of the primary enclosure used for transporting such live animal, written instructions concerning the food and water requirements of such animal while being so transported.

(e) No carrier or intermediate handler shall accept any live animals for transportation in commerce unless written instructions concerning the food and water requirements of such animal while being so transported is affixed to the outside of its primary enclosure.

39. A new § 3.115 (9 CFR 3.115) is added to the standards as follows:

§ 3.115 Care in transit.

(a) During surface transportation, it shall be the responsibility of the driver or other employee to visually observe the live animals as frequently as circumstances may dictate, but not less than once every 4 hours, to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any of the live animals are in obvious physical distress and to provide any needed veterinary care as soon as possible. When transported by air, live animals shall be visually observed by the carrier as frequently as circumstances may dictate, but not less than once every 4 hours, if the animal cargo space is accessible during flight. If the animal cargo space is not accessible during flight, the carrier shall visually observe the live animals whenever loaded and unloaded and whenever the animal cargo space is otherwise accessible to assure that they are receiving sufficient air for normal breathing, their ambient temperatures are within the prescribed limits, all other applicable standards are being complied with and to determine whether any such live animals are in obvious physical distress. The carrier shall provide any needed veterinary care as soon as possible. No animal in obvious physical distress shall be transported in commerce.

(b) Wild or otherwise dangerous animals shall not be taken from their primary enclosure except under extreme emergency conditions: *Provided, however*, That a temporary primary enclosure may be used, if available, and such temporary primary enclosure is structurally strong enough to prevent the escape of the animal. During the course of transportation, in commerce, live animals shall not be removed from their primary enclosures unless placed in other primary enclosures or facilities conforming to the requirements provided in this subpart.

40. A new § 3.116 (9 CFR 3.116) is added to the standards as follows:

§ 3.116 Terminal facilities.

(a) *Indoor facilities.* Carriers shall provide a designated indoor animal holding area which shall not be used for general cargo, but may be located within the general cargo area. The indoor animal holding area shall be provided with fresh air by means of windows, doors, vents, or air conditioning and shall be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. The ambient temperature shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) for more than 4 hours and shall not exceed 35° C. (95° F.) at any time. The indoor animal holding area shall be cleaned and sanitized in a manner prescribed in § 3.106 of the standards often enough to prevent an accumulation of debris or excreta, minimize vermin infestation and to prevent a disease hazard.

(b) *Outdoor facilities.* Carriers and intermediate handlers in transporting any live animal from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(i) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live animals from the direct rays of the sun.

(ii) *Shelter from rain or snow.* Live animals shall be provided protection to allow them to remain dry during rain or snow.

(iii) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live animals when the atmospheric temperature falls below 10° C. (50° F.).

41. A new § 3.117 (9 CFR 3.117) is added to the standards as follows:

§ 3.117 Handling.

(a) Carriers and intermediate handlers shall move live animals from the indoor animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the indoor animal holding area of the terminal facility as expeditiously as possible.

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live animal contained therein.

(c) Primary enclosures used to transport any live animal shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

42. A new § 3.118 (9 CFR 3.118) is added to the standards as follows:

§ 3.118 Ambient temperature.

The ambient temperature within primary enclosures used to transport live

animals shall not exceed 35° C. (95° F.) for a period of more than 45 minutes and shall not fall below 7.2° C. (45° F.) for a period of more than 45 minutes unless the person transporting such live animals knows that such live animals are acclimated to lower or higher temperatures.

(Secs. 3, 5, 6, 10, 11, 12, 13, 14, 16, 17, 21; 80 Stat. 351, 352, 353; 84 Stat. 1561, 1562, 1563, 1564; 90 Stat. 418, 419, 420, 423; (7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151); 37 FR 28464, 28477, 38 FR 19141.)

It does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to these amendments are impracticable and unnecessary.

Done at Washington, D.C., this 16th day of June 1977.

NOTE.—The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

DALE P. SCHWINDAMAN,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77-17665 Filed 6-20-77;8:45 am]

federal register

TUESDAY, JUNE 21, 1977

PART IV

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

DEPARTMENT OF THE TREASURY

Internal Revenue Service

■

EMPLOYEE BENEFIT PLANS

Class Exemption for Transfer of Individual Life Insurance Contracts

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Prohibited Transaction Exemption 77-8; Application No. D-281]

EMPLOYEE BENEFIT PLANS

Class Exemption Involving Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans to Plan Participants, Certain Beneficiaries of Plan Participants, Employers and Other Employee Benefit Plans

AGENCIES: Department of Labor, Department of Treasury/Internal Revenue Service.

ACTION: Grant of Class Exemption.

SUMMARY: This exemption enables an employee benefit plan to sell individual life insurance contracts and annuities to (1) a plan participant insured under such policies, (2) a relative of such insured participant who is the beneficiary under the contract, (3) an employer any of whose employees are covered by the plan, or (4) another employee benefit plan, for the cash surrender value of the contracts, provided certain conditions are satisfied. In the absence of this exemption, these sales would be prohibited by the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code).

EFFECTIVE DATE: January 1, 1975.

FOR FURTHER INFORMATION CONTACT:

Rhea S. Schwartz, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-523-6855.

William M. Tartikoff, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT, 202-566-3089.

(These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 21, 1977, notice was published in the FEDERAL REGISTER (42 FR 4036) that the Department of Labor and the Internal Revenue Service (the Agencies) had under consideration a proposed class exemption from the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed class exemption, which was requested in an application (No. D-281) filed by the American Council of Life Insurance, would have exempted the sale of individual life insurance contracts and annuities by employee benefit plans to plan participants insured under such policies for the cash surrender value of the policy.

The exemption was proposed in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 772. All interested persons were invited to submit comments on the proposed exemption. As indicated in the notice, no exemption was proposed for the sale of life insurance contracts and annuities by plans to employers. However, the Agencies specifically requested comments as to the unavailability of the proposed class exemption with respect to the sale of insurance contracts or annuities by plans to employers and as to whether there was a need for an exemption for such transactions and, if so, the conditions and safeguards under which an exemption for such transactions would be appropriate.

COMMENTS RECEIVED

Thirty-two comments were received with regard to the proposed exemption, all supporting the grant of the exemption. Several comments, while supporting the exemption, contained suggestions for changes.

SALES TO EMPLOYERS

Three comments recommended expansion of the proposed class exemption to include an exemption for the sale of insurance contracts or annuities by plans to employers where appropriate safeguards are provided. The comments indicated that the purchase of such contracts or annuities from the plan by the employer would protect participants who need continued insurance protection and who are unable to secure the funds to purchase the insurance for its cash surrender value from the plan or to maintain the premium payments. It was noted in one of the comments that in the various situations described in the notice of pendency where a plan may not continue individual life insurance contracts in effect until participants' normal retirement, participants entered the plan with the reasonable expectation that insurance protection would be afforded by the employer. The broadening of the proposed class exemption to permit the sale of insurance contracts or annuities by a plan to the employer would thus enable employees to benefit, at little or no cost, from the insurance protection available when the contract or annuity was maintained by the plan, in accordance with their expectations when the contract was originally purchased. The suggestion was accepted and incorporated in the exemption.

SALE TO A RELATIVE OF THE INSURED

Two commentators suggested that plans should be permitted to sell an individual life insurance contract or annuity directly to a relative of the insured participant where such relative is the beneficiary under the contract and where the sale is authorized in writing by the participant. Such a direct transfer would avoid the necessity of a two-step transfer, first from the plan to the participant, and then from the participant to the beneficiary. The position of the plan would not be affected in any manner whether the policy were sold to the participant or to a beneficiary. The comment has been accepted because the Agencies see no potential for abuse in this situation and it would permit direct transfers of insurance contracts or annuities which could be made indirectly under the proposed exemption. The term "relative", for purposes of this exemption, includes those persons defined as relatives in section 3(15) of the Act, a "member of a family" as defined in section 4975(e)(6) of the Code, and brothers and sisters of the insured and their spouses.

TRANSFER TO ANOTHER PLAN

Another comment suggested expanding the exemption to permit the transfer of insurance contracts or annuities between employee benefit plans. The transfer of insurance contracts or annuities from one plan to another is a prohibited transaction only where the plans are parties in interest or disqualified persons with respect to each other. Generally, however, two or more plans are not parties in interest or disqualified persons with respect to each other merely because they are maintained by the same plan sponsor, although one plan may be a party in interest or disqualified person with respect to another plan by virtue of being, among other things, a service provider to the other.

Because the Agencies see no potential for abuse in the transfer of insurance contracts or annuities between plans which may be parties in interest or disqualified persons with respect to one another, the suggestion to allow a direct transfer from one plan to another has been incorporated in the class exemption.

GENERAL CONDITION WITH RESPECT TO SALES AND TRANSFERS TO PERSONS OTHER THAN PLAN PARTICIPANTS

With respect to the broadening of the right of plans to sell insurance policies so as to include sales to employers, relatives, and other plans, an additional condition was added requiring that the participant first be afforded an opportunity to purchase any individual life insurance contract or annuity under which the participant is the insured and that the participant consent in writing to such sale. If the participant elects not to purchase the contract or annuity, the employer, relative or other plan may, upon receipt by the plan of the written consent of the participant, purchase the contract or annuity from the plan for an amount at least equal to the amount necessary to put the plan in the same cash position as it would have been in if it had retained the contract, surrendered it and made any distribution owing to the participant of his vested interest under the contract.

SALES OF OTHER POLICIES

A suggestion that the exemption be extended to individual insurance policies not containing life insurance benefits, and a suggestion that the exemption be extended to cover transfers of individual life insurance contracts and an-

nuities from the plan to participants at all times were rejected because insufficient information was provided to determine whether such an extension would be justified.

SALES UPON PLAN TERMINATION

One comment suggested that plan administrators be alerted to the potential applicability of Title IV of the Act in certain situations covered by the exemption. Where a contract is being sold in connection with the termination of a pension plan covered under Title IV, a participant's credit for vested benefits, which would serve to reduce the amount such participant would pay for the contract, may be limited to the participant's entitlement under the allocation rules of section 4044 of the Act. This comment was not incorporated because it is beyond the scope of the exemption.

MISCELLANEOUS

Finally, the agencies wish to note the following points, which were included in the Notice of Pendency of this class exemption:

(1) The exemption does not provide any relief from or relaxation of the requirement set forth in section 401(a)(4) of the Code. In order for a plan to qualify under section 401(a) of the Code, section 401(a)(4) of the Code provides that the contributions or benefits provided under such plan must not discriminate either in form or in operation in favor of employees who are officers, shareholders, or highly compensated. A condition has been included in the exemption imposing a similar non-discrimination requirement for employee welfare benefit plans which desire to make sales of life insurance contracts or annuities pursuant to the exemption.

(2) Under section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for a transaction of the type described herein between a plan and certain persons, such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee, as defined in section 1379 of the Code. This class exemption is, however, applicable to such persons for purposes of section 4975 of the Code.

(3) For Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59-195, 1959-1 C.B. 18. Therefore, for Federal income tax purposes, a purchase of an insurance policy at its cash surrender value may be a purchase of property for less than its fair market value. The Federal income tax consequences of such a bargain purchase must be determined in accordance with generally applicable Federal income tax rules. Any income realized by a participant or relative of such participant upon such a purchase under the conditions of this class exemption, however, will not be deemed a distribution of benefits from the plan to such participant for purposes of subchapter D of Chapter I of the Code relating to qualified pension, profit sharing, and stock bonus plans.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(5) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of January 21, 1977, the Department and the Service make the following determinations:

(i) The class exemption set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of plans.

EXEMPTION

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 22:

Effective January 1, 1975, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed under section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to (1) a participant under such plan; (2) a relative of a participant under such plan; (3) an employer, any of whose employees are covered by the plan; or (4) another employee benefit plan, if—

(1) Such participant is the insured under the contract;

(2) Such relative is a "relative" as defined in section 3(15) of the Act (or is a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and is the beneficiary under the contract;

(3) The contract would, but for the sale, be surrendered by the plan;

(4) With respect to sales of the policy to the employer, a relative of the insured or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative or other plan;

(5) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been in had it retained the contract, surrendered it, and made any distribution owing to the participant of his vested interest under the plan; and

(6) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 15th day of June, 1977.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor.

JEROME KURTZ,
Commissioner, Internal Revenue Service.

[FR Doc.77-17666 Filed 6-20-77;8:45 am]

[Prohibited Transactions Exemption 77-7]

EMPLOYEE BENEFIT PLANS

Class Exemption Involving Transfer of Individual Life Insurance and Annuity Contracts to Employee Benefit Plans

JUNE 21, 1977.

AGENCIES: Department of Treasury/Internal Revenue Service, Department of Labor.

ACTION: Grant of Class Exemption.

SUMMARY: The Internal Revenue Service and the Department of Labor hereby grant a class exemption for the transfer of certain individual insurance contracts to employee benefit plans by plan participants or by employers, any of whose employees participate in the plan.

In the absence of this exemption, these transfers would be prohibited by the Employee Retirement Income Security Act of 1974 (the Act), and the Internal Revenue Code of 1954 (the Code).

EFFECTIVE DATE: January 1, 1975.

FOR FURTHER INFORMATION CONTACT:

William M. Tartikoff, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attn: E:EP:PT, Phone 202-566-3089. Rhea S. Schwartz, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, Phone 202-523-6855.

(These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: On January 21, 1977, notice was published in the FEDERAL REGISTER (42 FR 4034) that the Internal Revenue Service and the Department of Labor (the Agencies) had under consideration a proposed class exemption from the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption involved the sale, transfer, or exchange of individual life insurance contracts to a defined contribution plan as defined in section 414(i) of the Code or to an employee welfare benefit plan as defined in section 3(1) of the Act by plan participants or by an employer any of whose employees participate in the plan (the employer). The exemption was proposed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

COMMENTS RECEIVED

A total of 28 comments were received by the Agencies. Three of the comments supported the grant of the exemption exactly as proposed. Two comments completely opposed the exemption. While urging the exemption be granted, each of the remaining comments suggested certain changes which are discussed below.

DEFINED BENEFIT PLANS

Seventeen comments suggested that the exemption be expanded to allow participants and employers to transfer individual insurance contracts to defined benefit plans as well as to defined contribution plans. The comments pointed out that the reasons given and representations made in the proposed exemption to allow the transfer to defined contribution plans and employee welfare plans were also applicable to defined benefit plans.

Several comments disputed the statement in the proposed exemption that it was not common practice for participants and employers to sell or otherwise transfer individual life insurance contracts to defined benefit plans. A national organization representing persons in the pension consulting business commented that most small defined benefit plans (less than 50 participants) to provide pre-retirement death benefits through individual life insurance contracts, and that it was a common practice before the enactment of the Act for a defined benefit plan providing life insurance to buy an individual life insurance contract from a participant or the employer. In view of these comments the exemption has been modified to remove the restriction against defined benefit plans.

ANNUITY CONTRACTS

Several comments suggested expanding the exemption to allow the sale or other transfer of individual annuity contracts to plans from participants or employers. The commentators stated that the reasons given for granting the exemption for individual life insurance contracts are applicable to annuity contracts. The recommendations contained in these comments are accepted and the exemption has been expanded to include individual annuity contracts.

VALUATION

Two comments were received which argued that the value of the insurance policy should be the replacement cost plus the prepaid premiums as required under § 25.2512 of the Gift Tax Regulations. This suggestion was not accepted. The use of the cash surrender value in this exemption will ensure that the participant or employer who is selling or otherwise transferring an insurance contract will receive the amount such participant or employer would have received if the contract had been surrendered to the issuing insurance company. Further, by paying no more than the cash surrender value, the plan can buy or otherwise obtain individual insurance contracts at a lower cost than if it had to purchase new contracts. This combination of plan benefit and participant protection justifies the use of the cash surrender value.

Attention is directed, however, to the fact that for Federal income tax purposes, the value of an insurance policy is not the same as, and may exceed, its cash surrender value. See Rev. Rul. 59-195, 1959-1 C.B.18. The Federal income tax consequences of such a transfer must be determined in accordance with generally applicable Federal income tax rules.

One commentator suggested that the purchase price of an insurance contract to be paid by a plan be limited to the cash surrender value or the participant's accrued benefit, whichever is lower. This condition was suggested in order to protect the other plan participants in the event an existing contract is purchased by a plan and the participant covered by the insurance contract dies before the participant's accrued benefit (in the case of a defined benefit plan) or account balance (in the case of a defined contribution plan) equals or exceeds the cash surrender value of the contract. In such a situation the entire contract would be payable to the insured's estate, the plan would lose the cash value of the contract, and the forfeiture to the plan of the participant's accrued benefit would be less than the cash value paid by the plan. This suggestion was adopted and the exemption is limited to those transactions where the plan pays the lesser of the cash surrender value of the contract or the value of the participant's accrued benefit at the time of the transaction as determined under any reasonable actuarial method.

COMMENTS OPPOSING THE EXEMPTION

Two comments were received advising that the exemption not be granted. Both of the commentators felt that the exemption favored highly paid employees and one of the comments suggested that the exemption would allow abusive situations. Neither of these comments was followed. The exemption, as set forth in the proposal, does not provide any relief from or relaxation of the non-discrimination requirements set forth in section 401(a)(4) of the Code. Further, a condition has been included in the exemption imposing a similar non-discrimination requirement for employee welfare plans.

MISCELLANEOUS

It should be noted that under Section 408(d) of the Act no exemption may be granted under section 408(a) of the Act for transactions of the type described herein between a plan and certain persons such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder employee as defined in section 1379 of the Code. This exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

GENERAL INFORMATION

The attention of interested persons is directed by the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406 (b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) The exemption set forth herein is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption.

(5) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, including the written comments submitted in response to the notice of January 21, 1977, the Department and the Service make the following determinations:

(i) The class exemption set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of plans.

EXEMPTION

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

Effective January 1, 1975, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale, transfer, or exchange of an individual life insurance or annuity contract to an employee benefit plan from a plan participant on whose life the contract was issued, or from an employer, any of whose employees are covered by the plan, if:

1. The plan pays, transfers, or otherwise exchanges no more than the lesser of—

(a) The cash surrender value of the contract;

(b) If the plan is a defined benefit plan, the value of the participant's accrued benefit at the time of the transaction (determined under any reasonable method); or

(c) If the plan is a defined contribution plan, the value of the participant's account balance.

2. Such sale, transfer, or exchange does not involve any contract which is subject to a mortgage or similar lien which the plan assumes.

3. Such sale, transfer, or exchange does not contravene any provision of the plan or trust document.

4. With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, transfer, or exchange, discriminate in form or in operation in favor of plan participants who are officers, shareholders, or highly compensated employees.

Signed at Washington, D.C., this 15th day of June, 1977.

JEROME KURTZ,
Commissioner,
Internal Revenue Service.

IAN D. LANOFF,
Administrator of Pension and
Welfare Benefit Programs,
U.S. Department of Labor.

[FR Doc.77-17667 Filed 6-20-77;8:45 am]

federal register

TUESDAY, JUNE 21, 1977

PART V

DEPARTMENT OF STATE

■

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish Off the Coast of U.S.

DEPARTMENT OF STATE

[Public Notice 550]

FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

Applications for Permits to Fish Off Coasts of United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94–265) (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that all applications for such permits be published in the FEDERAL REGISTER.

An application for additional authorization to allow the No. 70 Oyang Ho to conduct the transportation of herring on behalf of a Japanese corporation during 1977 has been received from the Republic of Korea, and is published herewith.

Dated: June 14, 1977.

ALBERT L. ZUCCA,
Director, Office of Fisheries Affairs.

FISHING VESSEL IDENTIFICATION FORM (FOREIGN)

Permit Period Applied For: 1977

Application No. For Use of Issuing Office KS-77-0048

State: Republic of Korea

1. Name of Vessel No. 70 Oyang Ho
2. Vessel No.: Hull No. _____ Registration No. BF 35942
3. Name and Address of Owner

   Name Sung Soo Kim

   Address 62-5, 1-Ka, Taepyung-Ro

   Choong-Ku, Seoul, Korea

   Cable Address Oyangfish, Seoul

   TLX: Oyfish K28522

   Name and Address of Charterer
4. Homeport and State of Registry: Busan, Republic of Korea
5. Type of Vessel Transportation (Freezing)
6. Tonnage (Gross) 1,598.67 G/T (Net) 653.21 G/T
7. Length 74.45 M. 8. Breadth 12.60 M. 9. Draft 8 M.
10. Horsepower 3,800 shp. 11. Maximum Speed 16 kt.
11. Propulsion: Diesel (X), Steam ( ), Diesel/Electric ( ),

    Other _____
13. Date Built 1972.9.8.
14. Number and Nationality of Personnel 55 Men, Korean

    Officers 10 Crew 45 Other (Specify) _____
15. Communications: VHF-FM (X), AM/SSB, Voice (X), Telegraphy ( ),

    Other _____

    International Radio Call Sign 6 M.L.Q.

    Radio Frequencies Monitored _____

    Other Working Frequencies _____

    Schedule _____

KS-77-0048:

16. Navigation Equipment: Loran C (X), Loran A (X), Omega ( ), Decca ( ), Navsat ( ), Radar (X), Fathometer (X), Other Gyro Auto-Pilot

17. Cargo Capacity (MT)

Salted Fish	
Fresh Fish	
Frozen Fish	1,240 M/T
Fish Meal	
Other	

18. Cargo Space

Number	Name
Freezer 8 Sets	Contact Freezer
Dry Hold 1,460.66M3	#1,2 fish hold
Tanks	
Other	

19. Processing Equipment (Indicate daily capacity, MT)

Head Cutter	2 Sets	50 M/T/Day
Contact Freezer	2.34M/T/Set/Round	93.6 M/T/Day

20. Fisheries for which Permit is Requested:

Ocean Area	Period (From-To)	Species	Contenplated Catch (MT)	Gear to be Used
Bering Sea and Aleutian Area	1977	Herring	Transportation (Freezing)	None

21. Name and Address of Agent appointed to receive any legal process issued in the United States:

Mr. Han Mo Kim
Fisheries Attache
~~Embassy of the Republic of Korea~~
Washington, D.C. 20008

[FR Doc.77-17535 Filed 6-20-77;8:45 am]

federal register

TUESDAY, JUNE 21, 1977

PART VI

OFFICE OF MANAGEMENT AND BUDGET

■

FEDERAL AUDIOVISUAL ACTIVITIES

Proposed Management Policies Circular

OFFICE OF MANAGEMENT AND BUDGET

FEDERAL AUDIOVISUAL ACTIVITIES

Proposed Management Policies Circular

The Office of Management and Budget (OMB) is committed to insure that all interested parties in the private sector as well as Federal agencies have adequate opportunity to participate in the development of Federal management policies. Accordingly comments and suggestions are solicited on the following proposed OMB circular.

The proposed circular contains policies for improving the management of Federal audiovisual activities. Federal audiovisual management practices have been the subject of much recent attention and criticism. Many articles and reports have been written and the President recently initiated a review of the Government's audiovisual practices. Common problems noted during the review and in the articles and reports include:

The proliferation of audiovisual use within the Government.
Duplication of production efforts among agencies.
Poor utilization of Government facilities.
Lack of information on the volume and cost of Federal audiovisual productions.

The President expressed specific concern about the need to improve Federal audiovisual management practices at the April 25 Cabinet meeting. The proposed circular is intended as a first step in bringing about the improvements sought by the President. Additional attachments will be added to the circular as other policies are developed. The circular, as presently proposed, consolidates existing audiovisual policies into a single document and offers several new policies. The new policies contained in the circular will require all agencies and departments to:

Consider other communication modes prior to contracting for audiovisual productions.
Coordinate new productions and thereby avoid duplication of production efforts.
Test the effectiveness of audiovisuals.
Improve the utilization of facilities.
Report annually on the volume of audiovisual activities.

Any comments you have on the proposed circular should be submitted by July 15, 1977. Comments should be addressed to the Administrator for Federal Procurement Policy, Office of Management and Budget, Room 9001, NEOB, Washington, D.C. 20503. For further information regarding the circular contact Mr. Charles W. Clark, area code 202-395-6194.

Dated: June 10, 1977.

BERT LANCE,
Director.

MAY 20, 1977.

[CIRCULAR NO. A-____]

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

1. *Purpose:* This circular prescribes policies for improving the management of Federal audiovisual activities.

2. *Background:* Federal audiovisual management has been the subject of much recent attention and criticism. Many articles have been written about Federal audiovisual activities, and common problems have been identified in several management reports. Problems frequently noted in the articles and reports include:

The proliferation of audiovisal use within the Government.
Duplication of production efforts among agencies.
Poor utilization of Government facilities.
Lack of information on the volume and cost of Federal audiovisual productions.

The President expressed his concern about the need to improve audiovisual management practices at the April 25, 1977 Cabinet meeting. This circular is intended as a first step in bringing about the improvements sought by the President. New policies contained in the circular will require all agencies and departments to:

Consider other communication modes prior to contracting for audiovisual productions.
Coordinate new productions and thereby avoid duplication of production efforts.
Test the effectiveness of audiovisuals.
Improve the utilization of facilities.
Report annually on the volume of audiovisual activities.

3. *Supersession.* This circular replaces Federal Management Notice 75-1, Use of Government Personnel in Audiovisual Productions and Federal Management Notice 75-2, Motion Picture Processing. These notices were published by the General Services Administration in the FEDERAL REGISTER on August 22, 1975 (40 FR 36842).

4. *Definitions.*

a. Audiovisual Activities: Resources used to provide an audiovisual service or produce an audiovisual product. This includes equipment, products, facilities, personnel, and procurement as they pertain to: (1) Still and motion picture photography and processing; (2) television and audio recording; (3) still, motion picture, television and audio production and reproduction; (4) depositories, distribution, training aids and devices of an audiovisual nature, and (5) audiovisual training and education related to these functions.

b. Audiovisual Services: Those functions performed in the production, utilization, distribution, and storage of audiovisual materials, such as tape or film editing, scripting, film processing, sound recording, audiovisual media depository and records center operations; reproduction and distribution of products; broadcast and closed circuit transmission of media via electronic means; loan, maintenance and repair of audiovisual products and equipment; presentation of television, audio, still and motion visual products and design or consulting support for audiovisual users.

c. Audiovisual Products: Material containing sound or imagery for conveying a message; refers to still photography, still projectuals (overhead transparencies, slides, filmstrips, etc.), motion pictures, television (film, video tape and disc), audio recording (tape and disc), and combination media.

d. Audiovisual Equipment: Equipment used for the recording, production, processing and exhibiting of audiovisual products.

e. Audiovisual Facilities: Physical plants which produce an audiovisual product or provide an audiovisual service.

5. *Applicability and Scope.* This circular applies to all agencies of the executive branch of the Federal Government except the United States Postal Service. It does not apply to the Government of the District of Columbia.

6. *Policies and Procedures.*

a. Heads of agencies shall be guided by the policies and procedures set forth in the following attachments to this circular:

Attachment A—Management of Audiovisual Facilities.
Attachment B—Use of Government Personnel as Performers in Audiovisual Productions.
Attachment C—Motion Picture Film Processing.
Attachment D—Agency Reporting Requirements and Use of Centralized Audiovisual Management Services.
Attachment E—Use of Grants and Cooperative Agreements.

b. An interagency committee composed of audiovisual experts representing agencies which are the major Federal users of audiovisual products has been established. It is chartered by the Administrator for Federal Procurement Policy, Office of Management and Budget. This committee is assigned an active, regular role in advising on, and assisting in, the formulation and coordination of Government policy for Federal audiovisual activities.

7. *Responsibilities.* The head of each Federal agency is responsible for promulgating such regulations, controls and review actions as necessary to implement the provisions of this circular.

8. *Inquiries.* Further information concerning this circular may be obtained by contacting:

Office of Federal Procurement Policy (OFPP), Office of Management and Budget, Washington, D.C. 20503, Telephone: IDS 103-6194, FTS: 202-395-6194.

----------,
Director.

ATTACHMENT A.—MANAGEMENT OF AUDIOVISUAL ACTIVITIES

1. *Policy Intent.* The intent of this attachment is to provide specific guidance relative to improving the utilization of audiovisual facilities. Many agencies have multiple facilities in the same geographic area and many facilities are underutilized. This attachment proposes that agencies improve the utilization of their audiovisual facilities by developing work measurement systems and consolidating work into a lesser number of facilities.

2. *Policies and Procedures.*

a. Agencies shall establish work measurement systems to determine the extent that existing audiovisual facilities, personnel and equipment are utilized. In this regard agencies should:

(1) Determine the capacity of equipment and facilities in terms of units of production and measure the utilization of specific facilities by comparing actual production to capacity of production.

(2) Establish staff time requirements related to units of audiovisual production. Such standards may be expressed in finite units such as staff minutes per print or in gross units such as average staff weeks or months for less consistent elements of work. Measurements of personnel utilization should be made by comparing the standards to production output.

b. Agencies shall survey existing audiovisual facilities with a view toward consolidating the activities into as few locations as practicable. As a general rule, each agency should attempt to have no more than one major audiovisual facility in a single metropolitan area. Underutilized facilities shall be phased down or phased out until total capacity matches existing workloads. Facilities operating at less than 30 percent of capacity shall be phased out or merged with other facilities.

c. The following guidelines are provided in order to achieve better utilization of existing equipment and facilities:

(1) Utilize excess capacity of existing agency facilities prior to expanding or establishing new audiovisual activities.

(2) Utilize excess capacity of facilities of other agencies prior to expanding or establishing new audiovisual activities.

(3) Establish second and third shifts, as appropriate, to avoid expanding existing or establishing new audiovisual facilities.

(4) Close inefficient and out-dated facilities and transfer work to more efficient and up-to-date facilities.

ATTACHMENT B.—USE OF GOVERNMENT PERSONNEL IN AUDIOVISUAL PRODUCTIONS

1. *Policy intent.* The intent of this attachment is to restrict the use of Government personnel as performers in audiovisual productions.

2. *Definitions.*

a. The term "Government personnel" refers to all Federal employees, including active duty military personnel.

b. The term "performers" as used in this attachment means those persons who are required to play roles, narrate, or act in audiovisual productions.

3. *Policy and procedures.*

a. Government personnel shall not appear as performers in Government audiovisual productions except:

(1) When they are performing their own jobs.

(2) Where successful completion of the production depends on availability of specialized skills or technical knowledge which are not readily available from professional acting sources and cannot be adequately provided for by use of a prepared script.

b. Government personnel shall not be used as performers in roles which subject them to health or safety hazards which exceed those normally encountered in the performance of their own jobs.

ATTACHMENT C.—IN-HOUSE PROCESSING OF MOTION PICTURE FILM

1. *Policy intent.* The intent of this attachment is to phase out all in-house motion picture processing facilities with only certain exceptions.

2. *Definitions.*

a. The term "motion picture processing" refers to the laboratory processing of all original exposed motion picture film intended for documentation, surveillance, instrumentation, training, communications, or other uses. It also includes the exposure and laboratory processing of subsequent negatives and prints.

b. The term "time-critical" as used in this attachment means that delays of normal time duration required by commercial companies to process exposed motion picture film would seriously impact on the mission of the agency.

c. The term "military combat contingency requirements" as used in this attachment refers to the need to maintain a combat readiness capability to react to national or international emergencies.

3. *Policy and procedures.*

a. Executive departments and establishments shall phase out in-house motion picture processing operations and facilities except those authorized in paragraph 3d below.

b. Motion picture processing activities are considered Government commercial or industrial activities. Any determination to retain in-house processing facilities must be submitted with appropriate documentation to the Office of Federal Procurement Policy, Office of Management and Budget.

c. Multiple-award contracts have been issued by General Services Administration for motion picture laboratory processing under Federal Supply Schedule Industrial Group 781, Part I. Agencies shall obtain pertinent ordering data from the General Services Administration regional office servicing their areas and use such contracts to the extent possible, so that the economies available under the Federal Supply Schedule program may be maximized. Agencies not using Federal Supply Schedules may continue to negotiate separate contracts for motion picture processing when this can be shown to be more economical.

d. Agencies are authorized to maintain a minimal in-house motion picture processing capability in support of the following:

(1) Time-critical audiovisual documentation in remote locations such as weapon test sites, and at locations where follow-on tests are dependent on photographic results of film data recording (such as engineering sequential, wind tunnel, or optical instrumentation).

(2) Military combat contingency requirements.

(3) Intelligence operations.

ATTACHMENT D.—AGENCY REPORTING REQUIREMENTS AND USE OF CENTRALIZED AUDIOVISUAL SERVICES

1. *Policy intent.* This attachment is intended to improve the management of Government-owned audiovisual products, and provides for the centralization of specific audiovisual management services in the National Audiovisual Center (NAC), National Archives and Records Service, General Services Administration.

2. *Definition.* Audiovisual Products: Material containing sound or imagery for conveying a message; refers to still photography, still projectuals (overhead transparencies, slides, filmstrips, etc.), motion pictures (film video tape and disc), television (video tape and disc), audio recordings (tape and disc), and combination media.

3. *Services Provided by NAC.* NAC will serve as a central information source to the general public and Federal agencies concerning the availability of federally produced audiovisual productions. In addition, NAC will rent and sell productions to the public and Federal agencies; compile and publish Government-wide catalogs on audiovisual materials available for rent and sale; develop criteria, establish appropriate terminology, and recommend Government-wide practices for the cataloging and indexing of audiovisual materials; and maintain a data bank containing common information on Federal audiovisual productions.

4. *Policy.* Executive agencies shall cooperate in providing NAC all information and materials necessary for the performance of the above functions. Agencies shall cooperate in the use of NAC services as a means of expanding and improving access to and use of Federal audiovisual productions by all agencies and the public. Agencies will be expected to review internal programs and discontinue any unnecessary duplicate services.

a. *Mandatory Title Check.*

(1) Prior to the production of any type of audiovisual product all agencies, except as noted in paragraph 5 below, will contact NAC and request information as to the availability of similar products; planned, in process, and completed; in an attempt to reduce duplication of effort. NAC will provide title information for those products presently in production as well as those completed, which the agencies will review to ascertain whether any existing products can satisfy their program needs. If the existing products do not satisfy agency needs, agencies may produce, within existing budget allocations, additional products necessary to support their program responsibilities.

(2) Agencies shall, prior to producing audiovisual products, consider alternative communication modes. Audiovisual products should be produced only where the agency has determined that the product is the most effective means of communicating the required message to the intended audience. In making this determination agencies shall consider all relevant factors including but not limited to: communication objective; production costs; target audience; user costs; life span of the information to be conveyed; frequency of use; immediacy of requirement necessity for periodic updating, method and level of distribution, and compatibility with other existing communication programs.

(3) When it has been determined that existing products do not satisfy agency needs, under a (1) and (2) above, a separate page shall accompany the Federal Audiovisual Information Report, explaining why such existing products do not satisfy agency needs. This page shall be signed by the agency official responsible for audiovisual clearance and authorization

b. *Federal Audiovisual Information Report.* The Federal Audiovisual Information Report (FAVIR), Standard Form _____, (Appendix 1) will be prepared by each agency when actual production of audiovisual materials is authorized or budget approval obtained, except as noted in paragraph 5. Section I of the FAVIR is designed to assist Federal agencies in learning about similar materials being produced in other agencies, and thereby assist in reducing any duplication of production effort. Preproduction sections of the report will be completed and sent to the National Audiovisual Center and will consist of information about materials planned or in process. Upon completion of an audiovisual production, the postproduction sections of the FAVIR will be completed and forwarded to NAC. This information will become part of the Center's master data bank. Information from the data bank will be provided upon request to other Federal agencies and the public.

c. *Distribution.* Executive departments and establishments will upon request by NAC, provide duplication materials and/or camera ready copy for accompanying printed materials necessary for the Center to make copies available to the public and other Federal agencies.

(1) Agencies may elect to loan duplication materials to NAC when required or provide it for the Center's permanent use. Under either condition NAC retains the right to place duplication material in a laboratory selected by the Center to ensure the best price to the public. Duplication material on loan to NAC will be promptly returned (usually within 30 days) to the agency but may through special arrangement with the producing agency be retained in the Center's laboratory until specifically requested by the agency.

(2) When acceptable duplication material is no longer available from an agency, the agency will loan NAC the original materials and/or printing masters necessary for the Center to duplicate at its expense the duplication material needed for reproduction. The original material may be maintained at the agency's laboratory for the production of duplication materials or, if mutually agreeable, be moved to a laboratory designated by NAC. The materials will be returned immediately after production of the duplication materials.

(3) Arrangements for the transfer of materials to NAC will normally be initiated by

the Center. Agencies, however, desiring to deposit duplication materials with NAC may arrange for automatic transfer upon completion of productions by executing an interagency agreement with the Center.

(4) NAC shall determine the prices of items for sale and rent through the Center under the authority of 44 U.S.C. 2112(c).

(5) Agencies desiring to make their productions available for sale to the public through commercial, internal or other distribution channels may continue to do so provided the agency head determines that such actions are necessary for the efficient operation of the agency. Duplication materials of productions distributed by agencies will be made available to NAC upon request.

5. *Exclusions.* Executive departments and establishments will ensure that information and duplication materials for audiovisual productions produced by or for Federal agencies are made available to the National Audiovisual Center for sale or rent to the public and other Federal agencies except for:

a. Those items which have a security classification.

b. Those items made for internal use which have specifically been denied public release by the producing agency.

c. Those items which the agencies deem to have a useful life of short duration (usually six months or less) or cost (usually $500 or less) that release of these materials would not be of benefit to the public.

d. Those mixed media packages in which the accompanying printed material clearly predominates over the audiovisual material and are normally handled by the Superintendent of Documents. In some instances, audiovisual materials from mixed media packages may be available through the Center with printed materials available through the Superintendent of Documents.

e. Agencies prohibited by statute from distributing audiovisual products within the United States are not required to deposit audiovisual products with NAC. Such agencies, are, however, required to comply with paragraphs 4a and 6 of this attachment.

6. *Free loan libraries.* Agencies which make their productions available to the public through their own free loan libraries shall survey existing similar free loan libraries within their organizations and in their geographical areas with a view toward consolidating into as few locations as possible. As a general rule, each department should have no more than one free loan library. After a title has been in distribution through an agency's free loan library for three years, consideration shall be given to making the title available to NAC for further possible access, in accordance with provisions 4C (1), (2), (3), and (4).

7. *Evaluation.*

a. Agencies should obtain independent evaluations of 25 percent of their annual audiovisual productions to determine the effectiveness of the products in communicating their intended messages. Where possible, particularly with educational and training materials, the effectiveness should be tested at the front end prior to the completion of costly production steps. Agencies producing four or fewer films per year should obtain evaluations of one film.

b. Agencies maintaining internal distribution channels for the distribution of their audiovisual products, shall evaluate the effectiveness of their distribution systems on an annual basis.

8. *Annual Audiovisual Activities Reports.* This report, Standard Form ------, (Appendix 2) will be submitted to NAC by each agency on a Fiscal Year basis. The first report for the fiscal year ending September 30, 1977 is due to NAC by January 1, 1978. The purpose of the report is to acquire data on Federal audiovisual activities. Such information, once compiled, will be made available upon request to all executive departments and agencies, and to the public. Copies of Standard Form ------ may be obtained from General Services Administration through forms distribution systems.

9. *Implementing Instructions.* The Administrator of General Services will issue such additional instructions as he deems appropriate to implement the Federal Audiovisual Information Report and the Annual Activities Report.

ATTACHMENT E.—USE OF GRANTS AND COOPERATIVE AGREEMENTS

1. *Policy intent.* The intent of this attachment is to restrict the procurement of audiovisual products through grants and cooperative agreements.

2. *Definitions.* For purposes of this attachment the following terms shall have the meanings set forth below:

a. Grants and cooperative agreements are legal instruments reflecting a relationship between the Federal Government and a State or local government or other recipient. Grants and cooperative agreements are appropriate for use when the principal purpose of the instrument is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government.

b. Procurement contracts are legal instruments reflecting a relationship between the Federal Government and a State or local government or other recipient. Procurement contracts are appropriate for use whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government.

3. *Policies and procedures.*

a. Agencies should use procurement contracts to procure audiovisual products. Grants and cooperative agreements should not be used except in special instances where the agency determines that the Government's best interest would be served by using a grant or cooperative agreement in lieu of a procurement contract.

b. Where grants or cooperative agreements result in audiovisual products that are intended for the direct benefit or use of the Federal Government, agencies shall reserve a royalty free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the product for Government purposes.

c. Appropriate copies of audiovisual products resulting from grants and cooperative agreements shall be provided to the National Audiovisual Center in accordance with paragraph 4, Attachment D.

Appendix 1

FEDERAL AUDIOVISUAL INFORMATION REPORT

1. NAC Report Control No.	2. Report Date / /	3. NAC ID No.		
4. Report Status ___ 5. Production Status ___	6. Title:			
7. Working Title:				
8. Series Title:				
9. Version	10. Language			
11. Size	12. Stock	13. Sound Mode	14. Medium	15. Track
16. Playback Format	17. Advance Signal Frequency: Aud. Hz. Inaud. Hz.			
18. Playback Speed	19. Running Time	20. No. of Units		
21. Titles in Series	22. Dimensions of Container cm.	23. Diameter of Reel in.		
24. Beginning Production / /	25. Estimated Completion / /	26. Completion / /		
27. Cancellation / /	28. Release Year	29. Production Source Type		
30. Production Source: Address/Zip: Phone:				
31. Reporting Agency: Contact Name & Position: Address/Zip: Phone:				
32. Sales Source: Address/Zip: Phone:				
33. Rental Source: Address/Zip: Phone:				
34. Loan Source: Address/Zip: Phone:				
35. Preprint Location: Address/Zip: Phone:				
36. Summary:				
37. Subject Areas:				
38. Credits:				
39. Accompanying Printed Materials:				
40. P.A.C. No.	41. T.A.C. No.	42. Content Status	43. Educ. Level	
44. Estimated Obsolete Year	45. Audience Type:			
46. Contents of Multimedia Kit:				
47. TV Clearance:				
48. Reproduction Rights:				
49. Limitations:				
50. Remarks:				

FEDERAL AUDIOVISUAL INFORMATION REPORT
Instructions

If an item does not apply or if there is no information to be given, please type in "N. A." for NOT APPLICABLE.

1. NAC Report Control No. - FOR NAC USE ONLY.
2. Report Date - The date the report form is submitted.
3. NAC ID No. - FOR NAC USE ONLY.
4. Report Status -
   A = Initial report to NAC
   B = Changing or Deleting data from previous report.
   C = Adding new data to a previous report.
   D = Reporting cancellation of production.
5. Production Status -
   A = Postproduction
   B = Preproduction. For preproduction report fill in segments #2,4,5,7,11, 12,24,25,27,29,31,36,41, and 50 only.
6. Title: The name given to an audiovisual, including the subtitle, transcribed exactly as on the completed audiovisual.
7. Working Title: Used to identify an audiovisual while it is in production.
8. Series title: If the audiovisual is part of a series, enter the series title.
9. Version: Word or phrase identifying an audiovisual which varies in content from another production but retains the same title, such as "Revised Version", "Short Version," "Technical Edition," etc.
10. Language: The language of the captions, sound, or accompanying material of an audiovisual.
11. Size:
    A = R8mm D = 35mm G = 1/2 in. K = 2 in. N = 2 in. x 2 in.
    B = S8mm E = 1/8 in. H = 3/4 in. L = 10 in. P = 8 1/2 in. x 10 in.
    C = 16mm F = 1/4 in. J = 1 in. M = 12 in. Z = Other (Specify)
12. Stock: A = Black & White, B = Color
13. Sound Mode: A = Mono B = Stereo C = Quad D = Silent
14. Medium:
    A = Audiodisc D = Motion Picture G = Transparency
    B = Audiotape E = Multimedia Kit H = Videodisc
    C = Filmstrip F = Slide J = Videotape
15. Track:
    Motion Pictures Only: A = Magnetic B = Optical.
    Other Media: C = Whole Track D = 2-Track E = 4-Track
16. Playback Format:
    A = Audible Advance Signal C = Captioned E = Cassette G = Mounted
    B = Inaudible Advance Signal D = Dartridge F = Reel-to-Reel H = Other (Specify)
17. Advance Signal Frequency: Indicate in Hertz.
18. Playback Speed:
    A = 33 1/3 RPM C = 1 15/16 IPS E = 7 1/2 IPS
    B = 45 RPM D = 3 7/8 IPS F = Other (Specify)
19. Running Time - The length of time it takes to listen to or view an audiovisual which runs at a fixed speed, such as a sound filmstrip. Round off to the nearest whole minute unless it is less than one minute, in which case give seconds.
20. Number of Units - The number of slides, frames, reels, cassettes, etc.
21. Number of Titles in Series - If the audiovisual is part of a series, indicate the current number of titles in the series.
22. Dimensions of Container - Required for Multimedia Kit only, in centimeters.
23. Diameter of Reel - Required for reel-to-reel audiotape only, in inches.
24. Beginning Production - The date actual physical production begins, such as filming, taping, etc.
25. Estimated Completion - The date release copies of an audiovisual will become available, as estimated by the agency.
26. Completion - The date actual physical production is completed, such as filming, taping, etc.
27. Cancellation - The date production of an audiovisual is permanently discontinued.
28. Release Year - The year release copies of an audiovisual actually become available for public distribution.
29. Production Source Type -
    A = Produced under contract. B = Produced under grant. C = In-house production.
30. Production Source - List contractor, grantee, or production unit.
31. Reporting Agency - The government unit submitting the report form and an individual who may be contacted for further information.
32. Sales Source - Indicate the sales distributor, if any.
33. Rental Source - Indicate the rental distributor, if any.
34. Loan Source - Indicate the loan distributor, if any.

FEDERAL AUDIOVISUAL INFORMATION REPORT
Instructions
(Cont'd)

35. Preprint Location:- Indicate the storage place for preprint material.
36. Summary - A narrative description of the content of an audiovisual.
37. Subject Areas:- Assign categories identifying the subject matter of an audiovisual.
38. Credits - List individuals or organizations which have made a noteworthy contribution to the production of an audiovisual. Specify the contribution made by each.
39. Accompanying Printed Materials.- Give the following data: title; author; number of pages; illustrations; type of material, e.g. teacher's guide; source where copies are obtained, e.g. GPO or agency; Superintendent of Documents number; Library of Congress card number; and agency control or publication number.
40. P.A.C. No. (Permanent Agency Control No.) - The identification number used by an agency for a completed audiovisual.
41. T.A.C. No. (Temporary Agency Control No.)- Temporary Agency Control Number, the working number assigned by an agency to an audiovisual which has not been completed.
42. Content Status - A = Historical Value - Does not necessarily reflect current policy or plans of the reporting agency.
B = Obsolete - The content is merely outdated for use within the reporting agency.
43. Education Level -
A = Pre-school to Kindergarten
B = Primary (grades 1-3)
C = Intermediate (grades 4-6)
D = Junior High School (grades 7-9)
E = High School (grades 10-12)
F = College
G = Adult Education
H = General Use
44. Estimated Obsolete Year - The year the subject content is expected to become outdated.
45. Audience Type - Indicate the occupation, profession, ethnic background, or other characteristics of the audience for which the audiovisual was designed.
46. Contents of Multimedia Kit: Describe the contents in detail, including the physical description of each audiovisual or print component. This could include medium designator, size, stock, playback format, track, sound mode, playback speed, running time, footage, and number of units. Specify the titles of individual components, if any. Attach additional sheets if more space is needed.
47. TV Clearance: Restraints placed on the presentation of an audiovisual via television.
48. Reproduction Rights: Privileges granted or not granted to a purchaser or borrower for the reproduction of an audiovisual.
49. Limitations: Limitations which are placed on the use, sale, rental, or loan of an audiovisual.
50. Remarks: Awards received, etc.

Appendix 2

ANNUAL AUDIOVISUAL ACTIVITY REPORT

AGENCY IDENTIFICATION	1. Report for FY19__	2. Date mo. / day / yr.
3a. Reporting Agency		
3b. Agency Contact (Name and Title)		
3c. Address/Zip		
3d. Phone (include area code): Commercial	Autovon	FTS

AUDIOVISUAL FACILITIES	No.	Sq.Ft.
4a. Govt owned & operated		
4b. Govt leased & operated		
4c. Contractor operated		
4d. Totals		

OFF-THE-SHELF PURCHASES	Motion Picture	Video-Tape/Disc	Audio-Tape/Disc	Other Media
5a. Titles				
5b. Copies				
5c. Cost				

	Motion Picture		Videotape/disc		Audiotape/disc		Other Media	
PRODUCTION	In-House	Contractor	In-House	Contractor	In-House	Contractor	In-House	Contractor
6a. Titles								
6b. Min.								
6c. Cost								
DUPLICATION								
7a. Min.								
7b. Cost								
A.V. LIBRARY								
8a. Copies								
8b. Loans								
8c. Cost								

INSTRUCTIONS

GENERAL INSTRUCTIONS Submit original and one copy to National Audiovisual Center (NAC), General Services Administration, ATTN: Cataloging Section, Washington, DC 20409. Report must be made within ninety days after the end of each fiscal year.

DEFINITIONS

Audiovisual Activity: The production, reproduction, storage, distribution, or management of motion pictures, videotapes and discs, audiotapes and discs, and other media.

Audiovisual Facilities: A building or space within a building housing an audiovisual activity (includes administrative offices).

Contractor: A commercial source providing audiovisual products and services to an agency through contract or purchase order. If over 50% of the product or service is contractual, the entire product or service is considered contract-supplied for the purpose of this report.

Cost: Include all direct and indirect costs associated with in-house and contract operations. Contract costs should include amount paid directly to suppliers, and expenses of preparing solicitations, evaluating offers and negotiating, awarding and managing contracts. In-house costs should include all amounts paid for personnel services and benefits; space rental including maintenance, repair and utility services; supplies, materials and equipment purchases; travel and transportation expenses; consultant and service fees, and indirect costs such as management and supervision.

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