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Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
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	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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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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.

rules and regulations

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

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

Title 5—Administrative Personnel CHAPTER I—CIVIL SERVICE COMMISSION PART 213—EXCEPTED SERVICE Department of Defense

AGENCY: Civil Service Commission.
ACTION: Final Rule.

SUMMARY: The position of Private Secretary to the Deputy Director of Policy Review is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: September 13, 1977.
FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3306(a) (93) is added as set out below:

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *
(93) One Private Secretary to the Deputy Director of Policy Review.

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

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

[FR Doc. 77-26625 Filed 9-12-77; 8:45 am]

PART 213—EXCEPTED SERVICE

Federal Energy Administration
AGENCY: Civil Service Commission.
ACTION: Final rule.

SUMMARY: The position of Staff Assistant to the Deputy Associate Administrator for Congressional and Intergovernmental Affairs/Director, Office of Congressional Affairs is excepted from the competitive service under Schedule C because it is confidential in nature.

EFFECTIVE DATE: September 13, 1977.
FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3388(q) (4) is added as set out below:

§ 213.3388 Federal Energy Administration.

(q) *Office of the Associate Administrator for Congressional and Intergovernmental Affairs.* * * *

(4) One Staff Assistant to the Deputy Associate Administrator for Congressional and Intergovernmental Affairs/Director, Office of Congressional Affairs.

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

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

[FR Doc. 77-26626 Filed 9-12-77; 8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Regulation 571, Amendment 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period September 2-8, 1977. The amendment recognizes that demand for Valencia oranges has improved, since the regulation was issued. This action will increase the supply of oranges available to consumers.

DATES: Weekly regulation period September 2-8, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-3545).

SUPPLEMENTARY INFORMATION: Findings. (1) Pursuant to the amended marketing agreement and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of recommendations and information submitted by the Valencia Orange Administrative Committee, established under the marketing agreement and order, and other available information, it is found that the limitation of handling of Valencia oranges as provided in this amendment will tend to effectuate the declared policy of the act.

(2) Demand in the Valencia orange markets has improved since the regula-

tion was issued. Amendment of the regulation is necessary to permit orange handlers to ship a larger quantity of Valencia oranges to market to supply the increased demand. The amendment will increase the quantity permitted to be shipped by 75,000 cartons, in the interest of producers and consumers.

(3) It is further found that it is impracticable and is contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because the time intervening between the date when information became available upon which this amendment is based and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Valencia oranges.

§ 908.871 [Amended]

(a) *Order, as amended.* The provisions in paragraph (b) (1) (i), and (ii) of § 908.871 Valencia Orange Regulation 571 (42 FR 43959) are hereby amended to read as follows:

"(i) District 1: 263,000 cartons;
"(ii) District 2: 412,000 cartons."

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.)

Dated: September 7, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 77-26556 Filed 9-12-77; 8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart E—Civil Rights Compliance Requirements FmHA Affirmative Action

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration is adopting regulations to implement the requirement that certain participants in FmHA rural housing programs submit a fair housing affirmative marketing plan or be a signatory to a voluntary fair housing affirmative marketing agreement approved by the Department of Housing and Urban Development. This regulation is intended to help ensure that individuals of similar

income levels in a housing market area will have housing choices available regardless of their race, color, religion, sex, or national origin.

EFFECTIVE DATE: September 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. William A. Tippins, 202-447-2243.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration published at page 13116 of the FEDERAL REGISTER for March 9, 1977, a proposal to amend § 1901.203 of Subpart E of Part 1901, Title 7, Code of Federal Regulations.

Comments on this proposal were accepted through April 8, 1977, and have been received and considered. Several comments were received suggesting that FmHA develop its own marketing plan form. Upon careful review of form HUD 935.2(3-76), it was concluded that the form with certain editorial changes, could be utilized on an interim basis. A separate guide will be issued to clarify and expand certain paragraphs of the form to aid the participant in documenting information appropriate to an acceptable marketing plan for rural areas. It is anticipated that a new form will be developed to help document a complete fair housing affirmative marketing plan for rural areas.

Several comments were received suggesting a follow-up procedure to determine if the plan is being properly implemented and to require reports from participants regarding cumulative accomplishments under the plan. The rule contains provisions for follow-up on a "sample" basis in accordance with FmHA Operation's Review regulations. It was determined that the manpower necessary to check implementation progress on every marketing plan, or to review regular reports of activity under each plan is not, and would not, be available.

Certain comments received resulted in minor changes in administrative procedures, and other changes which are editorial in nature.

Other comments have been considered but relate to specific content of marketing plans. These comments will be utilized in the training of personnel responsible for reviewing and approving the marketing plans.

As amended, § 1901.203, paragraph (c) reads as follows:

§ 1901.203 Title VIII of the Civil Rights Act of 1968.

(c) *FmHA affirmative action.* (1) It is the policy of the Farmers Home Administration to administer its housing program affirmatively so individuals of similar income levels in the housing market area have housing choices available to them regardless of their race, color, religion, sex, or national origin. Each participant in FmHA housing program shall pursue affirmative fair housing marketing policies in soliciting buyers and ten-

ants, in determining their eligibility and in concluding sales and rental transactions.

(2) Applicability. The affirmative fair housing marketing requirements shall apply as follows:

(i) Participants in FmHA housing programs who request approval for subdivision development involving five or more sites, multi-family projects with five or more units including self-help technical assistance grantees assisting five or more families or five or more conditional commitments for single family dwelling units during a 12-month period must submit an affirmative marketing plan.

(ii) Any real estate broker who agrees to list acquired rural housing properties on a term basis or who agrees to list 5 or more such properties on an individual listing basis (see § 1955.118 of this chapter) must sign a non-discrimination certification and submit an affirmative marketing plan. The Farmers Home Administration will develop, maintain, and operate an affirmative fair housing marketing plan for acquired properties managed and offered for sale in accordance with §§ 1955.63 and 1955.117 of this chapter.

(3) Affirmative fair housing marketing plans will be submitted on form HUD 935.2(3-76) or the participant must be a signatory to a voluntary affirmative marketing agreement approved by the Department of Housing and Urban Development. The plan, if submitted on form HUD 935.2(3-76) shall describe an affirmative program which will meet the following requirements:

(i) Reaching those prospective buyers or tenants, regardless of sex, of majority and minority groups in the marketing area who traditionally would not be expected to apply for such housing without special outreach efforts because of existing racial or socio-economic patterns.

(ii) Undertaking and/or maintaining a non-discriminatory hiring policy in recruiting from both majority and minority groups including both sexes, for staff engaged in the sale or rental of properties.

(iii) Training and instructing employees engaged in the sale or rental properties in the policy and application of nondiscrimination and fair housing.

(iv) Displaying in all sales and rental offices the "Fair Housing" poster.

(v) Posting in a conspicuous position on each property and FmHA construction site a sign displaying the equal opportunity logo or the following statement: "We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin."

(vi) Undertaking efforts to publicize the availability of housing opportunities to minority persons through the type of media customarily used by the applicant or participant, including minority publications and other minority outlets

available in the housing market area. As part of these efforts all advertising must include either the equal housing opportunity logo or statement. When illustrations or persons are included they shall depict persons of both sexes and of majority and minority groups.

(4) The affirmative fair housing marketing plans or evidence that the participant is covered by an approved voluntary affirmative marketing agreement must be submitted as follows:

(i) For subdivisions with the preliminary submission of plans and specifications.

(ii) For multi-family projects, including rural rental housing, labor housing, cooperative housing, technical assistance grants and site development loans with the AD-621, "Preapplication for Federal Assistance," or with the letter of application. Subsequent loans or grants extended to the participant will necessitate a new or updated plan.

(iii) For conditional commitments for five or more individual dwelling units in a 12-month period with the application for the fifth conditional commitment.

(iv) For real estate brokers agreeing to list acquired rural housing properties at the time of execution of Form FmHA 1955C-2, "Nonexclusive Real Property Master Listing Agreement."

(v) For real estate brokers agreeing to list 5 or more acquired rural housing properties on an individual listing basis in any year at the time of execution of the fifth Form FmHA 1955-2, "Nonexclusive Real Property Master Listing Agreement."

(5) Affirmative fair housing marketing plans will cover the following time periods:

(i) For subdivision, from time of application until all lots are sold.

(ii) For multi-family projects from time of application until the loan is paid in full or for so long as the project is being used for the same or a similar purpose for which the funds were extended.

(iii) For conditional commitments involving individual dwelling units, one year or until all units built through conditional commitments issued within the one year period have been sold.

(iv) For real estate brokers who list acquired rural housing properties, one year.

(6) Affirmative fair housing marketing plans will be reviewed and approved by the official authorized to approve the assistance requested. The County Supervisor will review and submit with comments to the official authorized to approve the assistance requested, those fair housing marketing plans where the assistance requested exceeds his approval authority. Any participant covered by this section must have an approved affirmative fair housing marketing plan for any assistance approved 90 or more days after the issuance of these regulations.

(7) Approved affirmative fair housing marketing plans will be made available by the participant for public inspection at the participant's place of business and at each sales or rental office. Participants

who fulfill the requirements of this section by filing a Form HUD 9352(3-76) will maintain records to reflect their efforts in fulfilling the affirmative fair housing marketing plan. These records will be made available for review by FmHA personnel. Affirmative fair housing marketing plans will be reviewed by FmHA personnel in accordance with section 2006-M of this chapter.

(8) Applicants failing to comply with these requirements will be liable to sanctions authorized by regulations, rules or policies governing the program in which they are participating including but not limited to denial of further participation in FmHA programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief.

(7 U.S.C. 1989 (42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301); Secretary 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director, OEO 29 FR 14784, 33 FR 9850.)

NOTE.—The Farmers Home Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: August 30, 1977.

GORDON CAVANAUGH,
Administrator, Farmers Home
Administration.

[FR Doc.77-26552 Filed 9-12-77; 8:45 am]

Title 9—Animals and Animal Products

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

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Restrictions on Importation of Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document will prohibit the importation into the United States of certain horses from England, Ireland, and France, and the importation into the United States of certain horses which have been in such countries within the 60 days immediately preceding their export to the United States, because of the existence of Equine Metritis-77, herein-after referred to as EM-77. This action is necessary to protect the livestock of the United States from such disease. The effect of this action is to prohibit the entry of certain horses into the United States which would be likely to introduce or disseminate EM-77 into the United States.

EFFECTIVE DATE: The foregoing amendment shall become effective September 9, 1977, except for horses then in transit to the United States (i.e., loaded aboard a commercial carrier and en route to the United States).

FOR FURTHER INFORMATION CONTACT:

Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 815, Hyattsville, Md. 20782 (301-436-8170).

SUPPLEMENTARY INFORMATION: EM-77, a contagious, infectious, and communicable disease of horses, is known to exist in England, Ireland, and France. EM-77 is a disease which is transmitted between horses generally at the time of breeding. There is no practical diagnostic test for EM-77 at the present time nor is there an effective treatment. Some pregnant mares are reported to be carriers of the disease following their treatment.

EM-77 is not known to exist in the United States at the present time. Therefore, in order to protect the livestock of the United States against the introduction and dissemination of EM-77, the importation of all horses, except geldings, from England, Ireland, or France, and the importation of all horses, except geldings, which have been in any such country during the 60 days immediately preceding their export to the United States is prohibited until further notice. Geldings are excluded from this restriction since they do not pose a threat of spreading this disease.

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended in the following respects:

In § 92.2, a new paragraph (i) is added to read:

§ 92.2 General prohibitions; exceptions.

(i) Notwithstanding the other provisions of this part concerning the importation of horses into the United States, the importation of all horses, except gelding, from the following listed countries and the importation of all horses, except geldings, which have been in any such country within the 60 days immediately preceding their export to the United States is prohibited because of the existence of EM-77 in such countries: England, Ireland, and France.

(Sec. 2, 32 Stat. 792, as amended; secs. 4 and 11, 78 Stat. 130, 132 (21 U.S.C. 111, 134c, and 134f); 37 FR 28464, 28477; 38 FR 19141.)

This amendment imposes additional restrictions on the importation of certain horses into the United States. The amendment is of an emergency nature and should be placed in effect immediately in order to protect the livestock of the United States from the introduction and dissemination of disease.

Therefore, for such good cause the Department finds that notice and other public procedure regarding this amendment are impracticable, unnecessary and contrary to the public interest and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of September 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.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc.77-26704 Filed 9-12-77; 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-0103 through FC-0105]

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: September 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Attorney, 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 providing identifying information for the public subject to certain limitations stated in 12 CFR Part 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).

[FC-0103]

§ 226.4(a) and § 226.7(a) Charges imposed in connection with checking accounts, required to be established as a condition of an extension of open end or other than open end credit need not be included in finance charge (§ 226.4(a)) or disclosed as an "other charge" under § 226.7(a)(6).

§ 226.8(e) Where checking account must be opened as a condition of an extension of credit other than open end, a minimum checking account balance maintained in order to avoid imposition of service charges is not a required deposit balance.

August 24, 1977.

This is in response to your letter of * * *, in which you request an official staff inter-

pretation of Regulation Z. You inquire as to the impact of Regulation Z on certain charges imposed and balances maintained in connection with checking accounts which are required to be established by customers as a condition of an extension of either open end credit or credit other than open end.

You first ask whether the checking account service charges should be included in the finance charge disclosure with regard to an extension of credit. In the case of open end credit, you also ask whether (assuming they are not to be included in the finance charge) the service charges should be identified as an "other charge" in accordance with § 226.7(a)(6). Third, you ask whether any minimum checking account balance required to be maintained in order to avoid the imposition of the checking account service charges is a required deposit balance as defined in § 226.8(e)(2) if the customer is required to establish a checking account as a condition of an extension of credit other than open end.

Section 226.4(a)(2) of Regulation Z requires that service, transaction, activity or carrying charges that are imposed by a creditor as a condition of an extension of credit must be included in the amount of the finance charge. As you indicate, however, footnote 2 to § 226.4(a)(2) provides that these charges include any such charges imposed in connection with a checking account but only "to the extent that such charges exceed any charges the customer is required to pay in connection with such an account when it is not being used to extend credit." Assuming, therefore, that the service charges assessed on a checking account established for the purpose of obtaining an extension of credit are not in excess of the charges normally assessed on a checking account which is not established for that purpose, staff is in agreement with your position that the service charges imposed on such a mandatory checking account need not be included in the amount of the finance charge for the related credit transaction.

Furthermore, in staff's view, the service charges do not come within the definition of an "other charge" to be disclosed in accordance with § 226.7(a)(6). In Public Information Letter 948 (a copy of which is enclosed for your convenient reference), staff concluded that: Where the overdraft is not treated as part of the credit plan and the fee assessed for honoring it is identical to the fee charged on an overdraft of a checking account without a credit feature, the fee would not seem to be an element of the credit plan, but rather would seem to be related to the basic checking account agreement.

Similarly, the service charges imposed on the checking account described herein appear to be assessed regardless of whether credit is extended.

Moreover, in those situations where a checking account must be opened as a condition of an extension of credit other than open end, staff does not consider a minimum checking account balance which is maintained in order to avoid the imposition of the service charges as constituting a required balance. Section 226.8(e)(2) defines a required deposit balance as including "(a)ny deposit balance. Section 226.8(e)(2) defines a required deposit balance as including "(a)ny deposit balance or investment which the creditor requires the customer to make, of credit * * *." Your client does not appear to require the customer to make, maintain, or increase a minimum balance in the checking account established in order to obtain an extension of credit. Rather, the customer is merely being given the option of maintaining a balance sufficient to avoid the imposition of the service charges. Since staff

regards the maintenance of such a minimum checking account balance as a condition for obtaining a benefit of the checking account plan, rather than as "a condition to the extension of credit," staff does not consider such a minimum checking account balance to be a required deposit balance as defined by § 226.8(e)(2).

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

Sincerely,

JANET HART,
Director.

[FC-0104]

§ 226.808 Disclosure method set out in § 226.808 may be used where mortgage insurance premiums vary each year and are collected from customer annually rather than monthly.

August 25, 1977.

This is in reply to your letter of * * *, in which you request an official staff interpretation concerning the proper disclosure of the schedule of payments in a mortgage loan involving mortgage insurance. You inquire about a situation in which the lender pays the mortgage insurance premiums annually. The premiums decrease each year because they are computed on the basis of the unpaid principal balance of the loan. Consequently, the program is similar to the programs discussed in Official Staff Interpretations FC-0003, FC-0025, and FC-0030, except that the mortgage insurance premium is collected from the borrower annually, rather than monthly. All payments are for an equal amount of principal and interest, but the twelfth payment each year is larger than the other eleven by the amount of the annual mortgage insurance premium.

You wish to know whether Board Interpretation § 226.808, which provides a method of disclosing the schedule of payments when the payment amounts vary over the term of a credit transaction, is applicable in this situation. You believe that the disclosure method set out in § 226.808 and explained in the above-cited official staff interpretations is equally as understandable and informative in your program, in which the premiums decline in annual steps and are paid annually, as it is in those programs in which the premiums decline in annual steps but are paid monthly. You propose to disclose the payment schedule by indicating the constant amount of principal and interest which will be due monthly throughout the life of the loan and, further, by explaining that on a certain date of each year an additional amount is to be paid for the mortgage insurance premiums. In addition, you propose to disclose the amounts of the mortgage insurance premiums that would be included in the first and in the last of these varying payments, as well as disclosing the total amount (reflecting principal, interest, and mortgage insurance premiums) of the first and the last of such varying payments.

It is staff's opinion that the principles underlying Board Interpretation § 226.808 are applicable to the program you have described. Staff believes that the above-described method of disclosure sufficiently complies with the regulation, assuming, of course, that the total finance charge and the total of payments are also disclosed as called for in § 226.808. You may be interested to know, however, that the staff is currently considering recommending to the Board a revision of § 226.808 concerning the method of disclosing the payment schedule when the payment amounts vary. If the interpreta-

tion should be revised, you will need to re-assess your method of disclosure in light of the changes at that time.

This is an official staff interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the regulation, and it is limited to the facts as set out herein. I trust that it proves helpful to you.

Sincerely,

JANET HART,
Director.

[FC-0105]

§ 226.4(1), § 167 of Act, § 171 of Act—Discounts limited to only cash-paying customers may qualify for the special treatment afforded by §§ 167 and 171(c) of the Truth in Lending Act and § 226.4(1) of Regulation Z.

August 26, 1977.

This is in response to your letter of * * *, inquiring about the requirements of § 167 of the Truth in Lending Act. You ask whether a merchant wishing to offer a discount in accordance with that section may restrict the availability of the discount to those customers paying with cash only (i.e., the discount would not be available to customers tendering checks, nor to credit card purchasers). Section 167 is implemented by § 226.4(1) of Regulation Z, which has been recently amended. Enclosed you will find a copy of the amendments.

Staff believes that it is permissible for a merchant to offer discounts to only those customers paying for goods or services by cash, and that such a discount would qualify for the special treatment afforded by §§ 167 and 171(c) of the Act and § 226.4(1) of the regulation. Of course the amount of the discount, and manner in which the discount is offered, must comply with the provisions of § 226.4(1) in order for the discount to be exempted from treatment as a finance charge.

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

Sincerely,

JANET HART,
Director.

Board of Governors of the Federal Reserve System, September 7, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 77-26532 Filed 9-12-77; 8:45 am]

[Reg. Z; Docket Nos. R-0093 and R-0087]

PART 226—TRUTH IN LENDING

Descriptions of Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This rule postpones the date for full implementation of the regulation regarding descriptive billing of nonsale credit transactions, such as cash advance checks, on open end credit accounts (Reg. Z, § 226.7(k)(3)(ii)) until March 28, 1978. The action is taken in order to permit the full consideration of proposals to amend this section of the regulation, which are designed to facilitate compliance with the regulation by creditors and, at the same time, to retain the essential description requirements of the present regulation for the benefit of consumers.

EFFECTIVE DATE: August 31, 1977.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Attorney, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412).

SUPPLEMENTARY INFORMATION: By this document the Board of Governors of the Federal Reserve System ("Board" herein) postpones the date for full implementation of § 226.7(k) (3) (ii) of Regulation Z, which prescribes rules regarding descriptive billing of nonsale credit transactions reflected on open end credit periodic statements. That section of the regulation was scheduled to become fully effective on October 28, 1977. However, because of the pendency of Board consideration of proposals to amend the section, it is necessary to postpone the date until March 28, 1978, in order to have sufficient time to complete the consideration of the proposals and any rulemaking proceedings that become necessary. This postponement is also necessary in order to avoid the commitment of resources by creditors to comply with the requirements of the section as it is currently written until the Board has determined whether or not it should be changed, and to give creditors sufficient time to adjust their systems to comply with the requirements ultimately adopted.

It should be made clear that this suspension relates only to the requirements of § 226.7(k) (3) (ii) of Regulation Z regarding identifications of nonsale credit transactions, such as cash advance checks. The requirements of § 226.7(k) relating to other types of credit transactions are not affected hereby.

Pursuant to 5 U.S.C. 553 (1970) the Board finds that notice and public participation in this rulemaking are impractical and unnecessary since (1) time is of the essence in postponing the date for full implementation of the section, (2) the effective date is merely temporarily postponed, and (3) opportunity will be afforded for public comment on any changes in the substance of the subject regulation proposed by the Board.

In consideration of the foregoing and pursuant to the authority granted in 15 U.S.C. 1604 (1970) the Board hereby postpones the October 28, 1977, date for full implementation of § 226.7(k) (3) (ii) of Regulation Z, as affected in § 226.7(k) (7) (i), until March 28, 1978. During the period of the postponement a creditor may comply with the requirements for identifying nonsale credit transactions on or with open end credit periodic statements either by use of the methods prescribed in § 226.7(k) (3), by use of the alternatives prescribed in § 226.7(k) (4) or § 226.7(k) (7) (i), or by use of a combination of those methods.

By order of the Board of Governors of the Federal Reserve System, August 31, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 77-26533 Filed 9-12-77; 8:45 am]

Title 20—Employees' Benefits

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

[Regulations No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Recovery of Excess Cost Resulting From Use of Accelerated Depreciation When Termination of Provider Agreement Results From Transaction Between Related Organizations

AGENCY: Health Care Financing Administration.

ACTION: Final rule.

SUMMARY: Current regulations require that when a provider who has used accelerated depreciation terminates participation in the health insurance program, depreciation claimed by the provider in excess of straight-line depreciation is to be recovered by the health insurance program. This regulation establishes new policy by providing that when the termination of the provider agreement is due to a change in provider ownership resulting from a transaction between related organizations, and certain other conditions are met, this recovery provision will not be applied.

EFFECTIVE DATE: This amendment shall be effective September 13, 1977, and may be applied to all cost reports subject to reopening.

FOR FURTHER INFORMATION CONTACT:

Virginia Gray, Division of Provider Reimbursement and Accounting Policy, Bureau of Health Insurance, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-9690.

SUPPLEMENTARY INFORMATION: On October 20, 1976, this regulation was published in the FEDERAL REGISTER (41 FR 46321) with a Notice of Proposed Rulemaking as a proposed amendment to Subpart D of Regulations No. 5 (20 CFR Part 405) regarding recovery of excess cost resulting from the use of accelerated depreciation when termination of the provider results from a transaction between related organizations.

Current regulations require that when a provider who has used accelerated depreciation terminates participation in the health insurance program, depreciation claimed by the provider in excess of straight-line depreciation is to be recovered by the health insurance program. The intention of the current regulation is to insure that the health insurance program pay providers only the reasonable cost of services furnished to Medicare beneficiaries. Without the provision for the recovery of excess depreciation, a provider who had been allowed depreciation at an accelerated rate, and thus received disproportionately high depreciation payments from the health insurance program in its initial years of participation, would avoid rendering services at compensatingly low depreciation allowances in later years, if it ter-

minated participation in the health insurance program.

However, when termination of the provider agreement results from a transaction between related organizations, and the successor provider remains in the health insurance program and its asset bases are the same as those of the terminated providers, health insurance program reimbursement is equitable to all parties. An amendment to the regulations is necessary, therefore, to provide that when termination of the provider agreement results from a transaction between related organizations, and certain other conditions are met, the recovery of accelerated depreciation will not be applied.

Section 5 U.S.C. 553(d) permits an immediate effective date when good cause exists. Because this amendment establishes new policy, which is a liberalization of an existing policy, and may be applicable to cost reports subject to reopening, good cause exists for not having a delayed effective date. Therefore, this amendment shall be effective upon publication in the FEDERAL REGISTER.

Interested parties were given 45 days from the date of publication of the Notice of Proposed Rulemaking in which to submit data, views, or arguments thereon. Only a few comments were received as a result of the Notice of Proposed Rulemaking. These comments essentially agreed with the purpose of the proposed regulation. The proposed amendment has been prepared for final publication with only clarifying editorial changes.

Accordingly, the amendments are adopted as revised and are set forth below.

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations, is amended as follows:

In § 405.415, paragraph (d) is amended by adding headings for paragraphs (d) (1), (d) (2), and (d) (3), redesignating the material in the present paragraph (d) (3) as paragraph (d) (3) (i), adding a heading for such redesignated paragraph, and adding paragraph (d) (3) (ii). The added headings and paragraph (d) (3) (ii) read as follows:

§ 405.415 Depreciation: Allowance for depreciation based on asset costs.

(d) *Depreciation methods.* (1) *General.* * * *

(2) *Change in method.* * * *

(3) *Recovery of accelerated depreciation.* (i) *General.* * * *

(ii) *Transaction between related organizations.* (a) *General.* When the termination of the provider agreement is due to a change in provider ownership, as defined in §§ 405.625 and 405.626, resulting from a transaction between related organizations, as defined in § 405.427, and the criteria in paragraph (b) of this section are met, the excess of reimbursable cost, as determined in paragraph (d) (3) (i) of this section shall not be recovered if there is a continuation of participation by the facility in the health insurance program.

RULES AND REGULATIONS

**CHAPTER V—EMPLOYMENT AND
TRAINING ADMINISTRATION
TEMPORARY EMPLOYMENT OF ALIENS
ON GUAM**

Labor Certification Process

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration is publishing rules for the labor certification process governing the temporary employment of aliens on Guam in occupations other than agriculture and logging. The purpose of the regulations is to implement the Department of Labor's new responsibilities under the regulations of the Immigration and Naturalization Service.

DATE: Effective date: September 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Aaron Bodin, Chief, Division of Labor Certification, United States Employment Service, Room 8410, 601 D Street NW., Washington, D.C. 20213, telephone 202-376-6295.

SUPPLEMENTARY INFORMATION:

**IMMIGRATION AND NATURALIZATION
SERVICE REGULATIONS**

Section 214.2(h)(3)(i) of the Immigration and Naturalization Service Regulations (8 CFR 214.2(h)(3)(i)), issued under the Immigration and Nationality Act, requires, in support of a petition for the admission of an alien into the United States to perform certain temporary labor:

Either a certification from the Secretary of Labor or his designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such a certification cannot be made shall be attached to every non-immigrant visa petition to accord an alien a classification under Section 101(a)(15)(H)(ii) of the Act.

Until July of this year, however, the above cited regulation contained an exception whereby the Guam Employment Service, rather than the U.S. Department of Labor, performed the labor certification function for temporary employment of aliens on Guam. On July 25, 1977, however, at 42 FR 37795 the Immigration and Naturalization Service amended its regulations by deleting this exception.

NEED FOR REGULATIONS

The Employment and Training Administration currently has regulations for the temporary labor certification program at 20 CFR 602.10, 10a, 10b, and 10c (for agricultural and logging em-

ployment) and at 20 CFR Part 621 (for employment in other than logging and agriculture). The regulations at 20 CFR 602.10, 10a, 10b, and 10c are comprehensive regulations dealing with wages, housing, transportation, workers' compensation, allowable deductions from pay and other relevant matters. Consequently, the Employment and Training Administration will use those regulations for agricultural and any logging employment of aliens on Guam.

The regulations at 20 CFR Part 621, however, consist only of principles and procedures of the most general kind. The Department has concluded, for the reasons set forth below relating to the uniqueness of the Guam alien employment situation, that the general principles and procedures in Part 621 should be elaborated in a set of regulations applicable only to Guam. This document contains the regulations for Guam.

**UNIQUENESS OF GUAM AND ITS ALIEN
EMPLOYMENT SITUATION**

The Territory of Guam is different from most of the United States. It is different in terms of history, culture, and economic and social structure. More specifically, the fact that a very large portion of its labor force is made up of non-immigrant aliens admitted for temporary employment in many different occupations is unique. Non-immigrant aliens comprise about one-fifth of the persons employed in wage and salary jobs on Guam.

Unemployment on Guam is a very serious problem. The unemployment rate of U.S. workers including immigrant aliens is significantly higher than the national average and has been a serious problem for many years. Unemployment is especially high among the native Chamorro population and among teenagers, causing many of the latter to emigrate to the continental United States.

Guam is particularly subject to widespread natural disasters. Typhoons Karen (1962) and Olive (1963) devastated the Island. Typhoon Pamela (1976) damaged up to 80 percent of all the buildings and facilities on the island. Repair work necessitated by Typhoon Pamela is still going on. As a result of these typhoons, because of increased tourism, and because of national defense needs, the construction industry is enormously significant to the Guam economy. There are, however, comparatively few resident Guamanians who have been trained for construction occupations. In most cases, therefore, alien workers have been admitted to perform construction jobs. In March 1975, for example, about 82 percent of construction jobs were held by non-immigrant aliens. The Department believes that the low wage rates paid aliens have adversely affected U.S. workers by discouraging U.S. workers from entering these low wage construction jobs or entering training for such jobs.

(b) *Criteria.* The following criteria must be met if the recovery of excess reimbursable cost is not to be made:

(1) The termination of the provider agreement is due to a change in ownership of the provider resulting from a transaction between related organizations.

(2) The successor provider continues to participate in the health insurance program.

(3) Control and the extent of the financial interest of the owners of the provider before and after the termination remain the same; that is, the successor owners acquire the same percentage of control or financial investment as the transferors had, and

(4) All assets and liabilities of the terminated provider are transferred to the related successor participating provider.

(c) *Effect of transaction.* In transactions meeting the criteria specified in paragraph (d)(3)(ii)(b) of this section, the provision concerning recovery of excess reimbursable cost (§ 405.415(d)(3)(i)) is not applied, and the transaction is treated as follows:

(1) The successor provider must record the historical cost and accumulated depreciation and the method of depreciation recognized under the health insurance program, and these are considered as incurred by the successor provider for health insurance purposes;

(2) The health insurance program's utilization of the terminated provider is considered as having been incurred by the successor provider for health insurance program purposes; and

(3) The equity capital of the terminated provider as of the closing of its final cost reporting period must be wholly contained in the equity capital of the successor provider as of the beginning of its first cost reporting period.

(Secs. 1102, 1815, 1861(v)(1)(A), and 1871 of the Social Security Act, 49 Stat. 847, as amended, 79 Stat. 297, 79 Stat. 322, as amended, 79 Stat. 331; 42 U.S.C. 1302, 1395g, 1395x(v)(1)(A), and 1395hh.)

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance.)

NOTE.—The Health Care Financing Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: August 2, 1977.

WILLIAM D. FULLERTON,
Acting Administrator, Health
Care Financing Administration.

Approved: August 27, 1977.

HALE CHAMPION,
Acting Secretary of Health,
Education, and Welfare.

[FR Doc. 77-26529 Filed 9-12-77; 8:45 am]

The Department has evidence, moreover, that the presence on Guam of so many non-immigrant alien workers has had other adverse effects upon the wages and working conditions of U.S. workers. Despite the high living cost on Guam, and continuing inflation, the wage rates in many occupations have not increased by appreciable amounts in recent years. This is in contrast, for example, with the situation on Hawaii where wage rates show appreciable increases. The Department believes that the presence of so many non-immigrant aliens in Guam on temporary visas, most of whom come from countries where they are accustomed to relatively low wages, contributes significantly to this situation.

It is not the Department's intention, in issuing these regulations, to stop the flow of non-immigrant alien workers into Guam. Such workers have contributed greatly to the growth of Guam's economy. They form an important and vital element in the island's economic structure. The Department, however, under the Immigration and Naturalization Service regulations, must take immediate steps to see that the wages and working conditions of U.S. workers are not adversely affected by the use of such aliens, and to see that qualified U.S. workers are not displaced by such aliens.

ADVERSE EFFECT RATES

The regulations contain adverse effect rates for occupations on Guam. The adverse effect rates are the rates which the Department requires employers to offer and pay so that the wages of similarly employed U.S. workers will not be adversely affected. The adverse effect rate is usually the prevailing wage rate. It may, however, be set at a higher level when the prevailing rates have been artificially depressed by the employment of non-immigrant alien workers.

The Department has concluded, in view of the circumstances set forth above, that the employment of non-immigrant aliens in the Guam construction industry has adversely affected U.S. workers by keeping the wage rates artificially low to the point that nearly all such work is being done by non-immigrant aliens. The Department, therefore, is publishing adverse effect rates for the Guam construction industry which are higher than the rates which are currently being paid to non-immigrant aliens. These adverse effect rates are based on the rates which have been found by a U.S. Navy Wage Board as applicable to construction craft workers on Guam. These rates are those which are prevailing for U.S. workers employed by the U.S. Government in construction trades on Guam and give the best indication as to what the Guam construction wage rates would be if they were not depressed by the use of non-immigrant aliens. The Department believes that it is necessary to use the Navy Wage Board rates to provide the necessary protections for U.S. workers on Guam.

Outside construction, the adverse effect rates are the prevailing rates in

Guam paid to U.S. workers. Generally, these will be the rates which are paid by the Guam government or by the U.S. government in its nonappropriated fund activities. Although, on the basis of the situation in other occupations on Guam, the Department may in the future, set higher adverse effect rates for other occupations, the seriousness of the construction wage situation, and the necessity for immediate rulemaking, mitigated in favor of the Department's decision to publish adverse effect rates at this time only for the construction industry.

Because the adverse effect rates are substantially above the present prevailing construction wage rates on Guam, the Department, in order to avoid disruption of the island's construction economy, has provided for a phasing-in of the higher adverse effect rates over a period of two years. Thus, most construction on Guam is by the U.S. Government and the amounts available annually is relatively fixed by the amount of appropriations by the Congress. Under these circumstances the greater the cost of the construction the less construction which can be performed with a resultant reduction in jobs. The two-year phase-in period is intended to provide a degree of protection for the number of jobs available while increasing the wage rates to their proper level. Starting September 1979, and thereafter it is intended that the construction rates will be based upon the then current wage Board rates.

In similar regard existing contracts on Guam were negotiated taking into consideration the present non-immigrant alien wage rates. In addition, construction home loans have been approved by the Small Business Administration to repair typhoon damage and Public Works Employment Act of 1977 grant funds have been committed for use on Guam for which construction contracts have not yet been executed. In order to prevent undue hardship to contractors with existing contracts, to the recipients of Small Business Administration loans, or to funded Public Works Employment Act of 1977 construction projects, the rates set forth in these regulations are not applicable to certifications for alien workers issued for work under those existing contracts, loans, and grants. This is similar to the practice of the Department of Labor under contracts affected by the Davis-Bacon and related Acts where the wage determination applicable at the time of the execution of the contract remains applicable to that contract until the completion of the contract notwithstanding subsequent determinations made in the same area.

REASON FOR FINAL RULEMAKING

With the change in the Immigration and Naturalization Service regulation at 8 CFR 214.2(h)(3)(1), the responsibility for administering the temporary labor certification process was placed upon the Department. The nature and scope and the seriousness of the temporary alien employment problem, as outlined above, make it clear to the Department that

definitive interpretive and procedural guidelines in the form of regulations are an immediate necessity. The use of non-immigrant alien workers, moreover, in large numbers and for an extended period of time, has resulted in a cumulative adverse effect upon U.S. workers which makes definitive action in the form of regulations an immediate necessity. It is also important not to disrupt the Department of Defense's procurement process, the Small Business Administration's loan process, or extant Public Works Employment Act projects by adding the element of uncertainty which proposed rulemaking would entail. Therefore, the Department finds that it is in the public interest, especially in the public interest of U.S. workers on Guam, to publish final rules which are immediately effective. This finding is made pursuant to 5 U.S.C. 553(b).

In keeping with the spirit of the Administrative Procedure Act, and with the Department's general policy as set forth at 29 CFR 2.7, the Department invites comments on these rules until November 15, 1977. Comments should be in writing and should be addressed to: Mr. William B. Lewis, Administrator, United States Employment Service, Room 8000, 601 D Street NW., Washington, D.C. 20213. Copies of all comments should also be sent to: Mr. William Heltigan, Regional Administrator, Employment and Training Administration, Federal Building, P.O. Box 36084, 450 Golden Gate Avenue, San Francisco, Calif. 94102.

Accordingly, 20 CFR Chapter V is amended as follows:

PART 621—CERTIFICATION OF TEMPORARY FOREIGN LABOR FOR INDUSTRIES OTHER THAN AGRICULTURE OR LOGGING

§ 621.1 [Amended]

1. In § 621.1 *Purpose.*, the following two sentences are added at the end:

* * * The temporary labor certification regulations governing job opportunities (other than in agriculture and logging) on Guam are found at Part 655, Subpart B, of this Chapter. Those regulations supplement this Part.

2. In § 621.11 *Purpose.*, the citation "(8 CFR 214.2(h)(1))" is changed to "(8 CFR 214.2(h)(3)(1))."

PART 651—GENERAL PROVISIONS GOVERNING THE FEDERAL-STATE EMPLOYMENT SERVICE SYSTEM

§ 651.5 [Amended]

3. In § 651.5 *Format of the regulations for the employment service system.*, paragraph (e), the phrase "when published" is deleted.

§ 651.6 [Amended]

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

4. In § 651.6 *Consolidated table of contents for Parts 651-658.*, the following table of contents for Part 655 is inserted in its proper place:

SUBPART A—TEMPORARY LABOR CERTIFICATION PROCESS FOR OCCUPATIONS OTHER THAN AGRICULTURE AND LOGGING

Sec.
655.1 Location of regulations.

SUBPART B—TEMPORARY LABOR CERTIFICATION PROCESS FOR OCCUPATION OF GUAM OTHER THAN AGRICULTURE AND LOGGING

Sec.
655.100 Scope and purpose of subpart.
655.101 Definitions of terms used in subpart.
655.102 Temporary labor certification applications (general).
655.103 Contents of job offers.
655.104 Assurances.
655.105 Action on temporary labor certification applications by the Guam employment service office.
655.106 Temporary labor certification determinations.
655.107 Adverse effect rates.
655.108 Temporary labor certification applications involving fraud or willful misrepresentation.
655.109 Temporary labor certification related records.
655.110 Nature of employment service job orders.

5. Part 655 is added to read as follows:

Subpart A—Temporary Labor Certification Process for Occupations Other Than Agriculture and Logging

Sec.
655.1 Location of regulations.

Subpart B—Temporary Labor Certification Process for Occupations on Guam Other Than Agriculture and Logging

Sec.
655.100 Scope and purpose of subpart.
655.101 Definitions of terms used in subpart.
655.102 Temporary labor certification applications (general).
655.103 Contents of job offers.
655.104 Assurances.
655.105 Action on temporary labor certification applications by the Guam employment service office.
655.106 Temporary labor certification determinations.
655.107 Adverse effect rates.
655.108 Temporary labor certification applications involving fraud or willful misrepresentation.
655.109 Temporary labor certification related records.
655.110 Nature of employment service job orders.

Subpart A—Temporary Labor Certification Process for Occupations Other Than Agriculture and Logging

AUTHORITY: 8 CFR 214.2(h)(3)(i); Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301.

§ 655.1 Location of regulations.

(a) The regulations governing the temporary labor certification process for occupations other than agriculture and logging are presently found at Part 621 of this Chapter. They will be codified in this subpart at a later date.

(b) For Guam, the regulations at Part 621 of this Chapter are supplemented by regulations which are found in subpart B of this Part.

Subpart B—Temporary Labor Certification Process for Occupations on Guam Other Than Agriculture and Logging

AUTHORITY: 8 CFR 214.2(h)(3)(i); Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 et seq.; 5 U.S.C. 301.

§ 655.100 Scope and purpose of subpart.

(a) This subpart supplements the regulations presently found at Part 621 of this Chapter and provides for the temporary labor certification process on Guam for all occupations except agriculture and logging.

(b) The Immigration and Naturalization Service Regulations at 8 CFR 214.2(h)(3)(i), issued under the Immigration and Nationality Act, requires, in support of a petition for the admission of an alien into the United States to perform certain temporary labor:

Either a certification from the Secretary of Labor or his designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect the wages and working conditions of workers in the United States similarly employed, or a notice that such a certification cannot be made shall be attached to every non-immigrant visa petition to accord an alien a classification under Section 101(a)(15)(H)(ii) of the Act.

(c) The temporary labor certification procedure is designed to prevent the use of foreign labor at the expense of the wages and working conditions of United States workers similarly employed. Temporary foreign workers may only be used to perform temporary services to meet shortages which occur in a particular occupation or industry.

§ 655.101 Definitions of terms used in subpart.

For purposes of this subpart:

"Administrator" means the chief official of the United States Employment Service or the Administrator's designee.

"Adverse effect rate" means the wage rate which the Administrator has determined must be offered and paid to foreign and U.S. workers for a particular occupation and/or area so that the wages of similarly employed U.S. workers will not be adversely affected. The prevailing wage rate in the area and/or occupation is the adverse effect rate, unless the Administrator has determined that a higher wage rate is necessary to prevent an adverse effect.

"Certifying Officer" means a U.S. Department of Labor official authorized to grant or deny temporary labor certification applications.

"Employment and Training Administration (ETA)" means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

"Employer" means a person, firm, corporation or other organization which currently has a location within the Territory of Guam to which U.S. workers may be referred for employment, or the authorized representative of such a person, firm, or corporation.

"Guam employment service office" means an office of the Guam Employment Service agency which serves the island of Guam.

"Job opportunity" means a job opening for employment on Guam to which U.S. workers can be referred.

"Offshore U.S. worker" means a United States worker whose domicile is in a State, Commonwealth, or territory of the U.S. other than Guam.

"Notice of Findings" means a notice which sets forth the bases upon which a Regional Administrator intends to deny a temporary labor certification unless the bases are satisfactorily rebutted.

"Regional Administrator, Employment and Training Administration (RA)" means the chief official of the Employment and Training Administration (ETA) in the Department of Labor (DOL) San Francisco regional office.

"Secretary" means the Secretary of Labor, of the U.S. Department of Labor, or the Secretary's designee.

"Temporary labor certification" means the determination by the Secretary of Labor, pursuant to 8 CFR 214.2(h)(3)(i), that (1) there are not sufficient U.S. workers who are qualified and available to perform the work and (2) the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

"United States Employment Service (USES)" means the agency of the U.S. Department of Labor, established under the Wagner-Peyser Act of 1933, which is charged with administering the national system of public employment offices and carrying out the functions of the Secretary under the Immigration and Nationality Act.

"United States worker" means any worker who, whether U.S. citizen, national, or alien, is legally permitted to work permanently within the United States.

§ 655.102 Temporary labor certification applications (general).

(a) An employer which anticipates a labor shortage may request a temporary labor certification for temporary foreign workers by filing, or by having an agent file, a temporary labor certification application, signed by the employer, with the Guam employment service office. However, if the temporary labor certification application is filed by an agent, the agent may sign the application. If be accompanied by a letter from the employer, signed by the employer, which authorizes the agent to ployer, which authorizes the agent to act on the employer's behalf, which states whether, and to what extent the agent is authorized to make changes in the employer's job offer, and which states that the employer assumes full responsibility for the accuracy of the application, for all representations made by the agent on the employer's behalf, and for the fulfillment of all legal requirements arising from the temporary labor certification.

(b) Every temporary labor certification application shall include: (1) A copy of the job offer used by the employer in the recruitment efforts for both U.S. and foreign workers. The job offer shall state the number of workers needed by the employer, and shall be signed by the employer. The job offer shall comply with the requirements of § 655.103 of this subpart;

(2) The assurances required by § 655.104 of this part;

(3) Documentation showing in detail the employer's efforts to recruit U.S. workers; and

(4) Documentation identifying the construction contract or contracts, if any, for which the temporary labor certification is being requested.

(c) A temporary labor certification application shall be filed in sufficient time to allow the Guam employment service office to attempt to recruit local U.S. workers. If local workers are not available, the Guam employment service office shall recruit through the interstate clearance system if current information from the RA indicates that offshore U.S. workers may be available. A minimum of 60 calendar days should be allowed for the Guam employment service local and interstate recruitment process. This 60-day period shall be in addition to the time necessary for the employer to secure foreign workers by the date of need if the temporary labor certification is granted. The Department of Labor, however, may grant or deny the temporary labor certification prior to the end of the 60 calendar days if the Certifying Officer is able to make the necessary determination in a shorter period of time.

§ 655.103 Contents of job offers.

(a) The employer's job offer shall:

(1) Offer to U.S. workers at least the same amount of wages and other benefits and working conditions which the employer is offering to the non-immigrant aliens;

(2) Set forth all the material terms and conditions of the job, including wage rates, working conditions, frequency of pay, hours and days of work, applicable workers' compensation benefits, fringe benefits, proposed deductions from pay, etc.;

(3) If housing is offered, contain a detailed description of such housing;

(4) If transportation is offered, describe the transportation benefits in detail;

(5) State that the employer will pay the worker the adverse effect rate pursuant to § 655.107 of this subpart; and

(6) State that the job offer, including all benefits therein, is open to all qualified U.S. workers, including offshore U.S. workers, without regard to race, color, national origin, age, sex, and to U.S. workers with handicaps who are qualified to perform the job.

§ 655.104 Assurances.

As part of the labor certification application the employer shall include assurances signed by the employer, that:

(a) The employer has not within the past year been found by a Court or by a

Federal or State enforcement agency to have failed without good cause to comply with applicable Federal, State and local employment-related laws, including wage and hour, health and housing laws and temporary labor certification related requirements, or that, if the employer was so found, the employer has produced conclusive, documented evidence that the violation has been remedied, and assures that it will not violate the law or laws in the future;

(b) The job opportunity is not:

(1) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or

(2) At issue in a labor dispute;

(c) During the period in which foreign workers are scheduled to be employed under the terms of the temporary labor certification:

(1) The wages and working conditions which will be offered and afforded by the employer to any foreign worker will be identical to those offered and afforded to U.S. workers; and

(2) The employer will offer and provide employment to any U.S. worker who is qualified and willing to work in the job opportunity and will keep a standing job order on file with the Guam employment service office.

(d) The employer will provide each worker with a copy of the worker's employment contract, and, if the worker is not literate in English, the contract which is provided will be in a language in which the worker is literate;

(e) Reasonable efforts have been and will continue to be made by the employer to obtain U.S. workers at adverse affect rates and working conditions no less favorable than those offered to aliens;

(f) The employer will not reject any qualified U.S. worker on the grounds that the employer's supervisory personnel speak a language other than that of the U.S. worker, and will assure that it has supervisors who speak a language understood by potential U.S. workers;

(g) If a U.S. worker cannot be recruited on Guam, the employer will consider referrals of offshore U.S. workers from Hawaii and the continental United States;

(h) The employer will accept the assistance of the Employment Service system in finding workers and will cooperate with it fully.

§ 655.105 Action on temporary labor certification applications by the Guam employment service office.

(a) When a temporary labor certification application is filed with the Guam employment service office, the Guam employment service office shall make sure that the application is complete. If the application is not complete, or if it is unlawfully discriminatory or otherwise unacceptable under Employment Service regulations for use in preparing a job order, the Guam employment service office shall return it to the employer and shall advise the employer to re-file it when it is completed.

(b) If the application is complete, the Guam employment service office, using the information on the application, shall prepare and process an employment service job order and, if it anticipates a shortage of local workers, an interstate job order.

(c) (1) The Guam employment service office shall then use the job order to recruit U.S. workers locally and, if local U.S. workers are not available, and there is evidence that offshore U.S. workers may be available, through the interstate clearance system. Special efforts shall be made to recruit workers out of Job Corps, CETA, and other DOL funded programs.

(2) As part of this recruitment effort the employer shall pay for an advertisement placed in the newspaper with the largest circulation on Guam for a 5-day period, and, in instances in which the interstate clearance system is used, in the largest circulation newspaper in Hawaii for a 5-day period for specified occupations as determined by the Regional Administrator. The advertisement(s) must specify the wages and other terms of employment. The advertisement(s) shall direct interested applicants to apply at the appropriate employment service office. The Guam and Hawaii Employment Service offices and the employer shall maintain records on the persons who respond and the results of referrals.

(d) The Guam employment service agency, after the recruitment period, shall send the temporary labor certification application to the Certifying Officer of the Employment and Training Administration, together with:

(1) A statement indicating whether the Guam employment service agency believes the employer has met requirements of this subpart;

(2) A report of U.S. workers availability in the area;

(3) A description of the recruitment efforts undertaken by the employer;

(4) Any information which indicates that, during the prior year, the employer did not fulfill the wage or other representations made in connection with any prior temporary labor certifications and whether or not the Guam employment service agency took action against the employer pursuant to Part 658, Subpart F, of this Chapter; and

(5) Any other information requested by the Department of Labor.

§ 655.106 Temporary labor certification determinations.

(a) If the Certifying Officer has reason to believe that the employer's efforts to recruit U.S. workers has not been sufficient, that U.S. workers are available, that the employment of the non-immigrant aliens will adversely affect the wages and working conditions of U.S. workers, or that the temporary labor certification should not be granted for other reasons, the Certifying Officer shall issue a Notice of Findings, and shall afford the employer a reasonable time to submit evidence to rebut the bases of the Notice of Findings.

(b) The Certifying Officer shall then make a determination to grant or deny the temporary labor certification. No temporary labor certification shall be granted, however, if the Certifying Officer determines that the employer, during the prior year, did not fulfill the wage or other representations made in connection with any prior temporary labor certification, or if the Certifying Officer determines that, with respect to the present temporary labor certification application, the employer has not complied with the requirements of §§ 655.103-107 of this part.

(c) After the temporary labor certification determination has been made the Certifying Officer shall notify the employer in writing of the decision. If the temporary labor certification is denied, the notice shall state the reasons therefor and the appeal rights of the employer under the Immigration and Naturalization Service regulations.

(d) The granting or denial of a temporary labor certification application by the Certifying Officer shall be the final decision of the Secretary of Labor. Therefore, the employer may not make use of the complaint procedures set forth at Part 658, subpart E of this Chapter.

§ 655.107 Adverse effect rates.

(a) Except as provided in paragraph (b) of this section, the adverse effect rates for Guam shall be the prevailing rates for the occupations on Guam or, if the occupation is new to Guam, the prevailing rates for the most nearly comparable occupation on Guam.

(b) The following hourly adverse effect wage rates shall be paid to journeymen for jobs in the Guam construction industry. Trainees may be employed in Pay Levels III, IV, and V. Such trainees shall be paid at 80 percent of the journeyman wage rate for the first year and 90 percent for the second year. The construction adverse effect rates shall not be applicable to contracts which were executed prior to the effective date of the regulations in this subpart. Nor shall the construction adverse effect rates be applicable to temporary labor certification applications involving job opportunities which are financed by loans from the Small Business Administration or by funds received from Federal grants made under the Public Works Employment Act of 1977 prior to the effective date of the regulations in this subpart. The rates applicable to such a contract, Small Business Administration loan, or Federal agreement, shall be those which were applicable under the temporary labor certification process at the time of the execution of the contract, loan, or grant.

(1) Pay Level I:	
(i) Effective date of regulations...	\$3.00
(ii) March 1, 1978.....	3.65
(iii) September 1, 1978.....	4.30
(iv) March 1, 1979.....	5.00
(2) Pay Level II:	
(i) Effective date of regulations...	3.25
(ii) March 1, 1978.....	4.00
(iii) September 1, 1978.....	4.75
(iv) March 1, 1979.....	5.50
(3) Pay Level III:	

(i) Effective date of regulations...	3.75
(ii) March 1, 1978.....	4.50
(iii) September 1, 1978.....	5.25
(iv) March 1, 1979.....	6.00
(4) Pay Level IV:	
(i) Effective date of regulations...	4.00
(ii) March 1, 1978.....	4.90
(iii) September 1, 1978.....	5.80
(iv) March 1, 1979.....	6.75
(5) Pay Level V:	
(i) Effective date of regulations...	4.25
(ii) March 1, 1978.....	5.15
(iii) September 1, 1978.....	6.05
(iv) March 1, 1979.....	7.00

(c) Starting September 1, 1979, and thereafter the construction rates will be based upon the then current Wage Board rates.

(d) Pay Level I.—The principal occupations included here are Laborers and Unskilled Workers; Includes all other laborers and unskilled workers involved in the performance of simple duties that may be learned within a short period of time and that require the exercise of little or no independent judgment. Characteristically, such occupations do not require previous experience, although a familiarity with the occupational environment may be necessary or very desirable. The occupations in this group vary from those involving a minimum of physical exertion to those characterized by heavy physical work. Pay Level I shall include occupations such as:

- (1) Hod carriers;
- (2) Pile drivers; and
- (3) All other laborer and unskilled worker occupations.

(e) Pay Level II.—The principal occupations included here are Helpers, Skilled Trades; Includes all helpers who assist one or more workers in the skilled trades, by performing a variety of duties, such as furnishing another worker with materials, tools, and supplies; cleaning work area, machines, and equipment; feeding of offbearing machines; holding materials or tools; and performing other routine duties. Pay Level II shall include occupations such as:

- (1) Oilers, such as greaser and oilers, lubricators, and machine hostlers;
- (2) Tile setter helpers;
- (3) Cement mason helpers;
- (4) Asphalt heater tenders;
- (5) Asphalt mixing machine tenders;
- (6) Asphalt rakers, including black top rakers;
- (7) Finegraders, including slopers, etc.;
- (8) Carpenter helpers;
- (9) Floor sanding machine operators, including floor sanders, floor scrapers, floor finishers, etc.;
- (10) Electrician helpers;
- (11) Painter helpers;
- (12) Paperhanger helpers;
- (13) Plasterer helpers;
- (14) Plumber and/or pipefitter helpers;
- (15) Roofer helpers;
- (16) Stone mason helpers;
- (17) Terrazzo worker helpers; and
- (18) All other helpers in the skilled trades, such as driller helpers and stucco mason helpers.

(f) Pay Level III.—The principal occupations included here are Operatives and Semiskilled Workers; Includes all operatives and semiskilled workers in occupations that are characterized by one, or a combination of the following requirements: The exercise of manipulative ability of a high order but limited to a fairly well-defined work routine; major reliance, not so much upon the worker's judgment or dexterity, but upon vigilance and alertness, in situations in which lapses in performance would cause extensive damage to product or equipment, and the exercise of independent judgment to meet variables in the work situation, which is not based on wide knowledge of work field and with the nature and extent of the judgments limited either (1) by application over a relatively narrow task situation; or (2) by having important decisions made by others. These occupations may require the performance of part of a craft or skilled occupation, but usually to a relatively limited extent. Occupations are considered semiskilled if the specific vocational preparation required to perform them involves training or other preparation of more than 30 days up to and including two years. Pay Level III shall include occupations such as:

- (1) Chain surveyor helpers, rod surveyor helpers, and/or triangulation lightkeepers, including surveyor assistants, surveyor helpers, etc.;
- (2) Automotive mechanics, including truck mechanics, industrial truck mechanics, etc., but excluding diesel mechanics and engineering equipment mechanics;
- (3) Maintenance mechanics, but excluding millwrights;
- (4) General utility maintenance workers;
- (5) Truck operators, including concrete mixing truck drivers, dump truck drivers, etc. (but excluding delivery and route drivers) and industrial truck drivers, including fork lift operators, etc.;
- (6) Concrete mixer operators, including batching and mixing plant operators, mixing machine operators, etc.;
- (7) Concrete rubbers, including cement patchers, cement rubbers, concrete polishers, etc.;
- (8) Concrete wall grinder operators, including concrete grinder operators, etc.;
- (9) Dredge dipper tenders, including bucket operators, etc.;
- (10) Dredge pipe installers;
- (11) Dope pourers, masticers, etc., but excluding pipe paperhangers;
- (12) Pipelaying fitters, including spacers, etc.;
- (13) Pipecleaning and priming machine operators;
- (14) Air hammer operators, including airbreaker operators, air gun operators, air tool operators, etc.;
- (15) Asphalt plant drier operators;
- (16) Asphalt plant operators;
- (17) Construction blasters, including chargers, firers, powder workers, shooters, shot firers, etc.;
- (18) Hook and chainers;

(19) Fence erectors, including iron workers, wire fence erectors, wire fence builders, etc.;

(20) Form tamper operators and/or tamping machine operators, including road form tamping machine operators, etc.;

(21) Metal road form setters, including metal road form fitters, etc.;

(22) Reinforcing iron workers, including iron workers, reinforcing bar setters, reinforcing steel erectors, reinforcing rod tiers, etc.;

(23) Metal fabricators, including structural metal fabricators, etc., but excluding sheet metal workers;

(24) Structural steel workers, including bridgers, iron erectors, steel erectors, structural steel erectors, etc.;

(25) Millwrights, including machine erectors, etc., but excluding maintenance mechanics;

(26) Carpet cutters and/or carpet layers, but excluding floorlayers;

(27) Lathers, including metal lathers, rockboard lathers, etc., but excluding carpenters;

(28) Dry wall applicators, including dry wall nailers, sheetrockers, etc., but excluding carpenters;

(29) Tapers, including dry wall finishers, wall board and plasterboard finishers, sheetrock tapers, tapers and bedders, tapers and floaters, etc.;

(30) Glaziers, including glass setters, plate glass glaziers, etc.;

(31) Construction and maintenance painters, including structural steel painters, finish painters, etc.;

(32) Paperhangers, excluding pipe paperhangers;

(33) Plasterers, including finish plasterers, spray gun plasterers, etc., but excluding drywall applicators, lathers, stucco masons and tapers;

(34) Oil burner installers and servicers, including oil burner installers, oil burner servicers, etc., but excluding plumbers;

(35) All other operatives and semi-skilled workers such as portable pump pumpers, pile driving jettors, steam cleaning machine operators, pipe paperhangers, etc.

(g) Pay Level IV—The occupations included here, and in Pay Level V, are Skilled Craftsmen: Includes all skilled craftsmen and kindred workers in occupations that predominately require a thorough and comprehensive knowledge of processes involved in the work, the exercise of considerable independent judgment, usually a high degree of manual dexterity, and in some instances, extensive responsibility for valuable product or equipment. Workers in these occupations usually become qualified by serving apprenticeships or completing extensive training periods. Occupations are considered skilled if the specific vocational preparation required to perform them involves training or other preparation of more than 2 years. Pay Level IV shall include skilled craft and kindred occupations such as:

(1) All mechanics and repairers not listed on other pay levels, such as dredge mechanics, etc.;

(2) Cement masons, including highway and street cement masons, etc.;

(3) Metal conduit layers, including duct layers, etc.;

(4) Dredge operators, including dredge pumpers, etc.;

(5) Pipelayers, including pipesetters, water pipelayers, cast iron pipelayers, etc.;

(6) Sewer tappers, but excluding plumbers and/or pipefitters;

(7) Fine trench trimmers, including trench trimmers, inverters, fine trimmers, etc.;

(8) Structural steel layout workers, including template layout workers, etc.;

(9) Asbestos and insulation workers, including blanket insulation workers, corkboard insulation workers, etc.;

(10) Bricklayers, including gypsum blocksetters, cinder block masons, etc.;

(11) Carpenters, including hardwood floor layers, framing carpenters, combination carpenters, window installers, etc., but excluding cabinetmakers, floor layers other than hardwood floor layers, lathers, and drywall applicators;

(12) Ceiling tile installers and/or floor layers, including asphalt tile floor layers, cork tile floor layers, floor coverers, floor covering block layers, etc., but excluding carpenters, terrazzo workers, and carpet cutters or layers;

(13) Line maintainers, including high tension line maintainers, etc., but excluding electricians and wirers;

(14) Plumbers and/or pipefitters, including steamfitters, sprinkler installers, etc., but excluding oil burner installers and servicers, hot air furnace installers and repairers, and pipeline construction workers;

(15) Roofers, including aluminum shingle roofers, composition roofers, etc., but excluding metal roofers;

(16) Stone masons, including alberene stone setters, artificial stone setters, etc.;

(17) Terrazzo workers, including artificial marble workers, etc.;

(18) Tile setters, including tile fitters, tile masons, etc.;

(19) Hot air furnace installers and repairers, including furnace workers, hot air furnace installers, hot air furnace repairers, heating workers, etc., but excluding plumbers;

(20) Sheet metal workers, including coppersmiths, tinsmiths, special item fabricators, metal roofers, etc., but excluding metal fabricators;

(21) Welders and flamecutters, including arc welders, gas welders, spot welders, leadburners, resistance welders, solderers, etc.; and

(22) All other skilled craft and kindred occupations, such as instrument repairers, stucco masons, stationary engineers, etc.

(h) Pay Level V—The occupations included here, and in Pay Level IV, are Skilled Craftsmen: Includes all skilled craftsmen and kindred workers in occupations that predominately require a thorough and comprehensive knowledge of processes involved in the work, the exercise of considerable independent judgment, usually a high degree of man-

ual dexterity, and in some instances, extensive responsibility for valuable product or equipment. Workers in these occupations usually become qualified by serving apprenticeships or completing extensive training periods. Occupations are considered skilled if the specific vocational preparation required to perform them involves training or other preparation of more than 2 years. Pay Level V shall include occupations such as:

(1) Diesel mechanics, excluding automotive mechanics and engineering equipment mechanics;

(2) Engineering equipment mechanics, including heavy equipment mechanics, etc., but excluding automotive mechanics and diesel mechanics;

(3) Refrigeration mechanics, including air conditioning attendants, air conditioning mechanics, refrigeration equipment erectors, etc.;

(4) Crane operators, derrick operators, and hoist operators, excluding heavy equipment operators and dredge operators;

(5) Boilermakers;

(6) Cabinetmakers, excluding carpenters;

(7) Electricians, including wirers, residential wirers, etc., but excluding line maintainers;

(8) Machinists, including maintenance machinists, etc.; and

(9) Heavy equipment operators, excluding dredge operators, crane operators, derrick operators, and hoist operators, but including:

(i) Asphalt paving machine operators;

(ii) Blade grader operators;

(iii) Bulldozer operators;

(iv) Concrete paver operators and/or concrete-paving machine operators;

(v) Dragline operators;

(vi) Drifters;

(vii) Water well drillers;

(viii) Earth boring machine operators;

(ix) Elevating grade operators;

(x) Form grader operators;

(xi) Foundation drill operators;

(xii) Heater planer operators;

(xiii) Horizontal earth boring machine operators;

(xiv) Motor grader operators;

(xv) Mucking machine operators;

(xvi) Pile driver operators;

(xvii) Power shovel operators;

(xviii) Road mixer operators;

(xix) Road roller operators;

(xx) Rock drill operators;

(xxi) Scraper operators;

(xxii) Sheet-pile-hammer operators;

(xxiii) Shield runners;

(xxiv) Subgrader operators;

(xxv) Sweeper operators;

(xxvi) Tower-excavator operators;

(xxvii) Trench-digging machine operators;

(xxviii) Utility tractor operators;

(xxix) Cable tool well-drill operators;

(xxx) Rotary drill well-drill operators;

(xxxi) Well-reactivator operators;

§ 655.108 Temporary labor certification applications involving fraud or willful misrepresentation.

(a) If possible fraud or willful misrepresentation involving a temporary labor certification application is discovered

prior to a final temporary labor certification determination, or if it is learned that an application is the subject of a criminal indictment or information filed in a Court, the Certifying Officer shall refer the matter to the INS for investigation and shall notify the applicant in writing of this referral. The Certifying Officer shall continue to process the application and may issue a qualified temporary labor certification.

(b) If a Court finds an applicant innocent of fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute an applicant, the Certifying Officer shall not deny the temporary labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons pursuant to this subpart.

(c) If a Court or the INS determines that there was fraud or willful misrepresentation involving a temporary labor certification application, the application shall be deemed invalidated, processing shall be terminated, and the application shall be returned to the applicant with the reason therefor stated in writing.

§ 655.109 Temporary labor certification related records.

Employers who have been granted temporary labor certifications shall maintain for at least three years all records, including payroll and other employment records, which are related to the employment of the non-immigrant alien workers. These records shall be made available by the Secretary or the Secretary's representatives.

§ 655.110 Nature of employment service job orders.

In view of the statutorily established basic function of the employment service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the Department of Labor nor the Guam employment service are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor do such job orders represent an "offer to contract" to which the Employment Service is in any way a party.

Signed at Washington, D.C., this 6th day of September 1977.

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

[FR Doc. 77-26599 Filed 9-8-77; 3:53 pm]

Title 21—Food and Drugs

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

[Docket No. 75P-0370]

PART 101—FOOD LABELING

Type-Size Exemption for Certain Small Packaged Food Labels

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This amendment permits a $\frac{1}{32}$ -inch type size to be used to print information required to appear on the labels of individual serving-size packages of foods if the food is for food service use, not intended for retail sale, and there is insufficient space on the package to print the information as required by existing regulations.

EFFECTIVE DATE: September 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-245-3092).

SUPPLEMENTARY INFORMATION:

In the FEDERAL REGISTER of August 12, 1976 (41 FR 34051) the Commissioner of Food and Drugs issued a proposal to amend § 1.8d (21 CFR 1.8d) in response to a petition received from the Smith-Kline Corp., Philadelphia, Pa. Section 1.8d was recodified as § 101.2 (21 CFR 101.2) in the FEDERAL REGISTER of March 15, 1977 (42 FR 14302); hereafter, it will be referred to by its new designation, § 101.2. The effect of the proposal was to permit a $\frac{1}{32}$ -inch type size to be used for printed information on the labels of individual serving-size packages of food that are for institutional food service use when there is insufficient space on the package to print the information as required by existing regulations.

In response to the proposal, 18 comments were received. There were 13 comments from consumers, 3 from industry, 1 from a local government agency, and 1 from a Federal government agency. The majority of the comments supported the proposal. Two comments were not directly applicable to the proposal.

DISCUSSION OF COMMENTS AND THE COMMISSIONER'S RESPONSE

1. Ten comments expressed general support for the proposal. One comment said, "The widespread use and popularity of individual single-service packaging benefits consumer and food service interests alike, permitting the sanitary and efficient distribution of prepared foods. The proposed $\frac{1}{32}$ -inch type size exemption makes allowances for the proper labeling of food items so packaged."

The Commissioner agrees, and to this he adds that since there is no prohibition against serving foods from open unlabeled serving containers—a practice that prevails in some food service operations—much has been gained in food service cleanliness and sanitation by the use of individual single-service packaging. Changes in the regulations are being made because the area of the surface available for labeling is often too small to accommodate all the required information in the type size currently required by § 101.2 and because the Commissioner wishes to encourage the use of single-service packaging as opposed to unlabeled open serving containers.

2. Several comments said that consumers will benefit from the proposed

amendment even though some may have difficulty reading information printed in $\frac{1}{32}$ -inch type. These comments pointed out that a $\frac{1}{32}$ -inch type will allow all required information to be readily available on the package at the point of usage, thereby enabling consumers to know the contents of the packaged food and to avoid ingredients to which they may be allergic.

The Commissioner recognizes that some consumers may have difficulty reading information printed in a $\frac{1}{32}$ -inch type size. He agrees, however, that the benefits expected from this amendment outweigh this detriment.

The Commissioner emphasizes that only packages having insufficient space available to meet present labeling requirements are entitled to this exemption. Accordingly, packages that have sufficient area for printing the required information in a $\frac{1}{32}$ -inch type size are required to do so.

3. Four comments said that the exemption should not be allowed because $\frac{1}{32}$ -inch type is difficult to read and would make consumers suspicious of the ingredients in the food. And the comments contended that information printed in $\frac{1}{32}$ -inch type is less likely to be read by the consumer, thereby defeating the purpose of placing the information on the package.

The Commissioner believes that for those food packages affected by this proposal it is appropriate to permit a $\frac{1}{32}$ -inch type size to be used for the printed information required. Because of the package area limitation of 3 square inches, the regulation is principally applicable to condiments. The Commissioner understands the concerns of the consumers who oppose the use of a $\frac{1}{32}$ -inch type size. It has been pointed out, however, that this exemption may serve to increase the availability of single-service packages of foods in food service operations. The increased availability of foods in single-service packaging will not only improve food sanitation, but will also provide the ultimate consumer with product information that may not otherwise be available to him.

4. One comment suggested, as an alternative to the proposed exemption, that manufacturers print the address where consumers can write for the information, which would then be supplied in a type size larger than $\frac{1}{32}$ -inch in height.

The Commissioner finds that labeling information should, whenever possible, accompany the food. It would be unfair to consumers to withhold this information from the labels and unreasonable to expect consumers to mail a request for labeling information concerning food about to be eaten.

5. One comment suggested that manufacturers be required to change the packaging size to accommodate printed information in a larger type size.

The Commissioner concludes that requiring manufacturers to enlarge their packages solely to accommodate information printed in a type size larger than $\frac{1}{32}$ inch in height would result in some unreasonable and avoidable cost

increases and environmental impact associated with the production and destruction of the larger packages. In addition, the Commissioner does not wish to impede the development of single-service containers by undue regulation of the size or style of packages for the products covered by this exemption.

6. One comment requested that § 101.2 (c) (5) (1) of the proposal be revised to state the package size limit as "3 square inches or less" rather than the proposed "less than 3 square inches." This comment contends that this revision is more in accord with the Commissioner's intent to include packages having a surface area of 3 square inches.

The Commissioner concurs and is revising paragraph (c) (5) (1) accordingly.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 403, 701(a), 52 Stat. 1040-1042 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321, 343, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 101 is amended in § 101.2 by adding new paragraph (c) (5) to read as follows:

§ 101.2 Information panel of package form food.

(c)

(5) Individual serving-size packages of food served with meals in restaurants, institutions, and on board passenger carriers, and not intended for sale at retail, are exempt from type-size requirements of this paragraph, provided:

(i) The package has a total area of 3 square inches or less available to bear labeling;

(ii) There is insufficient area on the package available to print all required information in a type size of $\frac{1}{16}$ inch in height;

(iii) The label information includes a full list of ingredients in accordance with regulations in this part and the policy expressed in § 101.6 of this chapter; and

(iv) The information required by paragraph (b) of this section appears on the label in accordance with the provisions of this paragraph, except that the type size is not less than $\frac{1}{16}$ inch in height.

Effective date: September 13, 1977.

(Secs. 201, 403, 701(a), 52 Stat. 1040-1042 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321, 343, 371(a)).)

Dated: September 7, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

[FR Doc. 77-26528 Filed 9-12-77; 8:45 am]

Title 29—Labor

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

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Alaska; Certification of Completion of Developmental Steps

AGENCY: Occupational Safety and Health Administration.

ACTION: Certification of completion of developmental steps.

SUMMARY: This document certifies that the State of Alaska has completed all of the developmental steps specified in its occupational safety and health plan as approved on July 31, 1973 (38 FR 21628) and gives notice that commencing with this certification, operations under the plan will be subject to at least one year extensive evaluation to determine whether Federal occupational safety and health standards development and enforcement authority will be relinquished within the State of Alaska pursuant to section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(e)).

EFFECTIVE DATE: September 9, 1977.

FOR FURTHER INFORMATION CONTACT:

Veronica Allen, Project Officer, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3608, Washington, D.C. 20210 (202-523-8031).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Subpart D of Part 1902 of Title 29, Code of Federal Regulations (40 FR 54780) sets out procedures under which the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) will make a determination under section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) whether, on the basis of actual operations under a State plan, the criteria of section 18(c) of the Act are being applied under the plan. Such a determination may not be made until at least three years after commencement of operations under the plan and, in the case of a developmental plan, until the State has satisfactorily completed all developmental steps and the Assistant Secretary has had at least one additional year to evaluate the plan on the basis of actual operations. Upon making a determination under 18(e) that the 18(c) require-

ments are being applied, Federal enforcement of standards and Federal Standards (except with regard to ongoing cases) cease to apply in the State with respect to any occupational safety and health issue covered under the determination.

Section 1902.34 of Subpart D provides that the evaluation of a State's fully operational program, preparatory to an 18(e) determination, shall commence upon publication in the FEDERAL REGISTER of a certification that all developmental steps have been completed. Such certification must list the developmental steps, including approved amendments thereto, and the dates their approvals were published in the FEDERAL REGISTER; approved substantive changes in the State plan and dates published in the FEDERAL REGISTER; documentation that the State merit system has been approved and found acceptable; and a description of the occupational safety and health issues covered by the certification. If the Assistant Secretary finds that the State has completed all the developmental steps specified in the plan, he shall give notice of same by publishing the certification in the FEDERAL REGISTER and amend the appropriate subpart of Part 1952 of this chapter to reflect this finding.

On August 19, 1973, notice was published in the FEDERAL REGISTER (38 FR 21628) of the approval of the Alaska plan as a developmental plan and adoption of Subpart R of Part 1952 containing the decision and describing the plan. During the three year period ending October 1, 1976, following commencement of State operations (three years from date of State's first 23(g) grant award), Edmond N. Orbeck, Commissioner, Alaska Department of Labor, submitted documentation attesting to the completion of each State developmental commitment for review and approval as provided in 29 CFR Part 1953. Following Departmental review, opportunity for public comment and subsequent modification of the State's submissions, as deemed appropriate, the Assistant Secretary has approved the completion of all individual Alaska developmental steps.

NOTICE OF CERTIFICATION OF COMPLETION OF DEVELOPMENTAL STEPS UNDER THE ALASKA PLAN

In accordance with the provisions of 29 CFR 1902.34, notice is given that the Alaska occupational safety and health plan is hereby certified, effective September 9, 1977, as having completed all the developmental steps specified in the plan as approved July 31, 1973, on or before October 1, 1976 (see Subpart C of 29 CFR Part 1952) as follows:

A. All developmental steps specified in the plan and amendments thereto have been completed:

1. The Alaska Occupational Safety and Health Act (§§ 18.60.010 through 18.60.105, Alaska Statutes), effective July 24, 1973, was approved at time of plan approval July 31, 1973 (38 FR 21628, August 10, 1973). State-initiated amended legislation (House Bill No. 588) was signed by the Governor on June 29, 1976, became effective June 30, 1976, and was approved by the Assistant Secretary on August 29, 1977. (See FR Doc. 77-26347 appearing in the Notices section of this issue.)

2. Alaska standards comparable to Subparts D, G, H, I, N, O, and P of Part 1910 were promulgated prior to and approved with the State plan on July 31, 1973. All Federal standards promulgated subsequent to the date of plan approval have been in turn promulgated by the State and approved by the Regional Administrator for Occupational Safety and Health as follows:

(a) State standards identical to Federal standards comparable to Part 1910, Subpart S were approved on June 30, 1975 (40 FR 33291, August 7, 1975).

(b) State standards identical to Federal standards comparable to Part 1910, Subpart J were approved on August 12, 1975 (40 FR 43101, September 18, 1975).

(c) State standards identical to Federal standards comparable to Part 1910, Subparts E, M, and F were approved on September 15, 1975 (40 FR 50582, October 30, 1975).

(d) State standards at least as effective as Federal standards comparable to Part 1910, Subparts K and Q were approved on September 11, 1975 (40 FR 50582, October 30, 1975).

(e) State standards at least as effective as Federal standards comparable to Part 1910, Subpart L were approved on September 15, 1975 (40 FR 50582, October 30, 1975).

(f) State standards at least as effective as the Federal standards comparable to Subpart R, § 1910.261 were approved on July 22, 1976 (41 FR 39112, September 14, 1976).

(g) State standards identical to Federal standards comparable to Subpart R, §§ 1910.262, 1910.263, and 1910.264 were approved on September 30, 1976 (41 FR 47613, October 29, 1976).

(h) In response to Federal program change, State standards identical to Federal standards comparable to Part 1910, Subpart Z were approved on October 29, 1976 (41 FR 52557, November 30, 1976).

(i) In response to a Federal program change, State standards identical to Federal standards comparable to § 1910.268, Telecommunications, were approved on October 29, 1976 (41 FR 52557, November 30, 1976).

(j) In response to a Federal program change, State standards identical to Federal standards comparable to Part 1928 were approved on October 29, 1976 (41 FR 52558, November 30, 1976).

(k) State standards at least as effective as the Federal standards comparable to Part 1928 were submitted to the Regional Administrator on September 24, 1976, and approved on October 29, 1976 (41 FR 53077, December 3, 1976).

(l) State standards identical to Federal standards comparable to Subpart R, §§ 1910.265 and 1910.266 were submitted to the Regional Administrator on September 20 and 24, 1976, and approved on October 29, 1976 (41 FR 56409, December 28, 1976).

(m) Update of all State standards comparable to Federal standards in Part 1910, as republished January 11, 1977 (42 FR

2366) were approved on December 3, 1976 (42 FR 2366, January 11, 1977).

(n) In response to a Federal program change, State standards identical to Federal standards comparable to § 1910.1001(1) (1), Asbestos Recordkeeping—Exposure Records, were approved on March 9, 1977 (42 FR 25389, May 17, 1977).

3. The Alaska compliance manual which establishes procedures to be used by State enforcement personnel was developed by February 1, 1974, and was subsequently revised. Documentation on completion of this developmental step was submitted by the State on September 28, 1976, and approved by the Assistant Secretary on August 9, 1977 (42 FR 40195).

4. Alaska developed and implemented a manual Management Information System by October 1, 1974. This developmental step was approved by the Assistant Secretary on August 20, 1976 (41 FR 36206, August 27, 1976).

5. Alaska completed its interim training program by April 1, 1974, and has developed an extended training program by October 1, 1976. This developmental step was approved by the Assistant Secretary on August 20, 1976 (41 FR 36206, August 27, 1976).

6. Alaska submitted a change to its plan to reduce the number of industrial hygienists as outlined in the original plan. This reduction was approved by the Assistant Secretary on November 19, 1976 (41 FR 52556, November 30, 1976). Therefore, in accordance with § 1952.243(e) Alaska completed hiring of its industrial health staff by October 1, 1976, which was approved by the Assistant Secretary on November 19, 1976 (41 FR 52556, November 30, 1976). Alaska has also provided for an Industrial Health Laboratory capacity which became fully operational on May 31, 1976, and which was approved by the Assistant Secretary on August 20, 1976 (41 FR 36206, August 27, 1976).

7. Alaska has promulgated the following administrative rules and regulations (Alaska Administrative Code) which were submitted on January 26, 1976, subsequently on April 14, May 13, 17, and 18, 1977, in response to Federal review and approved by the Assistant Secretary on August 9, 1977 (42 FR 40195).

(a) Regulation § 8 AAC 61.020 through 155: Inspections, Citations, and Proposed Penalties;

(b) Regulation § 8 AAC 61.225 through 295: Recording and Reporting Occupational Injuries and Illnesses;

(c) Regulation § 8 AAC 61.300 through 400: Variances;

(d) Regulation § 8 AAC 61.160 through 220: Occupational Safety and Health Review Board;

(e) Regulation § 8 AAC 61.410 through 420: Consulting and Training;

(f) Regulation § 8 AAC 61.430 through 460: General Provisions.

8. Alaska has developed a job safety poster applicable to both private and public employees which must be distributed to all workplaces in the State. The poster was approved by the Assistant Secretary on September 28, 1976 (41 FR 43405, October 1, 1976).

9. Alaska has submitted a revised plan. The revisions to the plan are editorial in nature: Clarifying and updating the original plan and eliminating duplications, conflicting time frames and extraneous information. This revision was approved by the Assistant Secretary on July 22, 1977 (42 FR 37607).

B. The personnel operations of the Alaska Department of Labor have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by the U.S. Civil Service Commission by letter dated May 18, 1976. The merit system also incorporates an affirmative action plan.

C. This certification covers all occupational safety and health issues covered under the Federal program except for the longshoring and maritime standards found in 29 CFR Parts 1915, 1916, 1917, and 1918 (longshoring, ship repairing, shipbuilding, shipbreaking) which are excluded from coverage under the plan. This certification also covers the State program covering State and local government employees.

LOCATION OF THE PLAN AND ITS SUPPLEMENTS FOR INSPECTION AND COPYING

A copy of the plan and the supplements may be inspected and copied during normal business hours at the following locations: Office of Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N-3608, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6048, 909 First Avenue, Seattle, Wash. 98174; and the Alaska Department of Labor, Juneau, Alaska 99801.

EFFECT OF CERTIFICATION

The operation of the Alaska occupational safety and health program will be monitored and evaluated for a period of not less than one year after publication of this certification, to determine whether the State program in operation is at least as effective as operations under the Federal program, in order to make a determination under section 18 (e) of the Act that Federal enforcement authority and standards should cease to apply in issues under the plan.

In accordance with 29 CFR 1902.35 Federal enforcement authority under sections 5(a)(2), 8, 9, 10, 13, and 17 of the Act (29 U.S.C. 654(a)(2), 657, 658, 659, 662, and 666) and Federal standards authority under section 6 (29 U.S.C. 655) of the Act will not be relinquished during this evaluation period. However, under the terms of the operational agreement entered into with Alaska effective January 6, 1977 (42 FR 37547) the exercise of this authority by the U.S. Department of Labor will continue to be limited to, among other things: Federal standards promulgated subsequent to the agreement where necessary to protect employees as in the case of temporary emergency standards promulgated under section 6(c) of the Act (29 U.S.C.

655 c) in the issues covered under the plan and agreement until such time as Alaska shall have adopted equivalent standards in accordance with Subpart C of 29 CFR Part 1953; complaints about violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660); Federal standards contained in the issues covered by Subpart B—Ship Repairing, Shipbuilding, Ship-breaking, and Longshoring, 29 CFR 1910.13 through 1910.16; and investigation and inspection for the purpose of evaluation of the Alaska plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

In accordance with this certification 29 CFR 1952.244 is hereby amended to reflect successful completion of the developmental period by changing the title of the section and by adding a paragraph (h) as follows:

§ 1952.244 Completion of developmental steps and certification.

(h) In accordance with § 1902.34 of this chapter, the Alaska occupational safety and health plan was certified; effective September 9, 1977, as having completed on or before October 1, 1976, all developmental steps specified in the plan as approved on July 31, 1973.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Washington, D.C., this 29th day of August 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-26491 Filed 9-12-77; 8:45 am]

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Wyoming Plan Supplement

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule.

SUMMARY: The Wyoming Occupational Health and Safety Commission formally submitted to OSHA its Affirmative Action Plan fulfilling a commitment in the notice of plan approval for insuring equal employment opportunity. The plan has been approved by both OSHA and the U.S. Civil Service Commission as completion of a developmental aspect of the State's plan.

FOR FURTHER INFORMATION CONTACT:

Charles Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, Department of Labor, 200 Constitution Avenue, NW., Room N-3608, Washington, D.C. 20210 (202-523-8031).

EFFECTIVE DATE: September 9, 1977.

BACKGROUND

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safe-

ty and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18 (c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the FEDERAL REGISTER (39 FR 15394) of the approval of the Wyoming plan and the adoption of Subpart BB to Part 1952 containing the decision and describing the plan. On June 24, 1977, Wyoming submitted a supplement to the plan involving implementation of its commitment to develop the basis for an ongoing affirmative action plan. The supplement was evaluated by the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) in conjunction with Regional Civil Service Commission officials.

DESCRIPTION OF THE SUPPLEMENT

Affirmative Action Plan: The Wyoming Occupational Health and Safety Commission has developed an Affirmative Action Plan outlining its policy of equal employment opportunity and establishing practice and procedures for the recruiting and hiring of minority and women employees, to assure its commitment to a program that provides equal employment opportunity to all persons on the basis of individual merit.

LOCATION OF THE PLAN AND ITS SUPPLEMENT FOR INSPECTION AND COPYING

A copy of the plan may be inspected and copied during normal business hours at the following locations: Office of the Director, Federal Compliance and State Programs, Room N-3608, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 15010, Federal Building, 1961 Stout Street, Denver, Colo. 80202; and, the Occupational Health and Safety Department, 200 East Eighth Avenue, Cheyenne, Wyo. 82001.

PUBLIC PARTICIPATION

Under § 1953.2(c) of this chapter, the Assistant Secretary for Occupational Safety and Health (hereinafter Assistant Secretary) may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Wyoming plan supplement described above is consistent at this time with commitments, contained in the approved plan, and previously made available for public comment, State of Wyoming personnel policies, and the overall goals of the State's occupational safety and health program. Accordingly, it is found that further public comment and notice is unnecessary.

DECISIONS

After careful consideration, the Wyoming plan change outlined herein is approved under Part 1953. In addition,

29 CFR 1952.344 is hereby amended to reflect the completion of the developmental step.

§ 1952.344 Completed developmental steps.

(d) The State plan has been amended to include an Affirmative Action Plan outlining the State's policy of equal employment opportunity.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Washington, D.C., this 29th day of August 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-26492 Filed 9-12-77; 8:45 am]

CHAPTER XXV—EMPLOYEE BENEFITS SECURITY OFFICE, DEPARTMENT OF LABOR

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

Exemption for Loans to Employee Stock Ownership Plans

Correction

In FR Doc. 77-25695 appearing at page 44383 as a Part IV in the issue for Friday, September 2, 1977, make the following corrections:

(1) On page 44386, third column, in § 2550.408b-3(h)(2), in the 5th line from the bottom, the word "refining" should have read "refinancing".

(2) On page 44387, middle column, in § 2550.408b-3(j), in the 9th line from the bottom, the word "option" should have read "put option".

(3) On the same page, in the same section, third column, in the italicized heading for paragraph (c)(2) the date for 60 days after publication of the final regulations is November 1, 1977.

**Title 32—Department of Defense
CHAPTER XII—DEFENSE LOGISTICS AGENCY**

[DLAR 5400.21:RCS DD(A&AR) 1379]

PART 1286—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS

Privacy Act of 1974

AGENCY: Defense Logistics Agency, DOD.

ACTION: Final rule.

SUMMARY: In FR Doc 77-21934 published in the FEDERAL REGISTER issue of July 26, 1977 (42 FR 37982), the Defense Logistics Agency published a proposed rule as a proposed amendment to 32 CFR Part 1286; amendment to Appendix C and modification of the reasons for exemption. No written comments, suggestions, or objections regarding the proposed rule were received. Accordingly, 32 CFR Part 1286 as set forth in 42 FR 37982 is formally adopted.

ADDRESS: Headquarters, Defense Logistics Agency, Attention: DLA-XA, Cameron Station, Alexandria, Va. 22314.

FOR FURTHER INFORMATION CONTACT:

Mr. William A. Smith, 202-274-6234.

By Order of the Director:

WILLIAM A. SMITH,
Chief, Administrative Management Division, Office of Administration.

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

SEPTEMBER 8, 1977.

PART 1286—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING THEIR PERSONAL RECORDS

Sec.	
1286.1	Purpose and scope.
1286.2	Policy.
1286.3	Definitions.
1286.4	Responsibilities.
1286.5	Procedures.
1286.6	Forms and reports.

AUTHORITY: Pub. L. 93-579 (5 U.S.C. 552a).

§ 1286.1 Purpose and scope.

(a) This Part 1286 implements the Privacy Act of 1974 (hereinafter referred to as the Act) by prescribing:

(1) The procedures whereby an individual can be notified in response to his¹ request of any system of records named by the individual contains a record pertaining to him.

(2) The requirements for verifying the identity of an individual who requests his record or information pertaining to him before the record or information will be made available to him.

(3) The procedures for granting access to an individual upon his request of his record or information pertaining to him.

(4) The procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to him, for making a determination on the request, and for an appeal of an initial adverse determination.

(5) The procedures and policies governing the collection, safeguarding, maintenance, public notice, use, and dissemination of personal information.

(6) The conditions under which disclosure of personal information may be made and procedures for exempting systems of records from certain requirements of the Act.

(b) This Part 1286 is applicable to HQDLA and all DLA field activities.

§ 1286.2 Policy.

It is the policy of DLA:

(a) To preserve the personal privacy of individuals, permitting an individual to know what records pertaining to him are collected, maintained, used, or disseminated in DLA, and to have access to and have a comprehensible copy made of all or any portion of such records and to correct or amend such records.

(b) To collect, maintain, use, or disseminate any record of identifiable per-

sonal information in a manner that assures that such action is for necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

§ 1286.3 Definitions.

(a) *Individual*. A citizen of the United States or an alien lawfully admitted for permanent residence. A legal guardian or the parent of a minor have the same rights as the individual and may act on behalf of the individual.

(b) *Maintain*. (Records on individuals) collect, use, or disseminate.

(c) *Record*. Any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) *Routine Use*. The disclosure of a record, or the use of such record for a purpose which is compatible with the purpose for which it was collected. Routine use encompasses not only common or ordinary uses, but also all the proper and necessary uses of the record; even if such use occurs infrequently.

(e) *System Manager*. The official responsible for the policies and practices governing the system of records.

(f) *System of Records*. A group of records under the control of any system manager from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 1286.4 Responsibilities.

(a) *HQ DLA*—(1) *The Chief, Administrative Management Division, Office of Administration (DLA-XA)* will:

(i) Formulate policy to provide comprehensive guidance necessary for uniform compliance with the Act by all elements of DLA.

(ii) Serve as the focal point on privacy matters for DLA in communication with the Defense Privacy Board and is designated the DLA Privacy Act Officer.

(iii) Supervise the preparation for publication in the FEDERAL REGISTER of all required information or systems of records affected by the Act.

(iv) Serve as the DLA representative on the Defense Privacy Board.

(v) Review for conformity with the Act, all procedures, including DLA and DD forms, which requires an individual to furnish information, and formulate corrective or supplementary provisions, as necessary.

(vi) Maintain this DLAR in a current status and review it annually.

(2) *The Chief, Publication Division, Office of Administration (DLA-XM)* will review DLA publications to assure that those which meet the criteria for publication in the FEDERAL REGISTER are

prepared in proper form and transmitted promptly for publication in the FEDERAL REGISTER as required by DLAR 5025.19, Publication of Material in the FEDERAL REGISTER.

(3) *The Counsel (DLA-G)* will review policies, practices, and procedures to ensure conformity with the Act.

(4) *The Assistant Director, Plans, Programs and Systems (DLA-LS)* will provide policies and guidance to preclude unauthorized disclosure of protective information maintained in the automatic data processing facility.

(5) *The Chief, Training and Incentives Division, Office of Civilian Personnel (DLA-KT)* will, in conjunction with the DLA Privacy Board, ensure development of appropriate training program for all personnel where duties involve responsibilities for systems of records affected by the Act.

(6) *The Heads of HQ DLA Principal Staff Elements (PSEs)* will:

(i) Ensure that the collection, maintenance, use, or dissemination of record of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose, that the information is timely and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(ii) Ensure that internal operating procedures provide for effective compliance with the Act.

(iii) Establish procedures for the granting of confidentiality in regulations and procedures for investigations (e.g., law enforcement, suitability, etc.).

(iv) Prepare and submit reports in accordance with § 1286.6.

(7) *DLA Privacy Board*. Established under the chairmanship of the Chief, Administrative Management Division, Office of Administration (DLA-XA) with membership consisting of representatives from the Comptroller, DLA, Counsel, DLA, Staff Director, Civilian Personnel, DLA, Assistant Director, Plans, Programs, and Systems, DLA, Staff Director, Military Personnel, DLA, Command Security Officer, DLA, and the Executive Director, Industrial Security, HQ DLA CAS. The Board will cause to be reviewed for conformity with the Act, each category of information in a system of records for necessity and relevance; provide assistance in the development of DLA-wide Privacy training program; and review practices and procedures established by system managers to ensure they are in conformity with the Act.

(b) *The Heads of DLA Primary Level Field Activities (PLFAs)* will:

(1) Ensure that the collection, maintenance, use, or dissemination of record of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose, that the information is timely and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(2) Designate a Privacy Act officer to serve as the principal point of contact on privacy matters.

¹For convenience in reading, standard pronoun gender usage will be followed in this DLAR. Where such pronouns as "he" or "him", etc., are used, it should be understood to include "she" or "hers", etc.

(3) Ensure that internal operating procedures provide for effective compliance with the Act.

(4) Establish a training program for those personnel whose duties involve responsibilities for systems of records affected by the Act.

§ 1286.5 Procedures.

(a) *Access to personal information.* (1) Upon request, an individual will be informed whether or not a system of records contains a record pertaining to him, and accompanied by a person of his own choosing, if he so desires, will be permitted to review his records, and to obtain a copy of such records in a form that is comprehensible to him at a reasonable cost, unless exempted in accordance with paragraph (c) (1) (v) of this section or paragraph (d) of this section. This Part 1286 does not require that a record be created or that an individual be given access to records which are not retrieved by name or other individual identifier. Only costs of reproduction, as set forth in DLAR 5400.14, Availability to the Public of Official Information, may be charged; however, if copying is the only means whereby the record can be made available to the individual, reproduction fees will not be assessed (i.e., when a copy must be made in order to delete information contained on the record pertaining to another individual).

(i) The granting of access to a record containing personal information will not be conditioned upon any requirement by the individual to state a reason or otherwise justify the need to gain access.

(ii) Prior to granting access to personal information, individuals may be required to provide reasonable verification of his identity.

(a) No verification of identity will be required of an individual seeking access to records which are otherwise available to any member of the public under DLAR 5400.14.

(b) For the individual who seeks access in person, verification of identity will normally be made by those documents which an individual is likely to have readily available, such as employee or military identification card, driver's license, or medical card.

(c) When access is requested by mail, verification of identity may consist of the individual providing certain minimum identifying data, such as name and date of birth or such other information deemed necessary by the system manager having custody of the record. If the sensitivity of the data warrants, a signed notarized statement of identity may be required.

(d) An individual will not be denied access to his record for refusing to disclose his social security number (SSN), unless disclosure of his SSN is required by Federal Statute or required for verification purposes under a system of records existing and operating before 1 January 1975, if such disclosure was required under statute or regulation adopted prior to such a date.

(e) Individuals may not be denied access to a record pertaining to themselves because those records are exempted from disclosure under the provisions of DLAR 5400.14.

(iii) Access to a record or a copy thereof will not be denied solely because the record's physical presence is not readily available (i.e., on magnetic tape), or because the context of the record may disclose sensitive information about another individual. To protect the personal privacy of other individuals who may be identified in a record, an extract will be prepared to delete only that information which would not be releasable to the requesting individual under DLAR 5400.14.

(iv) A medical record will be disclosed to the individual to whom it pertains unless, in the judgement of a physician, access to such record could have an adverse effect upon the individual's physical or mental health. When it has been determined that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the information may be transmitted to a physician named by the requesting individual.

(v) This Part 1286 does not entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

(vi) A system manager may require an individual who wishes to be accompanied by another person when receiving access to his records to furnish a written statement authorizing discussion of the records in the presence of the accompanying person.

(vii) Any requests from an individual for access to or copies of records maintained on him will be processed in accordance with this Part 1286 and not the Freedom of Information Act. Normally, requests for access to records will be acknowledged within 10 working days of receipt and access provided within 30 working days.

(viii) Copies of investigatory records compiled by any investigative organization, but in the temporary custody of an element requesting the record for purposes of adjudication or other personnel action, are the records of the originating investigatory organization. Individuals seeking access to such records will be directed to the originating investigative organization and should be instructed to direct all requests submitted under the Act to that organization. Records concerning the adjudication, or other personnel actions based on the investigative records, originated by the organization using the investigation, are the records of the using organization which shall respond to all other requests under the Act concerning them.

(2) *Amendment of personal information.* (i) An individual will be given the opportunity to request, either in person or through the mail, that his record be amended. The system manager may, however, require that such requests be made in writing. Instructions for the preparation of a request and any forms employed should be as brief and as sim-

ple as possible. Requests should contain as a minimum, identifying information to locate the record, a description of the items to be amended and the reason amendment is being requested. A request will not be rejected or required to be re-submitted unless additional information is essential to process the request. Incomplete or inaccurate requests will not be rejected categorically; the individual will be asked to clarify the request as needed. Individuals will be required to provide verification of identity as paragraph (a) (1) (ii) of this section to assure that the requester is seeking to amend records pertaining to him and not, inadvertently or intentionally, the records of another individual.

(ii) A written acknowledgement of the receipt of a request for amendment of a record must be provided to the individual within 10 working days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the system managers. The acknowledgement will clearly identify the request and advise the individual when he may expect to be advised of action taken on the request. Whenever practicable, the decision will be made within 30 working days. No separate acknowledgement of receipt is necessary if the request can be either approved or denied, and the individual advised within the 10-day period. For requests presented in person, written acknowledgement should be provided at the time the request is presented.

(iii) If the system manager agrees with any portion or all of the individual's request to amend a record, the system manager will promptly advise the individual and amend the record accordingly. If disclosure accounting has been made, the system manager will advise all previous recipients of the record that the amendment has been made and the substance of the correction.

(iv) If the system manager disagrees with all or any portion of a request to amend a record, the system manager will promptly:

(a) Advise the individual of his refusal and the reasons therefor.

(b) Inform the individual that he may request a further review by the designated reviewing official.

(c) Describe the procedures for requesting such a review including the name and address of the official to whom the request should be directed.

(v) A review of the initial refusal to amend a record will be made if requested by the individual.

(a) Heads of HQ DLA PSEs and Heads of PLFAs, as applicable, are designated reviewing officials and will make a review of the initial determination. The Deputy Director, DLA, or the Deputy Director, CAS, for HQ DLA CAS elements and Defense Contract Administration Services Regions, will be the reviewing official when one of the aforementioned officials is identified as a system manager.

(b) If, after conducting the review, the reviewing official also refuses to amend the record in accordance with the individual's request, the individual will be notified:

(1) Of the refusal and the reasons therefor.

(2) Of his right to file a concise statement of reasons for disagreeing with the decisions of DLA.

(3) Of the procedures for filing a statement of disagreement and such statement will be made available to anyone to whom the record is subsequently disclosed.

(4) That prior recipients of the disputed record will be provided a copy of the statement of disagreement to the extent that an accounting of disclosure is maintained.

(5) Of his right to seek judicial review of DLA's refusal to amend a record.

(c) If the reviewing official determines that the record should be amended in accordance with the request, the system manager will amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

(d) A final determination on the individual's request for a review of an initial refusal to amend a record must be completed within 30 days after receipt by the proper office unless the reviewing official determines that a fair and equitable review cannot be completed in that time. If additional time is required, the individual will be informed, in writing, of the reasons for the delay and of the approximate date on which the review is expected to be completed.

(vi) When an individual files a statement of disagreement, the system manager will clearly annotate the record so that the dispute is apparent to anyone who may subsequently grant access to use or disclose the record. The notation itself will be integral to the record. Where an accounting of disclosure has been made, the system manager will advise previous recipients that the record has been disputed and will provide a copy of the individual's statement.

(a) The individual's statement of disagreement need not be filed as an integral part of the record to which it pertains. It will, however, be maintained in such a manner as to permit ready retrieval whenever the disputed portion of the record is to be disclosed. When information which is the subject of a statement of disagreement, is subsequently disclosed, the system manager will note which information is disputed and provide a copy of the individual's statement.

(b) The system manager may include a brief summary of its reasons for not making an amendment when disclosing disputed information. Summaries normally will be limited to the reasons stated to the individual. The system manager's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedures.

(b) *Disclosure to others.* (1) Except as prescribed in paragraph (a) of this section, this Part 1286 does not require disclosure of records to anyone other than the individual to whom the records pertain.

(2) No record contained in a system of records maintained within DLA will be

disclosed by any means of communication to any person, or to any agency outside DLA, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(i) To those officials and employees of the Department of Defense who have a need for the record in the performance of their official duties and the use is compatible with the purpose for which the record is maintained. This includes, for example, transfer of information between components when civilians or military personnel assigned or affiliated with one component are processed by an activity of another component such as Armed Forces Examination and Entrance Stations (AFEEES), Air Terminals, or Defense Investigative Service (DIS).

(ii) Required to be disclosed to a member of the public by DLAR 5400.14. Some examples of personal information pertaining to military personnel which normally are released without an unwarranted invasion of privacy are: name, rank, date of rank, salary, present, and past duty assignments, future assignments which have been finalized, office phone number, source of commission, military and civilian educational level, and promotion sequence number. Disclosure of personal information pertaining to civilian employees shall be made in accordance with the Federal Personnel Manual.

(iii) For a routine use as defined in 1286.3 and described in section II H of Appendix A.

(iv) To the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity authorized by law.

(v) To a recipient who has provided DLA with advance adequate written assurance that:

(a) The record will be used solely as a statistical research or reporting record.

(b) The record is to be transferred in a form that is not individually identifiable, (i.e., the identity of the individual cannot be determined by combining various statistical records).

(c) The record will not be used to make any decisions about the rights, benefits, or entitlements of an individual.

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services, or his designee to determine whether the record has such value. A record transferred to a Federal records center for safekeeping or storage does not fall within this category since Federal records center personnel act on behalf of DLA in this instance and the records remain under the control of DLA. No disclosure accounting record of the transfer of records to Federal records centers need be maintained.

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is

authorized by law, and if the Head of the agency or instrumentality has made a written request to a DLA element which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought. Blanket requests for all records pertaining to an individual will not be accepted. A record may also be disclosed to a law enforcement agency at the initiative of a DLA element which maintains the record when criminal conduct is suspected, provided that such disclosure has been established in advance as a "routine use".

(viii) To a person pursuant to a showing or compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual to whom the record pertains.

(ix) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee. This does not authorize the disclosure of any record subject to this Part 1286 to members of Congress acting in their individual capacities or on behalf of their constituents.

(x) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office.

(xi) Pursuant to the order of a court of competent jurisdiction.

(a) When a record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court which issued it, reasonable efforts will be made to notify the individual to whom the record pertains. This may be accomplished by notifying the individual by mail at his most recent address as contained in DLA records.

(b) Upon being served with an order to disclose a record, the system manager will endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure will be made at the time the system manager complies with the order or subpoena.

(3) Each system manager, with respect to each system of records under his control will:

(1) For all disclosures under paragraph (b) (2) of this section, except those under paragraphs (b) (2) (i) and (ii) of this section, keep an accurate accounting of the following:

(a) The date of the disclosure.

(b) The nature of the disclosure; that is what was disclosed and how; for example, oral disclosure by telephone of home address. Other examples of disclosure include visual review of the record, written, transfer of data through telecommunications network, etc.

(c) The purpose of this disclosure. Describe the condition of the disclosure as listed in paragraphs (b) (2) (iii) thru (xi) of this section. If disclosure is for a routine use published in a records systems notice, briefly describe the specific routine use.

(d) The name and address of the person or agency to whom the disclosure is made. A system manager need not make a notation on a single document of every particular record, provided he can construction from the system for the required accounting information.

(i) Retain the accounting made under paragraph (b) (3) (i) of this section for at least 5 years after the last disclosure or the life of the record, whichever is longer. No record of the disclosure of this accounting need be maintained.

(iii) Upon request of the individual to whom the record pertains, make available to that individual all information in the accounting of disclosures except that pertaining to disclosures for law enforcement purposes pursuant to paragraph (b) (2) (vii) of this section, and systems that have been determined to be exempt from these provisions under subsections (j) and (k) of the Act.

(4) Names and Addresses. An individual's name and address may not be sold or rented by DLA unless such action is specifically authorized by law. Requests for home addresses may be referred to the last known address of the individual for reply at his discretion and the requester will be notified accordingly. This provision will not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(c) Collection of personal information from individuals. (1) Collection Directly from Individuals. Personal information shall be collected to the greatest extent practicable directly from the individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The collection of information from third parties should be minimized. Exceptions to this policy may be made under certain circumstances, such as the following:

(i) There is need to ensure accuracy of information supplied by an individual by verifying with a third party, such as in the case of verifying information for a security clearance.

(ii) The nature of the information is such that it can only be obtained from a third party, such as an evaluation of employee's performance in a previous job or assignment.

(iii) Obtaining the information from the individual would present exceptional practical difficulties or would result in unreasonable costs.

(2) Informing Individuals From Whom Information is Requested. Each individual who is asked to supply personal information must be told of:

(i) The authority (statute or Executive Order) which authorizes its solicitation.

(ii) The principal purpose or purpose for which it is to be used.

(iii) The routine uses, to be made of it.

(iv) Whether furnishing such information is mandatory or voluntary and the effects on him, if any, of not providing it. This notice to the individual will be made on a separate form which can be retained by the individual. This

advice must be given on all media used in requesting information whether it is a "form" in the usual sense (i.e., a preprinted document with a control number and an edition date) or a format, questionnaire, survey sheet, or report rendered on a blank sheet. Supplying personal information is when individuals personally complete the fill-in information about themselves on the form or when the individuals furnish the information about themselves verbally as in an interview or question and answer type of arrangement.

(3) Collection Documents in Use Prior to 27 Sep 75. These documents in use before 27 Sep 75 and which are to be used on and after that date, must meet the notice requirements by use of a separate statement to go along with each such document subject to the provisions of the Act. The statement will be assigned the identifying form number/RCS/OMB Appeal Number/Form Letter Number used in collecting the information and the suffix "Privacy Act Statement", as follows:

(i) For forms in regularly-issued, numbered series, the Privacy Act Statement will bear the same number and edition date as the form to which it pertains, except as provided in paragraph 2 of Appendix B Example: For DD Form 398, Statement of Personal History, the applicable notice to each individual asked to complete the form will be identified as "DD Form 398—Privacy Act Statement" in the lower left-hand corner.

(ii) For unnumbered formats, questionnaires, surveys, and reports which are not in the regularly-issued form number series, the Privacy Act Statement will bear the report control symbol or OMB Approval Number under the authority for which the information is collected, if applicable.

Example: For the Air Force Junior ROTC Survey for AFJRDTC Cadets (Format A), the applicable notice to each individual asked to complete the questionnaire will be identified as "OMB Approval No. 21-RO268—Privacy Act Statement". Same reports are assigned Reports Control Symbol (RCS) numbers or OMB Approval Numbers. If these reports are controlled in a regular numbered form series, then the Privacy Act Statement will bear the form number reference in lieu of the RCS or OMB Number.

(4) Preparation of Privacy Act statements. (i) The proponent (i.e., the initiator) has the final responsibility for determining whether a form, format, questionnaire, survey, or report requires a Privacy Act Statement. The proponent must consult his counsel, particularly for validation of the authority for asking for the information. Statements must be sufficiently complete and specific but, at the same time be concise and couched in easily understood language.

(ii) Forms and information management officers at all echelons must assure that Privacy Act Statements are available for issuance with new forms, when required.

(iii) No Department of Defense component may deny any individual any right, benefit, or privilege provided by

law because of such individual's refusal to disclose his SSN, unless such disclosure is:

(a) Required by Federal statute.

(b) To any component maintaining a system of records in existence and operating before 1 Jan 75, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual. Executive Order No. 9397, 22 Nov 43, authorizes components to use SSN as a system of numerical identification of individuals.

(iv) Any component which requests an individual to disclose his SSN must inform that individual:

(a) Whether that disclosure is mandatory or voluntary.

(b) By what statutory or other authority such number is solicited.

(c) What uses will be made of it.

(v) If disclosure of the SSN is not required by Federal statute or is not for a system of records in existence and operating prior to 1 Jan 75, proponents are nevertheless not precluded from requesting it from individuals concerned. However, the separate Privacy Act Statement for the SSN alone, or a merged Privacy Act Statement, covering not only the SSN but also other items of personal information, must make clear that the disclosure of the SSN is voluntary. If, in such instances, the individual refuses to disclose it, the proponent concerned must be prepared to identify him by alternate means.

(d) Exemptions. The Director, DLA will designate the DLA records which are to be exempted from certain provisions of the Act, and DLA-XA will publish in the FEDERAL REGISTER, information specifying the name of each designated system, the specific provisions of the Act from which each system is to be exempted, and the reasons for each exemption of the record system.

(1) General Exemptions. To qualify for a general exemption, as defined in the Act, the system of records must be maintained by a system manager who performs as his principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities. Such system of records must consist of:

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and containing only identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status.

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual.

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(2) *Specific Exemption.* To qualify for a specific exemption, as defined by the Act the systems of records must be:

(i) Specifically authorized under criteria established by an Executive Order to be kept classified in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

(ii) Investigatory material compiled for law enforcement purposes other than material covered under a general exemption. However, an individual will not be denied access to information which has been used to deny him a right or privilege unless disclosure would reveal a source who furnished information to the Government under a promise that the identity of the source would be held in confidence. For investigations made after 27 Sep 75, the identity of the source may be treated as confidential only if based on the expressed guarantee that the identity would not be revealed.

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. § 3056.

(iv) Used only to generate aggregate statistical data or for other similarly evaluative or analytic purposes, and which are not used to make decisions on the rights, benefits, or entitlements of individuals except for the disclosure of a census record permitted by 13 U.S.C. § 8.

(v) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Military Service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the source would be held in confidence, or prior to 27 Sep 75, under an implied promise that the identity of the source would be held in confidence.

(vi) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or elimination process.

(vii) Evaluation material used to determine potential for promotion in the Armed Services, but only the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or prior to 27 Sep 75, under an implied promise that the identity of the source would be held in confidence. System managers will specify those categories of individuals for whom pledges of confidentiality may be made when obtaining information on an individual's suitability for promotion.

(e) *System of Records—(1) Content.*

(i) Systems managers will maintain in its records systems only such information as is relevant and necessary to accomplish a purpose or mission required

by statute or Executive Order of the President.

(ii) The proponent of each system of records will identify the specific provision of law, or Executive Order, which provides authority for the maintenance of information in each system of records.

(iii) Authority to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient to have. The proponent of each system of records will evaluate each category of information in a system for both necessity and relevance. In performing this evaluation the following points will be considered:

(a) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(b) Specific adverse consequence of not collecting each category of information.

(c) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(d) Length of time that the information is needed and, where appropriate, techniques for purging parts of the record.

(e) Financial cost of information maintenance compared to risk or adverse consequence of not maintaining it.

(f) Necessity and relevance of this information to all individuals included in the system.

(iv) Collection will be discontinued for each category or item of information which, after the above evaluation, does not appear to be fully justifiable. Moreover, such information will be withdrawn and destroyed, provided it can be economically segregated from necessary and relevant information.

(v) The evaluation prescribed above will be performed by each proponent of a system of records:

(a) During the design phase of a new system of records or a change in an existing system of records.

(b) Annually, prior to the republication of all system notices in the FEDERAL REGISTER.

(2) *Publication of record system notices—(i) General.* A notice of the existence of each system of records, as defined in § 1286.3(d) must be published in the FEDERAL REGISTER.

(ii) *Record System Notices.* System managers proposing new systems will prepare system notices according to Appendix A at least 60 days before the proposed system change may be legally implemented. Initial system notices will be submitted to DLA-XA.

(iii) *Change to Existing Systems Requiring Advanced Public Notice*

(a) The following proposed changes to an existing system must be published in the FEDERAL REGISTER for public comment at least 30 days before the changes are implemented:

(1) Those which expand the categories of individuals on whom records are maintained.

(2) Those which add new categories of records to the system.

(3) Those which add new categories of sources.

(4) New or changed routine uses which involve disclosure to a new category of recipient.

(5) Changes in procedures governing access.

(b) Notices of proposed changes to existing systems will be submitted to DLA-XA, in accordance with Appendix A.

(iv) *Changes to Existing Systems Not Requiring Advanced Public Notice.* Changes in records systems not stated in paragraph (e) (2) (iii) of this section do not require advance publication, but must be submitted for inclusion in the annual consolidated listing of records systems. Accordingly, each system manager will ensure that all such changes are forwarded to DLA-XA by 15 March of each year for annual publication in the FEDERAL REGISTER.

(v) *Reports Concerning New and Changed Systems.* Concurrently with paragraph (e) (2) (ii) and (iii) of this section, DLA-XA will provide OASD (C) advanced notice of proposals to establish new systems or to change routine uses of existing systems.

(vi) *DLA Issuances.* DLA-XA will ensure that information contained in each system notice, as published in the FEDERAL REGISTER, is incorporated and published in DLAR 5400.22, Privacy Act System of Records Notices, to ensure uniform system use and maintenance. All DLA activities will take immediate action to discontinue any system of records not contained in DLAR 5400.22.

(3) *Standards of accuracy.* (i) Records used by system managers in making determinations about an individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in any determination.

(ii) Prior to disseminating any record about an individual to any person other than a Federal agency, unless the dissemination is made pursuant to DLAR 5400.14, reasonable efforts will be made to ensure that such records are accurate, complete, timely and relevant for DLA purposes.

(4) *Restriction on maintenance of certain records.* Maintenance of records describing how individuals exercise rights guaranteed by the First Amendment are prohibited unless expressly authorized by Federal statute or by the individual concerned, unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly, and to petition.

(5) *Rules of conduct.* Heads of HQ DLA PSEs and Heads of PLFAs will assure that persons including Government contractors or their employees, involved in the design, development, operation, or maintenance of any system of records, as defined in § 1286.3, are informed of all requirements to protect the privacy of

the individuals who are subjects of the records. The following sanctions will be emphasized to personnel:

(i) There are criminal penalties for knowingly and willfully disclosing a record about an individual without the written consent or the written request of that individual, or unless disclosure is for one of the reasons listed in paragraph (d) of this section.

(ii) DLA may be subject to civil suit due to failure to comply with the Act.

(6) *Safeguarding personal information in records systems.* (i) System managers will establish administrative and physical safeguards to protect information from unauthorized or unintentional access, disclosure, modification, or destruction. These safeguards will apply to systems of records, in whatever medium in which personal information is processed or stored. Such safeguards will be tailored to the requirements of each system of records. Where a greater degree of protection is not prescribed by other regulations, as a minimum, all records will be afforded the same degree of protection as "For Official Use Only" documents.

(ii) Access to personal information will be restricted to those persons whose official duties require access and the individual concerned in accordance with paragraph (b) of this section.

(iii) System managers will ensure that all persons whose official duties require access to or processing and maintenance of personal information are trained in the proper safeguarding and use of such information.

(iv) Personal records and documents will be stored so as to reasonably preclude unauthorized disclosure.

(v) Disposal of records containing personal information which are no longer required will be accomplished in such a manner that will prevent the contents from being disclosed (e.g., tearing or shredding the record into pieces or burial or in the case of magnetic tapes by degaussing).

§ 1286.6 Forms and reports.

(a) An annual report will be prepared by DLA-XA for the preceding calendar year on its implementation of the Privacy Act of 1974 as follows:

(1) *Summary.* A brief management summary of the status of actions taken to comply with the Act, the results of these efforts, any problems encountered and recommendations for any changes in legislation, policies, or procedures.

(2) *Accomplishments.* A summary of major accomplishments; i.e., improvements in agency information practices and safeguards.

(3) *Plans.* A summary of major plans for activities in the upcoming year, e.g., area of emphasis, additional securing of facilities planned.

(4) *Exemptions.* A list of systems which are exempted during this year from any of the operative provisions of this law permitted under the terms of subsections (j) and (k) of the Act, whether or not the exemption was obtained during the year, the number of

records in each system exempted from each specific provision and reasons for invoking the exemption.

(5) *Number of systems.* A brief summary of changes to the total inventory of personal data systems subject to the provisions of the Act, including reasons for major changes; e.g., the extent to which review of the relevance of and necessity for records has resulted in elimination of all or portions of systems of records or any reduction in the number of individuals on whom records are maintained.

(6) *Operational experiences.* A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system) requesting information on the existence of records pertaining to them, refusing to provide information, requesting access to their records, appealing initial refusals to amend records, and seeking redress through the courts.

(7) *Any available data, or estimates, of the cost of administering the Act.*

(8) *Six copies of the annual report* will be furnished to the Assistant Secretary of Defense (Comptroller) on or before 31 March of each year for transmittal to the Office of Management and Budget.

(b) An annual feeder report on the actions of the preceding year will be prepared by Heads of PLFAs and Heads of HQ DLA PSEs for submission in duplicate to DLA-XA on or before 10 March of each year. The report will contain:

(1) *Summary.* A brief management summary of the status of actions taken to comply with the Act, the results of these efforts, any problems encountered and recommendations for any changes in legislation, policies or procedures.

(2) *Accomplishments.* A summary of major accomplishment; i.e., improvements in agency information practices and safeguards.

(3) *Plans.* A summary of major plans for activities in the upcoming year, e.g., area of emphasis, additional securing of facilities planned.

(4) *Exemptions.* A list of systems which are exempted during the year from any of the operative provisions of this law permitted under the terms of subsection (j) and (k) of the Act, whether or not the exemptions were obtained during the year, the number of records in each system exempted from each specific provision and reason for invoking the exemption.

(5) *Number of systems.* A brief summary of changes to the total inventory of personal data systems subject to the provisions of the Act, including reasons for major changes; e.g., the extent to which review of the relevance of and necessity for records has resulted in elimination of all or portions of systems of records or any reduction in the number of individuals on whom records are maintained.

(6) *Operational experiences.* A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system) requesting information on the existence of records

pertaining to them, refusing to provide information, requesting access to their records, appealing initial refusals to amend records, and seeking redress through the courts.

(7) *Any available data, or estimates, of the costs of administering the Act.*

(c) Each PLFA will submit to HQ DLA, ATTN: DLA-XA during the last week in January, April, July, and October each year, a consolidated listing of those locally controlled and subordinate echelon forms affected by the Act. The listing will contain the form designation and number in numeric sequence, the edition date, and the complete title. Each group of forms will be identified by activity name. To provide the input for this consolidated listing, the forms management officer at all levels must prepare and maintain current, a listing of those forms for which they control and which are within the purview of the Act.

(d) The Reports Control Symbol for these reports will be RCS DD(A) 1379.

APPENDIX A

INSTRUCTIONS FOR PREPARATION OF RECORD SYSTEM NOTICES

SECTION I. GENERAL INSTRUCTIONS

A. For each system of records submit information in the sequence as shown in section II below. Show in this sequence even though an entry may not be required for all items.

B. Use keywords shown below (i.e., SYSTEM NAME, RECORD-CATEGORY, etc.). Explanations of keywords are shown in parentheses, but do not use.

C. Do not use paragraph or subparagraph numbers or letters.

D. Do not underline any part of the text.

E. Do not use hyphenation at the end of a line or subdivide a word at the end of a line.

G. Each system of records notice will be typed double-spaced on a separate sheet(s) of paper, with the originating office symbol entered in the upper right corner.

H. Do not use military or Government terminology which may not be understood by the public. Authorized abbreviations may be used, provided they are first spelled out in each system notice, e.g., Defense Logistics Agency (DLA).

I. Refer to section III below for systems which may qualify for exemption.

J. Number the pages separately for each draft system notice.

K. New and revised system notices shall be prepared in accordance with instructions contained herein. All notices are to be submitted in full, i.e., no partial system notice shall be accepted.

L. For the purpose of identifying record systems and preparing system of records notices, there are five distinguished categories of record systems subject to the Act:

1. *Category I.* Automated (ADP) systems of records identified by distinctive number and title and normally maintained according to ADP manuals. As a general rule, these systems are not individually or specifically identified by DLAM 5015.1. Files Maintenance and Disposition, although their output may be functionally identifiable through the manual. For preparation of systems notices, there are three recognizable types of ADP systems:

a. Class A and B systems managed by HQ DLA. Most of these systems are identified in the DoD Automated Data Systems Catalog LSPC 3-70-1.

b. Class C Systems. Individually designed, established, and maintained by DLA field activities.

c. DLA field activities systems which are not yet approved are classified as Class C systems, i.e., unauthorized systems.

2. *Category 2. Exclusive of ADP Systems.* Those systems of records established and maintained pursuant to and specifically prescribed by statute, executive order, or DLAR.

3. *Category 3. Exclusive of ADP Systems.* Those systems of records established under a function authorized by statute, Executive Order or DLAR rather than specifically prescribed by the statute, Executive Order or DSAR, that are accumulated DLA-wide by offices with similar or identical functions. Normally, decentralized segments of such systems vary only in scope and volume and not in content, for example, name files which are established in processing requests under the Freedom of Information Act. In most instances, these systems are identified in DLAM 5015.1.

4. *Category 4. Exclusive of ADP Systems.* Those systems of records established and maintained entirely in response to local needs. Although often difficult to describe, these systems have certain common characteristics which can be used in identifying them for preparation of systems notices:

a. Normally, they are unique to the accumulating office.

b. They are not accumulated DLA-wide in other elements or activities which perform like functions.

c. They are seldom specifically identified in DLAM 5015.1.

5. *Category 5.* Those in the custody of DLA temporarily, which "belong" to other Federal agencies. For example, official civilian personnel files on DLA civilian employees belong to the U.S. Civil Service Commission. Most such systems are identified by DLAM 5015.1.

M. Responsibility for preparation of system of records notices.

1. For Category 1 (ADP) Systems of Records:

a. Managers of Class A and B systems of records are responsible for preparing system of record notices applicable to their automated data systems (ADS).

b. Proponents of Categories 2, 3, 4, and 5 (manual) systems of records are responsible for including in their systems of record notices all Class C and unauthorized ADP systems of records which, in effect, are automated segments of their systems of records.

c. Managers are responsible for preparation and submission of system of record notices applicable to those Class C and unauthorized ADP system of records which are not automated segments of a manual system of records.

2. For Category 2 and 3 system or records, the office having DLA-wide staff responsibility for the function or process involved is considered to be the system of records proponent. Such proponents are responsible for including in their system of record notices coverage of all decentralized segments of the particular system of records.

3. Proponents of Category 4 (local) systems of records are responsible for preparation and submission of system notices applicable to their systems.

4. For Category 5, the proponent is the Federal agency to which a system of records belongs. It is responsible for system of records notices applicable to its records that are temporarily in DLA custody. For example, the CSC will publish system of records notices applicable to all systems of records prescribed by the Federal Personnel Manual. OSC will not, however, be responsible for any modifications or additions to a CSC system of record. The DLA proponent of such modifications or additions is therefore responsible for preparing a system of records notice for the portion added by him. DSA

proponents should contact the appropriate Federal agency for other systems of records temporarily in DSA custody to determine and fix responsibility for preparing applicable system of records notices. In instances where a Federal agency to which the records belong declines to cover a system of records temporarily in DLA custody, the DLA proponent will be responsible for preparing the applicable system of records notice.

SECTION II. SEQUENCE OF SUBMISSIONS AND INSTRUCTIONS

A. *Manual or Automated.* Indicate whether the system is manual or automated. An automated system would include records processed, maintained, or both, in a machine readable processing tapes and cards, etc. A manual system would include records processed, maintained, or both, in a human readable or vertical file cards, microfiche, roll microfilm, photographs, etc. A mechanized file which requires substantial human intervention for processing or maintenance is considered to be manual, rather than automated.

B. *System (System Name).* Whenever applicable, identify the system by number and title prescribed in your files or records disposition manual. Use locally originated titles for files which are not described specifically and adequately in the manual or which are otherwise unique to the reporting office. If more than one system is covered by a file description, identify each system. If several files, separately described in DLAM 5015.1, are a part of a single system, identify the system only (see paragraph F below for identification of separate files which form a system). Provide system and file title in unclassified form. Do not use abbreviations, nicknames, or acronyms unless spelled out the first time used. Place acronyms in parentheses immediately following the title.

C. *Security.* Specify the Defense or other security classification for the system of records if classified pursuant to the provisions of DoD 5200.1-R, Information Security Program Regulation, DLAM 5205.1, Safeguarding of Classified Information, and implementing directives. Do not cite as a security classification For Official Use Only, Internal Working Paper, Eyes Only, or similar marking used for internal control or other handling purposes. If unclassified, including FOUO, state unclassified.

D. *Location.* If the system is maintained in a single location, provide the exact name of the office, organization, and correspondence or routine symbol. On the other hand, if it is geographically or organizationally decentralized, specify each type of organization or element that maintains a segment of the system. For example, if the system was comprised of clinical records, then medical centers and hospitals, and the National Personnel Records Center would be listed as locations. Where automated data systems encompass a central computer facility, with input/output terminals at several geographical locations, list by category, each location under this heading. In all instances where multiple locations are referred to by type of organization, state that official mailing addresses are in the Department of Defense directory in the appendix to the DLA system of record notices. However, in all cases, give the official mailing address if the office maintaining the system is not listed in the FEDERAL REGISTER. If the address is classified, so state. Be sure to list each type of organization maintaining a segment or duplicate of the system, since maintenance by a type of organization not reported herein will constitute a violation of the Act. When indicating domestic addresses, use the United States Postal Service two letter state abbreviation and the Zip Code.

E. *Individual-Category (Categories of Individuals Covered by the System).* The purpose of this requirement is to permit an individual to determine whether or not information on him might be in the system of records. Categories of individuals, therefore, should be stated in easily understood, non-technical terms and include all categories of individuals on whom records are maintained. Avoid using broad general descriptions, such as "all civilian personnel" unless the system applies to all civilian personnel. For example, Civilian Individual Pay Record applies to all civilian employees of DLA, while a system of records of Individual Retirement Records would apply only to civilian employees covered by the Civil Service Retirement program. All categories of individuals included in the system must be listed, regardless of the frequency of inclusion or the number of records involved. All future changes to the system, which broaden or increase the categories of individuals covered, will require preparation and publication of a revised record system notice in the FEDERAL REGISTER.

F. *Record Category (Categories of Records in the System).* Briefly describe in nontechnical terms all types of records in the system. For example, under the Automatic Payroll Cost and Personnel System (APCAPS), the types would include, but not be limited to individual pay record, substantiating documents, such as certificates for deductions and retained leave and earning statements, records of travel payments, personnel actions, and time and attendance cards. For automated systems, do not list source documents unless they are retained and filed by name, SSN, or other individual identifier. Instead, list the categories of information stored in the system. Be sure to include all types of records in the system regardless of their frequency or volume of accumulation, since future additions of new types of records will require preparations and publication of revised public notices in the FEDERAL REGISTER.

G. *Authority (Authority for Maintenance of the System).* Cite the specific provision of a Federal statute or Executive Order of the President, including the title thereof which authorizes, or provides a legal basis for, maintenance of the system. Do not cite regulations. In this connection, authority for a system may be derived from a statute or Executive Order which:

1. Explicitly authorizes or directs the agency to maintain a system of records.

2. Authorizes or directs DLA to perform a function, the discharge of which requires maintenance of the system of records.

Note.—Check with the appropriate Counsel for assistance in determining the statutory or regulatory basis for the system.

H. *Routine Uses (Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses)*

1. Essentially, this requirement calls for the following information in nontechnical terms:

a. The purpose(s) for which information in the system is collected.

b. Each category of user.

c. The specific use(s) made of the information by each user.

2. Each category of user and each use must be reported. Any proposed new use or category of user, or change in an existing use, which has the effect of expanding the availability of the information in the system, will require publication of a revised notice in the FEDERAL REGISTER. Any such proposed change in a routine use must also be described in an advanced notice in the FEDERAL REGISTER to permit 30 days for public comment before it is implemented.

3. As defined by 5 U.S.C. 522a, the term "routine use" means with respect to the disclosure of a record, the use of such record for

a purpose which is compatible with the purpose for which it was collected.

4. "Uses" can be distinguished from "purposes" in that "purposes" describe the objective for collecting or maintaining information. "Uses" are the specific ways or processes in which the information is employed, including the persons or organizations to whom the record may be disclosed. For example, the purposes for collecting information may be to evaluate an application for a veteran's benefit and to issue checks. "Uses" might include verification of certain information with the appropriate Military Service and release of check data to the Department of the Treasury. List under routine uses if contractors are engaged to perform a service, such as key punch, optical scan, or telecommunications in connection with the operation of an automated data system. List also Federal agencies to which personal-type information is disclosed, including automated system interfaces, and the purposes for which the disclosures are made.

5. Each proponent of a system (i.e., that office or organization proposing, directing, or otherwise responsible for the system) must prescribe the "routine" uses of the records. Routine use does not merely encompass the common and ordinary uses to which records are put, but also includes all of the proper and necessary uses regardless of frequency. For example, individual income tax returns are routinely used by the Internal Revenue Service to audit the amount of tax due and for assistance on collection of such tax by civil proceedings. They are used less often, however, for referral to the Department of Justice for possible criminal prosecution of fraud or tax evasion. Therefore, the "routine" use of such records would include referrals to the Department of Justice. In addition, description of "routine use" shall include the fact that any individual records in a system of records might be transferred to any component of the Department of Defense. It should be expected normally that "routine use" would include disclosure to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

I. *Policy-practice (Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System)*. Describe how records in the system are managed during their life-cycle. When feasible, extract pertinent information from your files or DLAM 5015.1.

1. *Storage*. In describing records storage, specify the medium in which they are maintained, such as paper records in file folders, visible or vertical file cards, computer magnetic tapes, or disks, computer paper printouts, aperture cards, microfiche, roll microfilm, photographs, video-tape, etc.

2. *Retrievability*. Specify how information is accessed and retrieved, such as by name, SSN, Military Service number, or other identification number, classification or personal characteristics, such as fingerprint classification, voice print identifier, etc. Indicate further whether conventional or computerized indices are required to retrieve individual records from the system.

3. *Safeguards*. Describe what measures are taken to prevent unauthorized disclosure of the records and state the categories of individuals authorized access to the records. Specify system safeguards, such as safes, vaults, locked cabinets or rooms, guards, personnel screening, visitor registers, computer "fail-safe" systems software, etc.

NOTE.—Do not describe security safeguards in such detail as to increase the risk of unauthorized access to the records.

4. *Retention (Retention and Disposal)*. State rules on how long the records are to be maintained; if and when they are moved to Federal Records Centers, or to the National Archives or other designated depository; and if, when and how they are destroyed, or otherwise disposed of. Changes in this item will not normally require immediate publication of a revised public notice unless they reflect an expansion in the availability of or access to the system of records.

J. *Sysmanager (Title and Duty Address of the Agency Officials Responsible for the System)*. In all cases, enter the title of the official who is responsible for policies and procedures governing the system; i.e., Staff Director, Civilian Personnel, HQ DLA. If the title of the official is unknown or unknowable (such as for locally evolved systems), specify the Commander or the Head of the Office as the responsible official. In addition, for geographically or organizationally decentralized system, where individuals may deal directly with agency officials at each location to exercise their rights under the Act, give the position or duty title of each category of official responsible for the system, or a segment thereof. For example, in the case of individual accident case report records, the entries should be: Staff Director, Civilian Personnel, HQ DLA, and Safety Officers of PLPAs. Do not include the duty address if already listed in organizational directories mentioned in paragraph D above.

K. *Notification (Procedure Whereby Individuals Can Be Notified at Their Request if the System Contains Records Pertaining to Them)*.

1. Indicate whether or not requests from individuals should be addressed to the above SYSMANAGER as in paragraph J above. If requests are to be addressed to any other officials, list them by duty or position titles.

2. Specify what information will be required from the requesting individual to determine whether or not the system contains a record about him, such as full name, military status, SSN or service number, resident or nonresident, etc.

3. List by specific name, or categories, those offices which the requester may visit to obtain information on whether the system contains records pertaining to him or her.

4. For personal visits, specify what data the requester must present as proof of identity, such as a combination of full name, date and place of birth, parent's name, driver's license, or medicare card, etc. Do not require verification of identity for records which are disclosable under the Freedom of Information Act.

L. *Access (Procedures Whereby an Individual Can Be Notified at His Request How He Can Gain Access to Any Record Pertaining to Himself contained in the system of records)*. Include the title or category of officials who can provide assistance, if those officials are other than the SYSMANAGER above. If the mailing addresses are listed in the organizational directory, state that official mailing addresses are in the Department of Defense directory in the appendix to the DLA systems notice. Specific locations and telephone numbers of offices may be indicated for unique or centralized systems.

M. *Contest (Rules For Access and Contesting Contents of Records)*. To comply with this requirement, merely, state: "The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER".

N. *Source (Categories of Sources of Records in the System)*. List by type each source of information in the system, e.g., previous employers, financial institutions, educational institutions, trade associations, automated sys-

tem interfaces, etc. Specific individuals or institutions need not be identified by name. Again, be sure to include all types, since collection of information from types of sources other than listed will require publication of a revised public notice in the FEDERAL REGISTER before any information is collected from those sources.

SECTION III. SYSTEMS QUALIFIED AND PROPOSED FOR EXEMPTION

Generally, the following records may be exempted from the provisions of K, L, and N of section II above (subsection (e) (4) (G), (H), and (I) of the Act):

1. Records maintained by the Central Intelligence Agency.

2. Records compiled to ensure protection of the President or other officials, classified records, records required by statute to be maintained and used solely as statistical records.

3. Investigatory records, compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Military Service, Federal contracts, or access to classified information, but only to the extent as outlined in subsection (k) (5) of the Act.

4. Certain testing and examination material.

5. Certain material used to evaluate potential for promotion in the Armed Services. (All items in section II, above will be completed for systems proposed for exemption, except for K, L, M, and N). Cite the system name and specific provisions of the Act, from which the system is to be exempted and the reasons therefor. Consult with Counsel for detailed guidance for systems which may be eligible for exemption. Proponents of systems dealing with the above types of records should contact the appropriate records management staff for addition guidelines, if necessary, for preparing exemption notices for publication in the FEDERAL REGISTER (NOTE: No system of records is exempted from the public notice requirements of the Act). Failure to publish a notice constitutes a criminal violation.

APPENDIX B

DETAILED INSTRUCTIONS FOR FORMS AND INFORMATION REQUIREMENTS SUBJECT TO THE PRIVACY ACT OF 1974

1. Fill-in information on the preprinted blank Privacy Act Statement format will be completed by the functional element responsible for the form. It will be completed by typewriter, for use as camera copy to reproduce and distribute to users to the form to which the statement applies.

2. The forms management office will assign an edition date in the block provided, and when revised, a new edition date will be assigned. Edition dates assigned the Privacy Act Statements may differ from the date of the form described in the Statement since each may be revised without revision to the other. The same edition dates will be assigned to both form and related statement when processed simultaneously as new or revised actions. When Privacy Act Statements are revised, previous editions will always be obsolete. A supersession notice obsoleting the previous edition will be shown in the bottom border of the statement in the same manner as shown on forms when superseding a previous edition. No form number is assigned to the blank Privacy Act Statement format since it may be confused with the applicable form number entered in the space provided in the lower left hand corner.

3. When referencing a specific approved Privacy Act Statement, it will be referred to by the related form number followed by the words "Privacy Act Statement". For example,

if DLA Form 0000 is entered in the lower left corner of the Statement, the Statement will thereafter be referred to as DLA Form 0000-Privacy Act Statement. This will facilitate the requisitioning of supplies of the filled-in printed Statement and for making references in correspondence.

4. Strict attention is invited to item number 1 on the Statement, "Authority". This item, when completed, must be coordinated with Counsel for validation. The entry in the "Authority" block must be a "Statute" or "Executive Order". When a SSN is requested, in addition to other items of personal information, the authority for requesting the SSN, if different from the authority for the other items, will also be shown in this block. When a SSN is the only personal information requested, only item numbers 1, 3, and 4 of the Privacy Act Statement apply.

5. A supply of blank "Privacy Act Statements" will be maintained by the local forms management office for issuance on request from functional staff elements. PLFAs will locally reproduce future needs of the blank statement. HQ DLA and DASC staff elements will obtain additional supplies from DLA-XA.

6. Completed and officially approved statements applicable to DD, DLA, DLAH, and DSC forms will be processed for initial distribution in accordance with information contained in block 9 of DLA Form 1424, Request for Processing Privacy Act Statement. HQ DLA and DASC staff elements can obtain additional copies from DASC-PD. Completed statements applicable to DD and DLA forms will be initially distributed to PLFAs, who will redistribute needs to subordinate echelons. PLFAs will locally reproduce additional needs. PLFAs will develop local procedures for printing and distributing supplies of completed and approved Privacy Act Statements applicable to locally designated and controlled forms.

7. DLA Form 1424 will be prepared by functional elements responsible for each statement. It will serve as a source document for preparing a requisition for reproduction and distribution of the approved completed statement to all users of the form to which it is applicable. The forms management office will be the source of supply for blank copies of DLA Form 1424.

8. HQ DLA and PLFA forms management offices will maintain a file on each approved Privacy Act Statement along with a copy of the supporting DLA Form 1424, DD Form 843, Requisition for Printing and Binding Service, and DD Form 844, Requisition for Local Duplicating Service. The method of filing is left to the discretion of local forms management officers.

APPENDIX C

EXEMPTED RECORD SYSTEMS

All systems of records maintained by the Defense Logistics Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 11652, and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

A. ID: S150.20 DLA-T (Specific Exemption)

Sys name:

Security Violation Files.

Exemption:

This system of records is exempt from the following provisions of the title 5, United States Code, section 552a: (c)(3); (d); and (e)(1).

Authority:

5 U.S.C. 553a(k)(2).

Reasons:

Granting individuals access to information relating to law enforcement could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and jeopardize the safety and well being of informants, witnesses and their families and investigative personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his records and the reasons therefor necessitate the exemptions of this system of records from the requirements of the other cited provisions.

B. ID: § 153.01 DLA-T (Specific Exemption)

Sys Name:

Personnel Security Files.

Exemption:

This system of records is exempt from the following provisions of title 5, United States Code, section 552a subsection (d).

Authority:

5 U.S.C. 552a (k) (2) and (5).

Reasons:

Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government.

C. ID S160.50 DLA-T (Specific Exemption)

Sys name:

Criminal Incident/Investigations File.

Exemption:

This system of records is exempted from the following provisions of the title 5, United States Code, section 552a: (c)(3); (d); and (e)(1).

Authority:

5 U.S.C. 552a (k) (2).

Reasons:

Granting individuals access to information collected and maintained by this component relating to the enforcement of crim-

inal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government. The exemption of the individual's right to access to his records and the reasons therefor necessitate the exemption of this system of records from the requirements of the other cited provisions.

D. ID: S155.53 DLA-NS (Specific Exemption)

Sys name:

Industrial Personnel Security Clearance File.

Exemption:

This system of records is exempt from the following provisions of title 5, United States Code, Section 552a; subsection (d).

Authority:

5 U.S.C. 552a(k)(5).

Reasons:

Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government.

[FR Doc.77-26596 Filed 9-12-77;8:45 am]

Title 37—Patents, Trademarks and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 76-1; Rules Doc. C]

PART 201—GENERAL PROVISIONS

Termination of Transfers and Licenses Covering Extended Renewal Term

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting a new regulation pertaining to the termination of transfers and licenses covering the extended renewal term of copyright. The regulation is adopted to implement section 304(c) of the Act for General Revision of the Copyright Law. The effect

of the regulation is to establish requirements governing the form, content, service, and recordation of the notices of termination identified in that section.

EFFECTIVE DATE: This regulation takes effect on October 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Jon Baumgarten, General Counsel,
Copyright Office, Library of Congress,
Washington, D.C. 20559 (703-557-8731).

SUPPLEMENTARY INFORMATION: Under section 304(c) of Pub. L. 94-553 (90 Stat. 2541), the exclusive or non-exclusive grant of a transfer or license of a renewal copyright executed before January 1, 1978 is subject to termination in certain cases. Termination is effected by serving a notice of termination in writing upon the grantee or the grantee's successor in title under conditions specified in the law. Among other conditions, the notice of termination is to comply in form, content and manner of service "with requirements that the Register of Copyrights shall prescribe by regulation." A copy of the notice of termination shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect.

On November 15, 1976 we published in the *FEDERAL REGISTER* (41 FR 50300) a proposal to adopt a new regulation § 201.10 establishing requirements governing the form, content, service, and recordation of notices of termination. A number of comments were received in response to that proposal. On January 24, 1977 we published in the *FEDERAL REGISTER* (42 FR 4134) a notice extending the time to comment, specifically to "permit comment upon, reply to, or reconciliation of the comments already received * * *." Several additional comments were received under the extension of time; included among these were "Joint Reply Comments" submitted by several parties who, in their initial comments, had expressed substantially different views on certain aspects of our proposal.¹

All comments filed in this proceeding have been well-reasoned and cogently presented. We particularly appreciate the efforts made by the signatories to the Joint Reply Comments, in their words, to "assist the Copyright Office in reconciling the positions taken by the parties in their opening comments." We have not, however, considered ourselves bound

¹ The Joint Reply Comments were submitted by the Authors League of America, Inc., the National Music Publishers Association, the American Guild of Authors and Composers, Columbia Pictures Industries, Inc., MCA Inc., Metro-Goldwyn-Mayer, Inc., Paramount Pictures Corp., United Artists Corp., Twentieth Century-Fox Film Corp., and Warner Bros., Inc. Other parties commenting in this proceeding were: M. William Kraslowsky, Esq., W. Michael Cleary, Esq., Association of American Publishers, Inc., Walt Disney Productions, Charles R. Brainard, Esq., Society of Authors Representatives, Inc., Commission on Federal Paperwork, and Music Publishers Assn., Inc.

by any positions taken, or understandings among, the commenting parties. We have sought to evaluate and modify the proposed regulation in light of all comments received, and several of these comments have led us to make substantial changes from the proposed regulation. A discussion of the major substantive comments follows:

1. THE SERVICE OF NOTICES OF TERMINATION BEFORE JANUARY 1, 1978

The Preamble to our Notice of Proposed Rulemaking stated:

Section 304(c) expressly refers to the possibility of termination of grants during specified periods beginning on January 1, 1978, and requires the serving of notices "not less than two or more than ten years" before the effective date of termination. Thus, a reasonable interpretation would permit the serving of certain termination notices before January 1, 1978.

Several comments objected to this statement and argued that, under the Transitional and Supplementary provisions of the new Copyright Act, termination notices cannot be effectively served or recorded before January 1, 1978.

We recognize that there are arguments on both sides regarding the effectiveness of service or recordation of a termination notice before January 1, 1978. The statement in our Notice of Proposed Rulemaking, quoted above, was intended only to express our view that one reasonable interpretation of the Act would permit such service and recordation; we did not mean to imply that it was the only reasonable interpretation. The validity of pre-January 1, 1978 notices is one reasonable conclusion, and it must therefore be considered to be possible for a court to reach that result. Since section 304(c)(4)(A) of the Act requires termination notices to comply with Copyright Office regulations regarding form, content, and manner of service, our failure to issue these regulations and make them effective before January 1, 1978, could effectively prevent the question from ever coming before a court. We do not believe that our failure to issue regulations effective before January 1, 1978, should have the effect of preventing parties from serving and recording formally proper notices before that date and, if called upon, supporting their substantive validity before the courts.

We therefore adhere to the position just expressed. In making the termination notice regulation effective before January 1, 1978 it is our intent to permit compliance with certain sections of the statute by parties who believe they may serve and record termination notices before that date. The regulation does not purport to pass upon the validity or effectiveness of notices served or recorded before January 1, 1978.

2. IDENTIFICATION OF THE WORK IN WHICH RIGHTS ARE BEING TERMINATED

Our proposed regulation had required that a notice of termination identify the "title of each work covered by the grant being terminated, the name of at least one author of each such work, and, if possible and practicable, the renewal

registration number for each such work." Several comments suggested that, since the period during which termination may be effected is measured from the date copyright was originally secured, the facts of original rather than renewal registration and the date copyright was originally secured would be preferable. We have accepted this suggestion and modified § 201.10(b)(ii) accordingly. However, a new paragraph (e)(2), discussed below, has been added to make clear that errors made in giving the date copyright was secured or the original registration number "made in good faith and without any intention to deceive, mislead, or conceal relevant information" will not affect the validity of the notice.

One comment suggested that, if the notice does not include the registration number, it must include a brief explanation of the absence of that information. However, the registration number is intended to serve only as a means of possible assistance to persons receiving a notice of termination in identifying the work to which the notice applies. It is not itself a substantive condition of termination and does not directly affect such matters as the adequacy of service or execution of the notice, or the time periods within which service may be made or termination effected. Under these circumstances, we do not believe it appropriate to burden the notice with an additional requirement which may ultimately become a source of confusion, error, or challenge.

One comment also suggested that, rather than requiring the name of "at least one author," as originally proposed, the regulations require the names of all authors of the work. We have not adopted this suggestion. The name of at least one author of the work will generally be sufficient for purposes of identifying the work. Under section 304(c) of the Act, the preparation of notice of termination will be occurring at a time far removed from the original creation and publication of a work and, in many cases, will involve successors of original authors having little, if any, knowledge of the details of original creation or publication. We do not believe it necessary to require the names of all authors in a provision directed only to identification of the work itself. Although it was asserted that the names of all authors are required for purposes other than identification of the work—namely, to "determine whether the proper parties have joined in the notice"—we do not agree. Under section 304(c) a notice terminating a grant made by more than one author may be effected as to any particular author's share in the work. There is no requirement of unanimity, majority interest, or the like, among granting co-authors. Another argument in favor of identifying all co-authors was that this information would be needed to determine whether the grantee might continue using the work on a non-exclusive basis under a grant from a non-terminating co-author. However helpful such information might be to those receiving termination of notices, this has nothing

to do with the effectiveness of a termination notice served by those authors (or their successors), who do wish to terminate rights in a work to the extent of their share.

3. IDENTIFICATION OF THE GRANT BEING TERMINATED

Our proposed regulation required that a notice of termination state "the date of execution of the grant being terminated." Several objections were made by representatives of authors and composers to this proposal. It was noted that, since section 304(c) does not measure the period of permissible termination or service from the date of the grant, that date is not necessary to determine whether the notice can be served or whether the date of termination is correct. These representatives also pointed out that it will commonly be the case that the terminating author, or the terminating renewal claimant, widow, widower, children or grandchildren of a deceased author, will not have a copy of the grant or ready access to a copy. These objections are persuasive, and the final regulation does not require the date of grant.

For similar reasons, we have not adopted suggestions that the termination notice state the location of the grant document or include an offer to produce it, or that a copy of the grant be attached to the notice. Also, our original proposal that the notice identify "the names of persons who executed the grant" has been deleted from the identification of grant paragraph. (In particular cases, the names of some or all of the persons executing the grant may become necessary under other paragraphs of the regulation.)

Instead of the proposed and suggested date, name, location, and copy requirements just discussed, paragraph (b) (iii) of the final regulation requires that the notice include "a brief statement reasonably identifying the grant to which the notice of termination applies." This provision, supported in the Joint Reply Comments, also replaces our proposed requirement that the notice state "the nature of the grant and the rights covered by it". As pointed out in the original comments of the Authors League of America, the concepts of defining the "nature" of a grant and the "rights" conveyed can lead to unnecessary technical disputes, even among experts in the field. The requirement of "reasonable identification" in the final regulation is sufficient to meet our purpose and can be accommodated to varying factual and legal situations. Of course, there would be nothing to prevent a terminating party who wished to do so from including the date of execution, names of parties, or a copy of the contract in the notice under this paragraph.

4. ADDITIONAL INFORMATION

In our Notice of Proposed Rulemaking we stated that the proposed regulation "attempts to avoid the imposition of costly or burdensome requirements while, at

the same time, giving the grantee and the public a reasonable opportunity to identify the affected grant and work from the information given in the notice." However, representatives of motion picture companies, who will frequently be in the position of receiving termination notices, argued that the notices should perform an additional function, namely, the providing of information necessary to give notice recipients some assurance that the conditions established in the Act for effective termination have been met. The Act does provide that (i) in the case of grants executed by persons other than the author, termination may only be effected by joint action of all surviving grantors; and (ii) in the case of grants executed by authors since deceased, termination must be effected by those of the author's surviving widow or widower, children and grandchildren who constitute more than one-half of that author's termination interest. Accordingly, the representatives of motion picture companies argued that the notice should include a complete listing of the original grantors (if other than the author) or of the surviving authors of the work and the widow or widower, children and grandchildren of deceased authors, together with an indication of those persons serving the notice who constitute more than one-half of the author's termination interest.

After careful consideration we concluded that, within limits, the providing of information related to compliance with these conditions is justified. Moreover, since the Act itself requires the notice to be signed by or on behalf of all persons necessary to effect the termination, the providing of such information can reasonably be required under our authority to determine the "content" of the notice. At the same time, however, we remain convinced that the required contents of the notice must not become unduly burdensome to grantors, authors, or their successors, and must recognize that entirely legitimate reasons may exist for gaps in their knowledge and certainty.

In light of these considerations we have decided to require certain listings of grantors and author's successors in paragraph (b) (1) (v) of the final regulation. However, this "requirement" is subject to several important qualifications:

(a) We have not accepted the suggestion, implicit in language proposed by the motion picture companies, that when termination is sought of a grant executed by more than one author, the notice must include a list of all surviving authors and the widow or widower, children and grandchildren of any deceased author. As noted in paragraph 2 of this preamble, termination of a grant made by more than one author under section 304(c) may be effected by any of the granting authors, or that author's sur-

*The Joint Reply Comments would have us require such lists, but then provide that a failure to include them has no effect. This would render the provision nugatory and the "requirement" meaningless, and we have therefore not accepted this suggestion.

vivors, to the extent of that author's share. Additional information may be useful to recipients of termination notices but, when termination is sought as to one author's share, information as to other, non-terminating, surviving authors or the successors of other deceased authors is not related to compliance with the statutory conditions of termination. Accordingly, paragraph (b) (1) (v) of the final regulation requires a listing only of the statutory successors to that deceased author whose interest in the grant is being terminated.

(b) As an alternative to providing the listings, paragraph (b) (1) (v) will permit the notice to include both a statement of as much information as is currently available to terminating parties, with a brief explanation of why full information may be lacking, and an assertion that, to their best knowledge and belief, the notice has been signed by all required parties. Use of the word "currently," is intended to avoid any implication that this paragraph of the regulation itself requires that terminating parties first conduct an investigation.

(c) Under paragraph (e) of the final regulation, harmless or good-faith errors in providing the lists or giving the alternative explanation and assertion will not affect the validity of the notice.

The original comments of several motion picture companies also urged that we require the notice to include statements that the grant being terminated was not made by will and that the work was not made for hire. Although testamentary grants and works made for hire are excluded from section 304(c), we have not adopted this suggestion. There is no real reason to believe that recipients of termination notices will rely on such statements rather than on their own review of the nature of the work and grant. Moreover, in making such a review the relevant information may well be expected to be at least equally available to grantees as to original grantors, authors, or their successors. Under such circumstances, the requirement suggested in the comments would amount to a ritualistic formality serving no real purpose.

5. SIGNATURE

Following suggestions made in the Joint Reply Comments, paragraph (c) of § 202.10 has been revised to follow the language and intent of the statute as to the signatures required of a notice of termination. The alternative provision of paragraph (b) (1) (v), discussed above in item (4) of this preamble is not intended to affect these statutory requirements. Section 202.10(b) (1) (v) only provides an alternative to other requirements regarding the contents of the notice; whether the notice has been properly executed must be determined by the Act.

The final regulation also requires that the signature of an authorized agent clearly identify the person or person on whose behalf the agent is acting. One comment suggested that notices signed by agents be accompanied by an explanation of why the principal did not sign, and a statement of the agent's "source

of authority"; another suggested that agents be required to certify their agency and authority under oath. Since the person on whose behalf an agent is acting must clearly be identified under paragraph (c) (3) of § 202.10 we consider these additional requirements unnecessary. The Act indicates no preference for a terminating party's own signature over that of an agent, nor does it suggest disfavor of an agent's participation in the decision to terminate.

To ensure clarity, paragraph (c) (4) of § 201.10 contains a new provision that the notice include a typewritten or legibly hand printed statement of the full names and addresses of the parties or agents signing the notice.

Paragraph (c) (2) requires that in certain cases where termination is exercised by the successors of a deceased author, the signature of those successors, or of their authorized agents, be accompanied by a "brief statement of their relationship or relationships to that author." This provision earlier appeared as § 201.10(b) (1) (v) of our proposed regulation. It is not intended to require any more than, for example, categorization as "widow", "widower", "child", or "grandchild" of the deceased author.

6. SERVICE; "SUCCESSORS IN TITLE"

A substantial number of comments revolved around the following portion of section 304(c) (3) of the Act: "The termination shall be effected by serving an advance notice in writing upon the grantee or the grantee's successor in title." The comments raised essentially two issues: (a) Who is a "successor in title" to a grantee; and (b) where there is a "successor in title", who must be served?

(A) "WHO IS A SUCCESSOR IN TITLE"?

The comment letters appear to offer two interpretations of the phrase "successor in title". Under one interpretation a "successor in title" to a grantee is only one who has acquired from that grantee all of the rights originally acquired by that grantee, for the identical duration as originally acquired and without qualification. Under another interpretation, one who acquires from a grantee any one or portion of the rights originally acquired by that grantee is a "successor in title" as to that right or portion.

The phrase "successor in title" is not defined in the new Copyright Act. However relevant it may be to judicial inquiry or legal advice, it is not appropriate for us to conclude in this proceeding that the phrase "successor in title" necessarily has or does not have a meaning related to the definitions of "copyright owner" or "transfer of copyright ownership" in section 101 of the Act, or to consider the meaning and significance of "successor in title" as used in other areas of law which may be analogous or relevant. This Office's actions in deciding whether or not to record a copy of a notice of termination, for example, will generally not involve an investigation as to whether the persons identified in the notice have been properly categorized. Accordingly,

we have modified the proposed regulation only to substitute the statutory term "successor in title" where we had originally proposed the word "successor"; we have not adopted an interpretation of this phrase.

(B) WHERE THERE IS A "SUCCESSOR IN TITLE", WHO MUST BE SERVED?

Assuming there is a "successor in title" to a grantee, the comments indicated considerable uncertainty as to whether either one of or both of the "grantee" and "successor in title" must be served. Representatives of authors and composers, for example, pointed to the Act's use of the word "or" and expressed concern lest they be required to serve successors in title of whom they lacked knowledge in order to recapture the rights held by the successor. We agree that, whether or not the original grantee is still exploiting rights in a work, there are cases where author and composers are not aware of others holding rights in the work under a successorship to the original grantee. For example: the successor may not be actively exploiting the work; or no royalties may be owing to the author; or royalty statements may not separately identify sources of revenue; or the author's consent may not have been required for the successor's acquisition of rights; or a relevant document may not be recorded in the Copyright Office.

Representatives of producers and publishers, however, argued that use of the word "or" in the Act did not offer a complete option to parties serving termination notices and expressed concern over the possibility that their rights could be terminated by service of their predecessors in title and without their knowledge. We also agree that this does pose risks of liability and may generate an unfortunate lack of business certainty.

Section 201.10(d) of the final regulation attempts to deal with this problem. With considerable support in the comments from several parties who desired some guidance in this matter, paragraph (2) of this section provides that the service requirements of the Act are satisfied if a reasonable investigation is first made by the terminating parties and if: (i) The notice is served upon the grantee where the investigation does not give reason to believe there is a successor in title; or (ii) the notice is served upon the successor in title where the investigation does give reason to believe there is a particular successor in title. Paragraph (3) then defines certain elements to be included in a "reasonable investigation".

In order to avoid possible conflict with the literal language of the Act, paragraph (4) of § 201.10(d) contains an important qualification. This paragraph makes it clear that the regulations in paragraphs (2) and (3) of the section do not themselves impose an obligation on terminating parties to conduct a reasonable investigation, or to serve persons disclosed by such an investigation. If an investigation is not conducted, or if it does disclose (or would have disclosed) a successor in title who is not served, our

regulations do not purport to question the validity of service. In cases where § 202.10(d) (2) or (3) have not been followed, any questions as to the validity of service are left solely to interpretation and application of 17 U.S.C. 304(c) (4) in other forums.

Two comments suggested that we require service by mail to be registered or certified. We have not accepted this suggestion. A requirement that service be effected by registered or certified mail might lead to totally inadvertent mistakes, and substantively insignificant grounds of avoiding or challenging termination. Moreover the provisions of the final regulation dealing with recordation provide a basis for making of a record of service. Although we recognize that this is not a complete answer, since recordation might occur considerably later than service, we are not persuaded that registered or certified mail should be made a requirement.

7. ERRORS

Paragraph (e) (1) of the final regulation is new. It adopts a suggestion made in the initial comments of the Authors League of America, Inc., and later endorsed in the Joint Reply Comments, that "harmless errors" in a notice of termination shall not render the notice invalid. Additionally, the final regulation requires specific items of information that, in some cases, were not in our proposal. We do not intend that the validity of notices of termination should be subject to disputes over whether errors concerning these specific items are "harmless." Accordingly, we have added a new paragraph (e) (2) to make clear that errors made in connection with this information will not affect the validity of the notice if they were made in good faith and without intent to deceive, mislead, or conceal information.

8. RECORDATION

Several comments suggested that the final regulations should provide some demonstration of the facts of service. As suggested in the Joint Reply Comments, we have added a new paragraph (ii) to § 201.10(f) (1) requiring that the copy of a notice submitted for recordation be accompanied "by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice."

This information need not appear in the notice itself, and inclusion is not a condition of a valid notice. However, the Copyright Office will not record a copy of a notice of termination unless a proper statement as required in this paragraph is submitted to accompany it. Changes have also been made in the provisions of the final regulation dealing with the fee and date of recordation, to reflect this requirement.

The Joint Reply Comments urged the Copyright Office to give "notice of recordation" * * * to all parties named in the notice." Even if not considered a condition of effective termination or recordation, such a provision would impose upon

the Copyright Office in an affirmative responsibility which was not contemplated by the Act and which we are not prepared or equipped to undertake. Of course, our records of recorded copies of termination notices will be fully open to public inspection. Moreover, the search services of the Office will be available to interested parties and our search personnel will extend full cooperation and assistance in responding to requests for periodic or other specially-structured search reports.

We have amended paragraph (f) (1) of § 201.10 to make it clear that the copy submitted for recordation must "include the actual signature or signatures, or a reproduction of the actual signature or signatures, appearing" on the notice as served. This requirement was also contemplated by our original proposal, which provided that the copy be a "complete and exact duplicate of the notice as served." However, some question was raised on the point in one comment, and we have therefore decided to mention the signature requirement expressly. Although the comment suggested that the copy need not bear the signatures, the significance of signature under the Act has led us to conclude otherwise.

Paragraph (4) of § 201.10(f) is new, and reflects a point made in several comments: That the act of the Copyright Office in recording a copy of a notice of termination does not accord that notice any presumption of validity. Although this point is rather clear from the statute itself, sufficient concern was expressed to justify stating it expressly in the regulation.

One comment suggested that we add a new section to permit the filing of "notices of dispute of termination", containing specific information, by grantees or successors in title who challenge a notice of termination. As the statute does not specifically provide for such notices, or attach any consequences to their recordation, we have not adopted this suggestion.

Part 201 of 37 CFR Chapter II is amended by adding a new § 201.10 to read as follows:

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

(a) *Form.* The Copyright Office does not provide printed forms for the use of persons serving notices of termination.

(b) *Contents.* (1) A notice of termination must include a clear identification of each of the following:

(i) The name of each grantee whose rights are being terminated, or the grantee's successor in title, and each address at which service of the notice is being made;

(ii) The title and the name of at least one author of, and the date copyright was originally secured in, each work to which the notice of termination applies; and, if possible and practicable, the original copyright registration number;

(iii) A brief statement reasonably identifying the grant to which the notice of termination applies;

(iv) The effective date of termination; and

(v) In the case of a termination of a grant executed by a person or persons other than the author, a listing of the surviving person or persons who executed the grant. In the case of a termination of a grant executed by one or more of the authors of the work where the termination is exercised by the successors of a deceased author, a listing of the names and relationships to that deceased author of all of the following, together with specific indication of the person or persons executing the notice who constitute more than one-half of that author's termination interest: That author's surviving widow or widower; and all of that author's surviving children; and, where any of that author's children are dead, all of the surviving children of any such deceased child of that author; however, instead of the information required by this subdivision (v), the notice may contain both of the following: (A) A statement of as much of such information as is currently available to the person or persons signing the notice, with a brief explanation of the reasons why full information is or may be lacking; together with (B) a statement that, to the best knowledge and belief of the person or persons signing the notice, the notice has been signed by all persons whose signature is necessary to terminate the grant under section 304(c) of title 17, U.S.C., or by their duly authorized agents.

(2) Clear identification of the information specified by paragraph (b) (1) of this section requires a complete and unambiguous statement of facts in the notice itself, without incorporation by reference of information in other documents or records.

(c) *Signature.* (1) In the case of a termination of a grant executed by a person or persons other than the author, the notice shall be signed by all of the surviving person or persons who executed the grant, or by their duly authorized agents.

(2) In the case of a termination of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under clauses (1) and (2) of section 304(c) of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

(3) Where a signature is by a duly authorized agent, it shall clearly identify the person or persons on whose behalf the agent is acting.

(4) The handwritten signature of each person effecting the termination shall either be accompanied by a statement of the full name and address of that person, typewritten or printed legibly by hand, or shall clearly correspond to such a statement elsewhere in the notice.

(d) *Service.* (1) The notice of termination shall be served upon each grantee whose rights are being terminated, or the grantee's successor in title, by personal service, or by first-class mail sent to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title.

(2) The service provision of section 304(c) (4) of title 17, U.S.C., will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation: (i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or (ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

(3) For purposes of subparagraph (2) of this paragraph (d), a "reasonable investigation" includes, but is not limited to, a search of the records in the Copyright Office; in the case of a musical composition with respect to which performing rights are licensed by a performing rights society, as defined by section 116(e) (3) of title 17, U.S.C., a "reasonable investigation" also includes a report from that performing rights society identifying the person or persons claiming current ownership of the rights being terminated.

(4) Compliance with the provisions of clauses (2) and (3) of this paragraph (d) will satisfy the service requirements of section 304(c) (4) of title 17, U.S.C. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of subparagraph (2) or (3) of this paragraph (d) will not affect the validity of the service.

(e) *Harmless errors.* (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of section 304(c) of title 17, U.S.C., shall not render the notice invalid.

(2) Without prejudice to the general rule provided by subparagraph (1) of this paragraph (e), errors made in giving the date or registration number referred to in paragraph (b) (1) (ii) of this section, or in complying with the provisions of paragraph (b) (1) (v) of this section, or in describing the precise relationships under clause (2) of paragraph (c) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

(f) *Recordation.* (1) A copy of the notice of termination will be recorded in the Copyright Office upon payment of the fee prescribed by subparagraph (2) of this paragraph (f) and upon compliance with the following provisions:

(i) The copy submitted for recordation shall be a complete and exact duplicate of the notice of termination as

served and shall include the actual signature or signatures, or a reproduction of the actual signature or signatures, appearing on the notice; where separate copies of the same notice were served on more than one grantee or successor in title, only one copy need be submitted for recordation; and

(ii) The copy submitted for recordation shall be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice.

(2) For a document consisting of six pages or less, covering no more than one title, the basic recordation fee is \$5 if recorded before January 1, 1978, and \$10 if recorded after December 31, 1977; in either case an additional charge of 50 cents is made for each page over six and each title over one. The statement referred to in paragraph (f) (1) (ii) of this section will be considered a part of the document for this purpose.

(3) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee and, if required, the statement referred to in paragraph (f) (1) (ii) of this section, have been received in the Copyright Office. After recordation the document, including any accompanying statement, is returned to the sender with a certificate of record.

(4) Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for issuing a valid notice have not been met.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-553: Sections 304 (c); 702; 708(11).)

Dated: September 7, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DONALD C. CURRAN,
Acting Librarian of Congress.

[FR Doc. 77-26590 Filed 9-12-77; 8:45 am]

Title 40—Protection of Environment
CHAPTER I—ENVIRONMENTAL
PROTECTION AGENCY

[FRL 782-2]

PART 600—FUEL ECONOMY OF MOTOR
VEHICLES

Fuel Economy Calculation and Test Procedure for 1978 and Later Model Year Automobiles

AGENCY: Environmental Protection Agency.

ACTION: Interim-Final Rulemaking.

SUMMARY: This Interim-Final Rulemaking establishes procedures for calculating a manufacturer's average fuel economy for nonpassenger automobiles effective in 1979 and later model years by extending previously published regulations on 1978 and later model year passenger automobiles to apply to nonpassenger automobiles. The term "non-

passenger automobiles" generally means light trucks and vans, and is defined by the Secretary of Transportation in a separate rulemaking. The value calculated in accordance with these procedures will be used by the Secretary of Transportation in enforcing the fuel economy standards established by the Secretary under authority granted in Title V, of the Motor Vehicle Information and Cost Savings Act, as amended.

DATE: October 13, 1977. Comments with respect to model year 1980 and later must be received no later than November 25, 1977.

FOR FURTHER INFORMATION CONTACT:

Paula Machlin, Regulatory Management Staff, Office of Mobile Source Air Pollution Control, U.S. Environmental Protection Agency, Washington, D.C. 20460 (202-755-0596).

SUPPLEMENTARY INFORMATION: Title V of the Motor Vehicle Information and Cost Savings Act, as amended ("the Act"), 15 U.S.C. 2001 et seq., mandates the establishment of a comprehensive program to promote the manufacture and purchase of increasingly fuel efficient automobiles. The responsibility for carrying out this program is divided among several Federal agencies.

Specifically, section 503 of the Act requires the Environmental Protection Agency to develop testing and calculation procedures by which the fuel economy averages of a manufacturer's passenger automobile (PA) and nonpassenger automobile (NPA) fleets will be determined each model year, beginning in model years 1978 and 1979, respectively. In addition, EPA is required to perform, or to cause to be performed, the fuel economy testing and calculation that is necessary for determining a manufacturer's fuel economy average and for fuel economy labeling pursuant to section 506.

The manufacturer's average fuel economy values (AFE) calculated by EPA will be used by the Secretary of Transportation for comparison with the applicable fuel economy standards, and in assessing penalties or credits, as appropriate, under sections 507 and 508 of the Act. Section 502 establishes average fuel economy standards for model years 1978-80 and 1985 PA's. That same section requires the Secretary to establish fuel economy standards for model years 1981-1984 PA's, and for model year 1979 and later NPA's, based on technical, economic, and energy-related considerations. Under section 501, the Secretary is also responsible for defining which vehicles are to be considered automobiles for the purposes of the Act and, of those vehicles, which are PA's and which are NPA's.

PUBLICATION WITHOUT FORMAL PUBLIC COMMENT PERIOD

Publication of this rule establishes interim-final procedures for the testing and calculation of a manufacturer's average fuel economy for model year 1979 and later nonpassenger automobiles.

Comments are requested on this action and will be considered with respect to model year 1980 and later. A Notice of Proposed Rulemaking (NPRM) has not been previously issued.

Section 553 of Title 5 of the United States Code (pertaining to administrative procedure) provides for the promulgation of regulations without prior issuance of an NPRM. "When the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."

Section 503 of the Act requires that fuel economy testing and calculation regulations be published not less than 12 months prior to the model year to which such procedures apply. Thus the regulations for model year 1979 NPA's must be published no later than August, 1977, to the extent that such procedures apply to model year 1979. (EPA has previously found that, for the purpose of meeting the deadlines in section 503, a model year begins no earlier than August of the preceding calendar year (September 10, 1976, 41 FR 38674).) Thus, EPA finds that issuance of an NPRM and provision of a public comment period for this rulemaking prior to interim promulgation of these regulations would at this time be contrary to the public interest.

From the time that the Act was enacted on December 22, 1975, EPA has devoted considerable time and effort to developing regulations that prescribe fuel economy testing and calculation procedures for determining a manufacturer's average fuel economy for model year 1978 and later PA's, and to providing technical assistance to DOT in support of DOT's enforcement responsibilities under the Act. During this same period, regulations have been prepared to implement sections 506 (fuel economy labeling) and 511 (fuel economy retrofit devices) of the Act. The level of effort required to carry out these responsibilities, together with the deadline in the Act, have made it impossible to issue rules for 1979 nonpassenger automobiles with prior issuance of an NPRM.

In addition, it was apparent to EPA that it would be appropriate to pattern the NPA fleet average calculation scheme after that for PA's and that, therefore, development of NPA procedures would be greatly facilitated if EPA was able to capitalize on experience gained with PA's. As noted throughout this rule, many of the provisions of the passenger automobile AFE calculation regulations are extended by this rule to apply to nonpassenger automobiles.

In developing the testing and calculation scheme for PA's, EPA consulted with and provided drafts to interested parties including manufacturers and other interested agencies. The direction ultimately taken by EPA in formulating the PA testing and calculation scheme was significantly affected by these consultations, and the resulting rule has been favorably received by all parties. (Background information pertaining to public

participation in developing the PA rules is available on the Public Docket.) Because the majority of the provisions for the testing and calculation of a manufacturer's nonpassenger automobile AFE contained in this rule are substantially the same as those established for PA's, EPA expects that these rules will be favorably received by all interested parties as well. Nevertheless, EPA has provided interested parties the opportunity to comment informally on drafts of this rule. The responses received were generally favorable.

BACKGROUND: FUEL ECONOMY REGULATIONS CURRENTLY IN EFFECT

To a large extent, the provisions of this regulation are based on previously published EPA regulations (September 10, 1976, 41 FR 38674). Those regulations establish fuel economy testing and calculation procedures to be used in generating fuel economy label values for all automobiles (i.e., PA's and NPA's) under section 506 of the Act, as well as a procedure for calculating the passenger automobile AFE value to be used by the DOT in enforcing the applicable PA fuel economy standards. (Additional provisions that pertain specifically to fuel economy labeling under section 506 are contained in the November 10, 1976 FEDERAL REGISTER (41 FR 49752).) A detailed discussion of the issues involved and the alternatives evaluated in developing the vehicle selection, testing, and calculation procedures established previously is contained in the preamble to the regulations.

In consultation with DOT, the EPA has determined that a majority of the provisions of the existing regulations can be extended to apply to the calculation of nonpassenger automobile average fuel economy, since the legal, technical, and administrative considerations are generally the same with respect to both classes of automobiles. In both cases, the statute requires that fuel economy testing be conducted in conjunction with emissions testing to the extent practicable and provides for a civil penalty of \$5 per automobile for .1 mpg that the manufacturer's average fuel economy is below the standard. Thus the test vehicle selection scheme for both PA's and NPA's must permit average fuel economy calculations to be made with the same degree of accuracy, constrained by the same economic considerations such as the costs of testing (to both government and industry). Therefore, the provisions of the existing regulations on passenger automobile AFE calculation are extended by this rule to nonpassenger automobiles except where modifications were necessary to account for inherent differences between PA's and NPA's or to maintain consistency with actions taken by DOT pursuant to its responsibilities under the Act.

It should also be noted that this regulation provides for use of the same procedures for test vehicle selection, for the measurement of a test vehicle's fuel consumption, and for sales-weighting test results to yield a single value for a model type established for fuel economy label-

ing purposes (published in final on September 12, 1977). Although there is no explicit statutory requirement that EPA adopt the same procedures in calculating a manufacturer's nonpassenger automobile AFE as are used in labeling, it is clearly most reasonable to do so, since it minimizes cost to both industry and government without affecting the program adversely.

This regulation will require an increase in the number of fuel economy tests that must be performed by the industry over that required for labeling purposes early in the model year. For model year 1979, the increase will not be significant. EPA will reevaluate the impacts of the nonpassenger automobile vehicle selection and testing regulations in future model years in light of developments that affect the appropriateness of the rule.

In addition, there may be an increase in the number of fuel economy tests required to account for running changes during the model year. A running change is a design modification made by a manufacturer during the model year, usually to correct an unexpected problem occurring in the field, to optimize fuel economy or performance, or to save costs. The provisions that currently apply to running change testing of PA's for fuel economy purposes are extended by this regulation to NPA's, as noted previously. As discussed in the preamble to the passenger car regulations, exemptions from running change testing will be granted if the manufacturer's preliminary average fuel economy calculation exceeds the applicable fuel economy standard by a safety margin of an as yet unspecified amount. That amount will be of sufficient magnitude to ensure that the manufacturer remains in compliance during the model year irrespective of the effect of running changes.

MODIFICATIONS TO THE PA TESTING AND CALCULATION REGULATIONS THAT ARE ESTABLISHED FOR NPA'S IN THIS REGULATION

It was necessary to modify several aspects of the passenger automobile AFE calculation procedure in establishing a procedure for NPA's to account for inherent differences between PA's and NPA's as well as to maintain consistency with actions taken by DOT pursuant to its authority under the Act. Those modifications are discussed below:

1. *Test Vehicle Selection.* This regulation contains a provision granting the EPA Administrator authority to select additional test vehicles in those NPA base levels¹ for which he determines that the

¹ To facilitate test vehicle selection and the calculation of a manufacturer's average fuel economy, EPA has grouped vehicles into several categories and subcategories based on engineering parameters that are expected to significantly affect fuel economy. The categories are defined in the regulations in § 600.002 as follows:

(19) "Model Type" means a unique combination of car line, basic engine, and transmission class.

(23) "Base Level" means a unique combination of basic engine, inertia weight, and transmission class.

level of testing under the general vehicle selection rules (§ 600.207 and § 600.605) is not sufficiently representative of that base level. (In many cases, only one vehicle configuration is tested within a base level.) This could occur if the vehicle configurations comprising that NPA base level exhibit a wide range in magnitude for a specific parameter. It is expected that this authority will be evoked mainly to select additional vehicles based on the existence of a wide range of axle ratios among vehicle configurations in a NPA base level. EPA has determined that a range of axle ratio on the order of 0.75 (found in some PA base levels) can result in relatively high variability within a base level. In fact, EPA explored the possibility of including axle ratio as a determinant in the definition of base level during the development of the PA regulation, and found that it would yield very little benefit while incurring considerable cost to both the Agency and the industry.

It is expected that axle ratio ranges will be greater than 0.75 in about 25 percent of the NPA base levels. Consequently, it is desirable to permit the Administrator to isolate those cases where additional testing is needed to insure that the test fleet adequately represents the over-all fleet. EPA anticipates establishing guidelines to define where additional testing might be required (such as axle ratio bands).

2. *Two Categories of NPA's with Distinct Standards.* On March 14, 1977, DOT published a regulation under section 502 that established two categories of NPA's and a fuel economy standard applicable to each effective in model year 1979 (42 FR 13807). The two categories are entitled "jeep-type vehicles" and "all other NPA's", and the fuel economy standards are 15.8 mpg and 17.2 mpg, respectively. Moreover, in that rule the DOT provided that a manufacturer may determine compliance by either (1) comparing the AFE for his entire NPA fleet to the standard for the "all other NPA" category, or (2) comparing the AFE for each category of his NPA fleet to standards for their respective categories.

Accordingly, this regulation establishes a procedure for the separate calculation of AFE values for a manufacturer's jeep-type vehicles and for all other NPA's, and a procedure for calculating a single value for a manufacturer's entire NPA fleet. In the case where a manufacturer chooses to demonstrate compliance with the fuel economy standards on a separate basis for each NPA category, the value for each category will be calculated on a production-weighted model type basis. An AFE value will be calculated for the import portion of the vehicles in each category, and that value will be included in the

(24) "Vehicle Configuration" means a unique combination of basic engine, engine code, inertia weight, transmission configuration, and axle ratio within a base level.

A more detailed discussion of the rationale for those definitions is contained in the preamble to the September 10, 1976, FEDERAL REGISTER notice (41 FR 38674).

respective calculations as if it were a model type value.

In the case where a manufacturer opts to demonstrate compliance with the "all other NPA" fuel economy standard on the basis of his entire NPA fleet, average fuel economy will also be calculated on a production-weighted model type basis. An AFE value will be calculated for the import portion of his entire NPA fleet, and that value will be included in the final calculation as if it were a model type AFE value.

In some cases, vehicles that are grouped in the same car line for labeling purposes will be grouped into different NPA categories. For example, the Ram Charger (a car line) is produced both with and without four-wheel drive. The four-wheel drive version of the Ram Charger is a jeep-type vehicle under the current DOT definition, but the two-wheel drive Ram Charger is not. For the purpose of calculating average fuel economy in the case of vehicles that fall into the same car line but different NPA categories, separate model type fuel economy values will be calculated for the vehicles in each category.

3. *Inclusion of Imports in the Calculation of NPA AFE.* The regulations on passenger automobile AFE calculation limit the volume of imports that may be included in the calculation for model years prior to 1980 and require that the fuel economy of the remaining portion of a manufacturer's import fleet be calculated on a separate basis. In 1980 and later model years, the entire imported PA fleet will be treated as if produced by a separate manufacturer. The Act specifically mandates this approach for passenger automobiles but does not provide similar guidance with respect to imported NPAs.

This regulation provides for the calculation of an AFE value for the import component of a manufacturer's NPA fleet. That import fuel economy value is then treated as a model type fuel economy value in the calculation of a manufacturer's average fuel economy. The approach is identical to that used for PA's in model year 1978 and 1979, except that the production-weighting factor of the import fuel economy value is not limited. The approach reflects the methodology used by DOT in establishing the NPA fuel economy standards as discussed in detail in the March 14, 1977, FEDERAL REGISTER (42 FR 13807). DOT is currently reviewing alternative approaches to the inclusion of imported NPAs in the AFE calculation for use in 1980 and later model years. EPA will modify the NPA calculation procedures with respect to inclusion of imports as necessary to reflect changes in DOT methodology.

OTHER ISSUES

The DOT published a regulation (July 28, 1977, 42 FR 38362) under section 501(d)(1) of the Act establishing which vehicles are to be considered automobiles for the purposes of the Act, and, of those vehicles, which are PA's and which are NPAs. The NPA class includes all ve-

hicles currently certified by EPA as light-duty trucks for emissions purposes (Gross Vehicle Weight Rating of no greater than 6,000 lbs.), plus vehicles such as the Chevrolet El Camino and the Ford Ranchero. EPA tests the latter vehicles under the light-duty vehicle emissions testing procedures. The Chevrolet El Camino and Ford Ranchero are classified as light-duty vehicles by EPA for emissions purposes since those vehicles are derivatives of passenger cars and, as such, passenger car emission control technology may be applied. Under EPCA, vehicles must be classified based on design intent. The DOT has classified those vehicles as nonpassenger automobiles based on their similarity to pickup trucks in view of the open bed configurations.

As a result, the calculation of a manufacturer's AFE for NPA's will be based on data generated under different test procedures. The Agency has determined that this will not affect the validity of the calculation, since the fuel economy of the test vehicles are appropriately measured under the respective procedures and the classifications are appropriate with respect to statutory requirements.

It should also be noted that DOT published a regulation (July 28, 1977, 42 FR 38369) that assigns the responsibility for compliance with AFE standards to the incomplete vehicle manufacturer in the case of vehicles that are completed by a subsequent manufacturer. Incomplete vehicles will be treated as a model type in calculating AFE.

REQUEST FOR COMMENTS

Manufacturers and other interested parties may participate in this rulemaking for 1980 and later model years by submitting comments (in quadruplicate) to the Deputy Assistant Administrator, Environmental Protection Agency, Attention: Office of Mobile Source Air Pollution Control AW-455, 401 M Street SW., Washington, D.C. 20460, no later than November 25, 1977. The regulations established here are effective for model year 1979.

It is EPA's intention to assure all interested parties an opportunity to study all information which may become the basis for EPA's final action in this proceeding. Accordingly, the Agency will not consider in this rulemaking any material which cannot be made available to the public. Parties who wish to submit comments on this Interim-Final Rulemaking are cautioned that EPA will summarily return any comments which are claimed, in whole or in part, to be confidential.

AVAILABILITY OF MATERIAL

A copy of all public comments will be available for inspection and copying at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

ECONOMIC IMPACT

NOTE: The Environmental Protection Agency has determined that this document does not contain a major action requiring preparation of an Economic Impact Analysis under Executive Orders 11821 and 11949 and OMB Circular A-107.

Dated: August 31, 1977.

DOUGLAS M. COSTLE,
Administrator.

Part 600 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 600.002-79 is revised to read as follows:

§ 600.002-79 Definitions.

(a) The following definitions apply beginning with the 1979 model year. The definitions in § 600.002-78 remain effective except that definition number (14) is hereby superseded, definition numbers (41) and (42) are added. All terms used in this subpart that are not defined herein shall have the meaning given them in the Act.

(1) "Act" means Part I of Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.).

(2) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

(3) "Secretary" means the Secretary of Transportation or his authorized representative.

(4) "Automobile" means any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, or highways (except any vehicle operated on a rail or rails) and which is rated at 6,000 lbs gross vehicle weight or less or is a type of vehicle which the Secretary determines is substantially used for the same purposes.

(5) "Passenger Automobile" means any automobile which the Secretary determines is manufactured primarily for use in the transportation of no more than 10 individuals.

(6) "Model Year" means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(7) "Federal Emission Test Procedure" refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Part 86 for the respective model year, which are used to derive city fuel economy data.

(8) "Federal Highway Fuel Economy Test Procedure" refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Subpart B of this part and which are used to derive highway fuel economy data.

(9) "Fuel" means gasoline and diesel fuel.

(10) "Fuel Economy" means the average number of miles traveled by an automobile or group of automobiles per gallon

of gasoline or diesel fuel consumed as computed in § 600.113 or § 600.207.

(11) "City Fuel Economy" means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal Emission Test Procedure.

(12) "Highway Fuel Economy" means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal Highway Fuel Economy Test Procedure.

(13) "Combined Fuel Economy" means the fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively.

(14) "Average Fuel Economy" means the unique fuel economy value as compiled under § 600.510 for a specific class of automobiles produced by a manufacturer that are subject to average fuel economy standards.

(15) "Certification Vehicle" means a vehicle which is selected under § 86.077-24(b) (1) and used to determine compliance under § 86.077-30 for issuance of an original certificate of conformity.

(16) "Fuel Economy Data Vehicle" means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

(17) "Label" means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with Subpart D of this part.

(18) "Dealer" means a person who resides or is located in the United States, any territory of the United States or the District of Columbia and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(19) "Model Type" means a unique combination of car line, basic engine, and transmission class.

(20) "Car Line" means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis.) Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats or windows except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

(21) "Basic Engine" means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator.

(22) "Transmission Class" means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic), number of forward speeds (e.g., manual 4-speed, 3-speed automatic, 2-speed semi-automatic), and other characteristics determined to be significant by the Administrator (e.g., "creeper" first gear, over-drive final gear ratio, or overdrive unit) considering factors such as the manufacturer's recommendation for use and/or the numerical gear ratios.

(23) "Base Level" means a unique combination of basic engine, inertia weight, and transmission class.

(24) "Vehicle Configuration" means a unique combination of basic engine, engine code, inertia weight, transmission configuration, and axle ratio within a base level.

(25) "Engine Code" means a unique combination, within an engine-system combination (as defined in Part 86 of this Chapter), of displacement, carburetor (or fuel injection) calibration, distributor calibration, choke calibration, auxiliary emission control devices and other engine and emission control system components specified by the Administrator.

(26) "Inertia Weight" means the inertia weight class into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of Part 86 of this chapter.

(27) "Transmission Configuration" means a unique combination, within a transmission class, of the number of forward gears, and, if applicable, overdrive. The Administrator may further subdivide a transmission configuration (based on such criteria as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, etc.) if he determines that significant fuel economy differences exist within that transmission configuration.

(28) "Axle Ratio" means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

(29) "Auxiliary Emission Control Devices (AECD)" means an element of design as defined in Part 86.

(30) "Rounded" means a number shortened to the specific number of decimal places in accordance with the "Round Off Method" specified in ASTM E 29-67.

(31) "Calibration" means the set of specifications, including tolerances, unique to a particular design, version or application of a component or component assembly capable of functionally describing its operation over its working range.

(32) "Production Volume" means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

(33) "Body Style" means a level of commonality in vehicle configurations as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e. front seat, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

(34) "Hatchback" means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

(35) "Pickup Truck" means a non-passenger automobile which has a passenger compartment and an open cargo bed.

(36) "Station Wagon" means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate and one or more rear seats readily removed or folded to facilitate cargo carrying.

(37) "Gross Vehicle Weight Rating" means the manufacturer's gross weight rating for the individual vehicle.

(38) "Ultimate Consumer" means the first person who purchases an automobile for purposes other than resale, or leases an automobile.

(39) "Van" means any nonpassenger automobile having an integral enclosure, fully enclosing the driver compartment and load-carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(40) "Base Vehicle" means the lowest priced version of each body style that makes up a car line.

(41) "Nonpassenger automobile" means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 42 CFR 523.5.

(42) "Jeep-type Vehicle" means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a jeep-type configuration, as defined by the Secretary of Transportation at 42 CFR 533.4.

2. Section 600.002-80 is amended by revising definition (14) and by adding new definitions (40) and (41), reading as follows:

§ 600.002-80 Definitions.

(14) "Average Fuel Economy" means the unique fuel economy value as compiled under § 600.510 for a specific class of automobiles produced by a manufacturer that are subject to average fuel economy standards.

(41) "Nonpassenger automobile" means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 42 CFR 523.5.

(42) "Jeep-type Vehicle" means a 4-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a jeep-type configuration, as defined by the Secretary of Transportation at 42 CFR 533.4.

3. The title of Subpart F is revised to read as follows:

Subpart F—Fuel Economy Regulations for Model Year 1978 Passenger Automobiles and for 1979 and Later Model Year Automobiles (Nonpassenger and Passenger)—Procedures for Determining Manufacturer's Average Fuel Economy

4. A new § 600.501-79 is added reading as follows:

§ 600.501-79 General applicability.

The provisions of this subpart are applicable to 1979 and later model year automobiles (passenger and nonpassenger).

5. A new § 600.502-79 is added reading as follows:

§ 600.502-79 Definitions.

(a) The following definitions apply beginning with the 1979 model year. The definitions in § 600.502-78 remain effective except that provision (a)(2)(ii) is hereby superseded. The definitions in § 600.002 also apply to this subpart.

(1) "Declared value" of imported components shall be the value at which components are declared by the importer to the U.S. Customs Service at the date of entry into the customs territory of the United States, or, with respect to imports into Canada, the declared value of such components as if they were declared as imports into the United States at the date of entry into Canada.

(2) "Cost of production" of a car line shall mean the aggregate of the products of:

(i) The average U.S. dealer wholesale price for such car line as computed from each official dealer price list effective during the course of a model year, and

(ii) The number of automobiles within the car line produced during the part of the model year that the price list was in effect.

6. A new § 600.506-79 is added reading as follows:

§ 600.506-79 Preliminary determination of manufacturer's average fuel economy.

(a) The manufacturer shall submit, for approval by the Administrator, a determination of his preliminary average fuel economy value.

(1) The average must be submitted within 10 days after the date of the availability of the initial range of fuel economy values of comparable automobiles (ref. § 600.314(d)(1)) or within 30 days after the date the manufacturer's first model type is initially offered for sale, whichever is later.

(2) The deadline for submission of the preliminary average may be waived upon petition by the manufacturer to the Administrator if the Administrator finds good cause. The Administrator will set a new reporting date if a waiver is granted.

(b) The preliminary average fuel economy value will be calculated according to the procedures in § 600.510 except that:

(1) Sales projections will be used for the calculations in place of the production values, and must be updated at the time of the preliminary calculation.

(2) The fuel economy data used in the calculation shall be that approved by the Administrator as of the date of the preliminary average calculation including:

(i) All fuel economy data from original certification vehicles and fuel economy data vehicles as required by § 600.207.

(ii) Fuel economy data from all vehicles tested for running changes approved under § 86.077-23.

(iii) Fuel economy data required by paragraph (d), and

(iv) Other fuel economy data accepted by the Administrator under Subpart A of this part.

(c) Minimum data requirements will be established under paragraph (d) of this section for each base level with a sales fraction of 0.0100 or greater (known as a significant base level).

(1) The sales to be used in this determination are those in paragraph (b)(1) of this section.

(2) For the purposes of this section, the sales fraction for a base level shall be the quotient (rounded to the nearest 0.0001) of projected sales of passenger automobiles (where projected sales are calculated according to § 600.511), nonpassenger automobiles, or category of nonpassenger automobiles, as appropriate, except that projected sales are used in place of production values.

(d) For each significant base level identified in paragraph (c) of this section the manufacturer shall submit prior to the submission of the preliminary calculation, fuel economy data for those vehicle configurations, taken in order of decreasing sales (according to the projection submitted in paragraph (b)(1) of this section, whose sales total a minimum of 90 percent of the sales of that base level. For all other base levels, the minimum data requirements of § 600.207(a)(3)(iii) must be met.

(e) All fuel economy data submitted under this subpart must:

(1) Be determined by the test procedures specified in Subpart B or an approved analytical method as permitted under § 600.006(e), and

(2) Be accepted by the Administrator under the requirements of Subpart A.

(f) For nonpassenger automobiles, the Administrator may require additional testing to be conducted in a nonpassenger automobile base level if he determines that the vehicle configurations comprising that base level can reasonably be expected to exhibit an unacceptably large range in combined fuel economy. The Administrator will make that determination based upon the data submitted at the time of the preliminary calculation.

7. A new § 600.510-79 is added following § 600.510-78 which retains the provisions of § 600.510-78 except that the entire paragraphs (b) and (c) are hereby superseded and paragraphs (a)(3) and (d) are added reading as follows.

§ 600.510-79 Calculation of average fuel economy.

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified herein, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that are domestically manufactured plus the includable imports as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that are not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made either for all nonpassenger automobiles or for each category of nonpassenger automobile (jeep-type vehicles and all other nonpassenger automobiles) in accordance with the preference indicated by the manufacturer in § 600.512.

(b) For the purpose of calculating average fuel economy under paragraphs (c), (d), and (e) of this section:

(1) All fuel economy data submitted under § 600.512 must be used.

(2) Fuel economy will be calculated for each model type according to § 600.207 except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced and

(B) Non-domestically produced and imported;

(ii) Model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg;

(v) High altitude test data will be included; and

(vi) If a model type is comprised of vehicles that are jeep-type vehicles and vehicles that are not, as defined at 42 CFR 553.4 by the Secretary of Transportation, and if the manufacturer has indicated in § 600.512(c)(8) that average fuel economy will be calculated separately for jeep-type vehicles, then separate model type calculations will be made for those vehicles that are jeep-type vehicles and those that are not.

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206 except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced and

(B) Non-domestically produced and imported;

(ii) Model year production data, as required by this subpart, will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(c) For passenger automobiles, average fuel economy will be calculated as follows:

(1) For the category of passenger automobiles defined in § 600.511(d)(1), divide:

(i) The total domestic production volume plus the includable import volume, as determined in § 600.511, by

(ii) A sum of terms, where

(A) One term is a fraction determined by dividing the includable import volume by the average passenger automobile fuel economy value determined in paragraph (e) of this section, and

(B) Each of the remaining terms corresponds to a domestically produced model type and is a fraction determined by dividing the total production volume of that model type by the fuel economy value for that model type calculated in accordance with paragraph (b)(2) of this section.

(2) The average fuel economy for the category of automobiles defined in § 600.511(d)(2) is the value calculated in accordance with paragraph (e) of this section.

(d) For nonpassenger automobiles, average fuel economy will be calculated as follows:

(1) In the case where a manufacturer elects to calculate a single average fuel economy for all nonpassenger automobiles, divide:

(i) The total number of domestically-produced nonpassenger automobiles plus the total number of nonpassenger automobiles which are not domestically produced and are imported, by

(ii) A sum of terms, where

(A) One term is a fraction determined by dividing the total number of nonpassenger automobiles which are not domestically produced and are imported, by the average nonpassenger automobile fuel economy determined in paragraph (e) of this section, and

(B) Each of the remaining terms corresponds to a domestically-produced model type and is a fraction determined by dividing the total production volume of that model type by the fuel economy value for that model type calculated in accordance with paragraph (b)(2) of this section.

(2) In the case where a manufacturer elects to calculate a separate average fuel economy for each category of nonpassenger automobile (jeep-type vehicles and all other nonpassenger automobiles), for each category divide:

(i) The total number of domestically-produced nonpassenger automobiles in that category plus the total number of nonpassenger automobiles in that category which are not domestically produced and are imported, by

(ii) A sum of terms, where

(A) One term is a fraction determined by dividing the total number of nonpassenger automobiles in that category which are not domestically produced and are imported, by the average fuel economy value for that category determined in paragraph (e) of this section, as applicable, and

(B) Each of the remaining terms corresponds to a domestically-produced model type in that category and is a fraction determined by dividing the total

production volume of that model type by the fuel economy value for that model type calculated in accordance with paragraph (b)(2) of this section.

(e) An average fuel economy value will be calculated for the domestically-produced-but-not-imported component of each category of automobile identified in § 600.510(a) as specified below.

(1) Divide the total production volume of the automobiles which are not domestically-produced and are imported in each of the categories identified in paragraph (a) of this section, as appropriate, by

(2) A sum of terms, each of which corresponds to a model type that is not domestically produced and is imported and is a fraction determined by dividing:

(i) The number of automobiles of that model type imported by the manufacturer in the model year, by

(ii) The fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section.

8. Section 600.510-80 is amended by revising paragraphs (a)(3), (b), (d) and (e) to read as follows:

§ 600.510-80 Calculation of average fuel economy.

(a)

(3) An average fuel economy calculation will be made either for all nonpassenger automobiles or for each category of nonpassenger automobile (jeep-type vehicles and all other nonpassenger automobiles) in accordance with the preference indicated by the manufacturer in § 600.512.

(b) For the purpose of calculating average fuel economy under paragraphs (c), (d), and (e) of this section:

(1) All fuel economy data submitted under § 600.512 must be used.

(2) Fuel economy will be calculated for each model type according to § 600.207 except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced and

(B) Non-domestically produced and imported;

(ii) Model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg;

(v) High altitude test data will be included; and

(vi) If a model type is comprised of some vehicles that are jeep-type vehicles and some that are not, as defined at 42 CFR § 553.4 by the Secretary of Transportation, and if the manufacturer has indicated in § 600.512(c)(8) that average fuel economy will be calculated separately for jeep-type vehicles, then separate model type calculations will be made for those vehicles that are jeep-type vehicles and those that are not.

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206 except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced and

(B) Non-domestically produced and imported;

(ii) Model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(d) For nonpassenger automobiles, average fuel economy will be calculated as follows:

(1) In the case where a manufacturer elects to calculate a single average fuel economy for all nonpassenger automobiles, divide:

(i) The total number of domestically-produced nonpassenger automobiles, plus the total number of nonpassenger automobiles that are not domestically imported, by

(ii) A sum of terms, where

(A) One term is a fraction determined by dividing the total number of nonpassenger automobiles which are not domestically produced and are imported, by the average nonpassenger automobile fuel economy determined in paragraph (e) of this section, and

(B) Each of the remaining terms corresponds to a domestically-produced model type and is a fraction determined by dividing the total production volume of that model type by the fuel economy value for that model type calculated in accordance with paragraph (b)(2) of this section.

(2) In the case where a manufacturer elects to calculate a separate average fuel economy for each category of nonpassenger automobile (jeep-type vehicles and all other nonpassenger automobiles), for each category divide:

(i) The total number of domestically-produced nonpassenger automobiles in that category plus the total number of nonpassenger automobiles in that category which are imported, by

(ii) A sum of terms, where

(A) One term is a fraction determined by dividing the total number of nonpassenger automobiles in that category which are not domestically produced and are imported by the average fuel economy value for that category determined in paragraph (e) of this section, as applicable, and

(B) Each of the remaining terms corresponds to a domestically-produced model type of that category and is a fraction determined by dividing the total production volume of that model type by the fuel economy value for that model type calculated in accordance with paragraph (b)(2) of this section.

(e) An average fuel economy value will be calculated for the domestically-produced-but-not-imported component

of each category of automobile identified in § 600.510(a) as specified below.

(1) Divide the total production volume of the automobiles which are not domestically produced and are imported in each of the categories identified in paragraph (a) of this section, as appropriate, by

(2) A sum of terms, each of which corresponds to a model type that is domestically-produced and is imported and is a fraction determined by dividing:

(i) The number of automobiles of that model type imported by the manufacturer in the model year, by

(ii) The fuel economy calculated for that model type in accordance with paragraph (b) (2) of this section.

9. A new § 600.512-79 is added following § 600.512-78 that retains the provisions of § 600.512-78 except that paragraphs (b) (3) and (c) (8) are added reading as follows:

§ 600.512-79 Model year report.

(a) For each model year, the manufacturer shall submit to the Administrator a report, known as the model year report, containing all information necessary for the calculation of the manufacturer's average fuel economy.

(b) (1) The model year shall be in writing, signed by the authorized representative of the manufacturer and shall be submitted no later than 60 days after the report required in § 86.078-37 for the final production quarter.

(2) The Administrator may waive the requirement that the model year report be submitted within 60 days after the final quarterly production report. Based upon a request by the manufacturer, if the Administrator determines that 60 days is insufficient time for the manufacturer to provide all additional data required as determined in either §§ 600.506, 600.507, or 600.508, the Administrator shall establish a date by which the model year report must be submitted.

(3) Separate reports shall be submitted for passenger automobiles and nonpassenger automobiles.

(c) The model year report must include the following information:

(1) All fuel economy data used in the preliminary calculation and subsequently required by the Administrator either under §§ 600.506, 600.507, or 600.508.

(2) All fuel economy data for certification vehicles, and for vehicles tested for running changes approved under paragraph 86.078-33.

(3) Any additional fuel economy data submitted by the manufacturer under § 600.509.

(4) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510.

(5) The manufacturer's average fuel economy value calculated according to § 600.510.

(6) A listing of both domestically and non-domestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made.

(7) Production data, the authenticity and accuracy of which shall be attested to by the corporation, and shall bear the signature of the Chief Executive Officer.

(8) A statement that indicates the manner in which jeep-type vehicles will be included in the average fuel economy calculation for nonpassenger automobiles in accordance with the options established by the Secretary of Transportation at 42 CFR 553.5.

(Sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2001, 2003, 2005, 2006).)

[FR Doc. 77-26373 Filed 9-12-77; 8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 4—DEPARTMENT OF AGRICULTURE

PART 4-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Office-Type Copying Machines

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule amends the Agriculture Procurement Regulations by revising the section covering acquisition of office equipment to include duplicating equipment and by making requisitioners responsible for obtaining required acquisition approval prior to submitting requisitions.

EFFECTIVE DATE: This rule is effective September 13, 1977.

FOR FURTHER INFORMATION CONTACT:

William B. Saltsgaver, Office of Operations, Transportation and Supply Management Staff, United States Department of Agriculture, Washington, D.C. 20250 (202-447-7557).

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 U.S.C. 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. Section 4-4.5021 is revised to read as follows:

§ 4-4.5021 Office-type copying machines.

Proposed acquisitions of office-type copying and duplicating machines and related equipment to be located in the downtown Washington, D.C., complex and the Washington Metropolitan area (including all organizational activities in Beltsville and Hyattsville, Md., and Roslyn, Va., shall be accompanied by written approval from the Director, Office of Operations, or his designee. Requests for procurement action not supported by a

written approval form the Office of Operations shall be returned to the requisitioner. It shall be the responsibility of the requisitioner to prepare the justification statement. A copy of the justification statement and written approval shall be attached to the agency's file copy of the purchase order. Proposed acquisitions for other locations shall be approved by an agency designee. (See § 104-25.302-50 of Agriculture Property Management Regulations.)

AUTHORITY: This amendment is made under the authority of 5 USC 301, 40 USC 486 (c).

Done at Washington, D.C., this 8th day of September, 1977.

E. ALVAREZ,
Director, Office of Operations.

[FR Doc. 77-26604 Filed 9-12-77; 8:45 am]

Title 43—Public Lands: Interior

CHAPTER 1—BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

PART 423—1976-77 DROUGHT LOANS, GRANTS, AND DEFERMENTS

Rules for Emergency Loans, Grants, and Deferrals Under Emergency Drought Act of 1977

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rules.

SUMMARY: This document provides rules consistent with Public Law 95-107, signed by President Carter on August 17, 1977. The new regulation provides additional time to perform certain action under the Bureau of Reclamation Emergency Drought Act of 1977 (Pub. L. 95-18, approved April 7, 1977) and releases funds from the water bank for other purposes.

DATES: These rules are effective on September 13, 1977, and expire on November 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Eugene Hinds, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240 (202-343-5104).

SUPPLEMENTARY INFORMATION: These amendments bring the rules into conformity with legislation enacted by the Congress and signed by President Carter on August 17, 1977. The new Pub. L. 95-107 amends the Bureau of Reclamation Emergency Drought Act of 1977, approved April 7, 1977, to accomplish the following:

(a) Extends the authorities of the Act from September 30, 1977, to November 30, 1977.

(b) Extends the time for accomplishment of construction activities under those authorities from November 30, 1977, to January 31, 1978.

(c) Releases any remaining funds in the water bank provision of the Act for all authorized uses except for fish and wildlife grants.

(d) Removes the limitation on nonreimbursable funds available to State water resource agencies during fiscal year 1977, if such programs are found to be compatible with the broad purposes of the Act.

(e) Gives the Secretary the discretion to waive all, or a portion of, the repayment of loans upon the agreement of a recipient to undertake a program of water conservation and efficient management meeting standards established by the Secretary.¹

Funds for non-Federal projects continue to be limited to 15 percent of the available funds, and not more than \$1 million may be expended for any individual non-Federal contracting entities. Also, the limitation continues that funds not to exceed \$10 million may be expended on a nonreimbursable basis to purchase or to acquire entitlement to water from any available source to mitigate damages to fish and wildlife resources caused by drought.

Although the authorities of the Act have been extended until November 30, 1977, the \$100 million authorized to be appropriated to carry out the provisions of the Act have been appropriated only for fiscal year 1977. In the absence of further action by Congress, all funds to be used under that authority must be obligated by September 30, 1977.

Section 5 of the April 7, 1977, Act provides that actions taken pursuant thereto are in response to emergency conditions. To effect their prompt implementation, it has been decided not to publish the rules in proposed form for public comment. However, the public may submit comments for consideration in possible future revisions.

Section 5 further provides that such actions are not a major Federal action significantly affecting the quality of the human environment for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)).

NOTE.—This document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and Office of Management and Budget Circular A-107.

The primary author of this document is: Aldon D. Nielsen, Assistant Chief, Division of Water and Land, Bureau of Reclamation, Washington, D.C. 20240, telephone number 202-343-5104.

Under authority of Pub. L. 95-18, as amended by Pub. L. 95-107, it is proposed to amend Subtitle B, Chapter I, Title 43 of the Code of Federal Regulations by amending Part 423, Subpart A, as set forth below:

§ 423.9 [Amended]

1. Section 423.9(b) is amended by changing November 30, 1977, to January 31, 1978.

§ 423.14 [Amended]

2. Section 423.14 is amended by changing September 30, 1977, in the last sentence to November 30, 1977.

¹ The Secretary does not intend to exercise this authority. Since a very short time remains before this authority expires, it has been determined that there is not sufficient time to promulgate the standards required for the exercise of this authority.

§ 423.22 [Amended]

3. Section 423.22(c) is amended by changing November 30, 1977, in the last sentence to January 31, 1978.

Dated: September 6, 1977.

CECIL D. ANDRUS,
Secretary of the Interior.

[FR Doc.77-26531 Filed 9-12-77; 8:45 am]

Title 47—Telecommunication CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Editorial Amendment Concerning Station Documents

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Federal Communications Commission is clarifying its rules to specify that only vessels subject to the Communications Act and Great Lakes Agreement are required to retain a copy of Part 83 of the Commission's rules on board. Barge and towing vessels operating on rivers are only subject to the Bridge-to-Bridge Radiotelephone Act. Since they are in regular communications with their home offices where an amended copy of the rules is retained, no useful purpose is served in requiring these vessels to retain a copy of Part 83 of the Commission's rules on board.

EFFECTIVE DATE: September 16, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Nicholas G. Bagnato, Safety and Special Radio Services Bureau (202-632-7197).

SUPPLEMENTARY INFORMATION:

In the Matter of Editorial amendment of § 83.367(b) of the Commission's Rules and Regulations.

ORDER

Adopted: August 31, 1977.

Released: September 7, 1977.

1. Pursuant to section 83.367 of the rules, vessels that are subject to compulsory radio requirements are required to have a copy of Part 83 aboard the vessel. When this requirement was placed in the rules compulsorily equipped vessels were for the most part large sea going vessels, i.e., those subject to the Safety Convention, Title III, Parts II and III of the Act and the Great Lakes Agreement. However, with the advent of the Bridge-to-Bridge Radiotelephone Act the number of vessels required to be fitted with radio increased greatly. For the most part, this new addition to the compulsorily equipped category was made up of tugs and other similar ves-

sels operated solely on bays, sounds, port areas or rivers.

2. Many barge and towing companies operate numerous vessels subject to Bridge-to-Bridge. The requirement that each of these vessels carry Part 83 becomes an administrative burden that serves no useful purpose. In the past, the Commission has granted waivers to several barge and towing companies from this requirement provided a copy of Part 83 is retained in a suitable place on shore, a provision which is in the rules now for voluntarily equipped vessels. The American Waterways Operators, Inc., has now requested that a similar waiver be granted to all towing and barge companies.

3. The rule requirement does not serve any useful purpose when applied to vessels that are subject only to the compulsory requirements of the Bridge-to-Bridge Radiotelephone Act. These towing and barge vessels operating on the rivers are in communications with their home offices on a regular basis. A copy of the rules is retained at the home office and the information contained in the rules is available to the vessel at all times. Therefore, amendment of the rules to eliminate this requirement which was never intended to apply to this type of vessel is appropriate.

4. Since the amendment is editorial because it removes a requirement that was not intended to apply to the class of vessel discussed herein, the prior notice, procedures and effective date provisions of 5 USC 553 are not applicable.

5. It is ordered, That pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules is amended effective September 16, 1977, as set forth below. Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows; § 83.367(b) is amended to read as follows:

§ 83.367 Station documents.

(b) Ship radiotelephone stations not subject to the Safety Convention shall be provided with the documents listed in subparagraphs (1), (2), (3), and (6) of paragraph (a) of this section: *Provided*, That, at the option of the licensee of a radiotelephone station not subject to the compulsory equipment requirements of the Communications Act or the Great Lakes Agreement, the required copy of Part 83 of the Commission's rules may be retained in a suitable place on shore in lieu of being provided aboard the vessel.

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

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

[FR Doc.77-26602 Filed 9-12-77; 8:45 am]

Title 50—Wildlife and Fisheries

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

PART 32—HUNTING

Opening of Chautauqua National Wildlife Refuge, Ill., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

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

DATES: October 22, 1977, through December 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Howard A. Lipke, Refuge Manager, Mark Twain National Wildlife Refuge, P.O. Box 225, Quincy, Ill. 62301. Telephone: 217-224-8580.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game bird hunting for individual wildlife refuge areas.

Public hunting of migratory game birds is permitted on the Chautauqua National Wildlife Refuge, Ill., only on the areas designated by signs. These areas comprising 745 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Migratory game bird hunting shall be in accordance with all applicable State regulations subject to the following conditions:

1. Blinds—No permanent structure, excluding wood or brush duck blinds, shall be permitted, no blinds shall be locked or otherwise sealed against public entry.

2. Steel shot ammunition is required when hunting ducks, geese, and coots with 12 gauge shotguns. Hunters taking waterfowl and coots with 12 gauge shotguns may not possess ammunition containing lead or other toxic shot. Only 12 gauge shotguns will be required to use steel shot during the 1977 waterfowl season. All other sizes of shotgun, including 10 gauge, are exempt from the steel shot requirements during this year's season.

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

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under

Executive Order 11949 and OMB Circular A-107.

Dated: September 2, 1977.

JACK E. HEMPHILL,
Regional Director.

[FR Doc. 77-26591 Filed 9-12-77; 8:45 am]

PART 32—HUNTING

Opening of Certain National Wildlife Refuges to Hunting of Migratory Game Birds; Arizona, California, New Mexico, Oklahoma, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain national wildlife refuges in Arizona, California, New Mexico, Oklahoma, and Texas, is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. The name of each affected refuge and the special regulations for each refuge are set forth below.

EFFECTIVE DATES: See the dates listed for each refuge under Supplementary Information below.

FOR FURTHER INFORMATION CONTACT:

Refuge Manager, as listed for each refuge under Supplementary Information below.

SUPPLEMENTARY INFORMATION:

CIBOLA NATIONAL WILDLIFE REFUGE

DATES: September 1, 1977, through January 3, 1978.

FOR FURTHER INFORMATION CONTACT:

George M. Constantino, Refuge Manager, Cibola National Wildlife Refuge, Box AP, Blythe, Calif. 92225, telephone: 714-922-4433.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of doves on the Cibola National Wildlife Refuge, Arizona and California, is permitted as follows: Arizona—mourning and white-winged doves, from September 1 through September 25, 1977; mourning doves only, from December 10, 1977, through January 3, 1978. California—mourning and white-winged doves, from September 1 through September 30, 1977, and from November 19 through December 4, 1977. Hunting is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 7,500 acres, are delineated on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all State and Federal regulations subject to the following special conditions:

1. Up to 2 dogs per hunter may be used for the purpose of hunting and retrieving.

2. Pits or permanent blinds are prohibited.

3. Hunting is prohibited within one-fourth mile of any occupied dwelling or 250 yards of any farm field worker.

4. Campfires will be permitted only in designated areas. All other open fires are prohibited.

5. Cibola Lake, located in Zone I, is closed to fishing from October 1 through March 1 during the waterfowl use period.

HAVASU NATIONAL WILDLIFE REFUGE

DATES: September 1, 1977, through January 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Tyrus W. Berry, Refuge Manager, Havasu National Wildlife Refuge, P.O. Box A, Needles, Calif. 92362, telephone: 714-326-3853.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of doves on the Havasu National Wildlife Refuge, Arizona and California, is permitted only on the area designated by signs as open to hunting. This open area, comprising 23,200 acres, is delineated on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona—mourning doves, from September 1 through September 25, 1977, and from December 10, 1977, through January 3, 1978. White-winged doves, from September 1 through September 25, 1977. California—mourning and white-winged doves, from September 1 through September 30, 1977, and from November 19 through December 4, 1977. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of doves subject to the following special conditions:

1. Hunting is prohibited within one-fourth mile of any occupied dwelling or concession operation.

2. The Pintall Slough Management Unit will be open to hunting only on Saturdays, Sundays, and Wednesdays. This unit is comprised of all refuge land north of the north dike.

IMPERIAL NATIONAL WILDLIFE REFUGE

DATES: November 19, 1977, through January 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald E. Duncan, Refuge Manager, Imperial National Wildlife Refuge, Box 2217, Martinez Lake, Ariz. 85364, telephone: 602-783-3400.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of doves on the Imperial National Wildlife Refuge, Arizona

and California, is permitted only on the area designated by signs as open to hunting. This open area, comprising 16,500 acres, is delineated on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona—mourning doves only, from December 10, 1977, to January 3, 1978; California—mourning and white-winged doves, from November 19 through December 4, 1977. Hunting shall be in accordance with all applicable State and Federal regulations.

BITTER LAKE NATIONAL WILDLIFE REFUGE

DATES: Mourning and white-winged doves; September 1 through December 23, 1977. Teal ducks; September 17 through September 25, 1977.

FOR FURTHER INFORMATION CONTACT:

LeMoyné B. Marlett, Refuge Manager, Bitter Lake National Wildlife Refuge, Box 7, Roswell, N. Mex. 88201, telephone: 505-622-6755.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

1. Public hunting of mourning and white-winged doves on the Bitter Lake National Wildlife Refuge is permitted from September 1 through September 30, 1977 and from November 24 through December 23, 1977, but only on the areas designated by signs as open to hunting. These areas consist of 1,600 acres on the North Refuge Unit (Area B) and 1,800 acres on the South Refuge Unit (Area C). Hunting areas are delineated on maps available at refuge headquarters, 13 miles northeast of Roswell, N. Mex., and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all State and Federal regulations subject to the following special condition:

a. Steel (iron) shot shotgun ammunition only may be used for the taking of doves on the South Refuge Unit (Area C) during the special teal hunting season (September 17 through September 25, 1977) and during the regular waterfowl hunting season when both seasons run concurrently. Steel (iron) shot shotgun ammunition is available from at least 2 commercial outlets in Roswell, N. Mex.

2. Public hunting of teal ducks on the Bitter Lake National Wildlife Refuge is permitted from September 17 through September 25, 1977, but only on the areas designated by signs as open to hunting. These areas consist of 1,600 acres on the North Refuge Unit (Area B) and 1,800 acres on the South Refuge Unit (Area C). Hunting areas are delineated on maps available at refuge headquarters, 13 miles northeast of Roswell, N. Mex., and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of teal ducks subject to the

following special condition:

a. Steel (iron) shot shotgun ammunition only may be used for the taking of teal ducks on the South Refuge Unit (Area C) from September 17 through September 25, 1977. Steel (iron) shot shotgun ammunition is available from at least 2 commercial outlets in Roswell, N. Mex.

BOSQUE DEL APACHE NATIONAL WILDLIFE REFUGE

DATES: September 1 through December 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard W. Rigby, Refuge Manager, Bosque del Apache National Wildlife Refuge, P.O. Box 278, San Antonio, N. Mex. 78132, telephone: 505-835-1828.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of mourning and white-winged doves on the Bosque del Apache National Wildlife Refuge is permitted from September 1 through September 30, 1977, and from November 24 through December 23, 1977, but only on the area designated by signs as open to hunting. This area, encompassing 9,275 acres, includes the area from the Bureau of Reclamation Low Flow Channel east generally to the western boundary of the Little San Pascual Wilderness Unit and from the A.T. & S.F. railroad tracks west to the Bureau of Reclamation power line. The open area is delineated on maps available at refuge headquarters, 8 miles south of San Antonio, N. Mex., and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all State and Federal regulations covering the hunting of doves subject to the following special conditions:

1. Vehicles are permitted only on established roads.
2. Hunters shall leave the refuge by one-half hour after sunset.
3. No camping or open fires are allowed.

SEVILLETA NATIONAL WILDLIFE REFUGE

DATES: September 1 through December 23, 1977.

FOR FURTHER INFORMATION CONTACT:

Richard W. Rigby, Refuge Manager, Bosque del Apache National Wildlife Refuge, P.O. Box 278, San Antonio, N. Mex. 78132, telephone: 505-835-1828.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of doves and teal ducks on the Sevilleta National Wildlife Refuge, San Acacia, N. Mex., is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 1,992 acres, are delineated on maps available at refuge headquarters of the Bosque del Apache National Wild-

life Refuge, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: mourning and white-winged doves, from September 1 through September 30, 1977, and from November 24 through December 23, 1977; teal ducks, from September 17 through September 25, 1977. Hunting shall be in accordance with all State and Federal regulations covering the hunting of doves and teal ducks subject to the following special conditions:

1. No camping will be permitted on the area.
2. Parking will be limited to areas as posted and designated on hunt map.
3. Vehicle entry will be restricted to areas as posted and designated on hunt map.
4. There will be no entry to the hunt area earlier than 2 hours before sunrise.
5. All hunters must be out of the hunt area by one-half hour after shooting hours.
6. Up to 2 dogs per hunter may be used for the purpose of hunting and retrieving.
7. Hunters may not enter closed areas to retrieve birds.

SEQUOYAH NATIONAL WILDLIFE REFUGE

DATES: September 1 through December 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert H. Stratton, Jr., Refuge Manager, Sequoyah National Wildlife Refuge, Box 398, Sallisaw, Okla. 74955, telephone: 918-775-4931.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of doves and teal ducks on the Sequoyah National Wildlife Refuge is permitted on three areas designated by signs as open to hunting. These open areas, comprising 10,500 acres, are delineated on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: doves, from September 1 through September 30, 1977, and December 1 through December 30, 1977; teal ducks, from September 10 through September 18, 1977. Hunting shall be in accordance with all State and Federal regulations covering the hunting of doves and teal ducks subject to the following special conditions:

1. Hunting weapons of any kind are prohibited in areas not posted as open to public hunting, except the Kerr-McClellan Navigation Channel where weapons must be cased or broken down.
2. Only longbow and arrow or shotguns without slug ammunition are permitted.
3. Camping or possession of firearms on the refuge at night is prohibited.
4. All vehicles must be parked in designated parking areas as shown on maps available at refuge headquarters and at leaflet boxes throughout the public hunting area.

TISHOMINGO NATIONAL WILDLIFE REFUGE
DATES: September 1 through September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Ernest S. Jemison, Refuge Manager, Tishomingo National Wildlife Refuge, Box 248, Tishomingo, Okla. 73460, telephone: 405-371-2402.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of doves and teal ducks on the Tishomingo National Wildlife Refuge is permitted only on the area designated by signs as open to hunting. This open area, comprising 3,170 acres, is delineated on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of doves and teal ducks subject to the following special conditions:

1. The open season for hunting mourning doves on the refuge extends from September 1 through September 30, 1977.
2. The open season for hunting teal ducks on the refuge extends from September 10 through September 18, 1977.
3. Up to 2 dogs per hunter may be used for the purpose of hunting and retrieving.
4. A Federal permit is not required to enter the public hunting area, but hunters, upon entering and leaving, shall report at designated checking stations as may be established for the regulation of the hunting activity and shall furnish information pertaining to their hunting, as requested.

BRAZORIA NATIONAL WILDLIFE REFUGE
DATES: September 10 through September 18, 1977.

FOR FURTHER INFORMATION CONTACT:

Larry M. Ivy, Refuge Manager, Brazoria National Wildlife Refuge, Box 1088, Angleton, Tex. 77515, telephone: 713-849-6062.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of teal ducks on the Brazoria National Wildlife Refuge is permitted only on the area designated by signs as open to hunting. This open area, comprising 2,300 acres of Rattlesnake Island on the southeast side of the Intracoastal Waterway and adjacent to Bastrop, Christmas, and Drum Bays, is delineated on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of teal ducks subject to the following special conditions:

1. The open season for hunting of teal ducks on the refuge extends from September 10 through September 18, 1977.
2. Access to the hunting area is entirely over public water routes. Travel across the refuge mainland to and from the area open to hunting is not permitted.
3. Only temporary blinds may be constructed or used on the hunting area. Natural materials may be used for blind construction.
4. Up to 2 dogs per hunter may be used for the purpose of hunting and retrieving.

HAGERMAN NATIONAL WILDLIFE REFUGE
DATES: September 1 through September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Bert E. Blair, Refuge Manager, Hagerman National Wildlife Refuge, Route 3, Box 123, Sherman, Tex. 75090, telephone: 214-786-2826.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of mourning doves on the Hagerman National Wildlife Refuge is permitted only on the area designated by signs as open to hunting. This open area, comprising 1,754 acres, is delineated on maps available at refuge headquarters, and from the Regional Director, U.S. Fish and Wildlife Refuge, P.O. Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State and Federal regulations subject to the following special condition:

1. The open season for hunting mourning doves on the refuge extends from September 1 through September 30, 1977.

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

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

W. O. NELSON, Jr.,
Regional Director,
Albuquerque, N. Mex.

AUGUST 31, 1977.
 [FR Doc. 77-26488 Filed 9-12-77; 8:45 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

[7 CFR Part 2852]

UNITED STATES STANDARDS FOR GRADES OF CANNED TOMATO PUREE (TOMATO PULP)¹

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal is to amend the grading standards for canned tomato puree (tomato pulp). This action was initiated at the request of the industry. The effect of the change will be to provide for electronic color meters as an alternative method of evaluating the color of the product.

DATE: Comments, in duplicate, must be received on or before December 31, 1977.

ADDRESS: Send comments to: Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Comments will be available for public inspection at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Dale C. Dunham, Standardization Section, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202-447-4693).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the United States Department of Agriculture is considering an amendment to the United States Standards for Grades of Canned Tomato Puree (Tomato Pulp) (7 CFR 52.5081-52.5091) (to be recodified 7 CFR 2852.5081-2852.5091) issued pursuant to the authority contained in the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090, as amended, 7 U.S.C. 1924).

The current United States Standards for Grades of Canned Tomato Puree (Tomato Pulp) have been in effect since 1970.

During the last several years, the United States Department of Agriculture has conducted formal studies designed to accumulate data which would establish the relationships between visual and instrumental evaluations of the colors of tomato products. These studies were conducted during 1974, 1975, and 1976

¹ Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

in collaboration with the University of California at Davis and the Cannery League of California.

As a result of these studies, it was established that certain approved electronic color meters (which had been properly calibrated and standardized) would give readings that could be mathematically converted into numerical values of the colors of canned tomato puree (tomato pulp) that closely approximated the numerical value assigned when the same canned tomato puree (tomato pulp) was visually evaluated for color by members of an expert panel.

The accuracy and applicability of the methodology and conversion equations were verified during processing runs and confirmation tests conducted among packers of canned tomato puree (tomato pulp) during the 1975 and 1976 processing seasons.

Because of the apparent interchange between the two methods of accurately evaluating the color of canned tomato puree (tomato pulp), the Cannery League of California has requested the United States Department of Agriculture to amend the United States Standards for Grades of Canned Tomato Puree (Tomato Pulp) to allow for the instrumental evaluation of the color of the product.

The Department, after careful consideration, concurs with the request. The reasons are as follows:

(1) The use of electronic color meters to determine color values provides objectivity when making such evaluations.

(2) The use of electronic color meters provides repeatability of results and helps to minimize human visual errors such as eye fatigue, poor color discrimination, and/or subjective evaluations.

(3) Either a visual or instrumental method of the evaluation of the color of canned tomato puree (tomato pulp) is permitted.

(4) Precise lighting conditions which are absolutely necessary for accurate visual color evaluations are eliminated; provided, of course, that the electronic color meter that is used is properly calibrated and standardized. This is essential when using electronic color meters.

The amendment proposed is:

In Part 2852, Subpart—United States Standards for Grades of Canned Tomato Puree (Tomato Pulp), Sec. 2852.5088 Color, is amended to read as follows:

§ 2852.5088 Color.

(a) *General.* The amount of red in tomato puree is determined by comparing the color of the product, diluted, if necessary, with water to between 8.0 percent and 8.6 percent, inclusive, of natural tomato soluble solids (N.T.S.S.) with that produced by spinning a combination of the following Munsell color discs:

Disc 1—Red (5R 2.5/13) (glossy finish).
Disc 2—Yellow (2.5YR 5/12) (glossy finish).
Disc 3—Black (N1) (glossy finish).
Disc 4—Grey (N4) (mat finish).

Such comparison is made under a diffused light source of approximately 250 foot-candle (candela) intensity and having a spectral quality approximating that of daylight under a moderately overcast sky, and a color temperature of 7,500 degree Kelvin \pm 200 degree. With the light source directly over the disc and product, observation is made at an angle of 45 degrees and at a distance of 12 or more inches from the product.

(b) *Availability of color reference.* The colors referred to in this section are available from the approved supplier under a license from the U.S. Department of Agriculture:

Munsell Color Co., 2441 North Calvert Street, Baltimore, Md. 21218.

(c) *Use of electronic color meters.*

(1) Values that may be used for conversion to a numerical score point color evaluation of the product may be determined by any electronic color meter system approved by the United States Department of Agriculture. Such values may be determined by electronic color meters only on tomato puree that has a concentration of, or may be diluted with water to, 8.5 percent (\pm 0.1 percent) natural tomato soluble solids (N.T.S.S.).

(2) The values derived with the approved electronic color meter system shall be resolvable into a calculated numerical score point by use of any appropriate conversion formula that has been approved by the USDA.

(d) *Grade A classification.*—(1) Tomato puree that has a good color may be given a score of 45 to 50 points. "Good color" means a bright, typical, red tomato puree color. Such color, when the product of the proper concentration and observed as specified in this section, is as red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

65 percent of the area of Disc 1;
21 percent of the area of Disc 2; and
14 percent of the area of either Disc 3 or Disc 4; or
7 percent of the area of Disc 3 and 7 percent of the area of Disc 4, whichever most nearly matches the appearance of the sample.

(2) Any calculated numerical score of 45 points, for a product of the proper concentration, shall be equivalent to a visually evaluated color score of 45 points produced under the conditions specified in paragraph (d) (1) of this section. Proportionately higher calculated numerical scores or visually assigned score points

may be assigned to products of the proper concentration which show more redness.

(e) *Grade C classification.*—(1) Tomato puree that has at least a fairly good color may be given a score of 40 to 44 points. Tomato puree that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means a typical red tomato puree color which may be slightly dull or have a slight yellow, yellow-orange, or brownish cast. Such color, when the product is of the proper concentration and is observed as specified in this section, is as red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

53 percent of the area of Disc 1;
28 percent of the area of Disc 2; and
19 percent of the area of either Disc 3 or Disc 4; or
9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the appearance of the sample.

(2) Any calculated numerical score of 40 points, for a product of the proper concentration, shall be equivalent to a visually evaluated color score of 40 points produced under the conditions specified in paragraph (e) (1) of this section. Proportionately higher calculated numerical scores or visually assigned score points may be assigned to products of the proper concentration which show more redness.

(f) *Substandard classification.* Tomato puree that fails to meet the requirements of paragraph (e) of this section may be given a score of 0 to 39 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

Note.—The Food Safety and Quality 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.

Dated: September 7, 1977.

ROBERT ANGELOTTI,
Administrator.

[FR Doc. 77-26511 Filed 9-12-77; 8:45 am]

[7 CFR Part 2852]

UNITED STATES STANDARDS FOR
GRADES OF CANNED TOMATO JUICE¹

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal is to amend the grading standards for canned tomato juice. This action was initiated at the request of the industry. The effect of the change will be to provide for electronic color meters as an alternative

¹ Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

method of determining the color of the product.

DATE: Comments, in duplicate, must be received on or before December 31, 1977.

ADDRESS: Send comments to: Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250. Comments will be available for public inspection at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Dale C. Dunham, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250. Phone 202-447-4693.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the United States Department of Agriculture is considering an amendment to the United States Standards for Grades of Canned Tomato Juice (7 CFR 52.3621-52.3630) (to be recodified 7 CFR 2852.3621-2852.3630) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090 as amended, 7 U.S.C. 1624).

The current United States Standards for Grades of Canned Tomato Juice have been in effect since 1958.

During the last several years, the United States Department of Agriculture has conducted formal studies designed to accumulate data which would establish the relationships between visual and instrumental evaluations of the colors of tomato products. These studies were conducted in 1974, 1975, 1976 and 1977 in California at Davis and the Canners League of California.

As a result of these studies, it was established that certain approved electronic color meters (which had been properly calibrated and standardized) would give readouts that could be converted into numerical values of the colors of canned tomato juice that closely approximated the numerical values assigned when the same canned tomato juice was visually evaluated for color by members of an expert panel.

The accuracy and applicability of the methodology and conversion equations were verified during processing runs and confirmation tests conducted among packers of canned tomato juice during the 1976 processing season.

Because of the apparent interchange between the two methods of accurately evaluating the color of canned tomato juice, the Canners League of California has requested the United States Department of Agriculture to amend the United States Standards for Grades of Canned Tomato Juice to allow for the instrumental evaluation of the color of the product.

The Department, after careful consideration, concurs with the request. The reasons are as follows:

(1) The use of electronic color meters to determine color values provides objectivity when making evaluations.

(2) The use of electronic color meters provides repeatability of results and helps to minimize human visual errors such as eye fatigue, poor color discrimination, and subjective evaluations.

(3) Either a visual or instrumental method of the evaluation of the color of canned tomato juice is permitted.

(4) Precise lighting conditions which are absolutely necessary for accurate visual color evaluations are eliminated; provided, of course, that the electronic color meter that is used is properly calibrated and standardized. This is essential when using electronic color meters.

The amendment proposed is:

In Part 2852, Subpart—United States Standards of Grades of Canned Tomato Juice, Sec. 2852.3625 Color, is amended to read as follows:

§ 2852.3625 Color.

(a) *General.* The amount of red in canned tomato juice is determined by comparing the color of the product with that produced by spinning a combination of the following Munsell color discs:

Disc 1—Red (5R 2.6/13) (glossy finish).
Disc 2—Yellow (2.5 YR 5/12) (glossy finish).
Disc 3—Black (N1) (glossy finish).
Disc 4—Grey (N4) (mat finish).

Such comparison is made under a diffused light source of approximately 250 foot-candle intensity and having a spectral quality approximately that of daylight under a moderately overcast sky, and a color temperature of 7,500 degrees Kelvin \pm 200 degrees. With the light source directly over the disc and product, observation is made at an angle of 45 degrees and at a distance of 12 inches or more from the product.

(b) *Availability of color reference.* The colors referred to in this section are available from the approved supplier under a license from the U.S. Department of Agriculture:

Munsell Color Co., 2441 North Calvert Street, Baltimore, Md. 21218.

(c) *Use of electronic color meters.*

(1) Values that may be used for conversion to a numerical score point color evaluation of the product may be determined by any electronic color meter system approved by the United States Department of Agriculture.

(2) The values derived with the approved electronic color meter system shall be resolvable into a calculated numerical score point by use of any appropriate conversion formula that has been approved by the USDA.

(d) *Grade A classification.*

(1) Canned tomato juice that has a good color may be given a score of 26 to 30 points. "Good color" means a color that is typical of canned tomato juice, made from well ripened red tomatoes, which has been properly prepared and properly processed. Such color contains as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

65 Percent of the area of Disc 1;
21 Percent of the area of Disc 2; and

14 Percent of the area of either Disc 3 or Disc 4; or

7 Percent of the area of Disc 3 and 7 percent of the area of Disc 4, whichever most nearly matches the reflectance of the product.

(2) Any calculated numerical score of 26 points for the product shall be equivalent to a visually evaluated color score of 26 points produced under the conditions specified in paragraph (d)(1) of this section. Proportionally higher calculated numerical scores or visually assigned score points may be assigned to products which show more redness.

(e) *Grade C classification.*

(1) Canned tomato juice that has a fairly good color may be given a score of 23 to 25 points. Canned tomato juice that scores 23 or 24 points for color shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a partial limiting rule). "Fairly good color" means a color that is typical of canned tomato juice. To score 25 points for color, the juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

59 Percent of the area of Disc 1;

24½ Percent of the area of Disc 2; and

16½ Percent of the area of either Disc 3 or Disc 4; or

8¼ Percent of the area of Disc 3 and 8¼ percent of the area of Disc 4, whichever most nearly matches the reflectance of the product.

(2) Any calculated numerical score of 25 points for a product shall be equivalent to a visually evaluated color score produced under the conditions specified in paragraph (e)(1) of this section.

(3) To score 23 or 24 points for color the canned tomato juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

53 Percent of the area of Disc 1;

28 Percent of the area of Disc 2; and

19 Percent of the area of either Disc 3 or Disc 4; or

9½ Percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the reflectance of the product.

(4) Any calculated numerical score of 23 points for a product shall be equivalent to a visually evaluated color score produced under the conditions specified in paragraph (e)(3) of this section. A proportionally higher calculated numerical score or visually assigned score may be assigned to products which show more redness.

(f) *Substandard classifications.* Canned tomato juice that fails to meet the requirements of paragraph (e) of this section may be given a score of 0 to 22 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

NOTE.—The Food and Quality 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.

Dated: September 1, 1977.

ROBERT ANGELOTTI,
Administrator.

[FR Doc.77-26510 Filed 9-12-77;8:45 am]

Animal and Plant Health Inspection Service
[9 CFR Parts 1, 3]
MARINE MAMMALS

Proposed Regulations and Standards for the Humane Handling, Care, Treatment, and Transportation; Informal Public Hearing

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

ACTION: Notice of informal public hearings.

SUMMARY: On August 19, 1977, the Deputy Administrator, Veterinary Services, APHIS, published in the FEDERAL REGISTER proposed rulemaking under the authorities of the Animal Welfare Act (7 U.S.C. 2131) to provide for the humane handling, care, treatment, and transportation of marine mammals maintained in captivity. The notice gave all interested persons a period of 60 days for the filing of written comments concerning the proposed regulations and standards. Informal public hearings will be held to give interested persons a further opportunity to participate in the rulemaking proceeding through the submission of written comments with an opportunity for oral presentation.

DATES: The hearings will be held on Monday, September 26, 1977, at Los Angeles, Calif., and on Thursday, September 29, 1977, at Miami Springs, Fla., between the hours of 8:30 a.m. through 4:30 p.m.

ADDRESS: The informal public hearings will be held at the Century III Room, Quality Hotel—International Airport, 5249 West Century Boulevard, Los Angeles, Calif. 90045, telephone number 213-645-2200, and at the Buena Vista Room, Holiday Inn, 1111 South Royal Poinciana, Miami Springs, Fla. 33166, telephone number 305-885-1941.

FOR FURTHER INFORMATION CONTACT:

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, telephone number 301-436-8271.

SUPPLEMENTARY INFORMATION: Dr. Dale F. Schwindaman will serve as chairman at the informal public hearings. The procedure to be followed will be informal and without a structured agenda. Individual presentations will not be scheduled in advance. A written copy of a speaker's comments must be given to the chairman prior to the speaker's oral presentation, but is not required to be read into the record. Individuals

making presentations may verbally summarize or emphasize certain points of their written comments. Opportunity will be provided for the chairman or other persons at the hearing to ask questions relating to each presentation made. The time for oral presentations and questions may be limited in the discretion of the chairman in order to give all persons at the hearing an opportunity to be heard. Transcripts of the oral hearings will be made, and copies of the transcripts and any written comments submitted at the hearings, will be made a part of the record in this rulemaking proceeding and will be available for public inspection together with all other comments received in this proceeding in accordance with the notice dated August 19, 1977.

The American Association of Zoological Parks and Aquariums (AAZPA) is holding their 53rd Annual Conference in San Diego, Calif., from September 18 through 22, 1977. The agenda for such a conference calls for a post-conference field trip on September 23, 1977, to the Los Angeles Zoo. The members of the AAZPA possess extensive experience, knowledge, and expertise in the handling, care, treatment, and transportation of marine mammals, which is involved in this rulemaking proceeding. The Department is hopeful that many members of the AAZPA in attendance at such conference will attend the informal public hearing in Los Angeles if it is conveniently scheduled in conjunction with their conference, and thereby provide this Department with invaluable information concerning its proposed regulations and standards covering marine mammals. Therefore, it is deemed reasonable to set the date for such informal public hearing at Los Angeles less than 15 days after publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C. this 9th day of September 1977.

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

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc.77-26705 Filed 9-12-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Business for Purpose of Government Procurement for Establishments Engaged in Architectural and/or Engineering Services

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The purpose of this rule is to eliminate the current separate definitions of small business for the purpose

of Government procurement for architectural and engineering services and to adopt a single \$3.5 million standard for application to contracts for either or both. Confusion has existed among contracting officers and vendors as to which standard to apply when both architectural and engineering services are involved. Procurement for architectural services carried a size standard of \$2 million, while engineering services is \$7.5 million. This new definition is intended to eliminate the confusion while maintaining adequate competition by contractors qualified to meet Government requirements.

DATE: Written comments must be submitted by October 13, 1977.

ADDRESS: William L. Pellington, Director, Size Standards Division, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

John D. Whitmore, 202-653-6373.

SUPPLEMENTARY INFORMATION: This proposal was prompted by comments received from contracting officers, vendors, and professional associations concerning the dual size standards and also the present level.

The perplexity of deciding which standard to apply when the primary requirement of the procurement called for substantially equal proportions of both architectural and engineering services has bewildered both contracting officers and vendors alike. This situation has caused numerous protests to be lodged against the size standard applied in various procurements, causing delays in contract awards.

Additionally, commenters have indicated that the present size standard for engineering services is extremely high, so that very few firms are excluded, thus causing small firms to try and compete with the very large. It is their contention that the size standard for engineering services should be lowered to the point which would allow only those firms who, because of their size, have problems maintaining their competitive viability.

In this light, consideration has also been given to the issue of maintaining adequate competition among contractors qualified to meet Government requirements. Research shows that over 96 percent of the companies would fall under the \$3.5 million standard. This puts to rest any fear of insufficient qualified contractors. Accordingly, we propose to adopt a \$3.5 million annual receipts standard for both architectural and engineering services contracts.

More specifically, it is proposed to amend § 121.3-8 of Part 121, Chapter I, Title 13 of the Code of Federal Regulations, by revising § 121.3-8(e)(1) to read as follows:

§ 121.3-8 Definition of small business for Government procurement.

(e) Services. . . .

(1) Any concern bidding on a contract

for engineering services, architectural services, or architectural and engineering services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed \$3.5 million.

Dated: August 31, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 77-26577 Filed 9-12-77; 8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 286]

FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Procedures and Requirements; Extension of Comment Period

AGENCY: Office of the Secretary of Defense.

ACTION: Extension of comment period.

SUMMARY: In FR Doc. 77-23004 published in the FEDERAL REGISTER, August 10, 1977 (42 FR 40552), the Office of the Secretary of Defense published a proposed rule revising 32 CFR Part 286. This action extends the comment period for the proposed rule.

DATE: Comments must be received on or before September 26, 1977.

ADDRESS: Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Department of Defense, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT:

Arthur E. Fajans, 202-697-1171.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

SEPTEMBER 8, 1977.

[FR Doc. 77-26593 Filed 9-12-77; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 785-8]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Maine Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Disapproval of a proposed Implementation Plan revision.

SUMMARY: A revision to the Maine Implementation Plan, which would have exempted municipal refuse conical incinerators from the particulate emission standards, is being disapproved on the basis of predicted violations of the National Ambient Air Quality Standards. Accordingly, these facilities must continue to comply with Regulation 100.4 of the Maine Air Pollution Control Regulations.

EFFECTIVE DATE: September 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Wallace Woo, Air Branch, EPA Region I, Room 2113, JFK Federal Building, Boston, Mass. 02203 (617-223-5609).

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

On June 13, 1977, there was published in the FEDERAL REGISTER (42 FR 30219) a proposal to exempt municipal refuse conical incinerators serving populations of 25,000 or less from the incinerator particulate emission standards contained in Regulation 100.4 of the Maine Air Pollution Control Regulations. The proposed revision to the State Implementation Plan (SIP) was submitted by the Maine Department of Environmental Protection (Maine DEP) on November 18, 1976, and was accompanied by an evaluation of the air quality impact of the revision.

The calculations performed by the Maine DEP showed that air quality levels exceeding the NAAQS for total suspended particulates (TSP) could occur in the vicinity of municipal refuse conical incinerators which are not subject to any emission limitations. Based on this analysis, the Regional Administrator indicated in the FEDERAL REGISTER proposal that he was considering disapproval of the proposed revision.

No comments were received during the 30-day comment period, nor was any additional technical information submitted.

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

(Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 1827c-5(a).)

Dated: September 7, 1977.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 77-26546 Filed 9-12-77; 8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[41 CFR Part 24-1]

[Docket No. R-77-460]

PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Small Business Set-Asides; Correction

AGENCY: Office of Administration, HUD.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the telephone number of the person to be contacted for further information.

SUPPLEMENTARY INFORMATION: The telephone number for William F. Grigg appearing at 42 FR 42234 (August 22, 1977) should be corrected to read 202-724-0034.

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

Issued at Washington, D.C., August 31, 1977.

PATRICIA ROBERTS HARRIS,
Secretary of Housing and Urban
Development.

[FR Doc. 77-26871 Filed 9-12-77; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 43]

[Docket No. 21385; RM-2765; FCC 77-603]

ANNUAL REPORTS FORMS

Amending Form M for Telephone Companies, Form O for Wire-Telegraph and Ocean-Cable Carriers, and Form R for Radiotelegraph Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes to amend certain annual report forms used by telephone companies, wire-telegraph and ocean-cable carriers, and radiotelegraph carriers. The document would amend the reporting requirements for the compensation of employees other than officers and directors.

Comments are solicited from State Commissions and the general public on two major areas: (1) the adequacy of the compensation groups being proposed for aggregating employees other than officers and directors; and (2) which company officials shall be individually reported as officers in the revised schedules.

This proposal is in response to an original and an amended petition for rulemaking and will result in a reduction in respondent's reporting requirements.

DATES: Comments from the State Commissions and the general public should be submitted on or before November 1, 1977, and reply comments on or before December 1, 1977. The proposed effective date to amend Annual Report Forms M, O, and R is for the report for the year 1977.

ADDRESSES: Send comments to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Gary R. Oddi, Accounting Branch, Accounting and Audits Division, Common Carrier Bureau, 202-632-3863.

In the Matter of Amendment of Annual Reports Form M for Telephone Companies, Form O for Wire-Telegraph and Ocean-Cable Carriers, and Form R for Radio-telegraph Carriers to amend

the reporting requirements for compensation of employees other than officers and directors, (Docket No. 21385 (RM-2765)).

Adopted August 31, 1977.

Released: September 2, 1977.

1. On October 26, 1976, Public Notice was given that a Petition for Rulemaking in the above-entitled matter had been filed on October 6, 1976, by the American Telephone and Telegraph Company (AT&T). As a result of responses to its petition, AT&T amended its original petition on March 14, 1977.

2. Schedule 70B, "Compensation of Officers, Directors, Etc.," of Annual Report Form M requires each telephone company¹ to furnish names, positions, and compensations data with respect to (1) officers and directors, (2) all other persons having an annual salary of \$40,000 or more, and (3) persons to whom the carrier paid \$40,000 or more during the year as compensation for current or past services.²

3. In 1934, carriers were required to report the name, position, and amount of compensation paid to each officer and director in Annual Report Form M. In addition, the annual compensation of each employee not designated as an officer or director was required to be reported if the amount was \$10,000 or more. In 1948, this amount was raised to \$15,000 and in 1959, to \$20,000. In 1965, the reporting compensation level for those carriers having annual operating revenues exceeding \$25,000,000 was raised to \$30,000. In 1973, the present requirements were adopted. The compensation level for reporting data on these employees has been raised over the years because of increasing salary scales.

4. In its October 6, 1976, petition, AT&T requested the Commission to eliminate from Annual Report Form M the requirement for reporting the names, positions, and compensation of employees as distinguished from officers and directors. In AT&T's amended petition, compensation of employees other than officers and directors would continue to be reported but it would be aggregated by reporting the number of such persons within designated compensation groups. A description of the general nature of the position included within each compensation group would also be reported. The names of individuals so aggregated would not be reported but such information would be maintained by the carriers for submittal to the Commission upon request. AT&T believes its amended proposal would ensure the privacy of individuals who are neither directors nor

¹ Schedule 3, "General Officers and Executives," of Annual Report Forms O and R requires the same reporting for wire-telegraph, ocean-cable and radiotelegraph carriers.

² \$20,000 or more is the reporting level if the carrier's annual operating revenue does not exceed \$100 million.

officers while at the same time continue to provide an overall picture of the compensation of top management. For purposes of preparing this schedule, AT&T proposes that directors are those individuals who comprise the Board of Directors and officers are those corporate officials who are elected or appointed by the Board of Directors.

5. GTE Domestic Telephone Operating Companies and the Western Union Telegraph Company filed comments in support of AT&T's original request. The telegraph company urged that an equivalent change be made to Schedule 3, "General Officers and Executives," of Annual Report Form O. Comments in opposition to AT&T's original request were filed by the State Corporation Commission of Kansas, the State of Michigan Department of Attorney General, and the National Telephone Cooperative Association (NTCA).³ Each of these parties cited a regulatory or public interest need for compensation data of highly paid telephone company employees such as for (1) comparisons of executive and professional salaries among various telephone operating companies and between telephone and gas and electric utilities,⁴ (2) recommending disallowances in establishing intrastate telephone rates or in reporting to local commissions by their staffs of excessive executive compensation, (3) surveys of management-compensation practices, and (4) compilations of industry salary and benefit levels. AT&T's amended request is designed to continue to satisfy the needs of these parties and at the same time reduce the companies reporting burden and protect the privacy of employees who are not officers or directors.

6. We are aware that Schedule 70B of our Annual Report Form M in addition to serving this Commission also serves the needs of the state commissions⁵ and the general public. Accordingly, we are proposing two alternative amendments to our annual forms which are similar to AT&T's request.⁶ In addition we are inviting specific comments on two major areas. These comments shall be weighed heavily before reaching a final decision in this proceeding. These areas are (1) the adequacy of the compensation groups being proposed for the reporting of compensation of employees other than officers and directors and (2) which company officers shall be individually reported as officers in the revised

³ Late comments were filed by the Federation of Telephone Workers of Penn., but were not served upon AT&T and were not addressed in AT&T's reply comments. Because of these factors, such comments have not been considered.

⁴ Similar compensation for gas and electric utilities are required by the Federal Power Commission.

⁵ Annual Report Form M as modified for particular local needs serves as the reporting vehicle for state regulatory commissions.

⁶ With an exception, officers to be reported in Schedule 70B shall be general officers as defined in Section 51.3 of Part 51 of the Commission's Rules and Regulations.

schedule. Shall officers be limited to general officers or shall assistant officers⁷ such as assistant vice presidents, assistant secretaries, assistant treasurers, etc., also be included? Comments are invited on the extent these officials engage in the establishment of company policies and the establishment of procedures to implement these policies as well as the right of members of the rate paying public to know the names and salaries of company officials whose decisions affect the public.

7. It is proposed, therefore, to amend Annual Report Form M, O, and R, effective in the report for the year 1977, as set forth below.

8. This Notice of Proposed Rulemaking is issued under authority of sections 4(i) and 219 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219.

9. Pursuant to applicable procedures set forth in 47 CFR 1.415, interested persons may file comments on or before November 1, 1977, and reply comments on or before December 1, 1977. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

10. In accordance with the provisions of 47 CFR 1.419, an original and 5 copies of all statements or briefs shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Dockets Reference Room.

11. Although GAO clearance is not required, it should be noted that a reduction in respondents' reporting burden will be achieved under this proposal.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

I

Annual Report Forms M for Telephone Companies, O for Wire-Telegraph and Ocean-Cable Carriers, and R for Radio-telegraph Carriers are amended as follows: in Schedule 70B, Compensation of Officers, Directors, Etc., of Form M and in Schedule 3, General Officers and Executives, of Forms O and R, instruction 1 is amended to read as follows:

- 1 (a). Furnish the indicated data with respect to each officer and director, whether or not he received any compensation from the respondent at any time during the year for current or past services. For purposes of preparing this schedule, "directors" are those individuals who comprise the Board of Directors of the respondent, and "officers" are general officers as defined in Section 51.3 of Part

51 of Commission's rules and regulations.

- (b). Furnish the indicated data with respect to all other persons having an annual salary rate of \$20,000 or more (\$40,000 or more if respondent's annual operating revenues exceeded \$100,000,000) at any time during the year or to whom the respondent paid \$20,000 or more (\$40,000 or more if respondent's annual operating revenue exceeded \$100,000,000) during the year as compensation for current or past services.

With respect to the information requested in 1(b), above: Respondents having annual operating revenues of \$100,000,000 or less may aggregate by stating the number of such persons within the following compensation groups without naming them:

- i. \$20,000—\$29,999
 - ii. \$30,000—\$39,999
 - iii. \$40,000—
- Respondents having annual operating revenues in excess of \$100,000,000 may aggregate by stating the number of such persons within the following compensation groups without naming them:
- i. \$40,000—\$59,999
 - ii. \$60,000—\$79,999
 - iii. \$80,000—\$99,999
 - iv. \$100,000—

Furnish in Column (a) the aggregate number of such persons by compensation group. Furnish in Column (c) the compensation groups as applicable. Furnish in Columns (d), (e), and (f) the aggregate amounts received by such persons included in each compensation group. A brief description of the general nature of the positions included within each compensation group shall be included in a footnote on the schedule.

- (c). The respondent shall keep such records as are necessary to provide the Commission the individual data with respect to all columns of information for each of the persons aggregated, and will upon request of the Commission provide such individual data.

II

Annual Report Forms M for Telephone Companies, O for Wire-Telegraph and Ocean-Cable Carriers, and R for Radio-telegraph Carriers are amended as follows: in Schedule 70B, Compensation of Officers, Directors, Etc., of Form M and in Schedule 3, General Officers and Executives, of Forms O and R, instruction 1 is amended to read as follows:

- 1 (a). Furnish the indicated data with respect to each officer and director, whether or not he received any compensation from the respondent at any time during the year for current or past services. For purposes of preparing this schedule, "directors" are those individuals who comprise the Board of Directors of the respondent, and "officers" are general officers as defined in Section 51.3 of Part 51 of Commission's Rules and Regulations.
- (b). Furnish the indicated data with respect to all other persons having an annual salary rate of \$20,000 or more (\$40,000 or more if respondent's annual operating revenues exceeded \$100,000,000) at any time during the year or to whom the respondent paid \$20,000 or more (\$40,000 or more if

respondent's annual operating revenues exceeded \$100,000,000) during the year as compensation for current or past services.

With respect to the information requested in 1(b), above: Respondents having annual operating revenues of \$100,000,000 or less may aggregate such persons according to their job title in the following compensation groups:

- i. \$20,000—\$29,000
- ii. \$30,000—\$39,000
- iii. \$40,000—

Respondents having annual operating revenues in excess of \$100,000,000 may aggregate such persons according to their job title in the following compensation groups.

- i. \$40,000—\$49,000
- ii. \$50,000—\$59,000
- iii. \$60,000—\$69,000
- iv. \$70,000—\$79,000
- v. \$80,000—\$89,000
- vi. \$90,000—

Data will be accumulated in a similar matrix format as Schedule 70C. Furnish in column (a) the job titles of such persons to be aggregated. Under the column headings of the various compensation groups, furnish within the matrix the applicable number of persons associated with the job title under the applicable compensation group.

- (c). The respondent shall keep such records as are necessary to provide the Commission the individual data with respect to all columns of information for each of the persons aggregated, and will upon request of the Commission provide such individual data.

[FR Doc.77-26569 Filed 9-12-77; 8:45 am]

[47 CFR Part 67]

[Docket No. 21264]

COMMON CARRIERS BETWEEN UNITED STATES MAINLAND AND HAWAII, ALASKA, AND PUERTO RICO/VIRGIN ISLANDS

Integration of Rates and Services for Provision of Communications; Federal-State Joint Board

AGENCY: Federal Communications Commission.

ACTION: Supplemental Joint Board Notice.

SUMMARY: In this action the Commission accepts the nominations for State Commissioner representatives to this proceeding, appoints the Commission members to the Board, and schedules the first formal meeting of the Board.

DATES: The Joint Board will meet on September 22, 1977, at 9 a.m. in the Commission's Offices at 1919 M Street NW., Washington, D.C.

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

FOR FURTHER INFORMATION CONTACT:

Francis L. Young, Common Carrier Bureau, 632-5550.

SUPPLEMENTARY INFORMATION:

FIRST SUPPLEMENTAL NOTICE

Adopted: September 2, 1977.

Released: September 7, 1977.

In the matter of integration of rates and services for the provision of com-

⁷ See Section 51.32 of Part 51 of the Commission's Rules and Regulations.

munications by authorized common carriers between the United States Mainland and Hawaii, Alaska, and Puerto Rico/Virgin Islands, Docket No. 21264.

1. In a "Notice of Inquiry, Proposed Rulemaking and Creation of Federal-State Joint Board," FCC 77-366, released June 7, 1977, we gave notice of the convening of a Federal-State Joint Board pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410 (c).¹ This Joint Board was convened to prepare a recommended decision for the purpose of establishing the separations procedure(s) applicable to Puerto Rico and the Virgin Islands. Before us for consideration are the State Commissioner nominations submitted by the National Association of Regulatory Utility Commissioners (NARUC).

2. Pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), the following State Commission members of the Joint Board have been nominated by NARUC and submitted for our approval: Luis Berrios-Amadeo, Puerto Rico Public Service Commission; Gustav A. Danielson, Virgin Islands Public Services Commission; Alexander Kalinski, New Hampshire Public Utilities Commission; and Edward P. Larkin, New York Public Service Commission. We hereby accept these very competent State Commissioners as members of the Joint Board. They will be joined by Commissioners Richard E. Wiley, Robert E. Lee, and Joseph R. Fogarty of this Commission.²

3. It is the further purpose of this notice to organize and establish a meeting place and date so that the Board may determine at that time procedures appropriate to the stated purpose of the creation of this Board. It is anticipated that the initial meeting will explore a schedule for a notice and comment procedure so that all interested parties will have an adequate opportunity to develop a record supporting what modifications, if any, should be made to the existing Separations Manual in order that it would be applicable to Puerto Rico and the Virgin Islands. In addition, we anticipate that the Board will address the procedures under which the Board will operate including ex parte rules.

4. Accordingly, it is ordered, That Luis Berrios-Amadeo, Gustav A. Danielson, Alexander J. Kalinski, Edward P. Larkin, Richard E. Wiley, Robert E. Lee, and Joseph R. Fogarty are appointed to the Federal-State Joint Board mentioned

¹ See 42 FR 30220, June 13, 1977.

² Commissioner Abbott M. Washburn is designated as an alternate to this Joint Board.

herein and the first meeting of such board shall be held on September 22, 1977 at 9 a.m. in the offices of this Commission at 1919 M Street NW., in Washington, D.C.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary..

[FR Doc.77-26589 Filed 9-12-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 299]

[Docket No. 77N-0115]

DRUGS; OFFICIAL NAMES

Proposed Amendment of Designation of Official Names

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the drug regulations by updating the list of official names of drugs to reflect changes in chemical structure and the addition of new official names. Pursuant to statutory authority, the Commissioner of Food and Drugs is revising the designation of official names for certain drugs for reasons of usefulness and simplicity.

DATE: Comments by November 14, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Charles Kumkumian, Bureau of Drugs (HFD-102), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857. 301-443-4330.

² Commissioner Joseph R. Fogarty absent.

SUPPLEMENTARY INFORMATION:
The following changes are proposed:

1. Based on new chemical evidence concerning the composition of the drugs, and on adoption of the changes by the United States Adopted Names (USAN) Council, the official names "cisclomiphene" and "transclomiphene" are changed to "enclomiphene" and "zuclophene", respectively, and the chemical name of each is revised. Also based on new chemical evidence, the chemical name and molecular formula of "clorazepic acid" are revised and the spelling of the official name is corrected.

2. For the same reasons, the description of "colestipol" is revised.

3. The official name "dextran 40" is replaced with "dextrans," and the official names "nonoxynol 4," "nonoxynol 9," "nonoxynol 15," and "nonoxynol 30" are replaced with "nonoxynol." The chemical descriptions are revised in keeping with currently accepted nomenclature. The changes reflect FDA policy that, with rare exceptions, only the parent name of a drug is listed even though various salts, molecular weights, ratios of components, etc., might be available; a footnote is added to the table to explain that this is the agency's policy.

4. Forty-one additional official names, all of which have been adopted by the USAN Council, are added, together with the chemical name or description of each and the molecular formula where appropriate.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 508, 76 Stat. 789 (21 U.S.C. 358)) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to amend Part 299 by revising the table in § 299.20 by deleting the complete entries for "chlorazepic acid," "cisclomiphene," "transclomiphene," "dextran 40," "nonoxynol 4," "nonoxynol 9," "nonoxynol 15," and "nonoxynol 30;" revising the description of colestipol; adding an explanatory footnote; and alphabetically inserting new entries, as follows:

§ 299.20 Drugs; official names.

Official name ¹	Chemical name or description	Molecular formula
Amoxicillin	[2S]-(2a,5a,8b(S*))-[6-[[Amino(4-hydroxyphenyl)acetyl]amino]-3,3-dimethyl-7-oxo-4-thia-1-azabicyclo[2.2.0]heptane-2-carboxylic acid.	C ₁₆ H ₁₉ N ₅ O ₆ S
Beclomethasone	9-Chloro-11β,17,21-trihydroxy-16β-methylpregna-1,4-diene-3,20-dione.	C ₂₁ H ₃₅ ClO ₅
Benzquinamide	2-(Acetyloxy)-N,N-diethyl-1,3,4,6,7,11b-hexahydro-9,10-dimethoxy-2H-benzo[e]quinolizine-3-carboxamide.	C ₂₁ H ₂₉ N ₃ O ₄
Bupivacaine	1-Butyl-N-(2,6-dimethylphenyl)-2-piperidinecarboxamide.	C ₂₄ H ₃₁ N ₃ O
Calusterone	(7β,17β)-17-Hydroxy-7,17-dimethylandrosta-4-en-3-one.	C ₂₁ H ₃₃ O ₂
Carbidopa	(S)-α-Hydrazino-3,4-dihydro-α-methylbenzenepropanoic acid.	C ₉ H ₁₁ N ₃ O ₂
Cephacetril	(6R-trans)-3-[(Acetyloxy)methyl]-7-(cyanoacetyl)amino]-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid.	C ₁₉ H ₂₁ N ₃ O ₆ S

Official name ¹	Chemical name or description	Molecular formula
Cephapirin.....	(6 <i>R</i> - <i>trans</i>)-3-[(Acetyloxy)methyl]-8-oxo-7-[[4-(pyridinylthio)acetyl]amino]-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid.	C ₁₇ H ₁₇ N ₇ O ₄ S ₂
Cephadrine.....	[6 <i>R</i> -(6 <i>a</i> ,7 <i>R</i>)]-7-[(Amino-14-cyclohexadien-1-ylacetyl)amino]-3-methyl-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-ene-2-carboxylic acid.	C ₁₈ H ₁₉ N ₇ O ₄ S
Clorazepic acid.....	7-Chloro-2,3-dihydro-2-oxo-5-phenyl-1 <i>H</i> -1,4-benzodiazepine-3-carboxylic acid.	C ₁₈ H ₁₃ ClN ₂ O ₃
Clotrimazole.....	1-(2-Chlorophenyl)diphenylmethyl-1 <i>H</i> -imidazole.....	C ₂₀ H ₁₇ ClN ₂
Colestipol.....	Copolymer of diethylenetriamine and 1-chloro-2,3-epoxypropane (with approximately 1 out of 5 amine nitrogens protonated).	
Dacarbazine.....	5-(3,3-Dimethyl-1-triazenyl)-1 <i>H</i> -imidazole-4-carboxamide.....	C ₈ H ₁₂ N ₄ O
Dantrolene.....	1-[[5-(4-Nitrophenyl)-2-furyl]methylene]amino]-2,4-imidazolinedione.....	C ₁₄ H ₁₀ N ₄ O ₃
Desonide.....	(11 <i>β</i> ,16 <i>α</i>)-11,21-Dihydroxy-16,17-[(1-methylethylidene)bis(oxy)]pregna-1,4-diene-3,20-dione.	C ₂₁ H ₃₀ O ₄
Dextran.....	A polysaccharide produced by the action of <i>Leuconostoc mesenteroides</i> on sucrose.	
Dinoprost.....	(5 <i>Z</i> ,9 <i>α</i> ,11 <i>α</i> ,13 <i>E</i> ,15 <i>S</i>)-9,11,15-Trihydroxyprosta-5,13-dien-1- <i>oic</i> acid.....	C ₂₀ H ₃₄ O ₄
Doxorubicin.....	(8 <i>S</i> - <i>cis</i>)-10-[(3-Amino-2,3,6-trideoxy- α -L- <i>g</i> -hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-8-(hydroxyacetyl)-1-methoxy-5,12-naphthacenedione.	C ₂₈ H ₃₆ NO ₁₁
Enclomiphene.....	(<i>E</i>)-2-[4-(2-Chloro-1,2-diphenylethenyl)phenoxy]- <i>N,N</i> -diethylethanamine.....	C ₂₄ H ₂₉ ClNO
Enfurane.....	2-Chloro-1-(difluoromethoxy)-1,1,2-trifluoroethane.....	C ₂ H ₂ ClF ₃ O
Fenfuramine.....	<i>N</i> -Ethyl- α -methyl-3-(trifluoromethyl)benzeneethanamine.....	C ₁₂ H ₁₅ F ₃ N
Fenoprofen.....	(\pm)- α -Methyl-3-phenoxybenzeneacetic acid.....	C ₁₂ H ₁₃ O ₃
Halcinonide.....	(11 <i>β</i> ,16 <i>α</i>)-21-Chloro-9-fluoro-11-hydroxy-16,17-[(1-methylethylidene)bis(oxy)]pregn-4-ene-3,20-dione.	C ₂₄ H ₃₂ ClFO ₄
Haloprogin.....	1,2,4-Trichloro-5-[(3-iodo-2-propynyl)oxy]benzene.....	C ₇ H ₄ Cl ₃ IO
Hetastarch.....	A starch that is composed of more than 90 pct of amylopectin and that has been etherified to the extent that an average of 7 to 8 of the OH groups present in every 10 D-glucopyranose units of starch polymer have been converted into OCH ₂ CH ₂ OH groups.	
Lactulose.....	4-O- β -D-Galactopyranosyl-D-fructose.....	C ₁₂ H ₂₂ O ₁₁
Loxapine.....	2-Chloro-11-(4-methyl-1-piperazinyl)dibenz[<i>b,f</i>][1,4]oxazepine.....	C ₁₈ H ₁₈ ClN ₃ O
Mazindol.....	5-(4-Chlorophenyl)-2,5-dihydro-3 <i>H</i> -imidazo[2,1- <i>a</i>]isotindol-5-ol.....	C ₁₆ H ₁₅ ClN ₂ O
Mebendazole.....	Methyl (3-benzoyl-1 <i>H</i> -benzimidazol-2-yl)carbamate.....	C ₁₈ H ₁₅ N ₃ O ₃
Megestrol.....	17-Hydroxy-6-methylpregna-4,6-diene-3,20-dione.....	C ₂₁ H ₃₀ O ₃
Menotropins.....	Extract of postmenopausal urine of women containing primarily the follicle-stimulating hormone (FSH).	
Metaproterenol.....	5-[1-Hydroxy-2-[(1-methylethyl)amino]ethyl]-1,3-benzenediol.....	C ₁₀ H ₁₃ NO ₃
Metrizoic acid.....	3-(Acetylamino)-5-(acetyl-methylamino)-2,4,6-triiodobenzoic acid.....	C ₁₂ H ₁₀ I ₃ N ₂ O ₄
Miconazole.....	1-[2-(2,4-Dichlorophenyl)-2-[(2,4-dichlorophenyl)methoxy]ethyl]-1 <i>H</i> -imidazole.....	C ₁₈ H ₁₁ Cl ₄ N ₂ O
Mitomycin.....	[1 <i>a</i> F-(1 <i>a</i> ,8 <i>a</i> ,8 <i>b</i> ,8 <i>c</i>)]-6-Amino-8-[(aminocarbonyl)oxy]methyl-1,1 <i>a</i> ,2,8,8 <i>a</i> ,8 <i>b</i> -hexahydro-8 <i>a</i> -methoxy-5-methylazirino[2',3',4']pyrrolo[1,2- <i>a</i>]indole-4,7-dione.	C ₁₈ H ₁₈ N ₄ O ₄
Naproxen.....	(+)-6-Methoxy- α -methyl-2-naphthaleneacetic acid.....	C ₁₄ H ₁₄ O ₃
Nonoxonyl.....	α -(Nonylphenyl)- ω -hydroxypoly(oxy-1,2-ethanedyl).....	C ₁₀ H ₁₈ O(C ₉ H ₁₇ O) _{<i>n</i>}
Oxolinic acid.....	5-Ethyl-5,8-dihydro-8-oxo-1,3-dioxolo[4,5- <i>g</i>]quinoline-7-carboxylic acid.....	C ₁₄ H ₁₃ NO ₃
Oxybutynin.....	4-(Diethylamino)-2-butynyl α -cyclohexyl- α -hydroxybenzeneacetate.....	C ₂₀ H ₃₃ NO ₃
Prazosin.....	1-(4-Amino-6,7-dimethoxy-2-quinazolinyl)-4-(3-furanylcarbonyl)piperazine.....	C ₁₈ H ₁₈ N ₄ O ₄
Probucol.....	4,4'-[(1-Methylethylidene)bis(thio)]bis[2,6-bis(1,1-dimethylethyl)phenol].....	C ₂₈ H ₄₀ O ₂ S ₂
Sulfacytine.....	4-Amino- <i>N</i> -(1-ethyl)-1,2-dihydro-2-oxo-4-pyrimidinyl)benzenesulfonamide.....	C ₁₂ H ₁₄ N ₄ O ₂ S
Terbutaline.....	5-[2-[(1,1-Dimethylethyl)amino]-1-hydroxyethyl]-1,3-benzenediol.....	C ₁₂ H ₁₈ NO ₃
Tobramycin.....	O-3-Amino-3-deoxy- α -D-glucopyranosyl-(1 \rightarrow 6)-O-[2,6-diamino-2,3,6-trideoxy- α -D-ribo-hexopyranosyl-(1 \rightarrow 4)]-2-deoxy-D-streptamine.	C ₁₈ H ₃₅ N ₅ O ₉
Tolmetin.....	1-Methyl-5-(4-methylbenzoyl)-1 <i>H</i> -pyrrole-2-acetic acid.....	C ₁₄ H ₁₇ NO ₃
Trimethoprim.....	5-[(3,4,5-Trimethoxyphenyl)methyl]-2,4-pyrimidinediamine.....	C ₁₄ H ₁₈ N ₄ O ₃
Zuclofiphen.....	(<i>Z</i>)-2-[4-(2-Chloro-1,2-diphenylethenyl)phenoxy]- <i>N,N</i> -diethylethanamine.....	C ₂₄ H ₂₉ ClNO

¹ With rare exceptions, only the parent name is listed for a drug, even though various salts, molecular weights, or ratios of components may be available.

PROPOSED RULES

November 14, 1977, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office be-

tween the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: August 16, 1977.

JOSEPH P. HILE,
*Associate Commissioner for
Compliance.*

[FR Doc.77-26572 Filed 9-12-77;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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Agreement 146]

PEANUTS; 1977 CROP

Outgoing Quality Regulation and Indemnification Amendment

Pursuant to the provisions of sections 32, 34, and 36 of the marketing agreement regulating the quality of domestically produced peanuts heretofore entered into between the Secretary of Agriculture and various handlers of peanuts (30 FR 9402) and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information, it is hereby found that the amendments hereinafter set forth to the Outgoing Quality Regulation and Terms and Conditions of Indemnification Applicable to 1977 Crop Peanuts (42 FR 32278) will tend to effectuate the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and of such agreement.

Amendment of paragraph (g)(2) of the Outgoing Quality Regulation is necessary to provide that handlers may keep separate or commingle lots of loose shelled kernels, fall through, and pickouts. This proposal would change the restriction which requires pickouts to be kept separate and apart from loose shelled kernels and fall through and should facilitate movement of such peanuts to intended outlets.

Therefore, paragraph (g)(2) of the Outgoing Quality Regulation (42 FR 32278) is amended by deleting the second sentence and replaced by the following:

Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new or clean, used bags or placed in bulk containers acceptable to the Committee.

Amendment of last paragraph of the Terms and Conditions of Indemnification is necessary to bring the indemnification values into conformity with determinations of the Committee. This proposed change would specify a specific indemnification price for the various indemnifiable categories of peanuts rather than basing such prices on the national average support price.

Therefore, the last paragraph of the Terms and Conditions of Indemnification (42 FR 32278) is amended by deleting the entire paragraph and replaced by the following:

The indemnification value for all categories of peanuts eligible for indemnification, except U.S. Virginia Extra-Large and all types of peanuts grading U.S. splits as noted hereinafter, shall be 31.4 cents per pound. The

value for U.S. Virginia Extra-Large shall be 33.4 cents per pound. The value of U.S. splits of all types shall be 28.4 cents per pound.

The Peanut Administrative Committee has recommended that these amendments be issued as soon as possible so as to implement and effectuate the provisions of the marketing agreement dealing with the Outgoing Quality Regulation and Terms and Conditions of Indemnification. Marketing of the 1977 peanut crop is well underway and such regulations and terms and conditions for actual operations under the agreement should therefore be modified and made effective as soon as possible, i.e., on the effective date specified herein. Handlers of peanuts who will be affected by such amendments have signed the marketing agreement authorizing the issuance of such regulations, they are represented on the Committee which recommended such amendments and time does not permit prior notice of the proposed amendments to such handlers.

The foregoing amendments of the Outgoing Quality Regulations are hereby approved.

Dated: September 7, 1977.

CHARLES R. BRADER,
Deputy Director,
Fruit and Vegetable Division.

[FR Doc.77-26555 Filed 9-12-77;8:45 am]

Rural Electrification Administration COOPERATIVE POWER ASSOCIATION Negative Determination

Notice is hereby given that the Rural Electrification Administration (REA) has made a negative determination on the need for an environmental impact statement by REA in connection with a proposed loan guarantee commitment from the Rural Electrification Administration for Cooperative Power Association (CPA) of Minneapolis, Minn., to construct a combustion turbine in Minnesota. The proposed loan guarantee commitment will assist in obtaining financing to purchase a 50 MW combustion turbine to be located at the existing 115/69 kV substation in Waterford Township, Minn.

An on-site investigation on the proposed site was conducted by REA. REA has prepared an Environmental Assessment on the proposed action. CPA has prepared an Environmental Analysis of the proposed action in which REA had extensive input. The Environmental Analysis is in compliance with REA's environmental guidelines and numerous commitments have been made by CPA to

satisfy Federal, State, and local requirements.

Installation permits have been obtained from the Minnesota Pollution Control Agency. Rare and endangered species, prime and unique farmlands, archaeological and historic sites, and other potential impacts of the project are adequately considered, and we do not anticipate any significant effects as a result of this project.

Our independent evaluation of the proposed project leads us to conclude that REA's proposed financial assistance for this project does not represent a major Federal action that would significantly affect the quality of the human environment.

Based on REA's independent evaluation, our Environmental Assessment, our review of the Environmental Analysis and REA experience with installations of this type and the subsequent environmental effects, a negative determination was made under Section 5K of REA Bulletin 20-21.

Copies of the Environmental Assessment and Environmental Analysis may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Final REA action with respect to this matter may be taken after September 28, 1977, but only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 6th day of September 1977.

DAVID A. HAMIL,
Administrator,

Rural Electrification Administration.

[FR Doc.77-26603 Filed 9-12-77;8:45 am]

DEPARTMENT OF COMMERCE

Bureau of the Census

SPECIAL CENSUS

Summary Results

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the Decennial Census.

Summary results of special censuses are published semiannually in the Current Population Reports—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The data shown in the following table are the results of special censuses conducted since December 31, 1976, for which tabulations were completed between August 1, 1977, and August 31, 1977.

Dated: September 7, 1977.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

State/place or special area	County	Date of census	Population
Alabama: Rainbow City.....	Etowah.....	June 2, 1977	5,268
Arkansas:			
Mantua City.....	Mississippi.....	June 23, 1977	2,492
Pleasant Plains City.....	Independence.....	June 20, 1977	285
Colorado: Archuleta County.....		June 14, 1977	3,594
Idaho:			
Blaine County.....		June 7, 1977	8,748
Eagle City.....	Ida.....	June 6, 1977	1,579
Montpelier City.....	Bear Lake.....	June 21, 1977	3,122
Illinois:			
Antioch village.....	Lake.....	June 14, 1977	4,194
Burnham village.....	Cook.....	May 17, 1977	3,953
Cambria village.....	Williamson.....	June 13, 1977	960
Clinton city.....	DeWitt.....	Apr. 26, 1977	7,604
Cresta village.....	Will.....	June 20, 1977	5,012
DeSoto village.....	Jackson.....	do.....	1,324
Edwardsville city.....	Madison.....	June 9, 1977	11,982
Glen Ellyn village.....	DuPage.....	June 2, 1977	24,785
Inverness village.....	Cook.....	June 24, 1977	2,427
Northbrook village.....	do.....	June 23, 1977	30,067
Oswego village.....	Kendall.....	June 22, 1977	2,677
Salem city.....	Marion.....	May 24, 1977	7,183
Williamsville village.....	Sangamon.....	May 9, 1977	980
Indiana:			
Munster town.....	Lake.....	June 2, 1977	20,164
Union City.....	Randolph.....	June 27, 1977	3,944
Iowa:			
LeClaire city.....	Scott.....	June 23, 1977	2,619
Mitchellville city.....	Polk.....	June 6, 1977	1,430
Weldon city.....	Decatur.....	June 27, 1977	193
Minnesota: Eagan city.....	Dakota.....	June 8, 1977	19,276
Mississippi: Hancock County.....		June 17, 1977	19,390
Montana: Dawson County.....		May 6, 1977	11,387
Nebraska: Alliance city.....	Box Butte.....	June 8, 1977	7,987
North Carolina: Trent Woods town.....	Craven.....	May 16, 1977	1,110
North Dakota:			
Larimore city.....	Grand Forks.....	June 8, 1977	1,558
Oakes city.....	Dickey.....	June 6, 1977	2,017
Surrey city.....	Ward.....	July 12, 1977	990
Pennsylvania:			
Chester Heights borough.....	Delaware.....	July 5, 1977	1,059
Concord township.....	do.....	do.....	5,661
Derry township.....	Dauphin.....	June 21, 1977	17,396
Downingtown borough.....	Chester.....	Apr. 5, 1977	7,655
Lackawanna township.....	Mercer.....	June 6, 1977	2,489
Liberty township.....	Montour.....	July 11, 1977	1,224
Lower Pottsgrove township.....	Montgomery.....	June 29, 1977	6,666
Loyalsock township.....	Lycoming.....	May 31, 1977	10,943
Manor borough.....	Westmoreland.....	June 20, 1977	2,280
Upper Makefield township.....	Bucks.....	do.....	3,927
Wisconsin:			
Conover town.....	Vilas.....	June 6, 1977	888
Lincoln town.....	do.....	June 7, 1977	2,188
Mercer town.....	Iron.....	June 2, 1977	1,453
Plum Lake town.....	Vilas.....	July 13, 1977	581
Viola village.....	Richland and Vernon.....	July 6, 1977	666
Wyoming: South Superior town.....	Sweetwater.....	June 28, 1977	432

[FR Doc.77-26414 Filed 9-12-77; 8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session at the Naval Research Laboratory, 4555 Overlook Avenue SW., Building 208, Room 260A, Washington, D.C. 20375, on September 27, 1977.

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

development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout. In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it is hereby determined that this meeting of the Advisory Group on Electron Devices 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 As-
sistant Secretary of Defense
(Comptroller).

SEPTEMBER 9, 1977.

[FR Doc.77-26645 Filed 9-12-77; 8:45 am]

Office of the Secretary

NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE

Open Meeting

Pursuant to the provisions of Section 10, Pub. L. 92-463, effective January 5, 1973, notice is hereby given that a meeting of the National Committee for Employer Support of the Guard and Reserve Executive Committee will take place on September 16, 1977, in the Pentagon Conference Area, 1E801, Room 7.

The purpose of the meeting is to determine new objectives of the National Committee and discuss methods by which it may continue in its solicitation of Employer Support for the Guard and Reserve.

A transcript will be available to anyone desiring information about the meeting.

Additional information concerning these meetings may be obtained by contacting the Assistant to the National Chairman, National Committee for Employer Support of the Guard and Reserve, 1117 North 19th Street, 9th Floor, Arlington, Va. 22209 (telephone 697-6966).

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

SEPTEMBER 8, 1977.

[FR Doc.77-26594 Filed 9-12-77; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 788-6]

CALIFORNIA STATE STANDARDS

Motor Vehicle Pollution Control; Public Hearing

On August 7, 1977, the Clean Air Act Amendments of 1977 (hereinafter "the Amendments") were enacted. Pub. L. 95-95, 91 Stat. 685. As explained below, the Amendments altered the findings that the Administrator must make before denying a State request for a waiver of Federal preemption under section 209 (b) of the Clean Air Act, as amended (hereinafter "the Act"). 42 U.S.C. 7543.

The language of section 209(a), setting forth the general Federal preemption in this area, remains unchanged: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of

¹The U.S. Code classifications of the Clean Air Act were changed upon publication of the Amendments. The former classification of section 209 was 42 U.S.C. § 1857f-6a.

emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

However, section 209(b), which sets forth the conditions under which the Environmental Protection Agency (EPA) Administrator may waive application of section 209(a), was completely revised by section 207 of the amendments (91 Stat. 755):

(b) (1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standards shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this title.

The amended section 209(b) of the Act now requires a determination by California that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, and now prohibits the Administrator from granting a California waiver request if he finds California's determination is arbitrary and capricious. Before the amendments, a waiver could only be granted for standards that were determined by the Administrator to be more stringent than applicable Federal standards.

The EPA has determined that the new amendments apply to all California waiver requests not acted upon by the Administrator prior to enactment of the amendments. The EPA will, therefore, review the following pending waiver requests in light of the amended Act:

(i) Compliance and inspection testing of 1977 and subsequent model year motor vehicles except 1977 and 1978 model year gasoline-powered passenger cars and light duty trucks under sections 2100 et seq., Title 13, California Administrative Code,

(ii) Assembly line test procedures for 1978 model year diesel-powered light

duty trucks, and medium duty vehicles,

(iii) Exhaust emission standards and test procedures for 1979 and subsequent model year passenger cars, light duty trucks and medium duty vehicles,

(iv) Exhaust emission standards and test procedures for 1980 and subsequent model year passenger cars, light duty trucks and medium duty vehicles, including high altitude test requirements applicable to these classes of vehicles,

(v) Certification test procedures applicable to 1980 and subsequent model year passenger cars, light duty trucks and medium duty vehicles imposing a limitation on idle mixture adjustability,

(vi) Evaporative emission standard and test procedures (SHED test) for 1980 and subsequent model year gasoline-powered motor vehicles except motorcycles and, also, amendments to the SHED test procedures for 1978 and subsequent model year gasoline-powered motor vehicles except motorcycles,

(vii) Restrictions on allowable maintenance applicable to 1980 and subsequent model year gasoline-powered passenger cars and 1981 and subsequent model year gasoline-powered light duty trucks and medium duty vehicles adopted May 26, 1977,

(viii) The reconsideration of the October 1, 1977, motorcycle waiver decision and compliance testing and inspection of 1978 and subsequent model year motorcycles, and

(ix) Amendments to the California exhaust emission standards and test procedures for 1980 and subsequent model year passenger cars, light duty trucks, and medium duty vehicles pertaining to more stringent NO_x standards.

Notice is hereby given that:

(1) A public hearing will be convened to consider whether California's determinations pursuant to section 209(b) (1) are arbitrary and capricious,

(2) At that hearing, interested parties are invited to make further comments, limited to any information which has become available to the interested parties after the initial public hearings, on whether California needs such standards to meet compelling and extraordinary conditions or whether California's standards are not inconsistent with section 202(a) of this part,

(3) A public hearing on these matters will be convened at the Federal Building & U.S. Courthouse, Room 13450, 450 Golden Gate Avenue, San Francisco, Calif., on Thursday, October 13, 1977, commencing at 9 a.m. Benjamin R. Jackson, Director, Mobile Source Enforcement Division, EPA, is designated as the Presiding Officer for this hearing.

Any person desiring to make a statement at the hearing or to submit material for the hearing record should file a notice of such intention along with ten copies of his or her proposed statement (and other relevant material) by October 11, 1977, with the Director, Mobile Source Enforcement Division (EN-340), Environmental Protection Agency,

² 42 U.S.C. 7521(a), formerly 42 U.S.C. § 1857f-1; see note 1, supra.

401 M Street SW., Washington, D.C. 20460. The agenda will be determined by the order in which these notices are received. In addition, if feasible, twenty-five copies of such statement or material for the hearing record should be submitted to the Presiding Officer at the time of the public hearing.

The pertinent California standards and test procedures can be found in:

(i) Sections 2100 et seq., Title 13, California Administrative Code, "California New Vehicle Compliance Test Procedures," adopted on June 24, 1976, and "California New Motorcycle Test Procedures," adopted on June 30, 1977,

(ii) Sections 1955.1, 1955.5, 1959, Title 13, California Administrative Code and "California Exhaust Emission Standards and Test Procedures for 1975 Through 1978 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted February 19, 1975, last amended June 8, 1977,

(iii) Section 1959.5, Title 13, California Administrative Code and "California Exhaust Emission Standards and Test Procedures for 1979 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted June 8, 1977,

(iv) Section 1960, Title 13, California Administrative Code, and "California Exhaust Emission Standards and Test Procedures for 1980 and Subsequent Model Passenger Cars, Light-Duty Truck, and Medium-Duty Vehicles," adopted November 23, 1976, last amended June 22, 1977,

(v) Section 1976(b), Title 13, California Administrative Code, and "California Evaporative Emission Standards and Test Procedures for 1978 and Subsequent Model Gasoline-Powered Motor Vehicles except motorcycles," adopted April 16, 1975, last amended June 8, 1977,

(vi) Section 2056, Title 13, California Administrative Code, and "California Assembly-Line Test Procedures for 1978 Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," adopted January 25, 1977, and

(vii) Section 1958, Title 13, California Administrative Code, and "California Exhaust Emission Standards and Test Procedures for 1978 and Subsequent Production Motorcycles," adopted July 15, 1975.

A copy of the above-described material is available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460. Copies of the California standards and test procedures are available upon request from the California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, Calif. 95812.

Procedures. Since the public hearing is designed to give interested persons an opportunity to participate in this proceeding by the presentation of data, views, arguments, or other pertinent information concerning the Administrator's proposed action, there are no adversary parties as such. Statements by

the participants will not be subject to cross-examination.

Presentation by the participants should be limited to the matters set forth in subparagraphs (1) and (2), above.

In order to assure full opportunity for the presentation of data, views, and arguments by participants, the Presiding Officer will, upon request of the participants, allow a reasonable time after the close of the hearing for the submission of written data, views, arguments, or other pertinent information to be included as part of the hearing record.

A verbatim record of the proceeding will be made. A copy of the transcript can be requested from the reporter during the hearing and will be made at the expense of the person so requesting.

The determination of the Administrator regarding the action to be taken with respect to the waiver of the prohibition of section 209(a) for the State of California is not required to be made solely on the record of the public hearing. Other scientific, engineering, and related pertinent information, not presented at the public hearing, may also be considered. This information will be available for public inspection prior to the Administrator's determination on this matter.

Dated: September 6, 1977.

RICHARD D. WILSON,
Acting Assistant
Administrator for Enforcement.

[FR Doc. 77-26507 Filed 9-12-77; 8:45 am]

[FRL 789-4; OPP-60002]

FLORIDA PLAN

Application of Mirex in Coastal Counties; Solicitation of Public Views

On December 29, 1976 (41 FR 56694), the Administrator's Decision to Accept Plan of Mississippi Authority (the "Mississippi Plan") and Order Suspending Hearing for the Pesticide Chemical Mirex was published in the FEDERAL REGISTER. The Mississippi Plan provided that:

States that desire relief from the current label restrictions against aerial Mirex application in coastal counties may develop a plan in accordance with the criteria contained herein and additional guidelines as found necessary, and may submit the plan to the Office of Pesticide Programs (EPA) for review and approval. Such plan must be submitted to EPA for approval at least 45 days prior to application. The Office of Pesticide Programs may, by approving the Plan in whole or in part, grant relief from the label prohibition against aerial Mirex application in any coastal county to the extent that such aerial application is performed consistently with the Plan and any conditions imposed by EPA Office of Pesticide Programs in conjunction with approving the Plan. The current coastal county restrictions shall remain in effect for each county for which an acceptable coastal zone plan is not submitted. (41 FR 56704)

EPA has not received a request from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry that Florida be granted relief from the current label restrictions against aerial application of Mirex to control fire ants in certain coastal counties; in accordance with the December

29, 1976 publication in the FEDERAL REGISTER of the Administrator's Decision, it has developed a plan (the "Florida Plan").

In order to allow EPA to make the best informed decision regarding the Florida submission and to provide for public participation in that decision, EPA is making the Florida Plan available to the public for inspection and is soliciting comments on it. The Florida Plan may be inspected at the following locations:

Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Program, EPA, Room 401 East Tower, 401 M Street SW., Washington, D.C. 20460. Hours: 8:30 a.m. to 4 p.m.

Florida Department of Agriculture and Consumer Services, Division of Plant Industry, 1911 Southwest 34th Street, Gainesville, Fla. 32601. Hours: 7:45 a.m. to 4:30 p.m.

Comments should be addressed to the Federal Register Section at the address above and must be received on or before October 3, 1977. Any comments received will be available for inspection in the Office of the Federal Register Section during the hours mentioned above.

Dated: September 6, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 77-26547 Filed 9-12-77; 8:45 am]

[FRL 789-7; OPP-42021B]

NEW HAMPSHIRE

State Plan for Certification of Pesticide Applicators; Extension of Contingent Approval

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 86 Stat. 751; 7 U.S.C. 136 et seq.) and 40 CFR Part 171 (39 FR 36445 (October 9, 1974) and 40 FR 11698 (March 12, 1975)), the Honorable Meldrim Thomson, Jr., Governor of the State of New Hampshire, submitted a State Plan for Certification of Pesticide Applicators to the Environmental Protection Agency (EPA) for approval, contingent upon the promulgation of additional implementing regulations. On August 24, 1976, the Regional Administrator, EPA, Region I, approved the Plan on a contingency basis. Contingent approval was granted until August 23, 1977. Notice of the approval was published in the FEDERAL REGISTER on September 21, 1976 (41 FR 41154).

Subsequently, on August 9, 1977, the State of New Hampshire requested an extension of the period of the contingent approval in order to allow additional time to conduct a public hearing before promulgation of certain changes in regulations requested by EPA. The Agency finds that there is good cause for approving this request and as such has granted an extension until October 21, 1977.

Dated: August 23, 1977.

WILLIAM R. ADAMS, Jr.,
Regional Administrator, Region I.

[FR Doc. 77-26550 Filed 9-12-77; 8:45 am]

[FRL 789-6; OPP-66033]

PESTICIDE PROGRAMS

Voluntary Cancellation of Registrations of Pesticide Products Containing Arsenic Trioxide

On November 24, 1976, the American Smelting and Refining Co. (ASARCO), 120 Broadway, New York, N.Y. 10005 requested that the Environmental Protection Agency (EPA) cancel its registrations of Arsenic trioxide 95 percent and arsenic trioxide 99 percent (EPA Registration Numbers 567-6 and 567-7). Both products were formulated for use as chemical intermediates (see 40 CFR 162.4(c)(6)), but could have been used after reformulation or repackaging as pesticides (40 CFR 162.4(b)(3)) by other registrants, who like ASARCO, utilize arsenic trioxide as a pesticide ingredient. ASARCO intends to continue the sale of arsenic trioxide to other pesticide registrants as a chemical intermediate only. Such sale is compatible with a non-registered status.

Cancellation of the registrations for these two products shall be effective October 13, 1977, unless the registrant, or an interested person with the concurrence of the registrant, requests that the registrations be continued in effect.

Further formulation of these two products as pesticides after October 13, 1977, is prohibited. While the Administrator may permit the continued sale and use of these products as pesticides, no request for such sale or use has been made by ASARCO; the continued sale or use of these two products as pesticides is, therefore, prohibited.

Comments concerning this action may be submitted in triplicate to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Any such submissions should bear a notation indicating both the subject and the OPP document control number (OPP-66033). Any comments or other documents filed regarding this notice of cancellation will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 3, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FR Doc. 77-26549 Filed 9-12-77; 8:45 am]

[FRL 789-5; OPP-66036]

PESTICIDE PROGRAMS

Voluntary Withdrawal From the Heptachlor/Chlordane Hearings

The registrants and applicants listed have filed motions for leave to withdraw from the heptachlor/chlordane hearings now in progress. The reasons stated for the motions to withdraw include the fact that the registrant or applicant no longer desires to maintain the registrations involved or the applications for registrations and the registration in issue is no longer in dispute herein or does not exist.

As a result of the requests of withdrawal from these proceedings, pertinent registrations are cancelled and pertinent applications for registrations are withdrawn. Cancellation of the registration for these products and withdrawal of these applications were effective June 23, 1977.

Sale, distribution or use of products manufactured after July 29, 1975 is prohibited. Sale, distribution or use of existing stocks of these products beyond the effective date of cancellation constitutes an unlawful act under section 12(a) (2) (K) and is punishable under sections 13 and 14 of FIFRA.

Comments concerning this action may be submitted in triplicate to the Federal

Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Any submissions should bear a notation indicating both the subject and the OPP document control number "OPP-66036". Any comments or other documents filed regarding this notice of withdrawal will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: August 30, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator
for Pesticide Programs.

[FRL 788-7]

PLANT CLOSINGS ATTRIBUTABLE TO ENVIRONMENTAL REGULATIONS

Request for Information

The U.S. Environmental Protection Agency (EPA) is attempting to identify all industrial plant closings that have resulted from Federal, State, or local pollution control regulations. The EPA promptly transmits this information to the U.S. Department of Labor so that adverse employment effects can be minimized. This interagency reporting system is known as the Economic Dislocation Early Warning System (EDEWS). The information generated by the EDEWS is also essential in evaluating the effects of pollution control regulations on specific industries.

EPA is aware that plant closings generally result from a combination of factors, one of which may be the requirement to comply with environmental regulations. Because of the complexity of the subject and the unique circumstances of each decision to close a plant, EPA is not attempting to set forth guidelines as to what, in its view, may constitute a plant closing attributable to regulations for environmental protection. EPA would like to be contacted by any firm which has closed or plans to close a facility where inability to meet pollution control regulations is a substantial factor. The EPA would also appreciate any information regarding such situations from sources other than the firms themselves.

Please mail or phone the firm's name and address to the EPA contact in the appropriate region listed below.

Dated: September 1, 1977.

WILLIAM DRAYTON, JR.,
Assistant Administrator for
Planning and Management.

ECONOMIC DISLOCATION EARLY WARNING SYSTEM

EPA REGIONAL REPRESENTATIVES

Ms. Mary Vance, Enforcement Division, U.S. Environmental Protection Agency, Region I, Room 2103, John F. Kennedy Building, Boston, Mass. 02203 (617-223-3479).

Mr. Dan Kraft, Chief, Planning and Evaluation, Management Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 1013, New York, N.Y. 10007 (212-264-3052).

Mr. Fred Knapp, Management Division, U.S. Environmental Protection Agency, Region III, Curtis Building (6th and Walnut Streets), Philadelphia, Pa. 19106 (215-597-9217).

Mr. Alan W. McCluney, Jr., Program Planning, Development and Evaluation, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308 (404-881-3776).

Ms. MaryLu Lageman, Program Development Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604 (312-353-2043).

Mr. Patrick Hudson, Enforcement Division, U.S. Environmental Protection Agency, Region VI, First International Building, 1201 Elm Street, Dallas, Tex. 75270 (214-

Mr. Ray Hurley, Management Division, U.S. Environmental Protection Agency, Region VII, 1735 Baltimore Street, Kansas City, Mo. 64108 (816-758-5835).

EPA Reg. No./file symbol	Product name	Registrant/applicant
15646-E	Able 46% Chlordane Concentrate	Able Pest Control Inc., 406 West McCreight Ave., Springfield, Ohio 45504.
702-30	Blitz 48 Chlordane Insecticide	Alco Inc., P.O. Box 267, Marietta, Ohio 45750.
702-31	Blitz 72 Chlordane Insecticide	
413-19	Pioneer Brand 45% Chlordane E.C.	Bartels & Shores Chemical Co., 1400 St. Louis Ave., Kansas City, Mo. 64101.
413-41	Pioneer Brand 74% Chlordane Crab Grass Concentrate	
2553-16	Zee-Tox 6% Chlordane Powdered Insect Killer	Buhl Chemical Co., 601 A Brookhaven Dr., Orlando, Fla. 32802.
2553-27	Zee-Tox 5% Chlordane Powdered Insect Spray	
6294-5	Comet Comodane No. 2	Comet Manufacturing Co., 1381 Dalon Dr. NE., Atlanta Ga. 30306.
6294-6	Comet "SLS" 20% Chlordane E.C.	
784-80	Di-Chloro Residual Warehouse Insecticide	Consolidated Chemical Inc., 1470 South Vandeventer Ave., St. Louis, Mo. 63110.
13283-1	Professional Ant Control	Do-It-Yourself Pest Control Inc., 103 Citation Ct., Birmingham, Ala. 35209.
13283-2	Professional Outside Insect Control	
430-3	Durham's Ant Kill (With 10% Chlordane Powder)	Durham's Drug Products Co., Box 443, Comanche, Tex. 76442.
430-27	Durham's 73% Chlordane E.C.	
430-47	Durham's 40% Wettable Chlor-Kill Powder	
10638-L	Chlordane 40-W Wettable Powder	
3468-2	Schall Chlordane 10% Dust	Farm & Ranch Supply Co., 7800 East 11th St., Tulsa, Okla. 74112.
11046-R	Horneo Hornchlor 40 (Contains Chlordane)	Harold E. Schall Inc., P.O. Box 882, Monte Vista, Colo. 81144.
24909-9	Spra-Gon Ant & Roach Killer	HornKohl Laboratories Inc., P.O. Box 867, Bakersfield, Calif. 93302.
7558-A	Royal 303 Fog Oil Spray Concentrate	Knapp Chemical Co., 3227 East Pine Ave., Fresno, Calif. 93727.
11081-R	Lloyd's Chlordane 72% (Emuls.)	Leon Supply Co., P.O. Box 562, Montgomery, Ala. 36101.
305-47	Shur-Deth Brand Kills Roaches, Ants & Waterbugs With Patented Puffer	Lloyd Pest Control, 935 Sherman, San Diego, Calif. 92110.
527-40	Midland Ware-O-Cide Super Strength Furniture Warehouse Insecticide	Master Laboratories, Beaver Falls, Pa. 15010.
11104-R	Sberick Mist-O-Dane 25	Midland Labs, 210-220 Jones St., Dubuque, Iowa 52001.
8550-3	Municide Concentrated Residual Insecticide	Mist-O-Dane Manufacturing Co., 1830 Hillside Dr., Glendale, Calif. 91208.
8550-31	Del-A-Cide Insecticide	Oner II Inc., 875 Industrial Way, Sparks, Nev. 89431.
9803-10	Chlor-Mal 96 Concentrated Insecticide	
9803-13	Munichem Muml Fog Concentrated Insecticide	
2169-25	Chlordane 10% Dust	Patterson Chemical Co. Inc., 1400 Union Ave., Kansas City, Mo. 64101.
2169-77	Patterson's 45% Chlordane E.C.	
2169-99	Patterson's 40% Chlordane W.P.	
2169-129	Patterson's 6% Chlordane Dust	
2169-135	Patterson's 20% Chlordane Concentrate	
2169-177	Patterson's Stop Crab	
2169-209	Patterson's 10% Chlordane Granules	
8047-7	Poly Bug Kill	Poly Chem, Inc., P.O. Box 10026, New Orleans, La. 70121.
9340-1	S-488 Concentrated Insecticide	Precision Laboratories Inc., P.O. Box 127, Northbrook, Ill. 60062.
11157-E	Rose's 44% Chlordane	Rose Exterminator Co., 626 Potrero Ave., San Francisco, Calif. 94110.
2131-14	French's Shoo Flea Dry Bath For Dogs	R. T. French Co., 1 Mustard St., Rochester, N.Y. 14609.
11214-EN	Termigon-D For Control of Drywood Termites	Target Chemical Co., 17710 Studebaker Rd., Cerritos, Calif. 90701.
1234-13	Ticksul For Control of Ticks-Fleas-Lice on Dogs	Vet Products Inc., 1524 Holmes St., Kansas City, Mo. 64108.
1234-22	Buckeye Brand Chlorzol	
60-86	Watkins Wats-Guard Ant & Roach Powder	Watkins Products Inc., 150 Liberty St., Winona, Minn. 55987.
5815-20	Triple XXX Three Way Lawn Food Crabgrass Control Insect Killer	Wegro Inc., Box 82, Grand Rapids, Ohio 43322.
5815-24	Mr. Gro 4 Way Action Lawn Food With Iron Plus Crabgrass and Insect Control	
5815-26	Lawn King Turf Food Plus Crabgrass & Insect Control	
12956-R	Mibelich's Super Ant & Grub Control	William Mibelich & Son Nursery, 14300 Toepfer, Warren, Mich. 48080.
12956-E	Mibelich's Nursery Ant & Grub Control	

[FR Doc. 77-26548 Filed 9-12-77; 8:45 am]

Mr. Duane Traylor, Management Division, U.S. Environmental Protection Agency, Region VIII, Suite 900, 1860 Lincoln Street, Denver, Colo. 80203 (303-837-2351).
 Mr. R. L. O'Connell, Enforcement Division, U.S. Environmental Protection Agency, Region IX, 100 California Street, San Francisco, Calif. 94111 (415-556-0102).
 Mr. Dan Bodien, Permits Branch, Enforcement Division, U.S. Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Wash. 98101 (206-442-1270).

[FR Doc.77-26508 Filed 9-12-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20122; FCC 77-602]

INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION CONVENTION ON SAFETY OF FISHING VESSELS

International Radiotelephone and Radiotelegraph Regulations for Fishing Vessels

Adopted: August 31, 1977.

Released: September 2, 1977.

Order—Proceeding Terminated. In the matter of international radiotelephone and radiotelegraph regulations for fishing vessels: Draft of (IMCO) Convention on Safety of Fishing Vessels.

1. The Commission has adopted several Notices of Inquiry in this Docket¹ concerning proposed radio regulations to be included in a new Inter-Governmental Maritime Consultative Organization (IMCO) Convention on Safety of Fishing Vessels.

2. The comments received in response to these inquiries were used to provide guidance information for use by the United States delegation to the IMCO Subcommittee on Radiocommunications. The Subcommittee was responsible for preparation of draft regulations concerning radio communication equipment to be mandatorily fitted on certain fishing vessels. Draft regulations pertaining to various aspects of the safety of fishing vessels were prepared by a number of IMCO Subcommittees and a draft convention was prepared.

3. An International Conference on Safety of Fishing Vessels was held in Torremolinos, Spain, from March 7, 1977, to April 2, 1977, to consider the draft convention which was approved by the Maritime Safety Committee at its thirty-fourth session. The United States and forty-five other countries were represented at the Conference. The convention was named "Torremolinos International Convention for the Safety of Fishing Vessels, 1977" and will be available for signature at the IMCO Headquarters from October 1, 1977, to June 13, 1978.

4. The final text adopted by the Conference was unacceptable to the United

¹ After October 1, 1977, Region IX's address will be 215 Fremont Street, San Francisco, Calif. 94105.

² Notice of Inquiry, Docket 20122, adopted July 31, 1974 (39 FR 28457; FCC 74-819); Second Notice of Inquiry, Docket 20122, adopted November 27, 1974 (39 FR 4093; FCC 74-1283); Third Notice of Inquiry, Docket 20122, adopted June 10, 1975 (40 FR 27293; FCC 75-685).

States in numerous areas including the regulations pertaining to radiocommunications. The United States does not at this time plan to become a signatory to this convention and, consequently, since no further purpose could be served in keeping this docket open, we are terminating this proceeding.

5. In view of the above, *It is ordered*, That this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,²

VINCENT J. MULLINS,
Secretary.

[FR Doc.77-26588 Filed 9-12-77;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP73-66 (PGA77-2)]

INTER-CITY MINNESOTA PIPELINES LTD., INC.

Proposed Changes in FPC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

SEPTEMBER 2, 1977.

Take notice that Inter-City Minnesota Pipelines Ltd., Inc. on August 19, 1977, tendered for filing Ninth Revised Sheet No. 4 to its FPC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1977.

Minnesota Pipelines states that this filing is submitted to reflect a Purchased Gas Cost adjustment based on an increase in the Canadian border rates effective September 21, 1977, and the consequent increase in the price which Minnesota Pipelines is required to pay its supplier ICG Transmission Limited.

Minnesota Pipelines also states that copies of this filing have been served upon all its customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 14, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMBS,
Secretary.

[FR Doc.77-26581 Filed 9-12-77;8:45 am]

[Docket No. ER77-557]

KANSAS CITY POWER & LIGHT CO. Filing of Service Schedule

SEPTEMBER 8, 1977.

Take notice that on August 15, 1977, Kansas City Power Co. (KCPL) tendered for filing Service Schedule SE for Sys-

² Commissioner Fogarty absent.

tem Energy between KCPL and Associated Electric Cooperative, Inc. KCPL requests waiver of the Commission's notice requirements to allow for an effective date of July 10, 1977. KCPL indicates that the proposed Service Schedule SE adds "System Energy" to the Missouri Participation Agreement.

KCPL states that the proposed rates are KCPL's rates and charges for similar service under schedules previously filed by KCPL with the Federal Power Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8, and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 14, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMBS,
Secretary.

[FR Doc.77-26555 Filed 9-9-77;1:51 pm]

[Docket No. CP77-577]

MICHIGAN WISCONSIN PIPE LINE CO. Pipeline Application

SEPTEMBER 6, 1977.

Take notice that on August 22, 1977, Michigan Wisconsin Pipe Line Co. (Applicant), One Woodward Avenue, Detroit, Mich. 48226, filed in Docket No. CP77-577 an application pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of compressor facilities to maintain the receipt of natural gas supplies from two non-associated reservoirs within the Eugene Island Area Block 266 Field, Offshore Louisiana, which otherwise would not be deliverable to it, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application indicates that by Gas Sales Contracts between Applicant and Cities Service Oil Co. dated April 19, 1968, Atlantic Richfield Co. dated April 18, 1968, Getty Oil Co. dated April 17, 1968, and Continental Oil Co. (Conoco) dated April 19, 1968, Applicant acquired the right to purchase all of the recoverable gas reserves underlying the land and leaseholds down to the base of the FR Sand in Eugene Island Area Blocks 246, 266, 267, and 269 and South Marsh Island Area Blocks 95, 96, 108, and 109 (collectively hereinafter referred to as the Block 266 Field), all in Offshore Louisiana. All of the Gas Sales Contracts are substantially identical except for the name of the producer and the date of the contract, and dedicate an aggregate

of 500 Bcf of natural gas reserves to Applicant. Applicant states that Article IX of each of the Gas Sales Contracts provides that either Applicant or the producer may, but is not required to, install compressor facilities, and if neither the producer nor Applicant elects to install the necessary compressor facilities to effectuate deliveries, then Applicant will release the reserves attributable to the contract.

Applicant states that it has been advised by Conoco, as operator of the Block 266 Field, that by the first quarter of 1978, the pressure attributable to the DQ-2 (DG-B1) and DQ (DQ-B1) non-associated gas reservoirs located in South Marsh Island Area Block 108 will have declined to approximately 800 psia as a result of normal pressure decline caused by continuing production from such reservoirs. At a pressure of 800 psia, delivery of gas supplies from the affected non-associated reservoirs against the normal line pressure of Applicant's pipeline facility would be precluded. Accordingly, to obviate the loss of the supplies from such reservoirs, Applicant states that it has elected to install the necessary compressor facilities to enable it to maintain the receipt into its system of those recoverable gas reserves.

Applicant states that it requests authorization to cause to have installed and operated approximately 1,100 (1,160 ISO rated) horsepower of compression which will be located on the existing "D" production platform located in South Marsh Island Area Block 108. In accordance with a Construction and Operating Agreement between Applicant and Conoco dated March 10, 1977, the required compressor facilities including associated appurtenances will be wholly owned by Applicant but designed, installed, and operated by Conoco on Applicant's behalf. Applicant states that the agreement provides that the compressor is subject to its approval as to design, construction specifications, construction drawings, and equipment selections, and projects that the installation of the compression will increase the gas deliverability from the two non-associated reservoirs in Block 108 by over 70 Bcf.

Applicant estimates the total cost of the facilities proposed herein to be \$910,150, which it states will be financed with funds on hand.

Any person desiring to be heard or to make any protest with reference to said application, on or before September 26, 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 Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, any further notice of such hearing will be duly given.

Under the procedure here in 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. 77-26583 Filed 9-12-77; 8:45 am]

[Docket No. RP74-100]

NATIONAL FUEL GAS SUPPLY CORP.
Order Rejecting Proposed Tariff Sheets
SEPTEMBER 2, 1977.

On August 4, 1977, National Fuel Gas Supply Corp. (National) tendered for filing tariff sheets to its FPC Gas Tariff, Original Volume No. 1.¹ These sheets propose to allow National to track future increases in the cost of coke oven gas purchased from Donner-Hanna Coke Corp. (Donner-Hanna) through National's PGA clause. For the reasons stated, the Commission shall reject the proposed tariff sheets.

National and Donner-Hanna entered a new contract, effective November 1, 1976, for the sale of coke oven gas to National. Under this contract the price of the gas will change semi-annually based on the average price of coal in the preceding six month period. The proposed tariff sheets would permit National to track the changes in the cost through its PGA clause. Under the Commission's applicable regulations coke oven gas may not be reflected in a pipeline's PGA clause without prior approval of the Commission.

The Commission finds that good cause has not been shown to permit coke oven gas purchases to be included in National's PGA clause. The Donner-Hanna coke oven gas constitutes only a small portion of National's total system supply. Data submitted by National in Docket No. RP76-96 indicates that coke oven gas accounts for less than three percent of National's total gas supply. The Commission also notes that National has filed four rate increase applications with the Commission pursuant to section 4 of the

¹ Substitute Third Revised Sheet Nos. 35 and 36; First Revised Sheet No. 36A; Second Revised Sheet No. 37.

Natural Gas Act within the last two years² in addition to numerous PGA rate filings.³ While the Commission does not seek to encourage additional rate filings, the frequency of National's filings suggests that any increases in the cost of coke oven gas will be adequately considered in Section 4 proceedings.

Based on the foregoing considerations the Commission finds that National's request to include coke oven gas in its tariff PGA Clause is not justified, and the proposed tariff sheets shall accordingly be rejected.

The Commission orders. (A) National's proposed tariff sheets, tendered for filing on August 4, 1977, are rejected.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-26582 Filed 9-12-77; 8:45 am]

[Docket No. CP77-586]

NORTHERN NATURAL GAS CO.

Application

SEPTEMBER 6, 1977.

Take notice that on August 24, 1977, Northern Natural Gas Co. (Applicant), 2223 Dodge Street, Omaha, Nebr. 68102, filed in Docket No. CP77-586 an application for a budget-type certificate of public convenience and necessity authorizing, pursuant to section 7(c) of the Natural Gas Act and § 157.7(c) of the regulations thereunder (18 CFR 157.7(c)), unspecified miscellaneous branch-line and town border station rearrangements during calendar year 1978 and permitting and approving, pursuant to section 7(b) of the Natural Gas Act and § 157.7(e) of the regulations thereunder (18 CFR 157.7(e)), abandonment of various minor direct sales facilities during the calendar year 1978, all as more fully set forth in the application on file with the Commission and open to public inspection.

The stated purpose of the instant budget-type application for miscellaneous rearrangements of facilities is to augment Applicant's ability to accommodate, among other things, highway construction work, commercial development, and relocation of minor water ways; which it will not result in any change in service rendered by means of the facilities involved.

Applicant states that the total cost of the proposed miscellaneous rearrangements will not exceed \$300,000 for the calendar year and will be financed from cash on hand and funds generated through operations.

Applicant indicates that its application to abandon facilities is filed pursuant to

¹ Docket Nos. RP76-4, RP76-96, RP77-14, and RP77-57.

² National has filed seven PGA rate changes so far during the current fiscal year.

§ 157.7(e) of the Commission's regulations, which is intended to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sales measuring, regulating, and related minor facilities during a 12-month period by providing for the filing of an abbreviated budget-type abandonment application when (1) deliveries to any one direct sale customer through any one of the sales measuring facilities proposed to be abandoned have not exceeded 100,000 Mcf of natural gas during the last year of service and (2) Applicant will not abandon any service unless it receives a written request or written permission from the customer to terminate service. If such request or permission cannot be obtained, a statement certifying that the customer has no further need of service must be filed with the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 26, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that grant of the certificate and permission and approval for the proposed abandonments are 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. PLUMS,
Secretary.

[PR Doc.77-26586 Filed 9-12-77;8:45 am]

[Docket Nos. ER77-102 and ER77-277]

PENNSYLVANIA POWER CO.

Order Granting Motion To Dismiss and Terminate Proceeding, Denying Motion To Reject Filing, Granting Interventions, Establishing Price-Squeeze Procedures, Denying Reconsideration, and Setting Prehearing Conference Dates

SEPTEMBER 2, 1977.

On July 11, 1977, Pennsylvania Power Company (Company) tendered for filing¹ proposed rate schedules for jurisdictional sales to five of its customers² in Docket No. ER77-277. By order issued August 1, 1977, the Commission accepted the submittal for filing and suspended the rates and charges for one month, after which they are to become effective subject to refund.

The proposed rate schedules contain flat demand and energy charges. The schedules contain a fuel adjustment clause which conforms to Commission Order No. 517, a minimum bill, a high voltage discount, a 60 percent ratchet provision, and a tax clause. Any attempt to implement a tax adjustment clause requires full cost-of-service support as specified in § 35.13 of the Commission's regulations prior to implementation.

Notice of the proposed increase was issued April 8, 1977, with comments, protests, and/or petitions to intervene due on April 20, 1977. On April 20, the Boroughs of Ellwood City, Grove City, New Wilmington, Wampum, and Zellenople, Pennsylvania (Boroughs) filed motions to reject the filing and a petition to intervene in the proceeding.³ The Boroughs own and operate their own electric distributing systems under the laws of the Commonwealth of Pennsylvania and receive their electrical power from the Company. The Boroughs request that the proposed filing be rejected for the following reasons:

(1) The Company's proposed filing represents an attempt to threaten the existence of Ellwood City as a public power entity and jeopardize its continuing ability to serve existing and prospective loads in that the company has sought to totally change a Commission-adopted formula or methodology for a discount high voltage service (Docket No. E-8159, Commission Order of August 20, 1975).

¹ The filing was originally submitted on April 1, 1977. The Commission sent to Company a deficiency letter on April 26, 1977, and the Company responded on May 5, 1977. Another deficiency letter was sent on June 2, 1977, and the Company cured its filing on July 11, 1977.

² Boroughs of Ellwood City, Grove City, New Wilmington, Wampum, and Zellenople, Pennsylvania.

³ On April 19, 1977 the Borough of New Wilmington, Pa., filed a letter of protest in this docket.

(2) Failure to comply with § 35.13 of the Commission's regulations.

The Company filed an answer to the motions of the Boroughs on May 11, 1977.

We reviewed these filings prior to our decision to accept for filing the Company's rate schedules in our prior order in this docket.

The Motions and Petitions of the Boroughs also contain price-squeeze allegations and the Boroughs expressly state that they do not waive their rights to full and complete discovery on the price-squeeze issue. Accordingly, we will direct the Administrative Law Judge to convene a prehearing conference within 15 days from the date of this order for the purpose of hearing the petitioners' request for data necessary to present their prima-facie showing on the price-squeeze issue.

On August 8, 1977, the Boroughs filed a Petition for Rehearing, Reconsideration, and Expedited Action of the August 1 order.⁴ The Petition requests a number of Commission actions: (1) Grant of a Motion to Reject the Company's filing in ER77-277 because its high-voltage discount formula differs from the formula adopted in the previous FPC rate proceeding between the parties; (2) A full five month suspension period in place of the one month suspension period mentioned in the August 1 order; (3) A grant of Request for Intervenor status; (4) Grant of request to delay effectiveness of rates pending the outcome of a final Commission determination of the justice and reasonableness of the rates.

The Commission notes the substantial interest of the Boroughs in this proceeding and has no difficulty in granting intervenor status to the Boroughs. We shall deny the Motion to Reject, however, because the contention that the rates are excessive is better left to resolution in public hearing which we shall hereinafter order. Nothing contained in the Borough's petition causes us to reconsider the length of suspension period previously established. The request that the Company be allowed to establish new rates only after final Commission resolution of the issues must be denied because the Commission lacks the authority to suspend a rate increase filing for more than five months.

In a related docket, ER77-102, the Company submitted for filing on December 8, 1976, an interim high voltage service rate for Ellwood City in purported compliance with the Commission's order issued August 20, 1975, in Docket No. E-8159. Analysis of the ER77-102 filing dis-

⁴ Since our order of August 1, 1977, is interlocutory, no application for rehearing is permitted (§ 1.34 of the Commission's rules of practice and procedure). However, the Commission will treat the Application as a Motion for Reconsideration.

closes that (1) the proposed high voltage discount is identical to the one developed in the E-8159 proceeding and (2) the supply of electric power and energy is restricted to one delivery point at either high or low voltage but not at both voltages. The Commission's order of January 28, 1977, in Docket No. ER77-102 accepted the proposed high voltage discount rate effective January 23, 1977, but suspended operation of the restrictive language until July 28, 1977. In addition, the Company was ordered to file its case-in-chief in support of the restrictive provision.

On April 7, 1977, the Company submitted its case-in-chief and stated its willingness to serve at dual voltage and dual delivery points. Thereafter, the Borough of Ellwood City indicated that in light of the change in position on the part of the Company it was no longer necessary to hold a hearing in Docket No. ER77-102 and Ellwood City would not object to a motion by Penn Power to dismiss the proceedings. Such motion was filed on May 9, 1977.

Since no parties object to termination of ER77-102, we will grant the Company's motion to dismiss and terminate the proceeding, provided that the Company files revised language within 30 days for its agreement with Ellwood City which is not restrictive as to delivery points and voltage levels. This revised filing is to be effective for the period beginning January 23, 1977.

The Commission finds: (1) Good cause exists to grant the Company's Motion to Dismiss and Terminate Proceeding in Docket No. ER77-102, as hereinafter ordered.

(2) Good cause exists to establish price-squeeze procedures in Docket No. ER77-277 to effectuate the Commission's policy announced in Order No. 563.

(3) Good cause does not exist to allow implementation of the tax clause in the Company's filing in Docket No. ER77-277, absent cost of service support prior to implementation.

(4) Good cause exists to accept the petition to intervene of the Boroughs.

(5) Good cause does not exist to reject the Company's filing in Docket No. ER77-277.

(6) Good cause does not exist to reconsider the length of the suspension period specified in the August 1, 1977 order.

(7) Good cause does not exist to require the delay of effectiveness of the proposed rates pending final Commission determination of the reasonableness of the rates.

The Commission orders: (A) The Company's motion to terminate the proceeding in Docket No. ER77-102 is hereby granted: *Provided, however*, That the Company files acceptable substitute language with respect to its agreement with Ellwood City which eliminates the issue of restrictions as to delivery points and delivery voltages. Said filing shall be made within 30 days from the date of issuance of this order and shall be effective as of January 23, 1977.

(B) In Docket No. ER77-277, the Administrative Law Judge shall convene a prehearing conference within 15 days from the date of this order for the purpose of hearing the petitioners' request for data required to present their case, including a prima facie showing, on the price squeeze issue. Also, the Company shall be required to respond to the discovery requests authorized by the Administrative Law Judge within 30 days, and the petitioners shall file their case-in-chief on the price squeeze issue within 30 days after the Company's response.

(C) The tax adjustment clause contained in the Company's filing in ER77-277 shall remain inoperative pending cost of service support prior to its implementation.

(D) The Boroughs are hereby permitted to intervene in Docket No. ER77-277 subject to the rules and regulations of the Commission: *Provided, however*, That participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; *And provided, further*, That the admission of such intervenor shall not be construed as recognition by the Commission that they might be aggrieved because of any Commission order entered in this proceeding.

(E) The Staff shall prepare and serve top sheets on all parties for settlement purposes on or before November 10, 1977 (See Administrative Order No. 157).

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at an initial conference in this proceeding to be held on November 23, 1977, at 10 a.m., in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Said Law Judge is authorized to establish all procedural dates and to rule upon all motions, (except petitions to intervene, motions to consolidate and sever and motions to dismiss), as provided for in the rules of practice and procedure.

(G) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to § 1.18 of the Commission's rules of practice and procedure.

(H) The Boroughs' motion to reject the Company's filing in Docket No. ER77-277 is hereby denied.

(I) The Boroughs' petition for reconsideration of the length of suspension period is hereby denied.

(J) The Boroughs' request to delay effectiveness of the proposed rates pending final Commission determinations of the reasonableness of the rates is hereby rejected.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[PR Doc.77-26583 Filed 9-12-77;8:45 am]

[Docket No. ER76-285]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Extension of Time

SEPTEMBER 2, 1977.

On August 3, 1977, the Commission issued an order modifying Opinion No. 790 to provide for the payment of refunds in the above-designated matter. On August 9, 1977, the Public Service Company of New Hampshire filed an application for rehearing and a motion for stay until 30 days after the date of issuance of the rehearing order for filing refunds pursuant to ordering paragraph (B) of the Commission's August 3, 1977, order.

Upon consideration, notice is hereby given that the time within which Public Service Company of New Hampshire shall make refunds pursuant to the August 3, 1977, order extended pending further order of the Commission.

KENNETH F. PLUMB,
Secretary.

[PR Doc.77-26584 Filed 9-12-77;8:45 am]

[Docket No. RP73-3 (PGA77-3)]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Order Accepting for Filing and Suspending Proposed PGA Rate Adjustment, Permitting Refiling of Adjusted PGA Rates, and Directing Submission of Additional Information

AUGUST 31, 1977.

On August 1, 1977, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a proposed PGA rate increase of 5.1 cents per dekatherm (dth)¹ consisting of (1) an increase of 0.9 cents per dth, or \$46,458,754 annually, in Transco's current cost of purchased gas and (2) a net increase of 4.2 cents per dth (from 0.8 to 5.0 cents per dth) in the surcharge to recover the balance in the deferred purchase gas cost account (FPC Account No. 191). The latter net increase results from an increase of 3.1 cents per dth due to the elimination of a negative deferred adjustment of the same amount pursuant to Transco's PGA tracking rate filing which became effective on March 1, 1977, and an increase of 1.1 cents per dth to recover the balance in the deferred account as of June 30, 1977, for gas purchase costs exclusive of amounts attributable to Commission Opinion No. 770-A. Transco proposes a September 1, 1977, effective date.

A review of Transco's filing indicates that it is predicated, in part, upon 60-day emergency purchases under § 2.68 of the Commission's general rules at rates in excess of those established in Opinion 770-A. Transco should be allowed to include in its purchased gas costs those rates for emergency purchases which a

¹ Second Substitute Third Revised Sheet No. 12 and Substitute Second Revised Sheet No. 15 to FPC Gas Tariff, Second Revised Volume No. 1.

reasonably prudent pipeline would pay for gas under the same or similar circumstances. To assist the Commission in determining the reasonableness of the emergency purchases, Transco shall be required to submit certain additional information as specified in ordering paragraph (C) below.

In light of the foregoing the Commission finds that Transco's PGA rates should be accepted for filing, suspended for one day, and permitted to become effective on September 2, 1977, subject to refund and to the terms of this order. Transco shall be allowed to refile PGA rates to be made effective September 1, 1977, for those PGA rates excluding emergency purchases at rates in excess of those established in Opinion No. 770-A. This procedure would limit Transco's refund liability to those emergency purchases.

The Commission orders: (A) Transco's proposed PGA rates are accepted for filing and suspended for one day until September 2, 1977, when they shall be permitted to become effective subject to refund.

(B) Within 30 days of the date of this order, Transco shall be permitted to refile adjusted PGA rates to be made effective September 1, 1977, reflecting that portion of the proposed adjustment which includes costs other than those related to emergency purchases at rates in excess of those established in Opinion No. 770-A.

(C) Transco shall, within 30 days of the date of this order, file with the Commission and serve on all of its customers and interested state commissions the following information concerning its 60-day emergency purchases under § 2.68 of the Commission's general rules at rates in excess of those established in Opinion 770-A:

- (1) The pipeline's need for the gas;
- (2) The availability of other gas supplies;
- (3) The amount of gas purchased under each 60-day transaction;
- (4) A comparison of each emergency purchase price with appropriate market prices in the same or nearby areas; and
- (5) The relationship between purchaser and seller.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-26580 Filed 9-12-77; 8:45 am]

FEDERAL RESERVE SYSTEM

[H. 2, 1977 No. 34]

ACTIONS OF THE BOARD

Applications and Reports Received During the Week Ending August 20, 1977

ACTIONS OF THE BOARD

Interpretation of Regulation Z simplifying procedures for credit card issuers which bill customers in full on a transaction-by-transaction basis and impose no finance charges (Docket No. R-0094).

Issuance of subordinated debentures by American Bank of Carlbad, Carlbad, N. Mex.

State Bank of Milan, Milan, Ind., proposed merger with First Bank & Trust Co. of Batesville, Batesville, Ind., report to the Federal Deposit Insurance Corporation on competitive factors.

NBM Corp., McAlester, Okla., extension of time to October 19, 1977, within which it may consummate the acquisition of The National Bank of McAlester, McAlester, Okla.¹

Texas Commerce Bancshares, Inc., Houston, Tex., extension of time to November 16, 1977, to dispose of its indirect interest in Texas General Life Insurance Co., Austin, Tex., which was acquired on May 16, 1977, through the merger of Texas Commerce with the Bancapital Financial Corp., Austin, Tex.¹

Termination as a registered lender for Mountain Bell Federal Credit Union, Colorado Springs, Colo.¹

First Bank & Trust Co. of South Bend, South Bend, Ind., to make an investment in bank premises.¹

American Security Bank, Mount Pleasant, Mich., extension of time to April 7, 1978, within which to establish a branch at 19976 North Winn Road, Beal City, Mich.¹

Detroit Bank-Southfield, Southfield, Mich., extension of time to February 25, 1978, within which to establish a branch at the southeast corner of Southfield and Mount Vernon Roads, Southfield, Mich.¹

United California Bank, Los Angeles, Calif., extension of time to February 21, 1978, within which to establish a branch in the vicinity of Stevens Creek Boulevard and Saich Way, Cupertino, Calif.¹

Central Trust Co. of Mercer County, National Association, Celina, Ohio, proposed merger with First National Bank of Mercer County, Celina, Ohio, report to the Comptroller of the Currency on competitive factors.¹

Moline State Bank, Moline, Mich., proposed merger with First National Bank of Grand Rapids, Mich.; report to the Comptroller of the Currency on competitive factors.¹

National Stock Yards National Bank of National City, National City, Ill., proposed acquisition of a portion by Boatmen's National Bank of St. Louis, St. Louis, Mo.; report to the Comptroller of the Currency on competitive factors.¹

National Stock Yards National Bank of National City, Ill., proposed acquisition of a portion by First National Bank of East St. Louis, East St. Louis, Ill.; report to the Comptroller of the Currency on competitive factors.¹

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

APPROVED

The Western Security Bank, Sandusky, Ohio. Branch to be established at the intersection of Route 250 and Hull Road, Perkins Township, Erie County.¹

The Western Security Bank, Sandusky, Ohio. Branch to be established in the Sandusky Mall, Unit 350, State Route 250 and Hull Road, Perkins Township, Erie County.¹

Bank of Florida in St. Petersburg, St. Petersburg, Fla. Branch to be established at the corner of Pasadena Avenue and Sunset Boulevard in St. Petersburg.¹

First Bank & Trust Co. of South Bend, South Bend, Ind. Branch to be established at 1302

¹ Application processed on behalf of the Board of Governors under delegated authority.

² Application processed by the Reserve Bank on behalf of the Board of Governors under delegated authority.

Elwood Avenue (within Martin's Supermarket Inc.), South Bend, St. Joseph County.²

Citizens Bank, Hartford, Ky. Branch to be established at Spinks Shopping Center, Highway 231 (Main Street), Hartford, Ohio County.²

To Form a Bank Holding Company Pursuant to Section 3(a) (1) of the Bank Holding Company Act of 1956.

APPROVED

Keokuk County Bankshares, Inc., Sigourney, Iowa, for approval to acquire 80 percent or more of the voting shares of Keokuk County State Bank, Sigourney, Iowa.²

First of Grandfield Corp., Grandfield, Okla., for approval to acquire 100 percent (less directors' qualifying shares) of the voting shares of First State Bank, Grandfield, Okla.

Fort Worth Bancshares, Inc., Fort Worth, Tex., for approval to acquire 100 percent of the voting shares (less directors' qualifying shares) of Fort Worth Bank & Trust, Fort Worth, Tex.²

To Expand a Bank Holding Company Pursuant to Section 3(a) (3) of the Bank Holding Company Act of 1956.

APPROVED

United Bank Corp. of New York, Albany, N.Y., for approval to acquire 100 percent of the voting shares of the successor by merger to Hempstead Bank, Hempstead, N.Y.²

Manchester Financial Corp., St. Louis, Mo., for approval to acquire 100 percent of the voting shares (less directors' qualifying shares) of Manchester Bank West County, Maryland Heights, Mo., a proposed new branch.

To Expand a Bank Holding Company Pursuant to Section 4(c) (8) of the Bank Holding Company Act of 1956.

WITHDRAWN

First National of Nebraska, Inc., Omaha, Nebr., notification of intent to engage in de novo activities (acting as an insurance agent for the sale of decreasing credit life insurance and credit accident and health insurance which coverages are directly related to extensions of credit by First of Omaha Savings Co.) at 4421 South 84th Street and 3022 North 90th Street, Omaha, Nebr., through a subsidiary, First of Omaha Savings Co. (8-17-77).²

United Bancorp, Roseburg, Oreg., notification of intent to engage in de novo activities (to provide bookkeeping or data processing services for the internal operations of the holding company and its subsidiaries; to store and process other banking, financial or related economic data such as performing payroll, accounts receivable or payable, or billing services) at S.E. Oak and Kane Streets, Roseburg, Oreg., through its subsidiary, United D. P. Co. (8-15-77).²

Chemical New York Corp., New York, N.Y., notification of intent to engage in de novo activities (extending direct loan credit, purchasing sales finance contracts, and making such other extensions of credit as would be made or acquired by a consumer finance company operating under the South Carolina Consumer Protection Code;

² 4(c) (8) and 4(c) (12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

and providing, at the election of debtors of said consumer finance company, group credit life and accident and health insurance directly related to such extensions of credit) at CP&L Building, 2160 Hoffmeyer Road, Florence, S.C., through its subsidiary, Sun Finance Co.—1203, Inc. (8-15-77).²

Chemical New York Corp., New York, N.Y., notification of intent to engage in *de novo* activities (extending direct loan credit, purchasing sales finance contracts, and making such other extensions of credit as would be made or acquired by a consumer finance company operating under the Indiana Uniform Consumer Credit Code; providing, at election of debtors of said consumer finance company, group credit life and group accident and health insurance directly related to such extensions of credit) at Ayr-Way South Shopping Center, 3788 South East Street, Indianapolis, Ind., through its subsidiary, Sunamerica Financial Corp. (8-15-77).²

First Pennsylvania Corp., Philadelphia, Pa., notification of intent to relocate *de novo* activities (making, acquiring, and servicing consumer loans or other extensions of consumer credit including the sale of credit insurance which is directly related to such extensions of credit) from 203 East Main Street, Newark, Del. to 85 Brookside Shopping Center, Marrows Road, Newark, Del., through its subsidiary, Investors Loan Corp. (8-15-77).²

Colonial-American Bankshares Corp., Roanoke, Va., notification of intent to engage in *de novo* activities (making, acquiring and servicing, for its own account and for the account of others, leases of personal property and acting as agent, broker, or adviser in leasing such property to the extent permitted by law and the rules and regulations of the Federal Reserve Board) at 202 South Jefferson Street, Roanoke, Va., through its subsidiary, Colonial-American Leasing Corp. (8-19-77).²

South Carolina National Corp., Columbia, S.C., notification of intent to engage in *de novo* activities (financing of insurance premiums) at 132-146 South Moore Street, Sanford, N.C., through a subsidiary, Insurance Premium Discount Co. (8-19-77).²

Union Trust Bancorp., Baltimore, Md., notification of intent to engage in *de novo* activities (make secondary mortgage loans secured in whole or in part by mortgage deed of trust, security agreement, or other lien on real estate situated in the State of South Carolina which property may be subject to one or more prior encumbrances or other leasehold interests; and acting as agent in the sale of credit life insurance and credit accident and health insurance in connection with its extension of credit) at 4 Carriage Lane, Charleston, S.C., through its subsidiary, Union Home Loan Corp. (8-14-77).²

BankAmerica Corp., San Francisco, Calif., notification of intent to engage in *de novo* activities (making or acquiring, for its own account second mortgage loans and other extensions of credit such as would be made or acquired by a finance company and servicing second mortgage loans and other extensions of credit; such activities will include, but not be limited to, purchasing installment sales finance contracts, extending credit to small businesses, and making loans secured by second mortgages and personal property; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance in connection with extensions of credit made or acquired by FinanceAmerica Corporation) at Park Plaza West, 10700 S.W. Beaverton-Hillsdale Highway, Beaverton, Oreg., through its indirect subsidiary, FinanceAmerica Corp. (an Oregon Corp.) (8-20-77).²

BankAmerica Corp., San Francisco, Calif., notification of intent to relocate *de novo* activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by a finance company; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; acting as agent or broker for the sale of credit related life and credit related accident and disability insurance, and credit related property insurance in connection with extensions of credit made or acquired by FinanceAmerica Corp. of Ohio and FinanceAmerica Discount Co., of Ohio) from 238 Cleveland Avenue NW, to 3040 West Tuscarawas Street, Canton, Ohio, through its indirect subsidiaries, FinanceAmerica Corp. of Ohio and FinanceAmerica Discount Co. of Ohio (8-15-77).²

APPLICATIONS RECEIVED

To Establish a Domestic Branch Pursuant to Section 9 of the Federal Reserve Act.

The Community Bank, Napoleon, Ohio. Branch to be established at 1333 Woodlawn Avenue, Napoleon, Henry County.

Thirty Day Notice by a Member Bank of Intention to Establish an additional Branch in a Foreign Country.

The First National Bank of Boston: Branch—Additional in Hamburg, West Germany.

To Form a Bank Holding Company Pursuant to Section 3(a)(1) of the Bank Holding Company Act of 1956.

Kanopolis Bankshares, Inc., Kanopolis, Kans., for approval to acquire 80 percent or more of the voting shares of The Kanopolis State Bank, Kanopolis, Kans.

White Cloud Bancshares, Kansas City, Mo., for approval to acquire 86.7 percent of the voting shares of First State Bank, White Cloud, Kans.

To Expand a Bank Holding Company Pursuant to Section 3(a)(3) of the Bank Holding Company Act of 1956.

New Virginia Bancorporation, Springfield, Va., for approval to acquire 100 percent of the voting shares of the successor by merger to Bank of Warrenton, Warrenton, Va.

To Expand a Bank Holding Company Pursuant to Section 4(c)(8) of the Bank Holding Company Act of 1956.

Industrial National Corp., Providence, R.I., notification of intent to engage in *de novo* activities (consumer finance and insurance agency for the sale of credit life and credit accident and health insurance sold in connection with extensions of credit) at 6208 South Tamiami Trail, Sarasota, Fla., through its existing subsidiaries, Southern Discount Co. (a Florida Corp.) and S.D.A. Corp. (a Florida Corp.) which are wholly owned by Industrial National Corp.'s subsidiary, Southern Discount Co. (a Rhode Island Corp.) (8-16-77).²

Chemical New York Corp., New York, N.Y., notification of intent to engage in *de novo* activities (leasing real and personal property and equipment on a non-operating, full payout basis and acting as agent, broker, and adviser with respect to such leases; financing real and personal property and equipment such as would be done

by a commercial finance company; and servicing such extensions of credit) at 7 Corporate Park Drive, White Plains, N.Y., through its wholly owned subsidiary, ChemLease, Inc. (8-16-77).²

Citicorp, New York, N.Y., notification of intent to engage in *de novo* activities (making or acquiring, for its own account or for the account of others, commercial loans; and leasing personal or real property or acting as agent, broker, or adviser in leasing such property subject to all of the qualifications specified in 12 CFR 225.4 (a) (6) (a) and where the leases serve as the functional equivalent of an extension of credit to the lessee of the property) at Three Girard Plaza, Philadelphia, Pa., through its wholly owned subsidiary, Citicorp Commercial, Inc. (8-15-77).²

Centran Corp., Cleveland, Ohio, notification of intent to engage in *de novo* activities (the making and acquiring of consumer finance loans for its own account or the account of others (including loans secured by first or second mortgages on real estate), the purchasing of installment sales contracts, and the selling as agent of credit life insurance to borrowers at their request in connection with extensions of credit) at 27589 Euclid Avenue, Euclid, Ohio, through its wholly owned subsidiary, Peoples Financial Corp., of Cleveland, Ohio, through its wholly owned subsidiary, Peoples Investment Co., Louisville, Ky. (8-15-77).²

Mercantile Bankshare Corp., Baltimore, Md., notification of intent to engage in *de novo* activities (making or acquiring, for its own account and for the account of others, loans and other extensions of credit such as would be made by a mortgage company) at Ritchie Highway and McKinsey Road, Severna Park, Md. and 2000 East Joppa Road, Parkville, Md., through its subsidiary, Mercantile Mortgage Corp. (8-19-77).²

Barnett Banks of Florida, Inc., Jacksonville, Fla., notification of intent to engage in *de novo* activities (performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company including activities of a fiduciary, agency or custodial nature in the manner authorized by Federal and State law; *Provided, however*, That loans and investments will be made and deposits accepted only in conformity with Regulations of the Board of Governors of the Federal Reserve System) at 1201 Brickell Avenue, Miami, Fla., through a subsidiary, Barnett Banks Trust Co., National Association (8-19-77).²

Southwest Florida Banks, Inc., Fort Myers, Fla., for approval to engage *de novo* through Southwest Financial Services, Inc., Fort Myers, Fla. in the activity of providing as agent, in connection with extensions of credit by applicant's subsidiary banks, insurance assuring repayment of such an extension of credit in the event of death or disability of the borrower.

Illinois Neighborhood Development Corp., Chicago, Ill., for approval to engage in *de novo* activities (projects designed to promote community welfare pursuant to the provisions of section 225.4(a)(7) of Regulation Y) through a subsidiary to be known as City Lands Corp., Chicago, Ill.

Illinois Neighborhood Development Corp., Chicago, Ill., for approval to engage in *de novo* activities (projects designed to promote community welfare pursuant to the provisions of section 225.4(a)(7) of Regulation Y) through a subsidiary to be known as The Neighborhood Institute, Chicago, Ill.

St. Joseph Bank & Trust Co. and St. Joseph Agency, Inc., both of South Bend, Ind., notification of intent to engage in *de novo* activities (origination, acquiring, selling

and servicing of residential, commercial and industrial mortgage loans) in Kankakee, Ill., through a subsidiary of St. Joseph Agency, Inc. known as St. Joseph Mortgage Co., South Bend, Ind. (8-18-77).²

Omaha National Corp., Omaha, Neb., for approval to acquire the voting shares of Wyoming Trust & Management Co., Gillette, Wyo.

BankAmerica Corp., San Francisco, Calif., notification of intent to engage in de novo activities (making or acquiring, for their own account loans and other extensions of credit such as would be made or acquired by a finance company; FinanceAmerica Corp. will engage in making consumer installment loans, making loans and other extensions of credit to small businesses, purchasing installment sales finance contracts, and servicing loans and other extensions of credit; FinanceAmerica Loan & Investment Co. will engage in making consumer installment loans, making loans and other extensions of credit to small businesses, making loans secured by real or personal property, and servicing loans and other extensions of credit; both corporations will act as agent or broker for the sale of credit-related life and credit-related accident and disability insurance in connection with extensions of credit made or acquired by FinanceAmerica Corp. or FinanceAmerica Loan & Investment Co., at 1200B Smallhouse Road, Bowling Green, Ky., through its indirect subsidiaries, FinanceAmerica Corp. (a Kentucky corp.) and FinanceAmerica Loan & Investment Co. (8-18-77).²

BankAmerica Corp., San Francisco, Calif., notification of intent to engage in de novo activities (making or acquiring, for its own account loans and other extensions of credit such as would be made or acquired by a finance company and servicing loans and other extensions of credit; such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; acting as agent or broker for the sale of credit-related life and credit-related accident and disability insurance in connection with extensions of credit made or acquired by FinanceAmerica Consumer Discount Co.) at Hickory Plaza, 4461 W. Ridge Road, Erie, Pa., through its indirect subsidiary, FinanceAmerica Consumer Discount Co. (8-16-77).²

Old National Bancorporation, Spokane, Wash., notification of intent to relocate de novo activities (leasing of personal property and equipment and acting as agent, broker, or adviser in leasing personal property and equipment) from 1200 Westlake Avenue North, Seattle, Wash., to 425-108th Northeast, Bellevue, Wash., through its subsidiary, Old National Leasing Co. (8-15-77).²

Pacific Corp., Bakersfield, Calif., notification of intent to engage in de novo activities acting as agent with respect to the sale of credit-related life/accident and health insurance in connection with extension of credit made by its lending subsidiary, Community National Bank) at First and Main Street, Button willow; 10808 Main Street, Lamont; 600 James Street, Shafter; 6100 Highway 178, Lake Isabella; 27 Big Blue Road, Kernville; 567 Oiler Street, Mendota; 215 S. Madera, Kerman; 2142 Blossom, Dos Palos; 529 Chester Avenue, Bakersfield; 3312 Niles Street, Bakersfield; 3831 Mount Vernon Avenue, Bakersfield; 1810 Chester Avenue, Bakersfield; 1400 Air-

port Drive, Bakersfield; 8020 Bellevue, Atwater; 234 Balsam, Ridgecrest; and 401 Finley Drive, Taft, all located in California (8-15-77).²

Security Pacific Corp., Los Angeles, Calif., notification of intent to relocate de novo activities (making or acquiring, for its own account or for the account of others, loans and extensions of credit including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company; and acting as broker or agent for the sale of credit related life/accident and health insurance) from 117 East Fourth, Loveland, Colo., to 829 Main Street, Longmont, Colo., through its subsidiary, The Bankers Investment Co. (8-12-77).²

Security Pacific Corp., Los Angeles, Calif., notification of intent to engage in de novo activities (making or acquiring, for its own account or for the account of others, loans and extensions of credit including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company; and acting as broker or agent for the sale of credit-related life/accident and health insurance) at 1220 S.W. Morrison Street, Portland, Ore., through its subsidiary, Security Pacific Finance Corp. (8-15-77).²

Security Pacific Corp., Los Angeles, Calif., notification of intent to engage in de novo activities (making or acquiring, for its own account or for the account of others, loans and extensions of credit including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company; and acting as broker or agent for the sale of credit-related life/accident and health insurance) at 528 East Main Street, Santa Maria, Calif. through its subsidiary, Security Pacific Finance Corp. (8-15-77).²

To expand a Bank Holding Company Pursuant to section 4(c)(12) of the Bank Holding Company Act of 1956.

Lumbermens Mutual Casualty Co., Long Grove, Ill., notification of intent to acquire indirectly, through its subsidiary, Kemper Corp., Long Grove, Ill., 50 percent of the outstanding common stock of Hearax Occupational Health Services, Tampa, Fla., which provides industrial multi-phasic medical surveillance to industrial plants (8-16-77).²

For Certification Pursuant to the Bank Holding Company Tax Act of 1976.

Ector Shopping Center, Inc., Odessa, Tex., to divest shares of First National Bank of Olney, Olney, Tex. (Legal Division Docket TRC 76-146.)

Atlantic Insurance & Investment Co. and Southern Union Co., both of Savannah, Ga., to divest shares of Southern Bank & Trust Co., Savannah, Ga. (Legal Division Docket TRC 76-147.)

² 4(c)(8) and 4(c)(12) notifications processed by Reserve Bank on behalf of the Board of Governors under delegated authority.

Capital Corp., Atlanta, Ga., to divest shares of First National Bank of Cape Canaveral, Cape Canaveral, Fla. (Legal Division Docket TCR 76-148.)

REPORTS RECEIVED

None.

PETITIONS FOR RULEMAKING

None.

Board of Governors of the Federal Reserve System, September 2, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-29534 Filed 9-13-77;8:45 am]

AMERICAN NATIONAL BANCSHARES, INC.

Formation of Bank Holding Company

American National Bancshares, Inc., Midwest City, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of American National Bank of Midwest City, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than September 28, 1977.

Board of Governors of the Federal Reserve System, September 6, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-28535 Filed 9-12-77;8:45 am]

CHICKASHA BANCSHARES, INC.

Formation of Bank Holding Company

Chickasha Bancshares, Inc., Chickasha, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Chickasha Bank & Trust Co., Chickasha, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than September 30, 1977.

Board of Governors of the Federal Reserve System, September 2, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-26536 Filed 9-12-77;8:45 am]

COMANCHE LAND & CATTLE CO.**Request for Determination and Opportunity for Hearing**

Notice is hereby given that a request has been made to the Board of Governors of the Federal Reserve System, pursuant to the provisions of section 2(g) (3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g) (3)) ("the Act"), by Comanche Land & Cattle Co., Comanche, Tex. ("Comanche"), which has transferred 40.8 percent of the outstanding voting shares of First State Bank of Bangs, Bangs, Tex., to Messrs. James H. Weatherby, Charles Womack, Dub Slocum and W. J. Smelley ("Purchasers"), for a determination that Comanche is not nor will be capable of controlling Purchasers, notwithstanding the fact that Purchasers are directors of Comanche, and notwithstanding the fact that Mr. Dub Slocum is indebted to Comanche.

Section 2(g) (3) of the Act provides that shares transferred after January 1, 1966, by any bank holding company (or any company which but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor, unless the Board, after opportunity for hearing, determines that the transferor is not, in fact, capable of controlling the transferee.

Notice is hereby given, that, pursuant to section 2(g) (3) of the Act, an opportunity is provided for filing a request for oral hearing. Any such request or written comments on the application should be submitted in writing (in duplicate) to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than September 30, 1977. If a request for oral hearing is filed, each request should contain a statement of the nature of the requesting person's interest in the matter, his reasons for wishing to appear at an oral hearing, and a summary of the matters concerning which such person wishes to give testimony. The Board subsequently will designate a time and place for any hearing it orders, and will give notice of such hearing to the transferor, the transferee, and all persons that have requested an oral hearing. In the absence of a request for an oral hearing, the Board will consider the requested determination on the basis of documentary evidence filed in connection with the application.

Board of Governors of the Federal Reserve System, September 2, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc. 77-26537 Filed 9-12-77; 8:45 am]

DETROITBANK CORP.

Order Approving Merger of Bank Holding Companies

DETROITBANK Corp., Detroit, Mich. ("DETROITBANK"), a bank holding

company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a) (5) of the Act (12 U.S.C. 1842(a) (5)) to acquire all of the voting shares of the successor by merger to Lake Shore Financial Corp., Muskegon, Mich., and thereby indirectly acquire shares of Hackley Union National Bank and Trust Co. of Muskegon, Muskegon, Mich. ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received including those of the United States Department of Justice and those of National Lumberman's Bank and Trust Co., Muskegon, Mich. ("Protestant"), in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

DETROITBANK controls six banks with aggregate deposits of \$2.8 billion, representing 8.8 percent of the total deposits in commercial banks in Michigan, and is the third largest banking organization in the State.¹ Consummation of the proposed merger would increase Applicant's share of deposits in commercial banks in Michigan by 0.6 percent and would have no appreciable effect upon the concentration of banking resources in Michigan.

All but one of Applicant's subsidiary banks are located in the Detroit banking market, approximately 170 miles from Muskegon.² Approval of this application would not eliminate any significant amount of existing competition.

With respect to potential competition, the Department of Justice and Protestant have expressed the opinion that Applicant is a likely entrant into the market and that approval of the application would result in the elimination of potential competition and decrease the likelihood of the market becoming less concentrated in the future. While it appears that consummation of the proposal would result in some slight adverse effects on potential competition, for the reasons discussed below, the Board is unable to conclude that consummation of the proposal would result in a significant loss of potential competition.

Bank is the largest of six banking organizations in the Muskegon banking market.³ Bank holds total deposits of \$188 million, representing approximately 33.5 percent of the total deposits in commercial banks in the Muskegon market.

¹ Banking data are as of December 31, 1976.

² Applicant recently entered western Michigan by acquiring Kentwood Bank located 40 miles from Muskegon in a suburb of Grand Rapids. The application under the Bank Holding Company Act to acquire that bank was approved under delegated authority by the Federal Reserve Bank of Chicago on July 7, 1977. Kentwood Bank is not located in the relevant market, but rather competes in the adjacent Grand Rapids market. Bank derives only a nominal amount of deposits and loans from the Grand Rapids market.

The Board has previously found that the Muskegon market, with the exception of the Norton Shores area, was not attractive for de novo entry.⁴ Since that finding was made, an application for a charter for a de novo bank in Norton Shores has been filed with chartering authorities and, if that application is granted, the attractiveness of the Norton Shores area for de novo entry by others will be lessened.

Moreover, it appears that the overall Muskegon market continues to be generally unattractive for de novo entry. The deposits per banking office ratio for the Muskegon Standard Metropolitan Statistical Area is below the State average. Population of the Muskegon County portion of the market increased 0.2 percent between 1970 and 1975, ranking fifteenth in population growth among the 17 Michigan counties with population in excess of 100,000. It is anticipated that Muskegon County's population growth will continue to lag behind that of the other Michigan counties at least until 1980. In view of the apparent lack of attractiveness of the Muskegon area for de novo entry,⁵ particularly vis a vis other areas in Michigan in which Applicant is not currently represented, the Board is unable to conclude that Applicant is one of the most likely de novo entrants into the Muskegon area.

Of the six banks currently represented in the Muskegon market, three are affiliated with multibank holding companies.⁶ While "foot-hold" entry into the market would be preferable to Applicant's acquisition of the largest bank in the market, only two possibilities exist for Applicant to acquire an established bank as a means of entry into the market and neither of those appears feasible. The two banks that might be available for acquisition are Protestant, the second largest bank in Muskegon, and a bank located in the town of Coopersville that is prohibited by Michigan law from branching into the city of Muskegon and conducts its operations primarily in the Grand Rapids banking market. The former would not constitute a true "foot-hold" entry in view of its size and market share. Acquisition of the latter would

³ The Muskegon banking market, the relevant market, is approximated by all of Muskegon County, except for Casnovia Township, plus Grand Haven, Spring Lake, and Crockerly Townships in Ottawa County.

⁴ See Board's Order of March 26, 1975, denying application of Old Kent Financial Corp., Grand Rapids, Mich., 61 Fed. Res. Bull. 247 (1975) and Board's Order of January 25, 1974, denying application of Old Kent Financial Corp., Grand Rapids, Mich., 60 Fed. Res. Bull. 133 (1974).

⁵ Applicant's subsidiary banks are barred by Michigan's restrictive branching law (Mich. Stat. Ann. § 23.710 (171)) from branching into Muskegon. However, Michigan law does not prohibit the formation of de novo banks by Applicant and it is this form of de novo entry referred to in the text.

⁶ A pending de novo charter application, if approved, would enable a fourth multibank holding company, Old Kent Financial Corp., Grand Rapids, Mich., to enter this market and would thus increase the number of banking organizations in the market from six to seven.

not be likely to produce any significant procompetitive benefit in the Muskegon market.

Considerations relating to the financial and managerial resources and future prospects of Bank, Applicant, and Applicant's subsidiaries are regarded as generally satisfactory. Although Applicant would incur some debt as a result of this acquisition, it appears that dividends from Bank would be sufficient to retire that debt.

Applicant has stated its intention to augment the services of Bank by providing equipment leasing, accounts receivable financing, international services, cash management services, money market services, and real estate trust services. Bank does not currently provide many of these services. In addition, affiliation with Applicant would increase bank's lending limits at a time when there appears to be an increasing demand by local industries for large loans. Thus, considerations relating to the convenience and needs of the community to be served lend weight toward approval of the application and outweigh any slight adverse competitive effects that may result from the proposal.

On the basis of the record,⁷ the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

By order of the Board of Governors,
effective September 1, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-26538 Filed 9-12-77;8:45 am]

FIRST PARK RIDGE CORP.

Formation of Bank Holding Company

First Park Ridge Corp., Chicago, Ill., has applied for the Board's approval under section 3(a) (1) of the Bank Holding Company Act (12 U.S.C. 1842(a) (1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First State Bank & Trust Co. of Park Ridge, Park Ridge, Ill. The factors that are considered in acting on the application are set forth in section 3(c) of not later than October 4, 1977.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the

⁷ Dissenting Statement of Governor Wallich filed as part of the original document. Copies are available upon request to Board of Governors of the Federal Reserve System, Washington, D.C. 20551 or to the Federal Reserve Bank of Chicago.

⁸ Voting for this action: Chairman Burns and Governors Coldwell, Partee and Lilly. Voting against this action: Governor Wallich. Absent and not voting: Governors Gardner and Jackson.

application should submit views in writing to the Reserve Bank, to be received not later than October 4, 1977.

Board of Governors of the Federal Reserve System, September 6, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-26539 Filed 9-12-77;8:45 am]

OMAHA NATIONAL CORP.

Proposed Acquisition of Wyoming Trust & Management Co.

Omaha National Corporation, Omaha, Nebraska, has applied, pursuant to section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.4(b) (2) of the Board's Regulation Y (12 CFR 225.4(b) (2)), for permission to acquire voting shares of Wyoming Trust & Management Co., Gillette, Wyo. Notice of the application was published on July 21, 1977, in the "News Letter Journal", a newspaper circulated in Newcastle, Wyo., "The Sundance Times", a newspaper circulated in Sundance, Wyo., and "The Douglas Budget," a newspaper circulated in Converse County, Wyo. Notice of the application was also published on July 22, 1977, in the "Wyoming State Tribune," a newspaper circulated in Laramie County, Wyo., the "Casper Star-Tribune," a newspaper circulated in Casper, Wyo., the "News-Record," a newspaper circulated in Gillette, Wyo., and "The Sheridan Press," a newspaper circulated in Sheridan, Wyo.

Applicant states that the proposed subsidiary would engage in fiduciary, agency, and custodial activities that may be carried on by a trust company but will neither accept deposits nor make loans. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 30, 1977.

Board of Governors of the Federal Reserve System, September 2, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-26540 Filed 9-12-77;8:45 am]

SOUTHWEST FLORIDA BANKS, INC. Proposed Acquisition of Southwest Financial Services, Inc.

Southwest Florida Banks, Inc., Fort Myers, Fla., has applied, pursuant to section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.4(b) (2) of the Board's Regulation Y (12 CFR 225.4(b) (2)), for permission to acquire voting shares of Southwest Financial Services, Inc., Fort Myers, Fla. Notice of the application was published on June 10, 1977, in "Naples Daily News," a newspaper circulated in Naples, Fla., and on June 11, 1977, in "Fort Myers News-Press" and "Sarasota Herald-Tribune," newspapers circulated in Fort Myers, Florida, and Sarasota, Florida, respectively.

Applicant states that the proposed subsidiary would engage de novo in the activity of providing, as agent, credit life and credit accident and health insurance that is directly related to extensions of credit by Applicant's subsidiary banks. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 30, 1977.

Board of Governors of the Federal Reserve System, September 2, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-26541 Filed 9-12-77;8:45 am]

SWORD FINANCIAL CORP.

Formation of Bank Holding Company

Sword Financial Corporation, Horicon, Wis., has applied for the Board's ap-

proval under section 3(a) (1) of the Bank Holding Company Act (12 U.S.C. 1842(a) (1)) to become a bank holding company by acquiring 82.65 percent of the voting shares of Horicon State Bank, Horicon, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than September 29, 1977.

Board of Governors of the Federal Reserve System, September 2, 1977.

ROBERT E. MATTHEWS,
Assistant Secretary of the Board.

[FR Doc.77-26542 Filed 9-12-77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following request for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on September 2, and September 6, 1977. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before October 3, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5033, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

INTERSTATE COMMERCE COMMISSION

The ICC requests an extension without change clearance of Form ACC-42, Field Report of Highway Form A. This form collects information relating to the distribution of wage expenses to various types of carrier service and is reported by 216 intercity motor common carriers of general freight. Data are compiled and published to provide information to carriers for ratemaking processes. ICC estimates reporting burden to average 16 hours per annual response.

The ICC requests an extension without change clearance of Quarterly Report of

Freight Loss and Damage Claims—Railroads, Form QLD-R, required to be filed by some 59 Class I linehaul railroads (except switching and terminal companies) with an average operating revenue of \$10 million or more, pursuant to Section 20 of the Interstate Commerce Act. Data collected by Form QLD-R are used for economic regulatory purposes. ICC estimates reporting burden for carriers to average 64 hours per report. Reports are mandatory and available for use by the public.

The ICC requests extension without change clearance of quarterly report forms as follows: Revenue Piggyback and Container Traffic Class I Railroads, Form PTR-R; Piggyback Traffic of Class I Motor Carriers of Property, Form PTR-M; and Piggyback Traffic Originated by Class A Freight Forwarders, Form PTR-FF. Form PTR-R is required to be filed by 59 Class I line-haul railroads, Form PTR-M by 1,014 Class I motor carriers of property, and Form PTR-FF by 143 Class A freight forwarders, pursuant to order of the Interstate Commerce Commission, 49 CFR 1252. Data are used for economic regulatory purposes. No change is made in the data requirements. ICC estimates that reporting burden for carriers to average 114 hours for railroads, 5 hours for motor carriers, and 15 hours for freight forwarders per report. Reports are not available for public inspection pursuant to the above order of the Commission.

The ICC requests clearance of a new form, Piggyback Traffic Terminated by Class A Water Carriers and Maritime Carriers, Form PTR-W. This form is required to be filed by 67 Class A Water carriers pursuant to order of the Interstate Commerce Commission 49 CFR 1252. Data collected by this form are used for economic regulatory purposes. ICC estimates that reporting burden for the 67 carriers will average 8 hours per response. Reports are not available for public inspection pursuant to above Commission order.

The ICC requests clearance without change of Quarterly Report of Freight Commodity Statistics (Railroads), Form QCS. This form is required to be filed by some 59 Class I line-haul railroads pursuant to Section 20 of the Interstate Commerce Act. Data are used for economic purposes. ICC estimates that reporting burden for carriers averages 217 hours per response. Reports are not available for public inspection pursuant to the above order of the Commission.

NORMAN F. HEYL,
Regulatory Reports
Review Officer.

[FR Doc.77-26570 Filed 9-12-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

ADVISORY COMMITTEES

Notice of Renewals

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix I), the Alcohol, Drug Abuse, and Mental Health Administration announces the renewal by the Secretary, Department of Health, Education, and Welfare, with the concurrence of the Office of Management and Budget Committee Management Secretariat, of the following advisory committees:

Clinical Projects Research Review Committee
Clinical Psychopharmacology Research Review Committee
Developmental Problems Research Review Committee
Experimental and Special Training Review Committee
Mental Health Small Grant Committee
Personality and Cognition Research Review Committee

Authority for these committees will expire December 31, 1977, unless the Secretary formally determines that continuance is in the public interest.

Dated: September 2, 1977.

DAVID F. KEFAUVER,
Acting Deputy Administrator,
Alcohol, Drug Abuse, and
Mental Health Administration.

[FR Doc.77-26404 Filed 9-12-77;8:45 am]

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees on the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. D)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting and contact person
1. Contraceptive and Other Vaginal Drug Products Panel.	Oct. 1 and 2, 9 a.m., Holiday Inn, 8120 Wisconsin Ave., Bethesda, Md.	Open public hearing Oct. 1, 9 a.m. to 10 a.m.; open committee discussion, Oct. 1, 10 a.m. to 4:30 p.m.; Oct. 2, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 28, 1977, and submit a brief statement of the general nature of the data, information, or views they

wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
2. Gastrointestinal Drugs Advisory Committee.	Oct. 3 and 4, 9 a.m., Conference room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Oct. 3, 9 a.m. to 10 a.m.; open committee discussion Oct. 3, 10 a.m. to 5 p.m., Oct. 4, 9 a.m. to 1 p.m.; Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescriptional drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing,

on issues pending before the committee.

Open committee discussion. Discussion on Chenodeoxycholic Acid (IND 11,134) (Update—National Cooperative Gallstone Study); Metaclopramide Injectable (NDA 17-862, A. H. Robins); and the FDA action report on final guidelines for Fogarty International Symposium.

Committee name	Date, time, and place	Type of meeting and contact person
3. General Hospital and Personal Use Device Classification Panel.	Oct. 3 and 4, 9 a.m., room 425, 8757 Georgia Ave., Silver Spring, Md.	Open public hearing Oct. 3, 9 a.m. to 10 a.m.; open committee discussion Oct. 3, 10 a.m. to 5 p.m., Oct. 4, 9 a.m. to 5 p.m.; William C. Dierksheide, Ph. D. (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to the classification of general hospital and personal use devices to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by September 26, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentation.

Open committee discussion. The panel will review classification recommendations for the following devices: Fiber absorbent; absorbent tipped applicator; neonatal invasive oxygen analyzer; newborn urine collection bag; ostomy drainage bag with adhesive; elastic bandage; emesis basin; AC-powered bed; hydraulic bed; manual bed; pediatric open bed; tiltable cradle bed; AC-powered water flotation bed; neonatal open bed with radiant heat; bedpan; abdominal binder; perineal binder; bed board; cardiopulmonary resuscitation board; hot/cold water bottle; vacuum collection bottle; aerator cabinet; nasal cannula; examination cape; intravascular catheter; umbilical artery catheter; blood-donor chair; geriatric chair; wheeled

geriatric chair; examination and treatment chair; patient care reverse isolation chamber; recirculating filter room air cleaner; ultrasonic cleaner; adhesive strip skin closure; specimen collector; manual external cardiac compressor; powered external cardiac compressor; mattress cover; inflation cuff; ring cutter; tongue depressor; occlusion devices; dressing; infusion line filter; patient examination glove; surgical glove; operating room gown; infant oxygen hood; neonatal incubator; neonatal transport incubator; biological sterilization indicator; physical/chemical sterilization indicator; (IR) heat lamp; operating room lamp; blood lancet; jet lavage; patient lift; overhead boom patient lift; aneroid blood pressure manometer; mercury blood pressure manometer; spinal pressure manometer; oxygen mask; venturi oxygen mask; alternating pressure air flotation mattress; heated water mattress; silicone mattress and chair cushions; invasive neonatal blood pressure monitor; ultrasonic/doppler neonatal blood pressure monitor; neonatal heart rate monitor; electronic gravity flow infusion line monitor; nursery respiratory/apnea monitor; all types hollow lumen needles; special lambs nipple; chemical cold pack; chemical hot pack; neonatal eye pad; electric heating pad; kelley pad, prophylactic (condom); skin pressure protector; infusion pump; manual cuff inflating air pump; U.V. air purifier; mechanical oxygen regulator; vacuum regulator; neonatal ventilator respirator; protective restraint; manual pulmonary resuscitator; patient rollers; AC-powered patient rollers; mechanical bedpan sanitizer; body weight scale; patient scale; sponge scale; general hospital scissors; intravascular administration set; sterile burn sheet; gas sterilizer; steam sterilizer; DC-powered stethoscope; mechanical stethoscope; elastic stocking; stopcock; hand car-

ried stretcher; wheeled stretcher; scrotal support; piston syringe; AC-powered operating room table; manual operating room table; pediatric aerosol tent; clinical color change thermometer; clinical electronic

thermometer; mercury/clinical thermometer; suction tip; feeding tube; Levine tube; fluid delivery intravascular tubing; laminar airflow unit; surgical patient isolation unit; perfusion unit; sterilization wrap.

Committee name	Date, time, and place	Type of meeting and contact person
4. Biologic Effects of Ultrasound Subcommittee of the Obstetrical and Gynecological Device Classification Panel.	Oct. 4, 9 a.m., room 6821, FB-8, 200 C St. SW, Washington, D.C.	Open public hearing/open committee discussion 9 a.m. to 4 p.m.; Lillian Yin, Ph. D. (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7555.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing/open committee discussion. Richard Asofsky, M.D., will discuss "Differentiation in the Immune System"; J. Donald Hare, M.D., and Edwin Carstenson, Ph. D., will discuss "Immunological Effects of Ultrasound"; Andrew A. Monjan, Ph. D., will discuss "Stress Induced Modulation of the Immune Response"; and Melvin Stratmeyer, Ph. D., Bureau of Radiological Health, will discuss "Possible Immune Effects in Mice Following Exposure to

diagnostic Levels of Ultrasound." Interested parties are encouraged to present information pertinent to the effect of ultrasound on immunological response to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by September 27, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentation.

Committee name	Date, time, and place	Type of meeting and contact person
5. Clinical Toxicology Device Classification Panel.	Oct. 6 and 7, 8 a.m., room 425, 8757 Georgia Ave., Silver Spring, Md.	Open public hearing Oct. 6, 8 a.m. to 9 a.m.; open committee discussion Oct. 6, 9 a.m. to 5 p.m., Oct. 7, 8 a.m. to 5 p.m.; Srikrishna Vadlamudi, Ph. D., D.V.M. (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to products listed below to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by September 29, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentation.

Open committee discussion. The panel will review and comment on the reclassification petition under section 513(f) (2) of the Federal Food, Drug, and Cosmetic Act, by the following companies on their products: (1) Diagnostic Products Corp., Los Angeles, Calif. (Amikacin Kit); (2) Becton, Dickinson and Co., Washington, D.C. (Amsak); (3) P. L. Biochemicals, Inc., Milwaukee, Wis. (Quantitative Test for Gentamicin); and (4) the Syva Co., Palo Alto, Calif. (Emit; Theophylline and Lidocaine Assays). The panel will review classification results for consistency with the Medical Device Amendments of 1976. The panel will also review supplementary data sheets for all products classified at previous meetings.

Committee name	Date, time, and place	Type of meeting and contact person
6. Radiopharmaceutical Advisory Committee.	Oct. 6 and 7, 9 a.m., Conference room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open committee discussion Oct. 6, 9 a.m. to 1 p.m.; open public hearing Oct. 6, 1 p.m. to 2 p.m.; open committee discussion Oct. 6, 2 p.m. to 4 p.m., Oct. 7, 9 a.m. to 1 p.m.; G. Richard Grove, Ph. D. (HFD-150), 5600 Fishers Lane, Rockville, Md. 20857, 301-463-4250.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of nuclear medicine.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the major responsibilities of the Bureau of Medical Devices; safety and effectiveness of pediatric use of Sodium Pertechnetate Tc99m; objectives of the AIF/NBS Standards Program for Radiopharmaceutical Drugs; and the status report of Adverse Reaction and Product Defect Reporting Program.

Committee name	Date, time, and place	Type of meeting and contact person
7. Antimicrobial Panel.....	Oct. 8 and 9, 9 a.m., Holiday Inn, 8120 Wisconsin Ave., Bethesda, Md.	Open public hearing Oct. 8, 9 a.m. to 10 a.m.; open committee discussion Oct. 8, 10 a.m. to 4:30 p.m.; Oct. 9, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 5, 1977, and submit a brief statement of the general nature of the data, information, or views they wish

to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) reviewer's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
8. Neurologic Drugs Advisory Committee.	Oct. 12, 9 a.m., Conference room, G-H, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Charles Prostymat (HFD-130), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3900.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in neurologic diseases.

Agenda—Open public hearing. Any in-

terested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Review of NDA for Sodium Valproate and treatment of multiple sclerosis with ACTH.

Committee name	Date, time, and place	Type of meeting and contact person
9. Orthotic/Prosthetic Subcommittee of the Physical Medicine Device Classification Panel.	Oct. 13, 9 a.m., room 5169, HEW-N, 330 Independence Ave. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; Johnnie W. Bailey (HFC-470), 8747 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to classification of devices on the Physical Medicine Device Classification Panel list to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by October 1, 1977, and submit a brief statement of the general nature of the evidence or arguments

they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentation.

Open committee discussion. The following devices will be reviewed for approval for the panel's final report to FDA of their classification results and recommendations: External limb prostheses and components; limb and truncal orthoses; mobility assist devices; prosthetic, orthotic and wheelchair accessories.

The following devices will be classified: Foot driving control; force measuring platform; and flotation cushion.

Committee name	Date, time and place	Type of meeting and contact person
10. National Advisory Food and Drug Committee.	October 13 and 14, 9 a.m., Conference Room J, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Oct. 13, 9 a.m. to 10 a.m.; open committee discussion Oct. 13, 10 a.m. to 4 p.m., Oct. 14, 9 a.m. to 1 p.m.; William V. Whitehorn, M.D. (HFG-1), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1547.

General function of the committee. Reviews and evaluates agency programs and advises on policy matters of national significance as they relate to the statutory mission of the Food and Drug Administration in the areas of food, drugs, cosmetics, medical devices, biological products, and electronic products. Re-

views and makes recommendations on applications for grants-in-aid for research projects relevant to the mission of the Food and Drug Administration as required by law.

Agenda—Open public hearing/open committee discussion. Agenda items to be announced.

Committee name	Date, time and place	Type of meeting and contact person
11. Physical Medicine Device Classification Panel.	October 14, 9 a.m., Room 51-69, HEW-N, 330 Independence Ave. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m., open committee discussion 10 a.m. to 4 p.m.; Johnnie W. Bailey (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to classification of devices on the Physical Medicine Device Classification Panel list to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by October 1, 1977, and submit a brief statement of the general nature of the evidence or

arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentation.

Open committee discussion. Discussion of the panel's involvement under the premarket approval regulations—Dr. Keith Lusted, FDA/BMD.

The following devices will be classified: AC-powered exerciser, whole limb, active and active/passive.

The panel will review their final report to FDA of their classification results and recommendations.

Committee name	Date, time, and place	Type of meeting and contact person
12. Miscellaneous Internal Drug Products Panel.	Oct. 15, 16, and 17, 9 a.m., Holiday Inn, 8120 Wisconsin Ave., Bethesda, Md. (Oct. 15 and 16), Conference Room L, Parklawn Bldg., 5600 Fishers Lane Rockville, Md. (Oct. 17).	Open public hearing Oct. 15, 9 a.m. to 10 a.m.; open committee discussion Oct. 15, 10 a.m. to 4:30 p.m., Oct. 16 and 17, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4990.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 12, 1977, and submit a brief statement of the general nature of the data, information, or views

they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
13. Cardiovascular and Renal Advisory Committee.	Oct. 17 and 18, 9 a.m., Conference room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Oct. 17, 9 a.m. to 10 a.m.; open committee discussion Oct. 17, 10 a.m. to 5 p.m., Oct. 18, 9 a.m. to 1 p.m.; Joan C. Standaert (HFC-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4730.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Any interested persons may present data, in-

formation, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of NDA 17-963 (Metoprolol (Ciba-Geigy)) and NDA 17-946 (Perhexiline (Merrell National)); FDA update on Talwin labeling (NDA 16-194); and the status of NDA 17-819 (AtroPen).

Committee name	Date, time, and place	Type of meeting and contact person
14. Subcommittee of the Obstetrics and Gynecology Advisory Committee.	Oct. 19, 9 a.m., Conference room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; A. T. Gregoire, Ph. D. (HFD-130), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3510.

NOTICES

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.
Open committee discussion. Preparation of draft guidelines for clinical evaluation of systemic contraceptives.

Committee name	Date, time, and place	Type of meeting and contact person
15. Psychopharmacological Agents Advisory Committee.	Oct. 17 and 18, 9 a.m., Conference room M, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Oct. 17, 9 a.m. to 10 a.m.; open committee discussion Oct. 17, 10 a.m. to 5 p.m., Oct. 18, 9 a.m. to 5 p.m.; Thomas A. Hayes, M.D. (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4020.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Any interested persons may present data, in-

formation, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Action report on prior business; discussion of NDA 17-473, Orap (pimozide)—McNeil; NDA 18-021, Anamox (amoxapine)—Lederle; and NDA 9-519, Doriden (glutethimide)—USV.

Committee name	Date, time, and place	Type of meeting and contact person
16. Dentifrices and Dental Care Agents Panel.	Oct. 19 and 20, 9 a.m., Conference room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Oct. 19, 9 a.m. to 10 a.m.; open committee discussion Oct. 19, 10 a.m. to 4:30 p.m., Oct. 20, 9 a.m. to 4:30 p.m.; Michael D. Kennedy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4900.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 14, 1977, and submit a brief statement of the general nature of the data, information, or views they

wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
17. Anesthesiology Advisory Committee.	Oct. 20, 9 a.m., secs. F and G of Mardi Gras Ballroom, New Orleans Marriott Hotel, 535 Canal St., New Orleans, La.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4 p.m.; I. David Wolfson (HFD-160), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3500.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the field of anesthesiology.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Consideration of possible label revisions resulting from drug experience and information

presented in the literature for lidocaine; discussion of safety considerations resulting from recent animal studies for NDA 10-496, Xylocaine 5% with Glucose 7.5% (Lidocaine 5% with glucose 7.5%); evaluation of clinical data from pediatric patients for the indication of hypotensive anesthesia for NDA 17-546, Nipride (sodium nitroprusside); and the consideration of the use of IND 12-870, Dantrium IV (dantrolene sodium IV) in the management of malignant hyperthermia.

Committee name	Date, time, and place	Type of meeting and contact person
18. Device Good Manufacturing Practice Advisory Committee.	Oct. 27 and 28, 9 a.m., room 5051, HEW-N, 330 Independence Ave. SW, Washington, D.C.	Open public hearing Oct. 27, 9 a.m. to 10 a.m.; open committee discussion Oct. 27, 10 a.m. to 5 p.m., Oct. 28, 9 a.m. to 5 p.m.; Leonard J. Stauffer (HFK-123), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-8120.

General function of the committee. Reviews proposed regulations regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations regarding feasibility and reasonableness of the proposed regulations.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to device good manufacturing practices to the executive

secretary. Those desiring to make formal presentations should notify the executive secretary by October 13, 1977, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentation.

Open committee discussion. The committee will discuss the revised proposed good manufacturing practice regulations.

Committee name	Date, time, and place	Type of meeting and contact person
19. Miscellaneous External Drug Products Panel.	Oct. 30 and 31, 9 a.m., Holiday Inn, 8120 Wisconsin Ave., Bethesda, Md. (Oct. 30); Conference room C, Parklawn Bldg., Rockville, Md. (Oct. 31).	Open committee discussion Oct. 30, 9 a.m. to 4:30 p.m.; open public hearing Oct. 31, 9 a.m. to 10 a.m.; open committee discussion Oct. 31, 10 a.m. to 4:30 p.m.; Michael D. Kennedy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 19, 1977, and submit a brief statement of the general nature of the data, information, or views they

wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
20. Vitamins, Mineral, and Hematinic Panel.	Oct. 31 and Nov. 1, 9 a.m., Conference room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Oct. 31, 9 a.m. to 10 a.m.; open committee discussion Oct. 31, 10 a.m. to 4:30 p.m.; Nov. 1, 9 a.m. to 4:30 p.m.; Thomas D. DeCillis (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 27, 1977, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether

or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting re-

quest an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C. area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: September 8, 1977.

JOSEPH P. HILE,
Associate Commissioner
for Compliance.

[FR Doc. 77-26561 Filed 9-12-77; 8:45 am]

Health Resources Administration
NATIONAL COUNCIL ON HEALTH
PLANNING AND DEVELOPMENT
Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to assemble during the month of September 1977:

NAME: National Council on Health Planning and Development.

DATE AND TIME: September 23-24, 1977, 9 a.m.

PLACE: 1st Floor Auditorium, South Portal Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

OPEN for entire meeting.

PURPOSE: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to: (1) the development of national guidelines under section 1501 of Pub. L. 93-641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93-641, and (3) an evaluation of the implications of new medical technology for the organization, delivery, and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care

facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: This meeting of the Council will primarily be devoted to planning the future work schedule: Organization of the Council and Discussion of Election of a Chairperson; Report on Health Planning; Report on Health Technology Issues; Report of Section 1526 and 1533 (d); and Discussion of DOD and VA Health Programs.

The meeting is open to the public for observation. A portion of the meeting will be available for comments and public participation. Anyone wishing to participate, obtain a roster of members, minutes of meeting, or other relevant information should contact Mr. Daniel I. Zwick, Office of Planning, Evaluation and Legislation, Room 10-22, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301-436-7270.

Agenda items are subject to change as priorities dictate.

Dated: September 8, 1977.

NOTE.—Original notice of meeting, signed on August 23, 1977, was lost in the mail, thereby reducing time of public notice.

JAMES A. WALSH,
Associate Administrator for
Operations and Management.

[FR Doc.77-26649 Filed 9-12-77; 8:45 am]

National Institutes of Health

DIET AND CANCER SCIENTIFIC REVIEW COMMITTEE AND CANCER AND NUTRITION SCIENTIFIC REVIEW COMMITTEE

Meetings Cancelled

Notice is hereby given of the cancellation of meetings of the following committees:

Diet and Cancer Scientific Review Committee, September 21, 1977;
Cancer and Nutrition Scientific Review Committee, September 22, 1977;

National Cancer Institute, National Institutes of Health, which were published in the FEDERAL REGISTER on August 9, 1977 (42 FR 40256).

Dated: September 8, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-26651 Filed 9-12-77; 8:45 am]

PRESIDENT'S CANCER PANEL

Amended Notice of Meeting

Notice is hereby given of a change in the meeting date of the President's Cancer Panel, National Cancer Institute, October 11, 1977, which was published in the FEDERAL REGISTER on August 30, 1977 (42 FR 43669).

The meeting was to have convened at 9:30 a.m. on October 11, 1977, but has been changed to 9:30 a.m., October 7, 1977, Building 31C, Conference Room 6,

National Institutes of Health, Bethesda, Md. The meeting will be entirely open to the public.

Dated: September 8, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.77-26652 Filed 9-12-77; 8:45 am]

Office of the Secretary

NATIONAL HEALTH INSURANCE

Public Hearing

President Carter has pledged his Administration to submit to the Congress a proposal for National Health Insurance. As Secretary of Health, Education, and Welfare, I must formulate recommendations to the President on the Administration's program. In order to develop the best possible proposal for the President's consideration, the Department has undertaken a wide-ranging process of consultation.

I have established an advisory committee on National Health Insurance issues, and I have solicited advice from all members of Congress, every Governor, and more than 2,000 organizations and individuals with special interest or expertise in health matters. HEW Regional Offices will soon be engaged in a vigorous effort to obtain the views of other individuals and organizations throughout the country to supplement the Department's activities in Washington. Materials and studies prepared by HEW staff will also be available for comment by interested parties.

To provide a further forum for analysis and discussion of the critical issues involved in National Health Insurance, I have decided to chair personally a public hearing so that concerned citizens can advise me of their views on the many issues involved. This hearing will be conducted as a legislative-type hearing, and will be held on Tuesday, October 4, 1977, at the HEW North Building Auditorium, 330 Independence Avenue SW., Washington, D.C. The hearing schedule will be from 8:30 a.m. to 1 p.m. and from 2 p.m. to 6 p.m. We will try to assure a fair opportunity for proponents of all positions to present their views.

Requests to testify will be accepted from public officials, representatives of civic, public interest, professional or trade organizations, and concerned citizens. Time allotments will be governed by the number of requests received, but will not exceed 10 minutes for each participant. If the requests exceed the available time, the Department will select witnesses to provide a broad range of views.

Any public official, representative of an organization, or other individual desiring to participate at the hearing should write directly to me on or before September 24, 1977, providing the following information:

1. Name.
2. Business address.
3. Telephone number during normal working hours.

4. Capacity in which presentation will be made (i.e., public official, organization representative, or citizen).
5. Principal issues to be addressed.
6. Time desired, which must be 10 minutes or less.
7. Text of presentation, if available, or summary of presentation.

In order to assure prompt handling of requests to testify, envelopes should be marked *National Health Insurance Hearing*, and should be addressed to Secretary of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201, or hand-delivered to Room 405F, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C.

To aid in the process of identifying issues to be addressed, the Department will publish in the FEDERAL REGISTER, in the near future, a list of key issues and questions upon which comment and testimony might be based.

The public and press are invited to attend the hearing, which will be transcribed electronically. The transcription and all written submissions will become a part of the record in this proceeding.

Additionally, written statements may be offered by any person, including those who testified orally. Such statements should be submitted directly to me before November 1, 1977. They should be addressed to Secretary of Health, Education, and Welfare, National Health Insurance Statement, Room 405F, 200 Independence Avenue SW., Washington, D.C. 20201.

Dated: September 9, 1977.

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

[FR Doc.77-26700 Filed 9-12-77; 8:45 am]

PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Meeting

The President's Committee on Mental Retardation was established by Executive Order to provide advice and assistance in the area of mental retardation to the President including evaluation of the adequacy of the national effort to combat mental retardation; coordination of activities of Federal agencies; provision of adequate liaison between foundations and other private organizations; and development of information designed for dissemination to the general public.

The Committee in cooperation with the Department of Special Education, Norfolk State College will meet on October 10, 11, and 12, 1977, 9 a.m. to 4 p.m., at Norfolk State College, Norfolk, Va. At the meeting the Committee and Norfolk State College will discuss the issues and necessary action to reduce the prevalence of mental retardation associated with social disadvantage to the lowest level possible by the end of this century.

These meetings are open to the public. Further information on the President's Committee on Mental Retardation may be obtained from Mr. Fred J. Krause, Executive Director, President's Committee on Mental Retardation, Room 2614, ROB No. 3, 7th and D Streets SW., Washington, D.C. 20201, telephone: area code 202-245-7634.

Dated: September 1, 1977.

FRED J. KRAUSE,
Executive Director, President's
Committee on Mental Retardation.

[FR Doc.77-26595 Filed 9-12-77;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—
Federal Housing Commissioner

[Docket No. D-77-493]

ACTING ASSISTANT SECRETARY FOR HOUSING—ACTING FEDERAL HOUSING COMMISSIONER

Designation

Section A.—Designation. The officials appointed to, or designated to serve as Acting during a vacancy in the following positions are hereby designated to serve as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner during the absence of the Assistant Secretary for Housing—Federal Housing Commissioner with all the powers, functions, and duties delegated or assigned to the Assistant Secretary for Housing—Federal Housing Commissioner: *Provided*, That no official is authorized to serve as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner unless all other officials whose appointed, or designated Acting, position titles precede his in this designation are unable to act by reason of absence:

1. Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.
2. Deputy Assistant Secretary for Insured and Direct Loan Programs.
3. Deputy Assistant Secretary for Assisted Housing.
4. Director, Office of Policy Development and Evaluation.
5. Director, Office of Management.

Section B.—Authorization. Each head of an organizational unit of Housing is authorized to designate an employee under his jurisdiction to serve as Acting during the absence of the head of the unit.

Section C.—Superseding. This designation supersedes the designation of Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner published at 41 FR 55243, December 17, 1976. (Secretary's delegation of authority to designate Acting officials, 36 FR 5004, March 16, 1971.)

Effective date. This designation to serve as Acting Assistant Secretary for Housing—Acting Federal Housing Commissioner is effective as of April 5, 1977.

Issued at Washington, D.C., September 1, 1977.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—
Federal Housing Commissioner.

[FR Doc.77-26557 Filed 9-12-77;8:45 am]

Office of Interstate Land Sales Registration

[Docket Nos. N-77-798, 77-119-IS]

LAKE SURF, LAKE SURF, INC., AND A. B. HARDEE

Hearing

Pursuant to 15 U.S.C. 1706(e) and 24 CFR 1720.165(b) Notice is hereby given that:

1. Lake Surf, Lake Surf, Inc., and A. B. Hardee, President, its officers and agents, hereinafter referred to as "Respondents", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1701, et seq.) received a Notice of Proceedings and Opportunity for Hearing dated July 8, 1977, which was sent to the developer pursuant to 15 U.S.C. 1706(b), 24 CFR 1701.45(a) (1) and 1720.120 based on information obtained by the Office of Interstate Land Sales Registration showing that the Statement of Record and Property Report for Lake Surf, located in Moor County, N.C., contain untrue statements of material fact or omit to state material facts required to be stated herein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received July 28, 1977, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d): *It is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7143, Department of HUD, 451 Seventh Street SW., Washington, D.C., on September 28, 1977, at 10 a.m.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410, on or before September 7, 1977. Copies of all documents filed should be served at the same time on all parties of record.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b) (1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: August 12, 1977.

By the Secretary.

JAMES W. MAST,
Chief, Administrative Law Judge.

[FR Doc.77-26559 Filed 9-12-77;8:45 am]

[Docket Nos. N-77-797, 77-116-IS]

OAK MEADOWS, PARSEL II, OAK MEADOWS, INC., AND FLOYD A. MEGEE

Hearing

Pursuant to 15 U.S.C. 1706(e) and 24 CFR 1720.165(b)

Notice is hereby given that:

1. Oak Meadows, Parcel II, Oak Meadows, Inc., and Floyd A. Megee, President, its officers and agents, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1701, et seq.) received a Notice of Proceedings and Opportunity for Hearing dated July 7, 1977, which was sent to the developer pursuant to 15 U.S.C. 1706(b), 24 CFR 1701.45(a) (1) and 1720.120 based on information obtained by the Office of Interstate Land Sales Registration showing that the Statement of Record and Property Report for Sussex County, Del., contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received August 2, 1977, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d): *It is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7143, Department of HUD, 451 Seventh Street SW., Washington, D.C., on September 15, 1977, at 10 a.m.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410, on or before September 2, 1977. Copies of all documents filed should be served at the same time on all parties of record.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement

of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b) (1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: August 12, 1977.

By the Secretary.

JAMES W. MAST,

Chief Administrative Law Judge.

[FR Doc.77-26558 Filed 9-12-77; 8:45 am]

[Docket Nos. N-77-799, 77-98-IS]

VISTA GRANDE ESTATES I AND II, W. J. LOWELLS, AND BETTY LOWELLS

Hearing

Pursuant to 15 U.S.C. 1706(e) and 24 CFR 1720.165(b) Notice is hereby given that:

1. Vista Grande Estates I and II, W. J. Lowells, Owner and Betty Lowells, Owner authorized agents, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1701, et seq.) received a Notice of Proceedings and Opportunity for Hearing dated June 16, 1977, which was sent to the developer pursuant to 15 U.S.C. 1706(b), 24 CFR 1710.45(a) (1) and 1720.120 based on information obtained by the Office of Interstate Land Sale Registration showing that the Statement of Record and Property for Vista Grande Estates I and II, located in Yavapai County, Ariz., contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received July 6, 1977, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d): *It is hereby ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7143, Department of HUD, 451 Seventh Street SW., Washington, D.C., on September 23, 1977, at 10 a.m.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410, on or before September 8, 1977.

Copies of all documents filed should be served at the same time on all parties of record.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be

true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b) (1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: August 19, 1977.

By the Secretary.

JAMES W. MAST,

Chief, Administrative Law Judge.

[FR Doc.77-26560 Filed 9-12-77; 8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

NEW YORK OUTER CONTINENTAL SHELF OFFICE

Change of Address

Notice is hereby given that, effective Monday, September 12, 1977, the new York Outer Continental Shelf Office will relocate its office in New York City. The new address is:

New York Outer Continental Shelf Office, Bureau of Land Management, Federal Building, Suite 32-120, 26 Federal Plaza, New York, N.Y. 10007.

The main telephone number for commercial and FTS calls remains the same (264-2960, Area Code 212).

FRANK A. EDWARDS,
Director, Bureau of Land Management.

SEPTEMBER 8, 1977.

[FR Doc.77-26522 Filed 9-12-77; 8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 2, 1977. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by September 23, 1977.

RONALD M. GREENBERG,
Acting Keeper of the National Register.

ALASKA

Kenai-Cook Inlet Division

Cooper Landing, Cooper Landing Post Office (AHR Site, SEW-146).

CALIFORNIA

Fresno-Tulare County

Kings Canyon National Park, *Shorty Lovelace Historic District*, situated within Kings Canyon National Park.

Inyo County

Death Valley National Monument vicinity, *Death Valley Scotty Historic District (Scotty's Castle and Ranch; Death Valley Ranch)*, on W slope of Grapevine Mts. off Hwy. 72.

Mariposa County

El Portal, *Hetch Hetchy Railroad Engine No. 6 (Shay No. 6)*, off Yosemite All-Year Hwy. El Portal, *Hetch Hetchy Railroad Track Bus No. 19 Rail-car No. 19; Rail Ambulance*, off Yosemite All-Year Hwy.

Yosemite National Park, *Old Coulterville Road and Trail*, 2 road sections: 1) from near Hazel Green through Merced Grove; 2) from Little Nellie Falls to Wildcat Falls. Yosemite National Park, *Yosemite Valley Bridges*, 7 bridges over Merced River.

Yosemite Valley, *Bridalveil Meadow Historic Site*, Yosemite National Park.

Tulare County

Three Rivers vicinity, *Giant Forest Lodge Historic District*, Camp Sierra, in Sequoia National Park.

Three Rivers vicinity, *Giant Forest Village/Camp Kaweah Historic District (Kaweah Village; Kaweah Area)*, in Sequoia National Park.

Tuolumne County

Mono Pass vicinity, *Golden Crown Mine, The*, in Yosemite National Park.

CONNECTICUT

Hartford County

Bristol, *Forestville Passenger Station*, 171 Central St.

Litchfield County

Sharon, *Gay, Ebenezer, House (Gay-Hoyt House)*, Main St.

New Haven County

Waterbury, *Waterbury Union Station*, 389 Meadow St. HAER.

New London County

New London, *Williams Memorial Institute*, 110 Broad St.

DISTRICT OF COLUMBIA

United Brick Corporation Brick Complex (New York Avenue Brick Kilns), 2801 New York Ave., NE.

GUAM

Asan and vicinity, *Asan Invasion Beach*, Asan and vicinity to the N.

Yona vicinity, *South Palantat Site (66-09-0037B)*, 2 mi. W of Yona.

KENTUCKY

Lincoln County

Stanford, *Boughman's Mill and Stanford Railroad Depot Historic District*, Depot and Mill Sta.

MINNESOTA

Hennepin County

Minneapolis, *Fredrika Bremer Intermediate School (Bremer School)*, 1214 Lowry Ave. North.

Houston County

Sheldon vicinity, *Scheeh's Mill*, 1 mi. SE of Sheldon in Beaver Creek Valley State Park.

Norman County

Twin Valley vicinity, *Faith Milling Company (Faith Flour Mill)*, 11 mi. E of Twin Valley in Faith Village.

Rice County

Northfield, *Laura Baker School*, 211 Oak St.

Winona County

Elba vicinity, *Marnach, Nicholas, House*, 2 mi. N of Elba.
Winona, *Anger's Block*, 116-120 Walnut St.

MISSISSIPPI**Grenada County**

Grenada vicinity, *Evergreen Plantation (Old Mullin Place)*, 4 mi. N of Grenada on Hardy Rd.

Wilkinson County

Woodville, *Branch Banking House (Woodville Library)*, Bank St. (Courthouse Sq.)

MISSOURI**St. Louis County**

Florissant, *Myers, John B., House and Barn*, 180 Dunn Rd.

NEBRASKA**Adams County**

Hastings, *Burlington Station (AD04-1)*, 1st St. and St. Joseph's Ave.

Nemaha County

Brownville vicinity, *Captain Meriwether Lewis Dredge*, State recreation area adjacent to Missouri River, Missouri.

NEW MEXICO**Colfax County**

Raton vicinity, *Catskill Charcoal Ovens*, 35 mi. W of Raton.

NEW YORK**Albany County**

Albany, *Church of the Holy Innocents (Church of the Nativity of our Virgin Lady)*, 275 N. Pearl St.

New York County

New York, *Apthorp Apartments, The*, 2201-2219 Broadway Ave.

NORTH CAROLINA**Durham County**

Durham, *Downtown Durham Historic District*, roughly bounded by Peabody, Morgan, Seminary, Cleveland, Parrish and Queen Sts.

OHIO**Warren County**

Waynesville vicinity, *McKay, Moses, House*, NE of Jct of New Burlington and Furnas Rds.

OREGON**Multnomah County**

Portland, *Concord Building*, 208 SW. Stark St.

TENNESSEE**Greene County**

Chucky vicinity, *Mauris-Earnest Fort House (Earnest House)*, N of Nolichucky River on SR 3.

Robertson County

Springfield, *Mansfield-Cheatham House (Simmons House)*, 7th Ave. West.

Sumner County

Cottontown vicinity, *King Homestead (Greer House)*, W of Cottonwood on SR 1.

TEXAS**Jefferson County**

Beaumont, *Beaumont Commercial District*, roughly bounded by Orleans, Bowie, Laurel, Willow, Broadway, Pearl, Main, and Gilbert Sts.

Beaumont, *Jefferson Theatre*, 345 Fannin St.

San Augustine County

San Augustine, *Mission Nuestra Senora de los Dolores de los Ais (Mission Hill)*, SE of city center.

VERMONT**Addison County**

Ferrisburg, *Union Meeting House (Ferrisburg-Vergennes Baptist Church)*, U.S. 7.

Washington County

East Barre, *Nichols House (Nichols-Larson House)*, RR. 2.

Waterbury Center, *Green Mountain Seminary*, SE section of Waterbury Center.

[FR Doc. 77-26127 Filed 9-12-77; 8:45 am]

SOUTHWEST REGIONAL ADVISORY COMMITTEE**Meeting**

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Southwest Regional Advisory Committee will be held at 8:30 a.m., C.D.T., September 27 and 28, 1977, at the Padre Island Beach Hotel at Padre Island National Seashore, Tex.

The Southwest Regional Advisory Committee was established pursuant to Pub. L. 91-383 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on programs and problems pertinent to the Southwest Region of the National Park Service.

The members of the Southwest Regional Advisory Committee are:

Dr. Neil Compton, Bentonsville, Ark.
Mr. Ernie C. Deane, Fayetteville, Ark.
Mr. Perry A. Denton, Carlsbad, N. Mex.
Dr. Bertha P. Dutton, Santa Fe, N. Mex.
Mr. Sam R. Powell, Tulsa, Okla. (Chairman).
Mr. J. R. Singleton, Austin, Tex.
Mrs. Roulhac Toledano, New Orleans, La.
Mr. Elio J. Urbanovsky, Lubbock, Tex.

Designated Federal Officer to attend the meeting is John E. Cook, Regional Director, Southwest Region, National Park Service, or his designee.

The matters to be discussed at this meeting include:

1. The Barrier Beach Environment.
2. Management of National Seashores.
3. Water Safety in National Park Service Areas.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may appear be-

fore the Committee or file with the Committee a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Frank Mentzer, Assistant to the Regional Director, P.O. Box 728, National Park Service, Southwest Regional Office, Santa Fe, N.Mex. 87501, telephone area code 505-988-6375. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Southwest Region.

Dated: August 30, 1977.

JOHN E. COOK,
Regional Director, Southwest
Region, National Park Service.

[FR Doc. 77-26737 Filed 9-12-77; 9:03 am]

INTERNATIONAL TRADE COMMISSION

[AA 1921-168]

PRESSURE SENSITIVE PLASTIC TAPE FROM WEST GERMANY**Determination of No Injury or Likelihood Thereof**

On June 14, 1977, the United States International Trade Commission received advice from the Department of the Treasury that pressure sensitive plastic tape of more than 1 3/8 inches in width and not exceeding 4 mils in thickness from West Germany is being, or is likely to be, sold in the United States at less than fair value within the meaning of the antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on June 27, 1977, the Commission instituted investigation No. AA1921-168 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 merchandise into the United States.

Notices of the institution of the investigation and of the public hearing held in connection therewith were published in the FEDERAL REGISTER on July 5, 1977, and July 20, 1977 (42 FR 34385 and 42 FR 37258). On August 9, 1977, a hearing was held in Washington, D.C., at which 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 hearings as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of its 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 pressure sensitive plastic tape of more than 1 3/8 inches in width and not

exceeding 4 mils in thickness from West Germany that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR THE NEGATIVE DETERMINATION OF VICE CHAIRMAN JOSEPH O. PARKER AND COMMISSIONERS GEORGE M. MOORE, CATHERINE BEDELL, AND ITALO H. ABLONDI

On June 14, 1977, the United States International Trade Commission received advice from the Department of the Treasury that pressure sensitive plastic tape more than 1 3/8 inches in width and not exceeding 4 mils in thickness from West Germany is being, or is 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 June 27, 1977, the Commission instituted investigation No. AA1921-168 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 merchandise into the United States.

In order to find in the affirmative in this investigation, the Commission must find that two conditions are satisfied. 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 Treasury has determined is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

DETERMINATION

On the basis of the information obtained in the investigation, we determine that an industry in the United States is not being and is not likely to be injured by reason of the importation of certain pressure sensitive plastic tape from West Germany which is being, or is likely to be, sold at LTFV.

THE IMPORTED ARTICLE AND THE DOMESTIC INDUSTRY

Pressure sensitive plastic tape more than 1 3/8 inches in width and not exceeding 4 mils in thickness (PSP tape), the imported article which Treasury found to be sold at LTFV, is a plastic-film-backed tape with an adhesive on one side that remains permanently tacky at room temperature. The tape firmly adheres to a variety of surfaces upon mere contact, without the need of more than finger or hand pressure. No activation by water, solvent, or heat is required in order to obtain a strong adhesive holding force. PSP tape of the size and specifications which the Depart-

ment of the Treasury determined is being or is likely to be sold at LTFV is used primarily in the sealing of corrugated boxes.

In making this determination we have considered the U.S. industry to consist of the facilities in the United States devoted to the production of PSP tape. There are nine known producers of such tape.

LTFV SALES

The Department of the Treasury examined sales of PSP tape from West Germany during the period February 1976 through August 1976. Three West German firms were found to have made sales at LTFV, but the weighted average LTFV margins found on sales by two of these firms were regarded by Treasury to be minimal (less than 1 percent). These two firms provided Treasury with assurances that further sales to the United States will be made at prices not less than fair value, and they were excluded from the Treasury determination. LTFV margins ranging from 1 to 13 percent were found on virtually all sales by the third West German firm. The weighted average margin of the LTFV sales was approximately 9 percent.

NO INJURY OR LIKELIHOOD OF INJURY BY REASON OF LTFV IMPORTS FROM WEST GERMANY

Notwithstanding our earlier decisions regarding injury or likelihood thereof to the domestic industry owing to LTFV imports of pressure sensitive plastic tape from Italy,² in the instant investigation we have made a negative determination because the second condition requisite for an affirmative determination has not been met. Specifically, we are unable to find that those sales caused any injury or likelihood thereof and LTFV imports from West Germany.

As noted above, only one West German manufacturer was found by Treasury to have made LTFV sales with sufficient margins to justify subjecting it to a LTFV determination. We cannot find that those sales caused any injury or threat thereof to the domestic industry within the meaning of the Antidumping Act, 1921, as amended. That firm's share of the U.S. market for pressure sensitive plastic tape declined by 25 percent from 1975 to 1976, the period in which Treasury found that the West German sales were made at LTFV. In January-May 1977, the company's market share dropped again by about 20 percent, compared with its share in the corresponding period in 1976.³

An analysis of prices for PSP tape in the U.S. market during 1975, 1976, and January-May 1977 showed that LTFV

¹ See Pressure Sensitive Plastic Tape From Italy: Determination * * * in Investigation No. AA1921-167 * * *, USTIC Publication 830, 1977.

² Vice Chairman Parker and Commissioner Ablondi note that this is in marked contrast to LTFV imports of PSP tape from Italy, which more than doubled from 1975 to 1976 and continued to increase in 1977.

imports from West Germany were competitively priced, but were not a price leader.⁴ Furthermore, the Commission could verify only one sale that a U.S. producer lost to tape imported from the West German supplier of LTFV imports.

CONCLUSION

The conditions mentioned above and the trends that they represent lead us to conclude that an industry in the United States is not being and is not likely to be injured by reason of the importation of pressure sensitive plastic tape more than 1 3/8 inches in width and not exceeding 4 mils in thickness from West Germany which is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS OF NEGATIVE DETERMINATION OF CHAIRMAN DANIEL MINCHIEW

On June 14, 1977, the United States International Trade Commission (Commission) received advice from the Department of Treasury (Treasury) that PSP tape from West Germany is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended. Accordingly, on June 27, 1977, the Commission instituted investigation No. AA1921-168 under section 201(a) of the 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 merchandise into the United States.

Before the Commission may find in the affirmative in these investigations, it is necessary that the following two conditions be met:

- (1) An industry in the United States is being or is likely to be injured, or is prevented from being established,⁵ and
- (2) The requisite injury must be by reason of the importation into the United States of the merchandise which Treasury has determined is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

DETERMINATION

On the basis of information obtained in this investigation, I have determined that an industry in the United States is not being injured and is not likely to be injured, nor is it prevented from being established, by reason of the importation of pressure sensitive plastic tape more than 1 3/8 inches in width and not exceeding 4 mils in thickness from West Germany which is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

⁴ Vice Chairman Parker and Commissioner Ablondi note that during the same period Italian producers emerged as the downside price leaders, as evidenced by the fact that imports of PSP tape from Italy were priced below its domestic counterpart.

⁵ Prevention of the establishment of an industry is not an issue in the instant investigation and will not be discussed further.

¹ Prevention of establishment of an industry is not an issue in this investigation and will not be discussed further.

THE U.S. INDUSTRY

Pressure sensitive plastic tape more than 1 3/8 inches in width and not exceeding 4 mils in thickness is the article which is the subject of this investigation. It is a plastic-film-backed tape that firmly adheres to a variety of surfaces upon contact. Its major use is as corrugated-box-sealing tape, but can also be used for the manufacture of printed labels, for tabbing, for color coding, and for label protection.

In considering what makes the U.S. industry, I have determined that it consists of the facilities in the United States devoted to the production of plastic tape more than 1 3/8 inches in width and not exceeding 4 mils in thickness. There are nine known producers of this tape in the United States.

NO INJURY BY REASON OF LTFV IMPORTS

On August 31, 1977, the Commission reported to the Secretary of the Treasury that a U.S. industry was being or was likely to be injured by reason of the importation of pressure sensitive plastic tape of more than 1 3/8 inches in width and not exceeding 4 mils in thickness from Italy that was being, or was likely to be, sold at less than fair market value within the meaning of the Antidumping Act, 1921, as amended.⁶

Along with Commissioner Bedell, I dissented from that position determining that there was no injury or likelihood of injury to an industry in the United States by reason of the importation of that article. In so finding, I, along with Commissioner Bedell, stated that "in our opinion the information gathered during the investigation indicates that an industry in the United States is not being injured. Furthermore, if the requisite injury had been established, there would be no persuasive indication that such injury was caused by LTFV imports."⁷

Further, with regard to likelihood of injury, we found that "the strong growth trends evidenced by the domestic industry lead us to believe that LTFV imports as described by Treasury are not likely to injure the domestic industry."⁸

As the U.S. industry in question in this investigation is identical to the one in the case involving pressure sensitive tape from Italy, and I found no injury in that industry within the last few days, it would not seem necessary to further discuss the question of injury. And, even if it could be shown that there was some injury, the even lower level of LTFV import penetration in this case, about one-half of that attained by the Italian supplier in 1975 would indicate even less

likelihood that causation could be established.⁹

CONCLUSION

For the reasons stated above, I have concluded that an industry in the United States is not being injured and is not likely to be injured by reason of LTFV imports of pressure sensitive plastic tape from West Germany.

Issued: September 7, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc. 77-26553 Filed 9-12-77; 8:45 am]

[TA-201-23]

CERTAIN HEADWEAR

Report to the President

AUGUST 18, 1977.

To the President:

In accordance with section 201(d)(1) of the Trade Act of 1974, the United States International Trade Commission herein reports the results of an investigation relating to certain headwear.

The investigation (No. TA-201-23) was undertaken to determine whether headwear, knit or not knit, assembled from two or more cut pieces of fabric, of cotton, flax, or both, or of manmade fibers, provided for in items 702.06, 702.12, 702.14, 703.05, 703.10, and 703.15 of the Tariff Schedules of the United States (TSUS), and visors with straps, whether or not such straps are adjustable, designed to be worn on the head, knit or not knit, of cotton or of manmade fibers, provided for in TSUS items 382.00, 382.04, 382.06, 382.33, 382.78, and 382.81, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

The Commission instituted the investigation, under the authority of section 201(b)(1) of the Trade Act on February 22, 1977, following the receipt, on February 8, 1977, of a petition for import relief under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) filed by the Empire State Cloth Hat and Cap Manufacturers Association and the United Hatters, Cap and Millinery Workers International Union.

⁶ The share of U.S. apparent consumption of all types of PSP tape supplied by Braas, the only West German manufacturer with substantial LTFV margins, declined by about one-quarter from 1975 to 1976 and continued to decline in January-May, 1977, as contrasted with the Italian suppliers of LTFV imports whose share of U.S. consumption doubled from 1975 to 1976 and continued to increase in January-May, 1976.

The Commission held public hearings on this matter in New York City, on May 17, 1977, and in St. Louis, Mo., on May 26, 1977.

Notice of the institution of the investigation and of the scheduling of the public hearings was published in the FEDERAL REGISTER of February 28, 1977 (42 FR 11288). Notice of the amendment to the scope of the investigation was published in the FEDERAL REGISTER of March 21, 1977 (42 FR 15375).

The information for this report was obtained from field work and interviews by members of the Commission's staff, from other Federal agencies, from responses to the Commission's questionnaires, from information presented at the public hearings, from briefs submitted by interested parties, and from the Commission's files.

A transcript of the hearing and copies of briefs submitted by interested parties in connection with the investigation are attached.¹

DETERMINATION OF THE COMMISSION

On the basis of the investigation, the Commission (Vice Chairman Parker not participating) determines that headwear, knit or not knit, assembled from two or more cut pieces of fabric, of cotton, flax, or both, or of manmade fibers, provided for in items 702.06, 702.12, 702.14, 703.05, 703.10, and 703.15 of the Tariff Schedules of the United States (TSUS), and visors with straps, whether or not such straps are adjustable, designed to be worn on the head, knit or not knit, of cotton or of manmade fibers, provided for in TSUS items 382.00, 382.04, 382.06, 382.33, 382.78, and 382.81, are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

VIEWS OF COMMISSIONERS GEORGE M. MOORE, CATHERINE BEDELL, AND ITALO H. ABLONDI

On February 8, 1977, the United States International Trade Commission received a petition filed by the Empire State Cloth Hat and Cap Manufacturers Association and the United Hatters, Cap and Millinery Workers International Union requesting an investigation under section 201(b)(1) of the Trade Act of 1974 with respect to certain headwear. The petition was amended by the petitioners on February 18, 1977. On February 22, 1977, the Commission instituted an investigation pursuant to section 201(b)(1) of the Trade Act to determine whether head-

¹ Attached to the original report sent to the President, and available for inspection at the U.S. International Trade Commission, except for material submitted in confidence.

⁶ Pressure Sensitive Plastic Tape From Italy. USITC Publication 830, August 1977.

⁷ Ibid. p. 10.

⁸ Ibid. p. 12.

wear, knit or not knit, assembled from two or more cut pieces of fabric, of cotton, flax, or both, or of manmade fibers, provided for in items 702.06, 702.12, 702.-14, 703.05, 703.10, and 703.15 of the Tariff Schedules of the United States (TSUS), and visors with straps, whether or not such straps are adjustable, designed to be worn on the head, knit or not knit, of cotton or of manmade fibers, provided for in TSUS items 382.00, 382.04, 382.06, 382.33, 382.78, and 382.81,² are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.²

Before making an affirmative determination under section 201(b) (1) of the Trade Act, the Commission must find that all three of the following criteria are met:

- (1) Imports of an article into the United States are increasing (either actually or relative to domestic production);
- (2) The domestic industry producing an article like or directly competitive with the imported article is being seriously injured or threatened with serious injury; and
- (3) Increased imports are a substantial cause (i.e., an important cause and not less than any other cause) of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Because these criteria are cumulative, a finding that any one of them is not met requires a negative determination. In this case, we determine that the second criterion under section 201(b) (1) as set forth above has not been met, namely, the domestic industry producing articles like or directly competitive with the imported articles is not being seriously injured or threatened with serious injury.

THE DOMESTIC INDUSTRY

We have determined that the domestic industry in the present case consists of facilities in the United States devoted to the production of casual and sport headwear.

SERIOUS INJURY OR THREAT THEREOF

Examination of the performance of the producers of casual and sport headwear does not establish evidence of seri-

² The headwear and visors described above will hereinafter be referred to as casual and sport headwear.

³ Commissioners Moore and Bedell observe that the Commission did not consider the existence of the Arrangement Regarding International Trade in Textiles (MFA) and the bilateral agreements negotiated by the United States pursuant thereto as a legal bar to the conduct by the Commission of an investigation pursuant to section 201 of the Trade Act of 1974 since the MFA does not purport to preempt or preclude other possible remedies respecting textiles which are consistent with the provisions of the General Agreement on Tariffs and Trade. However, Commissioners Moore and Bedell note the applicability of the MFA and the bilateral agreements negotiated by the United States under article 4 of the MFA to the articles which are the subject of the Commission's escape clause investigation.

ous injury. In addition, the trends noted below demonstrate that despite increasing imports, there is no threat of serious injury at this time.

Domestic production of casual and sport headwear increased from 2.8 million dozen in 1972 to 5.6 million dozen in 1976. In terms of value of production, the industry realized an average annual increase of 4.8 percent during the period 1972-76. By 1976 the value of production had reached \$90.4 million, compared with \$37.3 million in 1972.

In the aggregate, net sales of domestic producers providing usable profit-and-loss information to the Commission rose every year from 1972 to 1976. On the basis of figures supplied by the same firms, the ratio of net operating profit to net sales is also trending upward. In 1972 the ratio of net operating profit to net sales was 6.2 percent; by 1976, the ratio had climbed to 9.7 percent despite a decrease of less than 1 percent from the previous year when the ratio was 10.4 percent. Thus, the combined profit-and-loss statements of the producers reveal that even in 1976, when imports had achieved a 22-percent penetration of the market, these firms had higher combined net sales and operating profits than they did in 1972, when imports accounted for only 7.6 percent of the U.S. market.

The average number of persons employed in the production of casual and sport headwear has increased annually since 1972: The 1976 employment figure of 4,999 production workers is approximately 47 percent higher than the employment levels reported for 1972. Although there is evidence of a slight decline in the number of persons employed in the first quarter of 1977 as compared with the first quarter of 1976, the overall trend in employment is positive during years of increasing imports.

Price comparisons of casual and sport headwear must be qualified by the fact that there is extensive product differentiation in their lines. With this in mind, it is still apparent that there is no evidence of price depression or suppression. Average wholesale prices rose by 32 percent from 1972 to 1976, which is very healthy when compared with the 15 percent increase of prices in the apparel industry during the same period.

CONCLUSION

In view of the above, we have determined that the domestic casual and sport headwear industry is not being seriously injured or threatened with serious injury within the meaning of section 201(b) (1) of the Trade Act by increasing imports of the articles under investigation, and, therefore, we have made a negative determination.

VIEWS OF CHAIRMAN DANIEL MINCHEW

On February 22, 1977, the United States International Trade Commission (Commission) instituted an investigation under section 201 of the Trade Act of 1974 (Trade Act) to determine whether headwear, knit or not knit, assembled from two or more cut pieces of fabric, of cot-

ton, flax, or both, or of manmade fibers, provided for in items 702.06, 702.12, 702.-14, 703.05, 703.10, and 703.15 of the Tariff Schedules of the United States (TSUS), and visors with straps, whether or not such straps are adjustable, designed to be worn on the head, knit or not knit, of cotton or of manmade fibers, provided for in TSUS items 382.00, 382.04, 382.06, 382.33, 382.78, and 382.81, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, of the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Section 201(b) (1) of the Trade Act requires that each of the following criteria is met before the Commission may recommend import relief:

- (1) That imports of an article into the United States are increasing (either actually or relative to domestic production);
- (2) That the domestic industry producing an article like or directly competitive with the imported article is being seriously injured or threatened with serious injury; and
- (3) That increased imports are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

The failure to satisfy any of these criteria, therefore, necessitates a negative determination.

THE DOMESTIC INDUSTRY

The "domestic industry," as defined in section 201(b) (1), consists of the domestic producers of "an article like or directly competitive with the imported article." Additionally, in considering what constitutes the domestic industry, section 201 (b) (3) provides:

The Commission—

- (A) May, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,
- (B) May, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and
- (C) May, in the case of one or more domestic producers, who produce a like or directly competitive article in a major geographic area of the United States and whose production facilities in such area for such article constitute a substantial portion of the domestic industry in the United States and primarily serve the market in such area, treat as such domestic industry only that segment of the production located in such area.

It has been argued in this investigation that the Commission should consider the facilities devoted to the production of headwear, as noticed in the investigation, which are located in the New York or St. Louis/Kansas City areas, as geographic domestic industries as defined in section 201(b) (3) (C). In order to qualify as a "geographic" industry within the meaning of section 201(b) (3) (C), four specific conditions must exist:

1. One or more domestic producers must produce an article like or directly competitive with the imported articles under investigation in a major geographic area of the United States.

2. The production facilities of such domestic producers must constitute a substantial portion of the domestic industry.

3. Such domestic producers must primarily serve the market in such geographic area.

4. The subject imports must be concentrated in such geographic area.

The failure to satisfy any of these conditions rules out the consideration of an industry as being "geographic" under the statute.

Information obtained in the current investigation indicates that production facilities concentrated in two geographic areas—New York and St. Louis/Kansas City—supply the entire country with headwear. In addition, while imports enter the United States through several major ports, there is no evidence that the imports impact primarily in that area. Taking this information into account, I have concluded that the criteria for a "geographic" domestic industry have not been met.

I have concluded that the domestic industry consists of those facilities in the United States devoted to the production of headwear, as noticed in investigation TA-201-23.

DETERMINATION

Based on the information obtained in investigation TA-201-23, I have determined that headwear, knit or not knit, assembled from two or more cut pieces of fabric, of cotton, flax, or both, or of manmade fibers, provided for in items 702.06, 702.12, 702.14, 703.05, 703.10, and 703.15 of the Tariff Schedules of the United States, and visors with straps, whether or not such straps are adjustable, designed to be worn on the head, knit or not knit, of cotton or of manmade fibers, provided for in TSUS items 382.00, 382.04, 382.06, 382.33, 382.78, and 382.81, are not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

Specifically, I have determined that the second criteria for an affirmative determination, i.e., that of serious injury or the threat thereof, has not been met. As the failure of any single criteria necessitates a negative determination, I will limit my discussion to serious injury or the threat thereof.

SERIOUS INJURY OR THE THREAT THEREOF

In determining whether the domestic industry is seriously injured, the Commission is directed, under section 201(b)(2) of the Trade Act, to take into account—

All economic factors which it considers relevant, including (but not limited to)—

(A) * * * the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry.

In determining whether the domestic industry is being threatened with serious injury, the Commission considers, in addition to the factors of serious injury, the

following factors found in section 201(b)(2)(B):

* * * a decline in sales, a higher and growing inventory and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned.

The ensuing discussion will consider both serious injury and the threat of serious injury together when possible.

Total U.S. production of casual and sport headwear has followed a steady trend upward from 2.8 million dozen in 1972, to 5.6 million dozen in 1976. Broken down by type of headwear, the figures show an upward trend in caps, hats and visors, with production in hats and visors decreasing very slightly in 1976. Domestic production of caps increased from 1.9 million dozen in 1972, to 4.2 million dozen in 1976, for an average annual increase of 22 percent. Domestic production of hats increased from 804 thousand dozen in 1972, to 1,141 thousand dozen, in 1974, before decreasing slightly to 1,060 thousand dozen in 1976. Production of visors increased from about 101 thousand dozen in 1972 to 380 thousand dozen in 1975 before decreasing to about 321 thousand dozen in 1976. The trends show a clear increase in production over the past five years.

U.S. producers' shipments of casual and sport headwear increased from 2.8 million dozen at \$37.3 million in 1972, to 5.6 million dozen valued at \$90.4 million in 1976, an average annual increase in quantity shipped of 18.9 percent. During the same period, the average unit value of producers' shipments rose steadily at an average rate of 4.8 percent.

Inventories are not an important consideration in the headwear industry, as production is usually undertaken on a direct order basis, which eliminates the need to carry large inventories of finished goods.

Employment in establishments in which casual and sport headwear are manufactured rose from 5,125 in 1972, to 7,896 in 1976. There appears to have been a slight decline in employment in the first quarter of 1977. The number of production workers producing casual and sport headwear increased from 3,389 in 1972, to 4,999 in 1976, before declining slightly in the first quarter of 1977. However, despite a marginal decline in employment in the first quarter of 1977, the trend of employment has been upward.

There appears to have been little evidence of pricing advantages in imported headwear, or at least of advantages passed along to the consumer, and there appears to have been little evidence of price suppression. From 1972 to 1976 the average wholesale prices for domestic caps, hats, and visors increased by an average annual rate of 6.7 percent, 7 percent, and 8.1 percent, respectively.

Net sales of headwear by U.S. producers increased annually throughout the period 1972-76, increasing from \$50.4 million in 1972, to \$100.1 million in 1976. Net operating profits increased steadily from \$3.1 million in 1972 to \$9.7

million in 1976. The ratio of net operating profit to net sales generally followed the same trend as that of dollar operating profits, rising from 6.2 percent in 1972, to 10.4 percent in 1975, before falling slightly to 9.7 percent in 1976.

The information obtained by the Commission indicates that certain producers of headwear have not done nearly as well as the above figures indicate.⁴ However, as I have been unable to find that there is a "geographic" domestic industry, I am compelled to look at the industry as a whole. The factors discussed above lead me to the conclusion that the "serious injury or threat thereof" criterion is not met.

CONCLUSION

As stated earlier, I have determined that the requirements of section 201(b)(1) of the Trade Act have not been met, and I must therefore determine in the negative.

By order of the Commission.

Issued: September 8, 1977.

KENNETH R. MASON,
Secretary.

[FR Doc. 77-26554 Filed 9-12-77; 8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

ALMAR PHARMACY

Revocation of Registration

On August 16, 1976, the Administrator of the Drug Enforcement Administration (DEA) directed to Mr. Albert Marcovsky, as pharmacist and owner of Almar Pharmacy, an Order to Show Cause requesting the Respondent to show why his DEA Registration AA5944928 should not be revoked for the reason that on June 11, 1976, in the United State District Court for the Western District of Pennsylvania, Mr. Marcovsky had been convicted of seven counts of illegal distribution of controlled substances and with one related count of conspiracy to distribute controlled substances. On September 14, 1976, the Respondent through his attorney requested a hearing on the proposed revocation. At the conclusion of prehearing matters, a formal hearing was conducted on May 3, 1977, before Administrative Law Judge Francis L. Young.

Judge Young certified the entire record with his recommended findings of fact and conclusions of law and decision to the Administrator pursuant to 21 CFR 1316.65 on August 5, 1977. The Administrator, pursuant to 21 CFR 1316.66, hereby publishes his final order in this matter.

In reviewing Mr. Marcovsky's felony conviction relating to controlled substances, the Administrative Law Judge

⁴ While the Commission has determined that the domestic industry is not eligible for import relief under section 201, a number of the individual firms and employees may qualify for relief under other sections of the Trade Act.

found that between January and June of 1975, Almar Pharmacy became accountable for approximately 85,000 dosage units of methaqualone, a Schedule II narcotic drug. The pharmacy, however, was unable to properly account for the distribution of approximately 24,000 of the 85,000 dosage units. Of the dosage units distributed and accounted for by the Respondent, 22,800 units of methaqualone had allegedly been distributed to two boarding homes for the elderly. Both the operators of the two boarding homes and the elderly residents, however, failed to indicate that they had received methaqualone in any amount close to the quantities represented by the Respondent's records.

The Respondent's records showed that the distribution of methaqualone to the two boarding homes was based on prescriptions signed by a Dr. Elias Yurek. The Administrative Law Judge found that Dr. Elias Yurek would usually come to the Respondent's pharmacy and while in the pharmacy prepare the prescriptions for the two boarding homes which were then filled one hundred percent of the time by the Respondent. Dr. Yurek's prescriptions for methaqualone were all prepared simultaneously at approximately the same time each month between January and June of 1975. The prescriptions were made out to everyone residing in the two boarding homes including the home operators and family members. Each month's prescriptions were sequentially numbered with approximately 50 prescriptions going to each home with each prescription made out for 50 tablets of methaqualone. Faced with the felony conviction at the administrative hearing on this matter the Respondent indicated that he believed he had done nothing wrong with respect to his conspiratorial association with Dr. Elias Yurek and his illegal distribution of methaqualone.

The Respondent's felony conviction also centered around the sale of 300 methaqualone tablets for \$350,000 to a confidential government informant. The sale occurred on three prescriptions, two of which were forged copies of an original. The Respondent was convicted of distributing 200 of the methaqualone tablets under the forged prescriptions at the time of this sale the legitimate price for methaqualone was approximately \$15-\$16 per hundred. After the Respondent filled the three prescriptions he gave the two copies back to the confidential informant. The Respondent testified at his hearing that when he received \$350,000 for the 300 methaqualone tablets the only thought which occurred to him was that the individual must have needed the pills badly.

In his recommended opinion the Administrative Law Judge finds that in light of the Respondent's past conduct he should not be permitted to dispense controlled substances in a pharmacy. Therefore, Judge Young recommends that the pharmacy registration be revoked.

The Administrator adopts the findings and recommendations of the Administrative Law Judge and upon consideration of the entire record in this matter and pursuant to the authority vested in the Attorney General and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the registration issued to Almar Pharmacy, Albert Marcovsky, owner, under registration number AA59-44928 be revoked, effective immediately.

Dated: September 6, 1977.

PETER B. BENSINGER,
Administrator.

[FR Doc.77-26562 Filed 9-12-77;8:45 am]

[Docket No. 77-24]

ANDRES SANCHEZ SENDIN, M.D.

Hearing

Notice is hereby given that on August 9, 1977, the Drug Enforcement Administration, Department of Justice, issued to Andres Sanchez Sendin, M.D., San Francisco, Calif., an Order to Show Cause as to why the Drug Enforcement Administration should not deny the application for registration, executed by the Respondent on February 12, 1977, under 21 U.S.C. 823.

Thirty days having elapsed since the said Order to Show Cause was received by the Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m., or as soon thereafter as this matter can be reached on Thursday, October 20, 1977, in the U.S. Tax Court Courtroom, Room 8541 of the Federal Building, 300 North Los Angeles Street, Los Angeles, Calif.

Dated: September 2, 1977.

PETER B. BENSINGER,
Administrator, Drug
Enforcement Administration.

[FR Doc.77-26503 Filed 9-12-77;8:45 am]

[Docket No. 77-22]

ROBERT C. BERWICK, M.D.

Hearing

Notice is hereby given that on June 13, 1977, the Drug Enforcement Administration, Department of Justice, issued to Robert C. Berwick, M.D., San Francisco, Calif., an Order to Show Cause as to why the Drug Enforcement Administration registration AB1348475 issued to the Respondent pursuant to 21 U.S.C. 823 should not be revoked.

Thirty days having elapsed since the said Order to Show Cause was received by the Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, October 18, 1977, in the

U.S. Tax Court Courtroom, Room 8541 of the Federal Building, 300 North Los Angeles Street, Los Angeles, Calif.

Dated: September 2, 1977.

PETER B. BENSINGER,
Administrator, Drug
Enforcement Administration.

[FR Doc.77-26564 Filed 9-12-77;8:45 am]

[Docket No. 77-16]

AARON LAX, M.D.

Hearing

Notice is hereby given that on April 26, 1977, the Drug Enforcement Administration, Department of Justice, issued to Aaron Lax, M.D., Beverly Hills, Calif., an Order to Show Cause as to why the Drug Enforcement Administration registration AL1454052 issued to the Respondent pursuant to 21 U.S.C. 823 should not be revoked.

Thirty days having elapsed since the said Order to Show Cause was received by the Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m., or as soon thereafter as this matter can be reached, on Wednesday, October 19, 1977, in the U.S. Tax Court Courtroom, Room 8541 of the Federal Building, 300 North Los Angeles Street, Los Angeles, Calif.

Dated: September 2, 1977.

PETER B. BENSINGER,
Administrator, Drug
Enforcement Administration.

[FR Doc.77-26565 Filed 9-12-77;8:45 am]

Office of the Secretary

U.S. V. U.S. STEEL CORP.

Proposed Consent Decree in Action To
Enjoin Discharge of Air Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on September 1, 1977, a proposed consent decree in *United States of America v. United States Steel Corp.*, was lodged with the District Court for the Northern District of Illinois, Eastern Division. The proposed decree would require defendant to bring a sinter plant at its integrated steel mill in Chicago into compliance with the particulate standard of the Illinois air pollution abatement implementation plant over a 32-month six-step time period through the addition of a wet electrostatic precipitator pollution control device. Liquidated damages are applicable if compliance is not achieved.

The Department of Justice will receive on or before October 13, 1977, written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United*

States of America v. United States Steel Corp., D.J. Ref. 90-5-2-3-806.

The proposed consent decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Ill. 60604, at the Region V Office of the Environmental Protection Agency, Enforcement Division, 230 South Dearborn Street, Chicago, Ill. 60606 and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2629, Department of Justice Building, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed consent judgment may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

JAMES W. MOORMAN,
Acting Assistant Attorney General,
Land and Natural Resources Division.

[FR Doc.77-26576 Filed 9-12-77; 8:45 am]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON CONSUMER AND WHOLESALE PRICES

Meeting

The BRAC Committee on Consumer and Wholesale Prices will meet at 9:30 a.m., September 29, 1977, at the General Accounting Office Building, 441 G Street NW., Room 4454, Washington, D.C. The agenda for the meeting is as follows:

1. The new CPI weights for both the "W" and the "U" indexes. This material should include the technique used to move from 1972-73 survey data to the final weights.
2. The WPI revision.
3. Export and import prices.
4. A report on the reaction to the Committee's suggestions on the Family Budget series.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on (Area Code 202) 523-1559.

Signed at Washington, D.C. this 8th day of September 1977.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc.77-26597 Filed 9-12-77; 8:45 am]

Office of Federal Contract Compliance Programs

HAHN & CLAY, MACHINE & BOILER WORKS, INC.

Debarment and Contract Compliance

Notice hereby is given that for violating Executive Order 11246, as amended, all existing United States Government contracts and subcontracts with Hahn & Clay, Machine & Boiler Works, Inc., Houston, Tex., are cancelled and the Company (its divisions and subsidiaries, and any and all purchasers, successors, assignees, and/or transferees), is declared ineligible for further contracts or subcontracts funded in whole or in part

with Federal funds, and for extensions or other modifications of any such existing contracts or subcontracts until such time as the Company has satisfied the Director, Office of Federal Contract Compliance Programs, that it has established and will carry out employment policies and practices in compliance with Executive Order 11246, as amended, and the implementing rules and regulations of the Secretary of Labor. This action is predicated upon Hahn & Clay's violations of 41 CFR 60-1.32.

The debarment and contract cancellation also apply but are not limited to, the following Hahn & Clay division or subsidiary: Houston Column Co., Houston, Tex.

A copy of my Decision is enclosed for publication in the FEDERAL REGISTER.

Dated: August 31, 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

UNITED STATES DEPARTMENT OF LABOR; OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
[Case No. OFCC-DSA]

DECISION BY THE DIRECTOR OF OFCCP

In the Matter of Hahn & Clay and Defense Supply Agency.

After a hearing in the above-captioned matter, Administrative Law Judge Burton S. Sternburg found that Hahn & Clay, Machine & Boiler Works, Inc., Houston, Tex., had violated its contractual obligations pursuant to 41 CFR Part 60-1.32 of the Secretary of Labor's regulations implementing Executive Order 11246, as amended, and recommended that with respect to Hahn & Clay, any and all existing United States Government contracts and subcontracts be cancelled and terminated, and further that Hahn & Clay be declared ineligible for further contracts and subcontracts with the United States Government. Subsequently, the Assistant Secretary of Defense for Manpower Reserve Affairs and Logistics forwarded a proposed cancellation and debarment order to the Director of the Office of Federal Contract Compliance Programs.

In accordance with the powers granted to the Director, Office of Federal Contract Compliance Programs by Title 41, Code of Federal Regulations Sections 60-1.26, 60-1.27 (1976) and 60-30.30(b), as amended January 18, 1977 (42 FR 3467) of the Secretary of Labor's regulations issued pursuant to Executive Order 11246, as amended, I hereby approve the debarment of Hahn & Clay, Machine & Boiler Works, Inc.; its divisions and subsidiaries and any and all purchasers, successors, assignees, and/or transferees, from the award of any contract or subcontract funded in whole or in part with Federal funds, and from extensions or other modifications of any such existing contracts or subcontracts. Further, all existing United States Government contracts and subcontracts with Hahn & Clay Machine & Boiler Works, Inc., and its divisions and subsidiaries are hereby cancelled and terminated.

The debarment will continue in effect until such time as Hahn & Clay has satisfied the Director, Office of Federal Contract Compliance Programs, that it has established and will carry out employment policies and practices in compliance with the equal opportunity clause of Executive Order 11246, as amended.

This debarment and contract and subcontract cancellation shall be effective as of this date and shall also apply, but is not limited to, the following Hahn & Clay division or subsidiary: Houston Column Co., Houston, Tex.

The company also is ordered to pay to the Office of Federal Contract Compliance Programs, for delivery to Lorenzo Garcia, back pay in the amount of \$1,228.80 plus 6 percent interest.

Attached hereto and made a part hereof is the Recommended Decision and Order of Administrative Law Judge, Burton S. Sternburg.

Signed at Washington, D.C., this 31st day of August 1977.

WELDON J. ROUGEAU,
Director, OFCCP.

U.S. DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Washington, D.C.

[Case No. OFCC-DSA]

In the Matter of Hahn & Clay and Defense Supply Agency.

Karl E. Kraft, Esquire, Bobbitt & Kraft, 640 Capital National Bank Building, Houston, Tex. 77002, for Hahn & Clay.

Faith F. Emory, Esquire, Joseph O. Collins, Esquire, DCRT-L, DCASE, Dallas, 500 South Ervay, Dallas, Tex. 75201, for the Defense Supply Agency.

Before: Burton S. Sternburg, Administrative Law Judge.

RECOMMENDED DECISION AND ORDER

STATEMENT OF THE CASE

This is a proceeding under Executive Order 11246, as amended (hereinafter called the Order) and the applicable rules and regulations promulgated thereunder by the Secretary of Labor (41 CFR Chapter 60). Pursuant to 41 CFR 60-1.26(b), on July 12, 1976, the Defense Supply Agency notified Hahn & Clay that it was not in compliance with the Order and applicable rules and regulations because its Affirmative Action Program (AAP) was deficient in certain respects and because it had discriminatorily discharged employee Lorenzo Garcia for a filing a charge with the Equal Employment Opportunity Commission. On the basis of the foregoing, the Defense Supply Agency proposed cancellation of Hahn & Clay's contracts with the United States Government and debarment from any future such contracts.¹

In accordance with the above-mentioned notice dated September 3, 1976, a hearing was held before the undersigned Administrative Law Judge on October 26 and 27, 1976, in Houston, Tex.² Evidence was received as to whether or not employee Lorenzo Garcia's action in filing an EEO complaint played any part in his subsequent discharge from Hahn & Clay.³ All parties were represented by Counsel and were afforded full opportunity to be heard, to adduce evidence and to examine and cross-examine witnesses. Opportunity was also afforded the parties to argue orally at the hearing and to file briefs, proposed findings of fact, and conclusions of law on or before December 6, 1976.

Upon the basis of the entire record, including my observation of the witnesses and their

¹ Prior to the Notice of Violation and Proposed Action, the Defense Contract Administration Service Region, Dallas, had on July 10, 1975, issued a "show cause" letter to Hahn & Clay pointing out their deficiencies.

² The Hearing was conducted pursuant to, and in accordance with, 41 CFR 60-1.26(b) and Defense Supply Agency Regulation 5500-7 (32 CFR Part 1281).

³ Although the complaint alleged certain deficiencies in Hahn & Clay's AAP, Government Counsel made it clear at the commencement of the Hearing that all alleged deficiencies with the exception of the Garcia matter had been corrected by Hahn & Clay prior to the hearing. Accordingly, the hearing was limited to the reasons for Mr. Garcia's discharge.

demeanor, I make the following proposed findings of fact, conclusions and recommendations:

PROPOSED FINDINGS OF FACT

1. Hahn & Clay is a Houston, Tex., based contractor who performs two categories of work, (1) heavy industrial maintenance and repair, and (2) the manufacture of special products including a substantial amount of nuclear work. For 12 to 15 years, Hahn & Clay has performed as prime contractor on Government contracts, primarily for the Navy.

2. Hahn & Clay has agreed, pursuant to the Equal Opportunity Clause of its United States Government contracts, to comply with all provisions of Executive Order 11246, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor, appearing in 41 CFR Chapter 60.

3. The Defense Supply Agency, Defense Contract Administration Services Region, Dallas, is responsible for monitoring Hahn & Clay's compliance with Executive Order 11246, as amended, and the implementing rules and regulations promulgated thereunder.

4. Mr. Lorenzo Solis Garcia began working as welder for Hahn & Clay on June 29, 1973. Mr. Garcia received and was receiving top welder's wages at the time of the events underlying the instant dispute.

5. On or about December 10, 1974, Mr. Garcia requested overtime work for the following weekend. Upon failing to receive the specific overtime work requested Mr. Garcia told Assistant foreman McKaskle that he was quitting and left the premises. The next day Mr. Garcia went to the Equal Employment Opportunity Commission and filed a discrimination complaint against Hahn & Clay based on national origin discrimination in the areas of overtime and wages. Mr. Garcia returned to work on December 12, 1974, following a discussion with, and urging by, Mr. Woodruff, vice-president in charge of production. At this time Hahn & Clay was not aware of Mr. Garcia's action in filing an EEOC complaint.

6. About two weeks after the filing of the complaint by Mr. Garcia, a "Notice of Charge of Employment Discrimination" was served on Supervisory Job Foreman Brantley. Mr. Brantley informed Mr. Garcia that he had received the charge but could take no action until such time as Mr. Lewis, Hahn & Clay's Personnel Manager, returned from vacation.

7. Upon Mr. Lewis' return from vacation on January 2, 1975, a meeting was held between Mr. Garcia, Mr. Lewis and Mr. Brantley wherein Mr. Garcia's complaint with EEOC was discussed. Mr. Lewis took the position that Mr. Garcia's charges were false and that he, Mr. Garcia, should go back to EEOC and drop the charges or he would lose his job.

8. On January 3, 1975, Mr. Garcia, who was under the impression from the conversation of the day before that he was discharged unless he withdrew his pending complaint with the EEOC, again visited the EEOC office, related the conversation of January 2, 1975, and filed a second charge predicated upon reprisal and discharge.

9. On January 8, 1975, Mr. Garcia returned to Hahn & Clay to pick up a pay check. At that time he inquired of Mr. Brantley if he still had a job. Upon being asked if he had withdrawn the pending charges, Mr. Garcia handed Mr. Brantley a copy of the newly filed reprisal charge. Whereupon, Mr. Brantley escorted Mr. Garcia to Mr. Lewis' office. After reading the second charge, Mr. Lewis informed Mr. Garcia that he was discharged and that in order to come back to work he would have to drop both charges and bring evidence from the EEOC of such action.

10. Mr. Garcia subsequently secured work with the Hunt Tool Co. on January 15, where he remained through February 26, 1975. He was paid \$5.50 per hour at the Hunt Tool Co.,

as opposed to the \$5.80 he made at Hahn & Clay.

11. On February 26, 1975 Mr. Garcia, being dissatisfied with his current work, contacted Mr. Lewis by telephone and inquired whether or not he could come back to work if he withdrew the EEOC complaints. Following the conversation, Mr. Garcia withdrew the complaints, presented verification of same and was rehired back on February 27, 1975, at top pay (\$6.05 per hour), but as a new employee with a loss of his accrued seniority. Mr. Garcia offered to withdraw his complaints and furnish verification of same only because he remembered the January 1975 exit conversation with Mr. Lewis.

12. Hahn & Clay's vacation policy grants two weeks paid vacation for employees completing two years of continuous service with the company. Mr. Garcia's two year anniversary date with Hahn & Clay would have occurred on June 29, 1975. But for the discharge, Mr. Garcia would have been entitled to two paid weeks vacation for 1975 and two weeks paid vacation for 1976. Mr. Garcia was paid for one week of vacation on his January 2, 1975, pay check. After his return to work, Mr. Garcia was considered a new employee and therefore received no more vacation pay in 1975. During the calendar year 1976, Mr. Garcia received only one week paid vacation.

13. Several conciliation meetings were held between Hahn & Clay personnel and Government personnel as required by 41 CFR 60-1.20 (a) and (b) and 41 CFR 60-2.2(c)(2). Defense Contract Administration Service Region, Dallas, made adequate efforts to secure Hahn & Clay's voluntary compliance with the requirements of the Order and applicable rules and regulations promulgated thereunder.

14. Hahn & Clay's Affirmative Action Programs for 1975 and 1976 do not contain action oriented programs covering the resolution of the Garcia incident as it relates to back pay and seniority. Otherwise, the 1975 and 1976 Affirmative Action Programs of Hahn & Clay are acceptable to the Government.

15. While Hahn & Clay might well have discharged Mr. Garcia for past indiscretions amounting to poor job performance, such indiscretions were overlooked prior to the filing of Mr. Garcia's first complaint with EEOC.

PROPOSED CONCLUSIONS OF LAW

1. Jurisdiction over the parties and the subject matter is proper under the provisions of Executive Order 11246, as amended, and the implementing rules and regulations of the Secretary of Labor.

2. Under the Provisions of Part II, Section 201 of Executive Order 11246, as amended, the Secretary of Labor is directed and empowered to adopt "such rules and regulations and issue orders as he deems necessary and appropriate to achieve the purpose . . . of Parts II and III of the Order." Pursuant to such direction and authority the Secretary of Labor has adopted the Affirmative Action Program requirements contained in 41 CFR 60-1 and 60-2.

3. Under delegation of authority by the Office of Federal Contracts Compliance, the Defense Supply Agency, DCASR Dallas, has been charged with the responsibility of ensuring that Federal contractors and subcontractors comply with the equal opportunity provisions of Government contracts and subcontracts and the implementing rules and regulations of the Secretary of Labor.

4. In accordance with the equal opportunity provisions contained in Hahn & Clay's Government contracts, Hahn & Clay was required to develop and adopt for 1975 and 1976 written APPs which met the requirements of the provisions of 41 CFR 60-2.

5. Hahn & Clay's actions in the Garcia dismissal constituted a violation of 41 CFR 60-1.32.⁴

a. Regardless of Mr. Garcia's past job performance, Hahn & Clay took no action against Mr. Garcia until after he had filed his first complaint.

b. The filing of the first complaint was contributing cause to Hahn & Clay's dismissal of Mr. Garcia.⁵

c. The filing of the second complaint was a contributing cause to Hahn & Clay's refusal to allow Mr. Garcia's return to work on 8 January 1975.

d. Mr. Garcia was fired on 2 January 1975, effective beginning 3 January 1975, in that the effect of the 2 January meeting was to create the impression that Mr. Garcia had been discharged unless he withdraw his first complaint.

e. Mr. Garcia was lead to believe that the withdrawal of both complaints was a condition precedent to his returning to work for Hahn & Clay.

f. Hahn & Clay intimidated Mr. Garcia and interfered with his right to file an EEOC complaint. (See EEOC Decision No. 711151 (1971) 3 FEP 387.)

6. Under the provisions of 41 CFR 602.13 (f), Hahn & Clay's AAPs for 1975 and 1976 must contain action oriented programs designed to eliminate the results of the violation of 41 CFR 601.32.

7. In order to eliminate the effects of the discrimination against Mr. Garcia, the required action oriented programs must include the payment of back pay to Mr. Garcia and the restoration of Mr. Garcia's seniority rights.

8. Hahn & Clay's Affirmative Action Programs (AAP) for 1975 and 1976 do not contain adequate action oriented programs as required by 41 CFR 60-2.13(f) designed to correct the deficiencies created by Hahn & Clay's violation of 41 CFR 60-1.32.

9. Except for those deficiencies listed in paragraph 7 above, the 1975 and 1976 AAPs are acceptable to the Government.

10. The acceptable action oriented programs should include back pay in the amount of \$1238.80 plus interest at 6 percent and restoration of Mr. Garcia's seniority.⁶

11. The Government has made reasonable efforts to secure Hahn & Clay's voluntary compliance with the Executive Order and the Rules and Regulations issued thereunder through conciliation and persuasion as required by 41 CFR 60-1.20(b) and 60-2.2(c)(2).

PROPOSED ORDER

Hahn & Clay having been found in non-compliance with Executive Order 11246, and its implementing rules and regulations, it is recommended that the following Order be entered:

Ordered, pursuant to Section 209 of Executive Order 11246, as amended, and 41 CFR 60-1.26(b), that, with respect to Hahn & Clay, any and all existing United States Government contracts and subcontracts are hereby cancelled and terminated and further, that Hahn & Clay is hereby declared ineligible for further contracts and subcontracts with the United States Government.

Dated: December 9, 1976, Washington, D.C.

BURTON S. STERNBERG,
Administrative Law Judge.

⁴ 41 CFR 601.32 provides that the sanctions and penalties contained in Subpart D of the Order may be exercised against any contractor who allows discrimination against an individual filing a complaint under the Order or any other Federal Law requiring equal employment opportunity.

⁵ *Bradington v. IBM*, 360 F. Supp. 845, 853, Aff'd, without OP, (CA4 Md) 492 F. 2d 1240.

⁶ Back pay computations are attached hereto as Appendix A.

Back pay: Hahn & Clay's total back pay liability arising out of the improper Garcia discharge is, based on a straight time 40 hour week.

Unemployed

<u>Weekly Pay Period</u>	<u>40 hour week</u>	<u>Amount of Back Pay</u>
3 Jan 75	8 hrs x \$5.80 p/h	\$ 46.40
6-10 Jan 75	40 hrs x \$5.80 p/h	232.00
13-14 Jan 75	16 hrs x \$5.80 p/h	92.80

Employed at Hunt Tools (\$5.50 p/h)

<u>Weekly Pay Period</u>	<u>40 hour week</u>	<u>Amount of Back Pay</u>
15-17 Jan 75	Actual: 29 hrs x \$5.50p/h=\$159.00 Difference: 24 hrs x \$.30p/h=\$ 7.20	\$ 7.20
20-24 Jan 75	Actual: 39 hrs x \$5.50p/h=\$214.50 Difference: 39 hrs x \$.30p/h= 11.70 plus 1 hr x \$5.80p/h=\$ 5.80	\$ 17.50
27-31 Jan 75	Actual: 24-1/2 hrs x \$5.50p/h=\$134.75 Difference: 24-1/2 hrs x \$.30p/h=\$ 7.35 plus 15-1 hrs x \$5.80p/h=\$ 89.90	\$ 97.25
3-7 Feb (3-4Feb) (5-7Feb) (5 Feb Cost of Living)	Actual: 41-1/2 hrs x \$5.50p/h=\$228.25 Difference: 16 hrs x \$.30p/h = \$ 4.80 24 hrs x \$.55p/h = \$ 13.20	\$ 18.00
10-14 Feb	Actual: 28 hrs x \$5.80p/h=\$154.00 Difference: 28 hrs x \$.55p/h=\$ 15.40 12 hrs x \$6.05p/h=\$ 72.60	\$ 88.00
17-21 Feb 76	Actual: 39 hrs x \$5.50p/h=\$214.50 Difference: 39 hrs x \$.55p/h=\$ 21.40 1 hr x \$6.05p/h=\$ 6.05	\$ 27.45
24-26 Feb 76	Actual: 10 hrs x \$5.50p/h=\$55.00 Difference: 10 hrs x \$.55p/h=\$ 5.50 14 hrs x \$6.05p/h=\$84.70	\$ 90.20
	TOTAL-not including interest	\$716.80

Restoration of all seniority rights including vacation pay as follows:

1975 Vacation - 40 hrs at \$6.05 p/h	\$242.00
1976 Vacation - 40 hrs at \$6.75 p/h	270.00
TOTAL-not including interest	\$512.00

GRAND TOTAL. \$1228 80

[PR Doc.77-26598 Filed 9-12-77;8:45 am]

**Employment and Training Administration
INDIAN AND NATIVE AMERICAN
ECONOMIC STIMULUS PROGRAM**

Plans for Allocating Fiscal Year 1978 Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice provides the plans of the Employment and Training Administration for allocating funds for the Fiscal Year 1978 Native American Economic Stimulus Program (NAESP).

DATE: Proposals must be received in the manner indicated below, by 4:45 p.m. on October 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Alexander S. MacNabb, Director, Division of Indian and Native American Programs, Room 6402, 601 D Street NW., Washington, D.C. 20213.

SUPPLEMENTARY INFORMATION: Pursuant to the Economic Stimulus Appropriations Act of 1977, the Division of Indian and Native American Programs (DINAP) of the Department of Labor announced on Tuesday, July 26, 1977, at 42 FR 38022 a program of new initiatives to support efforts to improve the internal strengths of Indian communities. That announcement described the plans for use of \$14,000,000 in Fiscal Year 1977 funds for the Native American Economic Stimulus Program (NAESP). An additional \$17,000,000 has been made available for the NAESP in Fiscal Year 1978 funds, and this announcement describes the plans for Fiscal Year 1978 programs to be funded with this money.

Like the Fiscal Year 1977 funds, this additional \$17,000,000 will be utilized to fund special employment and training projects that will assist in the process of economic development on Federal and State Indian reservations; in Indian communities in the State of Oklahoma; and in Alaska Native Villages and communities. Fifteen program categories have been selected for Fiscal Year 1978 and will be funded by competitive process. Eligible title VI prime sponsors will be mailed copies of the Solicitation for Grant Applications (SGA), which includes instructions for completion and submission of the grant application package, the fifteen individual Statements of Work, and the criteria by which proposals will be evaluated. The Statements of Work include the program objectives and a description of specific tasks to be performed. Governing regulations will be those contained in 29 CFR Part 97 Subpart D.

The fifteen categories, and the amounts tentatively set-aside for each, are as follows: Paramedical Training, \$1,000,000; Paralegal Training, \$1,000,000; Management Training, \$1,000,000; Agriculture Training, \$1,000,000; Aquaculture Training, \$1,000,000; Industrial Park Management Training, \$1,000,000; Road Construction Training, \$1,000,000; Domestic Fuel Development Training, \$1,000,000;

Vietnam-Era Veterans Training, \$1,000,000; Hotel/Motel Management Training, \$1,000,000; Waste Disposal Training, \$1,000,000; Emergency Vehicle Operation Training, \$1,000,000; Apprenticeship Outreach, \$3,000,000; Telecommunications Training, \$1,000,000, and Electric Power Training, \$1,000,000.

Eligible applicants will be those DINAP prime sponsors who are eligible for CETA title VI funds. Additionally, fully accredited nonprofit medical institutions may submit proposals for paramedical training funds, fully accredited nonprofit law schools may submit proposals for paralegal training funds, nonprofit management organizations may submit proposals for management training funds, fully accredited universities or colleges having degree programs in hotel/motel management may submit proposals for hotel/motel management training funds, and trade unions may submit proposals for apprenticeship outreach funds. Eligible nonprofit organizations may request in writing or by telephone that copies of the SGA be mailed to them. Telephone requests should be made to Herman Narcho on 202-376-6011.

The deadline for proposal receipt by DINAP in all fifteen program categories, including the five for which certain nonprofit organizations are eligible to apply, is 4:45 p.m. on October 17, 1977. Proposals will be evaluated on the basis of objective criteria, which is contained in the SGA, by a panel composed of one employment and training specialist from the Department of Labor, representatives from other appropriate Federal agencies, and nonprofit national Indian and Native American organizations.

Signed in Washington, D.C., this 29th day of August 1977.

LAMOND GODWIN,
Administrator,
Office of National Programs.

[FR Doc. 77-26629 Filed 9-12-77; 8:49 am]

**Occupational Safety and Health
Administration**

ALASKA

**Approval of Plan Supplement;
Amended Legislation**

AGENCY: Occupational Safety and Health Administration.

ACTION: Notice of Approval of Alaska's Amended Legislation.

SUMMARY: This document gives notice of the approval of a State-initiated plan change necessitated by legislative amendments to the Alaska Occupational Safety and Health Act.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 677) (hereinafter referred to as the Act) for the review of changes and progress in States which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the FEDERAL REGISTER (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision and a description of the plan. On February 7, 1977, the State of Alaska submitted a supplement to the plan involving a State-initiated change to the Seattle Regional Office of the Occupational Safety and Health Administration. Following regional review, the supplement was forwarded to the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) for her determination as to whether it should be approved. The supplement is described below.

DESCRIPTION OF THE SUPPLEMENT

Pursuant to 29 CFR Part 1953, Subpart E, the State submitted amendments to its enabling legislation (§§ 18.60.010 through 18.60.105, Alaska Statutes). The amended legislation (House Bill No. 588) was signed by Governor Jay S. Hammond on June 29, 1976, and became effective June 30, 1976. The legislation provides for the following:

- (1) Additional requirements on the Alaska Department of Labor to publicize promulgation of regulations and standards and granting of variances (§ 18.60.020(b));
- (2) Additional considerations for qualifications for safety inspectors (§ 18.60.055);
- (3) Reporting of fatalities and hospitalizations in the event of an employment accident and restrictions on moving materials related to the accident (§ 18.60.058);
- (4) An employer general duty provision § 18.60.075(a) identical to that in the Federal Act except for its provision that the hazard "in the opinion of the Commissioner" could cause death or serious physical harm. This language would appear to be as broad as § 5(a)(1). We do not think that this imposes any additional substantive requirements; it merely reflects the fact that the establishment of any violation is a determination of the Commission. Subject to evaluation it is approved.
- (5) Additional provisions for employee and employee representative confidentiality and anonymity (§§ 18.60.087 and 18.60.088(b)); and
- (6) Procedures for judicial review which include appeal right to the Alaska Superior Court for the Alaska Department of Labor (§ 18.60.097).

LOCATION OF THE PLAN AND ITS SUPPLEMENT FOR INSPECTION AND COPYING

A copy of the State's plan and its supplement may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3112, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6048, Federal Office Building, Seattle, Washington 98174; and the Alaska Department of Labor, Juneau, Alaska 99801.

PUBLIC PARTICIPATION

Under § 1953.2(c) of this chapter the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the Alaska supplement described above is consistent with commitments contained in the approved plan, which were previously made available for public comment. Accordingly, it is found that further public comment and notice is unnecessary.

DECISION

After careful consideration, the Alaska plan supplement described above is hereby approved under Subpart E of Part 1953 of this chapter. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Washington, D.C., this 29th day of August 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 77-26347 Filed 9-12-77; 8:45 am]

NATIONAL SCIENCE FOUNDATION

STEERING COMMITTEE OF NSF ADVISORY COUNCIL

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Steering Committee of the NSF Advisory Council.

PLACE: Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

DATE: September 30, 1977.

TIME: 9 a.m.

TYPE OF MEETING: Open.

CONTACT PERSON: Ms. Margaret L. Windus, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 518, Washington, D.C. 20550. Telephone: 202-632-4384.

PURPOSE OF STEERING COMMITTEE: The purpose of the Steering Com-

mittee, composed of members of the NSF Advisory Council, is to assist the Chairperson and Foundation staff in planning Council activity and related matters not requiring the formation of a separate task group.

SUMMARY MINUTES: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

AGENDA: To review with cognizant NSF staff the issues being studied by the four task groups and other issues of general concern.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

SEPTEMBER 6, 1977.

[FR Doc. 77-26551 Filed 9-12-77; 8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on September 6, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Center for Education Statistics, Vocational Education Data System, NCES 2404, 1 through 6, single time, local educational agencies, postsecondary institutions, present and former students, Laverne V. Collins, 395-5867.

Center for Disease Control, Revised Compendium of Materials for Noise Control, single time, manufacturers of noise control materials, Ellett, C. A., 395-5867.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration: Application for Flood Insurance, Renewal Application, Change Endorsement and Cancellations, on occasion, residents and

businesses in flood prone areas, housing, veterans and labor division, 395-3532. Inspection and Estimate, Adjuster's Report, Worksheet, notice of loss, proof of loss, etc., on occasion, residents and businesses in flood prone areas, housing, veterans and labor divisions, 395-3532.

DEPARTMENT OF THE INTERIOR

Law Enforcement Assistance Administration, 1977 Census of Public and Private Juvenile Detention, Correctional and Shelter facilities, CJ-17, CJ-29, annually, public and private juvenile correctional facilities, Richard Elstinger, 395-6140.

DEPARTMENT OF THE INTERIOR

Bureau of Sport Fisheries and Wildlife, Recreation Use Survey: Arctic National Wildlife Range, single time, all recreationists 1977-78, Ellett, C. A. 395-5887.

REVISIONS

UNITED STATES INTERNATIONAL TRADE COMMISSION

Color Television Receivers and Subassemblies, (producers' survey), quarterly, U.S. producers of color TV receivers, C. Louis Kincannon, 395-3211.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration, Regulations Under the Packers and Stockyards Act, on occasion, meat packers, market agencies, and dealers, Ellett, C. A., 395-5887.

Food and Nutrition Service, Monthly Report of the Special Supplemental Food Program for Women, Infants, PNS 187, monthly, State agencies, Caywood, D. P., 395-3443.

DEPARTMENT OF COMMERCE

Bureau of Census: Metal Cans (Shipments), M-34D, monthly, can manufacturers, C. Louis Kincannon, 395-3211.

Selected Instruments and Related Products—Annual Report, MA-38B, annually, manufacturers of instruments, C. Louis Kincannon, 395-3211.

Converted Flexible Packaging Products—Quarterly Report, MQ-26F, quarterly, plants which convert flexible packaging materials, C. Louis Kincannon, 395-3211.

Plastic Bottles, Monthly Report, M30E, monthly, manufacturers of plastic bottles, C. Louis Kincannon, 395-3211.

Construction Machinery and Reference List, MA35-D, annually, manufacturing establishment of construction machinery, C. Louis Kincannon, 395-3211.

Pharmaceutical Preparations, Except Biologicals, MA-28G, annually, drug manufacturers, C. Louis Kincannon, 395-3211.

Plumbing Fixtures (Production, Shipments, and Stocks), MQ-34E, quarterly, manufacturers of plumbing fixtures, C. Louis Kincannon, 395-3211.

Radio Receivers and Television Sets, Phonographs and Record Players, Speakers and Related Equipment, MA-36M, annually, manufacturing establishment of consumer electronics, C. Louis Kincannon, 395-3211.

Mattresses, Foundations, and Dual Purpose Sleep Furniture, M-25E, monthly, manufacturers, C. Louis Kincannon, 395-3211.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Foreign Language Graduate Fellowship Forms (NDEA), OE7632, annually, institutions of higher education, Laverne V. Collins, 395-5867.

DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

Community Planning and Development:
Satisfaction of Conditional Approval, HUD
7015.14, single time, CDBG with grant
conditions, budget review division, 395-
4775.
Request for Release of Funds and Certifi-
cation, HUD 7015.15, single time, CDBG
grantees, budget review division, 395-
4775.

DEPARTMENT OF LABOR

Employment Standards Administration, Ap-
plication for Farm Labor Contractor Iden-
tification Card, WH-412, annually, migrant
agricultural workers, Strasser, A. and Paul
Planchon, 395-5867.
Employment and Training Administration,
FSB and SUA—Monthly Activity Report,
Characteristics of Claimants and Benefit
Rights and Experience, MA5-141, MA5-142,
and MA5-143, weekly, State employment
security agencies, Lowry, R. L., 395-3772.

DEPARTMENT OF THE INTERIOR

Bureau of Mines, Talc, Soapstone, and Py-
rophyllite (Production), 6-1290-A, annual-
ly, producers of talc, C. Louis Kincannon,
395-3211.

EXTENSIONS

ENVIRONMENTAL PROTECTION AGENCY

Labor Law Compliance Review, EPA-1900-18,
other (see SF-83), business firms, Strasser,
A. and Paul Planchon, 395-5867.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Services:
Sugarcane Inquiries, other (see SF-83),
sugar mills, Ellett, C. A., 395-5867.
Retail Seed Price Inquiry, CE10-30, semi-
annually, retail seed dealers, Ellett, C. A.,
395-5867.
Packers and Stockyards Administration, Spe-
cial Report, "Statement of Accounts Pay-
able for Livestock," P&SA-135, on occasion,
livestock market agencies dealers and meat
packers, Ellett, C. A., 395-5867.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Adminis-
tration, Methodology Study—Marine Rec-
reational Fisheries Statistics, single time,
sports fishermen, Ellett, C. A., 395-5867.

DEPARTMENT OF DEFENSE

Department of the Air Force, Cost Perform-
ance Report, monthly, defense contractors,
Manha Traynham, 395-4529.

DEPARTMENT OF HEALTH, EDUCATION, AND
WELFARE

Health Care Financing Administration (Medi-
care), Statement of Support of Claim for
Emergency Hospital Service, SSA-1771, on
occasion, attending physicians in private
and State hospitals, Richard Eisinger, 395-
6140.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Services:
Application to File Declaration of Inten-
tion (Immigrants), N-300, on occasion,
permanent resident alien over 18 years
old, Warren Topellus, 395-5872.
Agreement by Transportation Line to Ass-
ume Responsibility for Removal of
Aliens, 1-259A, on occasion, transporta-
tion lines, Warren Topellus, 395-5872.
Application for Status as Permanent Resi-
dent—Cuba Refugee, I-485A, on occasion,
Cuban refugee, Lowry, R. L., 395-3772.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc. 77-26631 Filed 9-12-77; 8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for
clearance of reports intended for use in
collecting information from the public
received by the Office of Management
and Budget on September 7, 1977 (44
U.S.C. 3509). The purpose of publishing
this list in the FEDERAL REGISTER is to in-
form the public.

The list includes the title of each re-
quest received; the name of the agency
sponsoring the proposed collection of
information; the agency form num-
ber(s), if applicable; the frequency with
which the information is proposed to be
collected; the name of the reviewer or
reviewing division within OMB, and an
indication of who will be the respond-
ents to the proposed collection.

Requests for extension which appear
to raise no significant issues are to be
approved after brief notice through this
release.

Further information about the items
on this daily list may be obtained from
the Clearance Office, Office of Manage-
ment and Budget, Washington, D.C.
20503 (202-395-4529), or from the re-
viewer listed.

NEW FORMS

DEPARTMENT OF LABOR

Labor Management and Service Administra-
tion:

ERISA Plan Administrators Attitudinal
Questionnaire, LMSA-82T, single time,
private pension plan sponsors, Strasser,
A. and Lowry, R. L., 395-5867.

Holdings of Specific Common Stocks—
Yearly, LMSA-80T, single time, money
managers and pension plan administra-
tors, Strasser, A. and Lowry, R. L., 395-
5867.

ERISA—Annual Compositional Data; Funds
Flow Data, LMSA-81T, single time, pri-
vate pension plan sponsors, Strasser, A.
and Lowry, R. L., 395-5867.

Quarterly Acquisition and Disposition of
Specific Common Stocks, LMSA-78T,
single time, banks and investment man-
agers, Strasser, A. and Lowry, R. L., 395-
5867.

ERSIA Quarterly Time Weighted Rate of
Return for Plan Assets, LMSA-76T, single
time, private pension plan administra-
tors, Strasser, A. and Lowry, R. L., 395-
5867.

Composition of Assets of Employee Benefit
Plans, LMSA-77T, single time, pension
plan money managers, Strasser, A. and
Lowry, R. L., 395-5867.

ERISA—Money Managers Attitudinal Que-
stionnaire, LMSA-79T, single time, banks
and investment firms, Strasser, A. and
Lowry, R. L., 395-5867.

REVISIONS

DEPARTMENT OF LABOR

Bureau of Labor Statistics, Monthly Report
on Labor Turnover and Annual Industrial
Classification Supplements, DL-1219,
monthly, industrial establishments,
Strasser, A., 395-5867.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc. 77-26632 Filed 9-12-77; 8:45 am]

SMALL BUSINESS
ADMINISTRATION

[Declaration of Disaster Loan Area No. 1368]

CALIFORNIA

Declaration of Disaster Loan Area

The counties of Imperial and San
Diego and adjacent counties within the
State of California, constitute a disaster
area because of physical damage result-
ing from high winds, heavy rains and
flooding which occurred on August 15-16,
1977. Eligible persons, firms and orga-
nizations may file applications for loans
for physical damage until the close of
business on October 31, 1977, and for
economic injury until May 31, 1978, at:

Small Business Administration, District Of-
fice, 880 Front Street, Federal Building,
Suite 4-S-33, San Diego, Calif. 92101.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Pro-
gram Nos. 59002 and 59008.)

Dated: August 31, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 77-26574 Filed 9-12-77; 8:45 am]

DALLAS DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration
Dallas District Advisory Council will
hold a public meeting at 10 a.m., Fri-
day, September 30, 1977, in the Board of
Directors' Room, Mezzanine Floor, Mer-
cantile National Bank, 1704 Main Street,
Dallas, Tex., 75201, to discuss such mat-
ters as may be presented by members,
staff of the Small Business Administra-
tion, or others present. For further in-
formation, write or call Emly S. Atkin-
son, 1100 Commerce, Room 3C36, Dallas,
Tex., 75242, (214-749-2706).

Dated: September 6, 1977.

K. DREW,
*Deputy Advocate for
Advisory Councils.*

[FR Doc. 77-26573 Filed 9-12-77; 8:45 am]

[Declaration of Disaster Loan Area No. 1397]

MISSISSIPPI

Declaration of Disaster Loan Area

The Counties of Choctaw, Clay, Kem-
per, Lowndes, Noxubee, Oktibbeha and
adjacent counties within the State of
Mississippi, constitute a disaster area as
a result of drought which caused severe
crop losses during the 1976 crop year and
continuing into the 1977 crop year. Eligi-
ble persons, firms, and organizations
may file applications for loans for phys-
ical damage until the close of business
on October 31, 1977, and for economic
injury until the close of business on
May 31, 1978, at:

Small Business Administration, District Of-
fice, Petroleum Building, Room 690, 200
East Pascagoula, Jackson, Miss. 39201.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date, August 31, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc. 77-26575 Filed 9-12-77; 8:45 am]

DEPARTMENT OF THE TREASURY

Customs Service

NON-RUBBER FOOTWEAR FROM URUGUAY

Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: United States Customs Service, Treasury Department.

ACTION: Initiation of countervailing duty investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and that a countervailing duty investigation has been initiated for the purpose of determining whether or not benefits are paid by the Government of Uruguay to manufacturers/exporters of non-rubber footwear which constitute the payment of a bounty or grant within the meaning of the U.S. Countervailing Duty Law.

A preliminary determination will be made not later than January 8, 1978, and a final determination no later than July 8, 1978.

EFFECTIVE DATE: On July 8, 1977, this investigation was initiated.

FOR FURTHER INFORMATION CONTACT:

Mr. Vincent P. Kane, Duty Assessment Division, Office of Operations U.S. Customs Service, Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: A petition in satisfactory form was received on July 8, 1977, alleging that benefits conferred by the Government of Uruguay upon the manufacture, production or exportation of non-rubber footwear from Uruguay 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).

The non-rubber footwear specified in the petition is classified under items 700.05 through 700.85 inclusive of the Tariff Schedules of the United States Annotated (TSUSA), except items 700.28, 700.51, 700.52, 700.53, 700.54 and 700.60.

Pursuant to section 303(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary 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 that statute within six months of receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final determination must be issued within 12 months of the receipt of such petition. Therefore, a preliminary determination on this petition will be made no later than January 8, 1978, as to whether or not the alleged payments or bestowals conferred by the Government of Uruguay upon the manufacture, production, or exportation of the merchandise described above 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 July 8, 1978.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 14, July 1, 1977, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954 and § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

SEPTEMBER 1, 1977.

[FR Doc. 77-26952 Filed 9-12-77; 8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 479]

ASSIGNMENT OF HEARINGS

SEPTEMBER 8, 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 53965 (Sub 129), Graves Truck Line, Inc. now assigned November 10, 1977 at Kansas City, Mo. is cancelled and transferred to Modified Procedure.

MC 11207 (Sub-No. 387), Deaton, Inc., now being assigned December 6, 1977, at Jacksonville, Fla. (1 day), in a hearing room to be later designated.

MC 143187, Seyforth Express, Inc., now being assigned December 7, 1977 (1 day), at Jacksonville, Fla. in a hearing room to be later designated.

MC 109397 (Sub-No. 350), Tri-State Motor Transit Co., now being assigned December 8, 1977 (2 days), at Jacksonville, Fla. in a hearing room to be later designated.

MC 115182 (Sub-No. 350), Poole Truck Line, Inc. and MC 142610 (Sub-No. 4), Action Motor Express, Inc., now being assigned December 12, 1977, at Jacksonville, Fla. (2 days), in a hearing room to be later designated.

MC 115215 (Sub-No. 24), New Truck Lines, Inc., now being assigned December 14, 1977, (3 days), at Jacksonville, Fla. in a hearing room to be later designated.

MC 143112 Western Kansas Express, Inc., now being assigned November 28, 1977 (2 weeks) at Wichita, Kans., in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 77-26501 Filed 9-12-77; 8:45 am]

[Notice No. 36574]

DEMURRAGE CHARGES CAUSED BY SEVERE WINTER WEATHER

Petition of Railroads Seeking Authorization to Waive

SEPTEMBER 8, 1977.

In an order served August 12, 1977, the Commission granted specified rail carriers the right to waive a portion of demurrage charges caused by severe winter weather. (Published in the FEDERAL REGISTER, on August 19, 1977, 42 FR 41948.) In that order, the Commission stated that other carriers who want to participate in the proposal could, upon notifying the Commission in writing of their intent to do so. In letters filed August 23, 1977, by The Buffalo Terminal Railway Co., and August 29, 1977, by The South Buffalo Railway Co., these two carriers gave notice of their intent to participate in the approved proposal.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 77-26600 Filed 9-12-77; 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

CIVIL AERONAUTICS BOARD.

[M-51]

SEPTEMBER 7, 1977.

TIME AND DATE: 10 a.m., September 12, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Docket 25908 et al., Transatlantic Route Proceeding (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The President has requested that the Board submit its decision in the Transatlantic case to him in early October 1977. In order for the Board to have sufficient time to consider the matter and to be in a position to decide this case in a timely manner it is necessary that the Board meet on this matter on less than seven days' notice. Accordingly the following Members have voted that agency business requires that the Board meet on less than seven days' notice and that no earlier announcement was possible:

Chairman Alfred E. Kahn
Vice Chairman Richard J. O'Melia
Member G. Joseph Minetti
Member Lee R. West
Member Elizabeth E. Bailey

[S-1297-77 Filed 9-9-77;9:10 am]

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., September 12, 1977.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial matter canceled from September 7.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1292-77 Filed 9-9-77;9:10 am]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., September 16, 1977.

PLACE: 2033 K Street NW., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1293-77 Filed 9-9-77;9:10 am]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., September 14, 1977.

PLACE: 2033 K Street NW., Washington, D.C. 5th Floor Hearing Room.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

CTA/CPO Regulations/Interim Status Report.
Regulation 1.61/Exchange Enforcement of CFTC Act.
Foreign Trader Policy Discussion.

Portions closed to the public:

Enforcement Matter.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1294-77 Filed 9-9-77;9:10 am]

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:30 p.m., September 9, 1977.

PLACE: Telephone Conference Call.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

APPLICATION FOR CONSENT TO MERGE AND ESTABLISH BRANCHES

First Bank and Trust, Boynton Beach, Fla., an insured State nonmember bank, for consent to merge under its charter, and with the title "First Bank and Trust, Palm Beach County," with First Bank, Delray Beach, Fla., Delray Beach, Fla., and First Bank West, Palm Beach County (P.O. Lake Worth), Fla., also insured State nonmember banks, and to establish the two offices of First Bank, Delray Beach, Fla., and the sole office of First Bank West as branches of the resultant bank.

RECOMMENDATIONS WITH RESPECT TO THE INITIATION OF CEASE-AND-DESIST 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-1283-77 Filed 9-8-77;11:45 am]

6

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 2:45 p.m., September 9, 1977.

PLACE: Telephone Conference Call.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Memorandum and resolution proposing the final adoption of an amendment to Part 343 of the Corporation's rules and regulations, entitled "Insured State Nonmember Banks Which Are Municipal Securities Dealers," to defer the effective date of the part from September 15, 1977 to October 31, 1977.

Resolution changing the title of the Division of Management Systems and Economic Analysis to the "Division of Management Systems and Financial Statistics" and amending the Manning Table of the Division of Management Systems and Financial Statistics and of the Division of Research.

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary,
202-389-4446.

[S-1284-77 Filed 9-8-77;11:45 am]

7

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Thursday, September 15, 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. Appropriations and budget—Budget Execution Report.
- IV. Report from the Task Force on Independent Expenditures.
- V. Code of Ethics—proposed amendments.
- VI. Pending legislation.
- VII. Presidential reorganization project.
- VIII. Liaison with other Federal agencies.
- IX. Pending litigation—status report.
- X. Advisory opinions—status report.
- XI. Routine administrative matters.

Portions closed to the public:

Executive session: compliance; audit reports; personnel.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, telephone:
202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-1286-77 Filed 9-8-77;3:27 pm]

8

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, September 14, 1977, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, Telephone
202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-1287-77 Filed 9-8-77;3:27 pm]

9

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 42, No. 171, page 44348, Friday, September 2, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., September 8, 1977.

STATUS: Closed meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall, 202-376-3012.

CHANGES IN THE MEETING:

The following item has been withdrawn from the open agenda and will be taken up during the closed portion of the meeting:

Service Corporation Activity Application—HONOFED Corp., Honolulu, Hawaii, a wholly-owned Service Corporation of Honolulu FS&LA, Honolulu, Hawaii.

No. 68, September 8, 1977.

[S-1289-77 Filed 9-8-77;3:45 pm]

10

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., September 14, 1977.

PLACE: 320 First Street NW., Room 630, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall, 202-376-3012.

MATTERS TO BE CONSIDERED:

Branch Office Application—Phenix Federal Savings and Loan Association, Phenix City, Ala.

Preliminary Application for Conversion to a Federal Charter—Winchester Building and Savings Association, Winchester, Ky.

RSU Application—Toledo Home Federal Savings and Loan Association, Toledo, Ohio.

Branch Office Applications Concurrently Submitted—First Federal Savings and Loan Association of Huntsville, Huntsville, Ala.; and Security Federal Savings and Loan Association of Huntsville, Huntsville, Ala.

No. 67, September 8, 1977.

Notice is being made at the earliest practicable time.

[S-1290-77 Filed 9-8-77;3:47 pm]

11

FEDERAL POWER COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 44867, September 7, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 8, 1977, continued September 9, 1977, continued September 9, 1977.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company
G-69.—RP77-72, East Tennessee Natural Gas Co.; RP77-74, El Paso Natural Gas Co.; RP77-86, Tennessee Gas Pipeline Co.; RP77-87, Tennessee Natural Gas Lines, Inc.; RP77-89, Transcontinental Gas Pipe Line Corp.; RP77-92, United Gas Pipe Line Co.

[S-1291-77 Filed 9-8-77;3:47 pm]

12

FEDERAL RESERVE SYSTEM.

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 44868, September 7, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, September 13, 1977.

CHANGES IN THE MEETING: Addition of the following closed item to the meeting:

Proposed statement to be presented to the House Committee on Banking, Finance and Urban Affairs regarding H.R. 7918, a bill to amend the Federal Financing Bank Act of 1973.

Previously announced closed items:
1. Proposed salary structure adjustments at the Federal Reserve Banks of Boston, Atlanta, and Kansas City.

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

SEPTEMBER 8, 1977.

[S-1285-77 Filed 9-8-77;2:18 pm]

13

RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 45733, September 12, 1977.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, September 13, 1977, 10 a.m.

CHANGES IN MEETING:

1. Date of previously announced meeting changed to: Wednesday, September 14, 1977, 10 a.m.

2. Items 14 and 15 are added.

MATTERS TO BE CONSIDERED: Board Meeting concerning:

14. AMF Inc. (formerly American Machine & Foundry Co.), consolidated

with: AMF Bealrd, Inc.; W. J. Voit Rubber Corp., The Cuno Engineering Corp., fiscal year ended September 31, 1968.

15. Witnesses in Court of Claims cases.

STATUS: Item 14 is open to the public, Item 15 is closed to the public.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General-Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446 (202-254-8277).

Dated: September 7, 1977.

GOODWIN CHASE,
Chairman.

[S-1288-77 Filed 9-8-77;3:27 pm]

14

SECURITIES AND EXCHANGE COMMISSION.

TIME AND DATE: Thursday, September 1, 1977, 3:30 p.m.

STATUS: Closed meeting.

SUBJECT MATTER:

Consideration of regulatory matter.

Chairman Williams, Commissioners Loomis, Evans, and Pollack voted to close the meeting and determined that no earlier notice thereof was possible.

SEPTEMBER 1, 1977.

[S-1295-77 Filed 9-9-77;9:10 am]

15

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 44329, September 2, 1977.

PREVIOUS ANNOUNCED TIME AND DATE: September 8, 1977, 10 a.m.

CHANGES IN THE MEETING: Additional closed items to be considered after the open meeting at 10 a.m.

The following additional items will be considered on September 8, 1977, immediately following the open meeting:

Institution of injunctive action.

Authorization of staff member to testify.

Chairman Williams, Commissioners Loomis, Evans, and Pollack voted to approve the above changes and determined that no earlier notice thereof was possible.

SEPTEMBER 8, 1977.

[S-1296-77 Filed 9-9-77;9:10 am]

Federal register

TUESDAY, SEPTEMBER 13, 1977

PART II



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**

**Federal Insurance
Administration**



**APPEALS FROM
PROPOSED FLOOD
ELEVATION
DETERMINATIONS**

**Final Flood Elevation Determinations
for Various Communities**

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-2962]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, City of Cairo, Alexander County, Ill.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the City of Cairo, Alexander County, Ill. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the City of Cairo, Alexander County, Ill.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Cairo, Alexander County, Ill. are available for review at the City Hall, 1501 Washington, Cairo.

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 his final determinations of flood elevations for the City of Cairo, Alexander County, Ill.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Local runoff within the levee.	Flooding contained within an area of the city between 21st St. and 40th St. and between Washington Ave. and Commercial St. Includes parts of Highland Ave., Magnolia Dr., Park Ave., and St. Mary's Place West. Ponding conditions also exist in the extreme northeast corner, along with some local ponding near the southwest corner of the levee system.	312
Mississippi River.....	Interstate 57.....	334
	U.S. 60/62.....	330
Ohio River.....	Illinois Central RR.....	332
	U.S. 31/60/62.....	330

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-25560 Filed 8-12-77; 8:45 am]

[Docket No. FI-2890]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Town of Funkstown, Washington County, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Town of Funkstown, Washington County, Md. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Town of Funkstown, Washington County, Md.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Funkstown, Washington County, Md., are available for review in the fire hall, Westside and Baltimore Streets, Funkstown.

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 his final determinations of flood elevations for the Town of Funkstown, Washington County, Md.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Antietam Creek....	Interstate 70.....	459
	Downstream of Ridge Rd.	462
	Upstream of Baltimore St.	469

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-25561 Filed 8-12-77; 8:45 am]

[Docket No. FI-2416]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, City of Fenton, St. Louis County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the City of Fenton,

St. Louis County, Mo. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the City of Fenton, St. Louis County, Mo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Fenton, St. Louis County, Mo., are available for review at the City Hall, 625 North Highway 141, Fenton, Mo.

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 his final determinations of flood elevations for the City of Fenton, St. Louis County, Mo.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Meramec River	SE. corporate limits	422
	Gravois Rd.	423
	State Rd. 30	423
	Larkin Williams Rd.	423
	Fabricator Dr.	424
	Interstate Route 44	425
Fenton Creek	Cassen's Dr. (extended)	428
	NW. corporate limits	430
	SE. corporate limits	422
	Moond St.	422
	Ferry St.	422
	Gravois Rd.	423
Yarnell Creek	Larkin Williams Rd.	423
	Fablick Dr.	423
	Green Acres Lane	423
	Industrial Court Rd.	430
	Horan Dr.	432
	Gibson Dr.	440
	Bowles Ave.	459

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25562 Filed 9-12-77; 8:45 am]

[Docket No. FI-2664]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Village of Briarcliff Manor, Westchester County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Village of Briarcliff Manor, Westchester County, N.Y.

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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Village of Briarcliff Manor, Westchester County, N.Y.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Briarcliff Manor, Westchester County, N.Y., are available for review at the Village office, 1111 Pleasantville Road, Briarcliff Manor, N.Y.

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 his final determinations of flood elevations for the Village of Briarcliff Manor, Westchester County, N.Y.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has

been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Pocantico River	South State Rd.	231
	State Route 9A/100	233
	Pleasantville Rd (upstream of bridge)	238
	State Route 9A (exit ramp)	241
	Upstream corporate limits	273
Caney Brook	Pocantico Lake	233
	Long Hill Rd. (upstream of bridge)	235
	Sleepy Hollow Rd.	235

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25563 Filed 9-12-77; 8:45 am]

[Docket No. FI-2778]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Village of East Randolph, Cattaraugus County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Village of East Randolph, Cattaraugus County, N.Y.

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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Village of East Randolph, Cattaraugus County, N.Y.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of East Randolph, Cattaraugus County, New York are available for review at the Village Hall, Main Street, East Randolph, N.Y.

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 his final determinations of flood elevations for the Village of East Randolph, Cattaraugus County, N.Y.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Elm Creek.....	Downstream corporate limits.	1,280
	Spring St.....	1,311
	Main St.....	1,320
	Upstream corporate limits.	1,340
Stillson Pond tributary.	Confluence with Elm Creek.	1,316
	Upstream corporate limits.	1,345

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (39 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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25564 Filed 9-12-77;8:45 am]

[Docket No. FI-2783]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Village of Fair Haven, Cayuga County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Village of Fair Haven, Cayuga County, N.Y.

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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Village of Fair Haven, Cayuga County, N.Y.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Fair Haven, Cayuga County, N.Y. are available for review at the Post Office, Fair Haven, N.Y.

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 his final determinations of flood elevations for the Village of Fair Haven, Cayuga County, N.Y.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Little Sodus Bay....	Main St.....	249
	Phillips Lane (extended).	250
	Johns Rd. (extended).	250
	West Shore Rd. (extended).	250
	13th St. (extended)....	252
	10th St. (extended)....	252
	Ontario St. (extended).	252
Cottage St. (extended).	250	

(National Flood Insurance Act 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (39 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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25565 Filed 9-12-77;8:45 am]

[Docket No. FI-2804]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Village of Seacliff, Nassau County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Village of Seacliff, Nassau County, N.Y. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Village of Seacliff, Nassau County, New York.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Seacliff, Nassau County, N.Y., are available for review at the Village Hall, Seacliff and Summit Avenue, Seacliff, N.Y.

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 Administration gives notice of his final determinations of flood elevations for the Village of Seacliff, Nassau County, N.Y.

This final rule is issued 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 (Public L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Hempstead Harbor	8th Ave. (extended).....	13
	29th Ave. (extended).....	13
	Laurel Ave. (extended).....	13
	Littleworth Lane (extended).....	13
	South corporate limits.....	13

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25566 Filed 9-12-77;8:45 am]

[Docket No. FI-2740]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Town of Hamlin, Monroe County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Town of Hamlin, Monroe County, N.Y. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Town of Hamlin, Monroe County, N.Y.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Hamlin, Monroe County, N.Y., are available for review at the Bulletin Board in the Town Hall, 1658 Lake Road, Hamlin.

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 his final determinations of flood elevations for the Town of Hamlin, Monroe County, N.Y.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lake Ontario	Eastern corporate limits.....	251
	Martin Rd.	251
	Eastern limits of Beach State Park.....	251
	Western corporate limits.....	251

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25567 Filed 9-12-77;8:45 am]

[Docket No. FI-2734]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATION

Final Flood Elevation Determination; Town of Wilson, Niagara County, N.Y.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Town of Wilson, Niagara County, N.Y. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Town of Wilson, Niagara County, N.Y.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Wilson, Niagara County, N.Y., are available for review at the Town Hall, 375 Lake Street, Wilson.

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 his final determinations of flood elevations for the Town of Wilson, Niagara County, N.Y.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
East Branch Twelvemile Creek	Mouth on Lake Ontario.....	249
	Lake Rd.	256
	Youngtown Rd.	258
	Daniels Rd. (downstream crossing).....	203
	Con Rd.	310
	Daniels Rd. (upstream crossing).....	322
	Footbridge 3,000 ft. upstream of Daniels Rd.	327
	Bralley Rd.	330
	Cambria-Wilson Rd. (downstream crossing).....	354
	Chestnut Rd.	362
	Willow Rd.	365
	Cambria-Wilson Rd. (upstream crossing).....	368
	Willow Rd.	366
East Branch Twelvemile Creek, tributary east	Irish Rd.	366
	Willow Rd. and upstream.....	366
East Branch Twelvemile Creek, tributary south	Route 18.....	252
	Youngtown Rd.	271
	Fitch Rd.	291
	Tributary upstream of Fitch Rd.	297
	Corporate limits.....	302

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25568 Filed 9-12-77;8:45 am]

[Docket No. FI-2887]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination, City of Lakewood, Cuyahoga County, Ohio**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the City of Lakewood, Cuyahoga County, Ohio.

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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the City of Lakewood, Cuyahoga County, Ohio.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Lakewood, Cuyahoga County, Ohio are available for review at the Bulletin Board in the City Hall, Lakewood, Ohio.

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 his final determinations of flood elevations for the City of Lakewood, Cuyahoga County, Ohio.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Rocky River.....	Upstream corporate limits	607
	Abandoned Ford Park Dr.	603
	Sewer at sewage treatment plant.	595
	Park Dr.....	566
	Detroit Ave.....	579
	Lake Rd.....	576

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25569 Filed 9-12-77;8:45 am]

[Docket No. FI-2611]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination, Township of Lower Merion, Montgomery County, Pa.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Township of Lower Merion, Montgomery County, Pa.

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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Township of Lower Merion, Montgomery County, Pa.

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 his final determinations of flood elevations for the Township of Lower Merion, Montgomery County, Pa.

This final rule is issued 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). An opportunity for the com-

munity or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Lower Merion, Montgomery County, Pennsylvania are available for review at the Township Building, 75 East Lancaster Avenue, Ardmore, Pa.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Schuylkill River...	East corporate limits	38.0
	Reading RR bridge...	44.0
	Belmont Ave.....	47.0
	Flatrock Dam.....	55.0
	Young's Ford Rd. (extended).	58.0
Mill Creek.....	West corporate limits	65.0
	River Rd.....	56.0
	Rose Glen Rd.....	67.0
	Conshohocken State Rd.	120.0
	Williamson Rd.....	120.0
	Gulph Rd.....	161.0
	Mill Creek Rd.....	181.0
	Old Gulph Rd.....	208.0
	Black Rock Rd.....	259.0
	Morris Ave.....	275.0
	Harrison Ave.....	288.0
	Old Gulph Rd.....	296.0
	Ivy Mont Rd.....	351.0
	Montgomery Ave.....	364.0

(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: June 24, 1977.

JAY JANIS,
Under Secretary.

[FR Doc.77-25570 Filed 9-12-77;8:45 am]

[Docket No. FI-2963]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS**Final Flood Elevation Determination, Borough of Mifflin, Juniata County, Pa.**

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Borough of Mifflin, Juniata County, Pa.

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.)

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Borough of Mifflin, Juniata County, Pa.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Borough of Mifflin, Juniata County, Pennsylvania are available for review at the Council Meeting Room, Borough Building, 106 Tuscarora Street, Mifflin, Pa.

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 his final determinations of flood elevations for the Borough of Mifflin, Juniata County, Pa.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 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 Administration, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-25571 Filed 9-12-77; 8:45 am]

[Docket No. FI-2288]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Township of Springettsbury, York County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Township of Springettsbury, York County, Pa. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Program for the Township of Springettsburg, York County, Pa.

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.

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Left	Right
Codorus Creek	Northeastern corporate limits of the township of Springettsbury	298	(¹)	70
	Sherman Street Bridge (LR 60020)	343	(¹)	760
	Mundis Mill Road Bridge	350	(¹)	100
	Con Rail bridge	369	(¹)	129
Mill Creek	200 ft downstream from Route 30	362	(¹)	1,150
	Loucks Mill Road Bridge	362	(¹)	80
	Eberls Road Bridge	374	(¹)	60
	Con Rail bridge	388	(¹)	120
	Market Street Bridge	409	(¹)	760
	Route 124 bridge	433	(¹)	320
	Southern corporate limits of the township of Springettsbury	457	(¹)	49

¹ Corporation limits.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968) as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: June 24, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-25572 Filed 9-12-77; 8:45 am]

[Docket No. FI-2919]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Township of Wysox, Bradford County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Township of Wysox, Bradford County, Pa. These base

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Township of Springettsbury, York County, Pa.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Springettsbury, York County, Pa., are available for review at the lobby of the Municipal Building, 1501 Mount Zion Road, York, Pa.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level	Width from shoreline or bank of stream (facing downstream) to 100-yr flood boundary (feet)	
			Left	Right
Codorus Creek	Northeastern corporate limits of the township of Springettsbury	298	(¹)	70
	Sherman Street Bridge (LR 60020)	343	(¹)	760
	Mundis Mill Road Bridge	350	(¹)	100
	Con Rail bridge	369	(¹)	129
Mill Creek	200 ft downstream from Route 30	362	(¹)	1,150
	Loucks Mill Road Bridge	362	(¹)	80
	Eberls Road Bridge	374	(¹)	60
	Con Rail bridge	388	(¹)	120
	Market Street Bridge	409	(¹)	760
	Route 124 bridge	433	(¹)	320
	Southern corporate limits of the township of Springettsbury	457	(¹)	49

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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Township of Wysox, Bradford County, Pa.

ADDRESS: Maps and other information showing the detailed outlines of the

flood-prone areas and the final elevations for the Township of Wysox, Bradford County, Pa., are available for review at the office of Mr. James W. Ward, Township Secretary of Wysox, Ward Building, Wysox, Pa.

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 his final determinations of flood elevations for the Township of Wysox, Bradford County, Pa.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 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
	Asilam St.	711
	U.S. Route 6.	721
Landing Creek	Confluence with Susquehanna River.	712
	Masonite Rd.	723

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-25573 Filed 9-12-77; 9:45 am]

[Docket No. FI-2686]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, City of Brentwood, Williamson County, Tenn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the City of Brentwood, Williamson County, Tenn. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the City of Brentwood, Williamson County, Tenn.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Brentwood, Williamson County, Tenn., are available for review at the City Hall, 112 Pewitt Drive, Brentwood.

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 his final determinations of flood elevations for the City of Brentwood, Williamson County, Tenn.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum 1929
Little Harpeth River.	Downstream corporate limit.	624.8
	Granny White Pike...	637.0
	L&N RR	664.0
	Concord Rd.	672.7
	Moore Lane	713.7

(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 dele-

gation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-25574 Filed 9-12-77; 8:45 am]

[Docket No. FI-2770]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, City of Longview, Gregg and Harrison Counties, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the City of Longview, Gregg and Harrison Counties, Tex. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the City of Longview, Gregg and Harrison Counties, Tex.

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 his final determinations of flood elevations for the City of Longview, Gregg and Harrison Counties, Tex.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Longview, Gregg and Harrison Counties, Tex., are available for review at City Hall, 300 West Cotton Street, Longview, Tex.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Eastman Lake Creek	Doyle St.....	356
	Leona St.....	351
	Marshall Ave.....	332
	Confluence with drain No. 1.....	332
	Texas & Pacific RR... County boundary.....	328
	Cotton St.....	319
	Downstream corporate limits.....	316
Drain No. 1.....	Upstream corporate limits.....	337
	U.S. Highway 90.....	337
	Old RR alignment.....	335
Iron Bridge Creek	Level St.....	334
	Dean St.....	325
	Birdsong St.....	316
	Wells St.....	305
	Mango St.....	292
	Eldeville Rd.....	284
	Downstream corporate limits.....	274
Grace Creek.....	Upstream corporate limits.....	304
	Confluence with Drain No. 2.....	297
	East Fairmont St.....	287
	U.S. Highway 249.....	273
	Missouri-Pacific RR... Downstream corporate limits.....	269
	Downstream corporate limits.....	266
Wade Creek.....	Walk bridge.....	353
	Texas & Pacific RR... Gulf, Colorado and Santa Fe RR.....	344
	Cotton St.....	323
	Bonner St.....	314
	Electra St.....	308
	Green St.....	293
	High St.....	279
	Garfield Dr.....	269
	Confluence with Grace Creek.....	268
Harris Creek.....	Lynnwood Lane.....	372
	Evergreen St.....	368
	Reel Rd.....	363
	Loop 281.....	334
	Lincoln Rd.....	319
	Marshall Ave.....	306
	Lake Lamond Rd.....	296
	Confluence with Grace Creek.....	279
Drain No. 4.....	Scenic Dr.....	367
	Lane Wells Dr.....	347
	Loop 281.....	336
	Confluence with Harris Creek.....	324
Guthrie Creek.....	Wood Place.....	323
	Confluence with Oakland Creek.....	305
	Johnston St.....	297
	Glencrest Lane.....	289
	Spur 63.....	285
Johnston Creek.....	Loop 281.....	366
	Commander Dr.....	338
	Drake Blvd.....	351
	Hollybrook Dr.....	344
	Delwood Dr.....	337
	Eden Dr.....	319
	Confluence with Guthrie Creek.....	305
Oakland Creek.....	Hollybrook Dr.....	332
	Delwood Dr.....	319
	Eden Dr.....	312
Coushatta Hills Creek.....	Hollybrook Dr.....	379
	U.S. Highway 289.....	362
	Navajo Trail.....	337
	North 4th St.....	329
	Delwood Dr.....	319
	Confluence with Oakland Creek.....	313
Glimmer Creek.....	Loop 281.....	345
	Dir road over dam.....	327
	Oil Rd.....	294
	Confluence with Grace Creek.....	288
Drain No. 2.....	McCann Rd.....	311
	Loop 281.....	303
School Branch Creek.....	Upstream corporate limits.....	353
	Oil Rd.....	304
Drain No. 3.....	U.S. corporate limits.....	337
	Confluence with School Branch Creek.....	324
Ray Creek.....	Upstream corporate limits.....	305

Source of flooding	Location	Elevation in feet above mean sea level
Lafame Creek.....	Baxley Lane.....	379
	Oil Rd.....	325
	Payne Rd.....	321
	Downstream corporate limits.....	311

(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: June 24, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25575 Filed 9-12-77;8:45 am]

[Docket No. FI-2769]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination, Town of Lumberton, Hardin County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Town of Lumberton, Hardin County, Tex. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Town of Lumberton, Hardin County, Tex.

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 his final determinations of flood elevations for the Town of Lumberton, Hardin County, Tex.

This final rule is issued 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). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received

from the community or from individuals within the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Lumberton, Hardin County, Tex., are available for review at the First State Bank, Lumberton, Tex.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Walton Creek.....	Welter Rd.....	59
	Walton Rd.....	36
	U.S. Highway 96.....	35
Village Creek.....	Downstream corporate limits.....	36
Do.....	Upstream corporate limits.....	37
Tributary No. 1.....	Taft Rd.....	36
	Confluence with Village Creek.....	36

(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: June 24, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-25576 Filed 9-12-77;8:45 am]

[Docket No. FI-2170]

PART 1917—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Final Flood Elevation Determination; Town of West Warwick, Kent County, R.I.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base flood elevations (100-year flood) are listed below for selected locations in the Town of West Warwick, Kent County, R.I. 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).

EFFECTIVE DATE: On publication of the Flood Insurance Rate Map for the Town of West Warwick, Kent County, R.I.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of West Warwick, Kent County, R.I., are available for review at the Town Hall, 1120 Main Street, West Warwick.

RULES AND REGULATIONS

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 his final determinations of flood elevations for the Town of West Warwick, Kent County, R.I.

This final rule is issued 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. 90-48), 42 U.S.C. 4001-4128, and 24 CFR Part 1917). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator, to whom the Secretary has delegated the statutory authority, has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Pawtuxet River....	Daisy St.....	35
	East St.....	35
	Providence St.....	54
	Evergreen Ave.....	55
	Cantara St.....	56
North Branch Pawtuxet River.	Main St.....	63
	Dam No. 155 (downstream side).	70
	Dam No. 155 (upstream side).	83
	Dam No. 156 (downstream side).	83
	Dam No. 156 (upstream side).	102
South Branch Pawtuxet River.	Fairview Ave.....	102
	Providence St.....	62
	Factory St.....	87
	Hare St.....	115
	Main St.....	130
Lippitt Brook.....	Dale Ave.....	131
	Pulaski St.....	132
	Oricle Ave.....	147
	Paekard St.....	85
	Ventura St.....	87
	Wakefield St.....	91

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Baker Street Brook.	West Warwick Ave....	130
	Baker St.....	151
Hardig Brook.....	Quaker Lane.....	114
	Glenn Dr.....	118
	Coit Ave.....	132
	Beal St.....	145
	Revere Ave.....	164
Hawkinson Brook..	Tingue Ave.....	147
	Campbell St.....	151
	New London Turnpike.	158
	Quaker Lane.....	227
Tributary to Maskerchugg River.	I-95 exit ramp to south bound Quaker Lane.	232

(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: August 11, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc 77-25577 Filed 9-12-77; 8:45 am]

**Register
Federal Order**

TUESDAY, SEPTEMBER 13, 1977

PART III



**DEPARTMENT OF
COMMERCE**

**National Oceanic and
Atmospheric Administration**



**GULF OF MEXICO FISHERY
MANAGEMENT COUNCIL**

Organization, Practices and Procedures

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
AdministrationGULF OF MEXICO FISHERY
MANAGEMENT COUNCILStatement of Organization, Practices, and
Procedures

Pursuant to section 302 (f) (6) of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), each Regional Fishery Management Council is responsible for determining its organization and prescribing its practices and procedures for carrying out its functions under the Act in accordance with such uniform standards as are prescribed by the Secretary of Commerce. Further, each Council must publish and make available to the public a statement of its organization, practices, and procedures. As required by the Act, the Gulf of Mexico Fishery Management Council has prepared and is hereby publishing its Statement of Organization, Practices, and Procedures.

Dated: September 2, 1977.

JOSEPH W. SLAVIN,
Acting Associate Director, National
Marine Fisheries Service.

ORGANIZATION, PRACTICES, AND PROCEDURES OF
THE GULF OF MEXICO FISHERY MANAGEMENT
COUNCIL

(1) *Name of Council:* Gulf of Mexico Fishery Management Council.

(2) *Location of Offices:* Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609.

(3) *Legal Authority:* Legal authority for the Council is found in the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265, Sec. 302 (a) (5) (16 U.S.C. 1853). The geographical area of authority of the Council includes the states of Texas, Louisiana, Mississippi, Alabama, and Florida, and has authority over the fisheries in the fishery conservation zone of the Gulf of Mexico seaward of such states.

(4) *Purposes:* (a) The Council shall prepare and submit to the Secretary of Commerce or his delegate (the "Secretary" hereinafter) a fishery management plan with respect to each fishery within its geographical area and, from time to time, such amendments to each plan as are necessary.

(b) The Council shall prepare comments on any application for foreign fishing transmitted to it under a governing international fishery agreement by the Secretary of State or his delegate under the terms of the Act.

(c) The Council shall prepare comments on any fishery management plan or amendments thereto prepared by the Secretary or his delegate which are transmitted to it under Section 304(c)(2) of the Act.

(d) The Council shall conduct public hearings at appropriate times and in appropriate locations in the Council's geographical area so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments thereto, and with respect to the administration and implementation of the provisions of the Act.

(e) The Council shall review on a continuing basis, and revise, as appropriate, the assessments and specifications contained in each fishery management plan for each fishery within its geographical area with regard to:

1. The present and probable future condition of the fishery;

2. The maximum sustainable yield from the fishery;

3. The optimum yield from the fishery;

4. The capacity and the extent to which fishery vessels of the United States will harvest the optimum yield on an annual basis;

5. The portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing.

(f) The Council shall submit to the Secretary or his delegate: (1) a report, before February 1 of each year, on the Council's activities during the preceding calendar year, (2) such periodic reports as the Council deems appropriate, and (3) any other relevant report which may be requested by the Secretary or his delegate.

(g) The Council may prepare any proposed regulations which it deems necessary to carry out any fishery management plan, or any amendment to a fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary or his delegate, together with such plan or amendment, for action by the Secretary or his delegate, pursuant to Sections 304 and 305 of the Act.

(h) The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions in accordance with such uniform standards as the Secretary or his delegate may prescribe, and shall publish and make available to the public a statement of its organization, practices, and procedures.

(i) The Council shall conduct any other activities which are required by, or provided for in, the Act or which are necessary and appropriate to the foregoing functions.

(5) *Council Composition:* (a) The Gulf of Mexico Fishery Management Council shall have a total of 17 voting members, and four non-voting members, appointed pursuant to provisions of the Act.

(b) Eleven of the voting members (at least one of whom shall be appointed from each State) shall be appointed by the Secretary or his delegate, from a list of qualified individuals submitted by the Governor of each applicable constituent State.

(c) These eleven voting members shall be appointed for a term of three-years; except that, for initial appointments, the Secretary or his delegate shall designate up to one-third of the initial appointed members to serve for a term of one-year, up to one-third to serve for a term of two-years, and the remaining such members to serve for a term of three-years. Appointments thereafter shall be in the same manner as the original appointments. Vacancy appointments shall be for the remainder of the unexpired term of the vacancy.

(d) The six remaining voting Council members shall be:

1. The principal State official with marine fishery management responsibility and expertise in each of the five constituent States, as designated by the Governors of the States, so long as the official continues to hold such position, or the designee of such official; and

2. The Regional Director, Southeast Region, National Marine Fisheries Service, NOAA, for the Council's geographical area, or his designee.

(e) The Chairman shall be selected from among the voting members by majority vote of the voting members present and voting.

(f) Nonvoting members shall be:

1. The regional or area Director of the United States Fish and Wildlife Service for the Council's geographical area or his designee;

2. The Commander of the Eighth Coast Guard District or his designee;

3. The Executive Director of the Gulf States Marine Fisheries Commission;

4. One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(6) *Officers and Terms of Office:* The Council elects during the first meeting after September each year, from among the voting members, a chairman and a vice chairman who serve for a one year term ending on September 30, until sooner replaced, or until their successors have been duly elected. Either the chairman or vice chairman may succeed themselves at the will of the Council.

(7) *Staff:* (a) The Council will determine needs and hire staff deemed necessary to carrying out the decisions and desires of the Council. The Council Executive Director has the responsibility to prepare lists of eligible candidates, as appropriate, for each position and to make recommendations accordingly to the Council. The Council may authorize the Executive Director to fill existing staff vacancies and to hire temporary personnel.

(b) *Staff Functions:*

1. Staff positions and functions are reported in Appendix I. Other positions may be authorized as deemed necessary by the Council. Experts, consultants and temporary personnel may be employed to provide additional Council staff support as required.

2. Temporary transfer of government employees. Authority is provided for temporary transfer of State, local, and Federal government employees to the Council staff. The Council may authorize requests for such personnel.

(c) *Employment practices:*

1. *Nondiscrimination.* All activities supported in whole or in part by Federal funds shall be operated under a policy of equal employment opportunity. Council staff positions shall be filled solely on the basis of merit, fitness, competence, and qualifications. Employment actions shall be free from discrimination based on race, religion, color, national origin, sex, age, or physical handicap.

2. *Personnel Actions.* Subject to these practices and procedures and according to personnel authority provided by the Secretary, the Council may establish positions, recruit, hire, compensate, and dismiss personnel. Involuntary separation shall be for cause alone, with reasonable advance notice given to the employee.

3. *Salary and Wage Administrations.* In setting rates of pay for Council staff, the principle of equal pay for substantially equal work shall be followed. Variations in basic rates of pay shall be in proportion to substantial differences in the difficulty and responsibilities of the work performed. The duties of any new position shall be contained in a brief description to be submitted to the National Oceanic and Atmospheric Administration Personnel Office servicing the National Marine Fisheries Service Regional Office assigned to the Council prior to the submission of a budget in which the salary of that position is requested. The Council will be provided a salary range appropriate to the position. The Council may fill the position at any salary level within that range, except that, unless recruitment of exceptionally qualified employees is hampered, the policy of hiring at the beginning rate shall be recognized. The annual pay for any staff position may not exceed the equivalent of the top step of GS-15 of the Federal General Schedule at any time. After a position has been filled, the employee may receive salary increases by annual step raises comparable to the Federal pay scale, and be recognized for superior performance within the specific salary ranges of the position. Such raises and salaries shall be subject to approval by the Council upon recommendation of the Executive Director.

(d) **Duty Time:** The usual work week is five, eight-hour days or 40 hours. This applies to all full-time, permanent employees. The hours worked by individual employees may vary depending on the needs and interests of the office and the individual. The Fair Labor Standards Act applies. The Council office will be open from 8 a.m. to 5:30 p.m. on official work days. An individual employee's workday may vary from the official office hours, but must be predetermined and approved by the individual's supervisor.

(e) **Leave Policy:** 1. Annual Leave.

a. Council full-time employees are granted paid leave annually in accordance with the following schedule or a share thereof prorated on the basis of days employed in a given calendar year.

Years of service:	Working days of leave per year
Under 3.....	13
3 to 15.....	20
15 and over.....	26

(Years of service refers to years of Council service except that up to 4 years of U.S. Federal military, state, or Federal government service may be applied to years of service in computing total years of creditable service for leave determination.)

b. New employees accrue annual leave from the beginning of the first full pay period of the employment period, but normally will not be granted leave until the completion of six months of service.

c. Earned annual leave may be taken in accordance with procedures and schedules approved by the Executive Director.

d. A maximum of 60 days of annual leave may be carried over into each new calendar year. All accumulated annual leave in excess of 60 days will be forfeited on the last pay period in effect at the end of each calendar year.

e. Upon termination of employment, an employee shall be compensated for unused annual leave at the hourly wage rate in effect at the time of termination.

a. Council full-time employees will be granted 13 days of paid sick leave, or a prorated share thereof, annually. Sick leave is accumulative throughout the Council tenure of the employee.

b. Earned sick leave may be used for illnesses, injury, temporary disability, other disabling or incapacitating disability, and for medical and dental appointments. Sick leave in excess of three consecutive days shall be supported by documentation of a medical doctor.

3. **Compensatory Leave and Overtime Pay.** Employees subject to the Fair Labor Standards Act (FLSA) shall receive overtime as specified therein. Exempt employees under FLSA may, at the discretion of the Executive Director of the Council, be granted one hour of compensatory leave for each overtime hour worked.

All overtime work must be authorized in advance by the employee's supervisor.

Travel time is not considered as overtime for pay or compensatory leave if it occurs during the normal work week (Monday through Friday).

Compensatory time must be used within a 30 day period or be forfeited.

4. The Council recognizes jury duty and military duty for training and shall compensate employees on a full wage rate basis for days absent from work in performance of such duty. Compensation for military leave for training shall not exceed 10 working days annually. Personnel on extended active duty in the armed forces shall be placed on leave without pay from the Council staff.

5. **Holidays.** The Council recognizes the following days as holidays and employees are granted the day off with pay when the holi-

day falls on a work day. If a holiday falls on either Saturday or Sunday, the respective Friday or Monday is recognized as a holiday. New Year's Day, January 1.

Washington's Birthday, Third Monday in February.

Memorial Day, Last Monday in May.

Independence Day, July 4.

Labor Day, First Monday in September.

Columbus Day, Second Monday in October.

Veterans' Day, Fourth Monday in October.

Thanksgiving Day, Fourth Thursday in November.

Christmas Day, December 25.

(f) **Administrative Leave:** The Executive Director shall have authority to grant administrative leave in the event of emergency conditions affecting the office or well being of the staff.

(g) **Employee Benefits:** The Council provides medical insurance, life insurance, and retirement programs for full-time permanent employees. The Council pays the full costs of these programs within the budget limitations authorized by the Council. However, the retirement program which is provided by the Council may be supplemented by the employee. Details of each of these benefit programs are available in the Council's offices.

(h) **Standards of Conduct:** The Council is responsible for maintaining high standards of ethical conduct among themselves and their staff. Such standards include the following principles:

1. No employee of the Council shall use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, State, county or municipal elective office.

2. No employee of the Council shall be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election or on account of his or her political affiliation.

3. No Council member or employee shall pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, either as a political contribution or a personal emolument any money, or anything of value in consideration of either support, or the use of influence, or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

4. No employee of the Council shall have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties.

5. No Council member or employee of the Council shall use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment which has not been made available to the general public.

6. No Council member or employee of the Council shall engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct prejudicial to the Council.

7. No Council member or employee of the Council shall use Council property for other than official business. Such property shall be protected and preserved from improper or deleterious operation or use.

(i) **Personnel Files:** A file for each Council member and employee containing appointment papers, security reports, biographical data and other official papers will be maintained in the Council's office under security and safeguard conditions required of files subject to the Privacy Act. Each member or employee may have access to his/her individual file; but files are otherwise available

to others only pursuant to the Privacy Act and Freedom of Information Act in consultation with NOAA legal counsel.

(j) **Security Investigations:** It is necessary for some Council members, Scientific and Statistical Committee, Advisory Panel and Council staff to have access to classified information. Therefore, these individuals are provided security clearance as is necessary to the conduct of Council activities and in accordance with Federal standards. Security clearances are issued by the Office of Investigation and Security of the Department of Commerce.

(8) **Council Standing Committees:** (a) General.—The following listed committees, and other committees which the Council may appoint, are considered the standing committees of the Council:

ADMINISTRATIVE COMMITTEES

Budget Committee.
Personnel Committee.
Advisory Panel Selection Committee.
Scientific and Statistical Screening Committee.

MANAGEMENT COMMITTEES

ADVISORY COMMITTEE

Scientific and Statistical Committee.

(b) **Committee Composition.**—Copies of the Charters and lists of committee members are available in the Council office.

(c) **Committee Functions.**—Budget Committee: The Budget Committee, with the assistance of the Executive Director and Administrative Officer, develops budget and fiscal policy, prepares the Council budget, monitors budget and fiscal activities and as appropriate, makes recommendations to the Council.

Personnel Committee: The Personnel Committee, with the assistance of the Executive Director, develops personnel policy, reviews and determines staffing requirements, reviews eligible candidates for vacant staff positions and makes recommendations to the Council regarding personnel hiring, retention, separation, pay, benefits and other appropriate personnel matters.

Advisory Panel Selection Committee: The Advisory Panel Selection Committee determines the organizational structure, membership composition, functions, duties and responsibilities of advisory panels.

Scientific and Statistical Screening Committee: The Scientific and Statistical Screening Committee identifies, screens and recommends to the Council prospective individuals to serve as members of the Scientific and Statistical Committee.

Fishery Management Committees: Each Fishery Management Committee provides liaison between the respective fishery advisory panel and the Council; assists panels in assigned tasks; monitors work of each panel and monitors work of the contractors in the development and drafting of fishery management plans.

The Scientific and Statistical Committee: Provides expert scientific and technical advice to the Council on fishery management policies, fishery management plans, and the effectiveness of fishery management plans. The Committee aids the Council in identifying scientific resources available for the development of plans, in establishing goals and objectives, establishing criteria useful in evaluating the effectiveness of plans and in plans review.

(9) **Council Meetings:** (a) General.—The Council will meet at the call of the Chairman or upon request of a majority of its voting members. Meetings will ordinarily be held in plenary sessions, but may be in subgroups or in individual sessions. Advisory Panels and Council standing committees will meet with the approval of the Chairman or his designee.

(b) Meeting notices.—A notice containing the time, location and purpose of each meeting will be published in the FEDERAL REGISTER in accordance with Federal regulations.

(c) Frequency and Duration.—The Council will meet in plenary session at least once each quarter. Ordinarily a meeting will be held each month. The duration of each meeting will vary according to need.

(d) Location.—Council meetings will ordinarily be held within the five state geographical area. However, when in the best interests of the work of the Council, meetings may be held outside of the five state area. Public access will be given primary consideration in meeting plans.

(e) Agendas.—A suggested agenda will be prepared for each Council meeting by the Executive Director with the approval of the Chairman. Agenda items may be recommended to the Executive Director by other Council members and by staff members.

(f) Rules of Procedure.—1. Meetings will be conducted in a manner to permit the greatest possible participation by all Council members and the public. Decisions by consensus are permitted except where the issue is Council approval of:

(1) A Fishery Management Plan, (2) an amendment to a Fishery Management Plan, (3) a proposed regulation, (4) comments for the Secretary on foreign fishing applications or (5) on Secretarial prepared management plans.

2. Meetings will be conducted in accordance with Roberts Rules of Order Newly Revised unless otherwise specified in these Standard Operating Procedures.

3. The presiding officer at any meeting or hearing will be the Council Chairman, Vice Chairman, or in their absence, the Council Chairman or Vice Chairman's designee from among the Council voting members.

(g) Meeting Minutes.—Detailed minutes will be kept of each meeting and made available to the public upon request, except for minutes of closed sessions.

(10) Hearings: (a) Public hearings will be held by the Council so as to provide maximum participation by the public in the development of Fishery Management Plans, amendments thereto and other aspects of administering the Act. All such hearings will be held in the geographical area of concern. Interested parties may appear in person and present their views or submit them in written form to the Council Chairman.

(b) Hearing notices will be prepared and issued in the same manner as meeting notices (9)(b) above. In addition, local media will be used to publicize meetings so as to maximize public awareness.

(c) When it is determined by the Council that a hearing is appropriate, the Chairman of the Council will designate at least one voting member of the Council to officiate. The designated official in charge will provide for maximum participation and expression of viewpoints by all those present. All meetings will be conducted in an orderly, business manner.

(d) Records of the participants and their views, whether in person or written, will be made available to the Council and retained as official Council records.

(11) Advisory panels: (a) The Council has established an Advisory Panel, and will form such sub-advisory panels as it deems necessary or appropriate to assist in carrying out assigned functions under the law. An advisory sub-panel shall normally be established for each fishery management unit identified by the Council.

(b) The panel and sub-panels shall generally be composed of members who are residents of the five-state geographical area. Each sub-panel shall be selected so as to provide for geographical, commercial, recreational marketing or other interests in accordance with functions and purposes of the panel.

(c) A chairman and vice chairman shall be designated by the Council for each sub-panel. The chairman or vice chairman shall preside at each sub-panel meeting. The Council may designate one or more voting members to meet with each sub-panel.

(12) Fishery Management Plan Organization and Development Procedure: (a) The Council initiates a request for management plan through the Executive Director. The Council staff prepares detailed documentation on the information requirements of a management plan for each management unit and sets of optional, tentative goals and objectives which are submitted to the Scientific and Statistical Committee and Advisory Panel for review and comment to the Council. The Scientific and Statistical Committee comments to the Council on the data requirements and makes recommendations on the agencies, institutions or other entities which have the expertise to develop the draft management plan. The Council reviews, revises and adopts a set of goals and objectives and selects the group who will develop the draft.

(b) The Council staff negotiates a contractual agreement with the group(s) selected to prepare the draft plan, subject to approval of the Council. In some fisheries, the Council staff may be utilized to prepare a draft plan. The contractor or staff develops a draft management plan according to the requirements of Pub. L. 94-265, accompanying regulations and the goals and objectives as approved by the Council. The contractor may schedule reviews of the completed drafts for one or more tasks by the Scientific and Statistical Committee and Advisory Panel in accordance with contractual provisions. Development of a set of proposed management regulations with optional alternatives may be requested by the Council as appropriate.

(c) The contractor, staff or group(s) completes the plan draft using the format required by the regulations and that for environmental impact statements, and forwards the document to the Council through the Executive Director. The Executive Director distributes copies to the Council Management Committee for each fishery plan, the Council technical staff, and the state liaison officers with the request for a critical review of the document. Copies are distributed to Council members.

(d) The reviewers are allowed three to four weeks for critical review of the document. The state liaison officers provide particular review emphasis on management applicability and omission of available technical data as well as a general critical review. Staff reviews applicability to requirements of Pub. L. 94-265 and the interim regulations as well as a general critical review of scientific content.

(e) Review comments are returned to Council staff who summarize them by reference page number and by source. Important omissions and possible errors noted are forwarded to the contractor (if any) for comment and clarification. The plan may be revised to include this omitted information and the correction of errors by Council staff. Summarized comments and copies of the plan are forwarded to Scientific and Statistical Committee members three weeks prior

to their scheduled meeting. The summarized comments are intended as a time-saving device to aid Scientific and Statistical Committee members in their own review.

(f) Scientific and Statistical Committee reviews draft plan and provides comment to Council. Representatives from the appropriate Advisory Panel may be invited to participate in the meeting as requested by the staff, the Council, or the Scientific and Statistical Committee.

(g) The Council staff in cooperation with contractor, if any, the Scientific and Statistical Committee members and possibly specific consultants revise the plan considering Scientific and Statistical Committee's comments. The revised document now contains the best available scientific knowledge and is transmitted to members of the respective advisory panel at least three weeks prior to their scheduled meeting along with summarized lists of comments and changes. Council Management Committee reviews document changes.

(h) Advisory Panel reviews document, as amended, and provides comments. Representatives from the Scientific and Statistical Committee may also be invited to participate in the meeting as requested by the staff, the Council or the Advisory Panel. Council Management Committee participates in discussion.

(i) Council staff prepares document for Council review and provides sets of alternative regulations, summarizes all comments and areas of disagreement on scientific or operational aspects and adds draft EIS, if necessary.

(j) Chairman of the Scientific and Statistical Committee and the Advisory Panel advise Council on their review of document content. Council reviews and adopts a revised document and adopts proposed regulations, if appropriate. Council staff revises the amended document according to the directives of the Council for public hearings. Appropriate distribution of the revised document will be made for the public hearings.

(k) Public hearings may be held at appropriate locations and times at the discretion of the Council. Management Committee members or other Council members designated by the Council Chairman chair these public hearings.

(l) Council staff forwards a summary of the public hearing results to Scientific and Statistical Committee and Advisory Panels and the Council three weeks prior to scheduled meetings. Copies are also provided to Management Committee members.

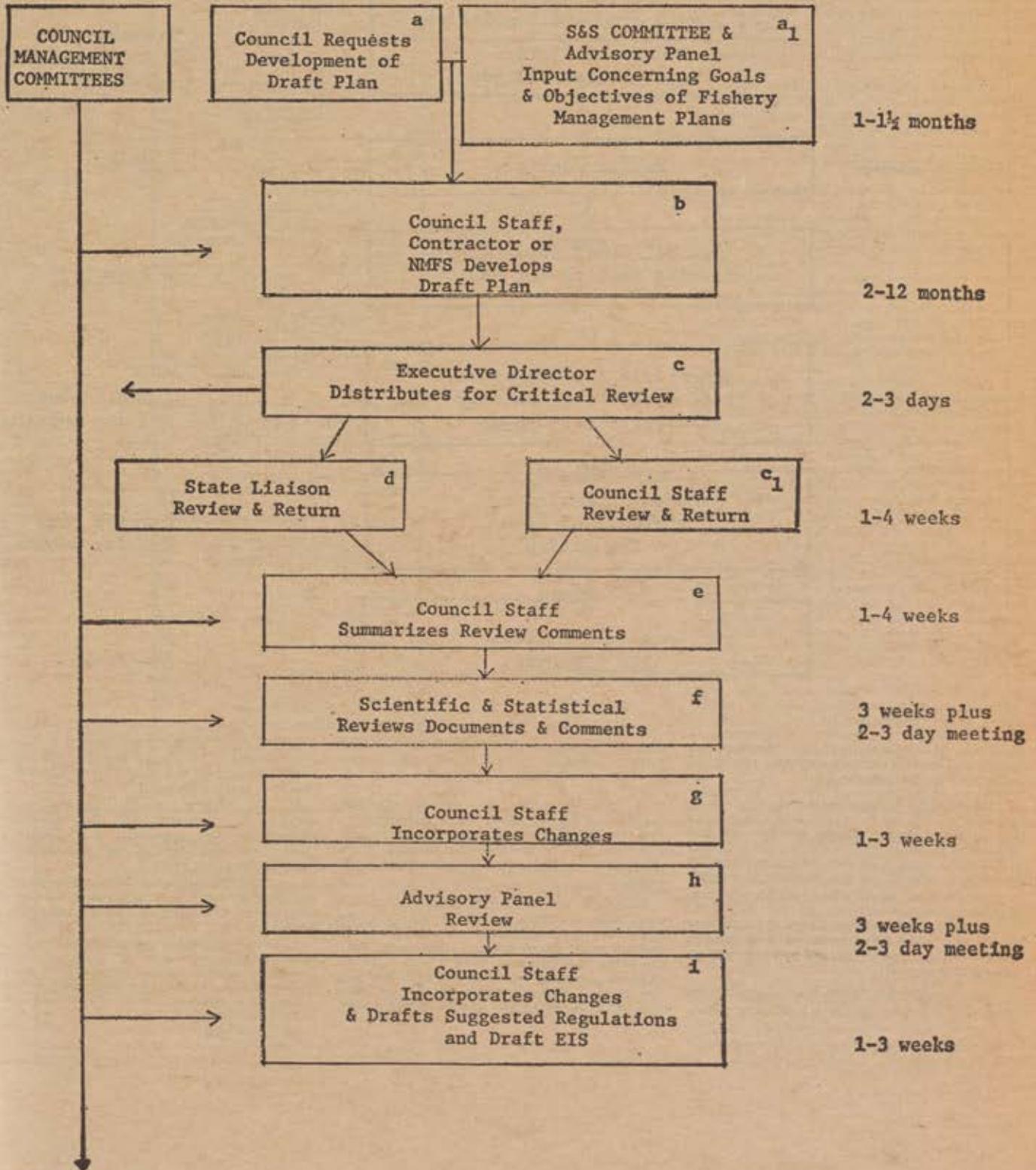
(m) The Scientific and Statistical Committee and the Advisory Panel meet jointly, in whole or in part, as directed by the Council Chairman to review public comments and recommend changes in plan or regulations.

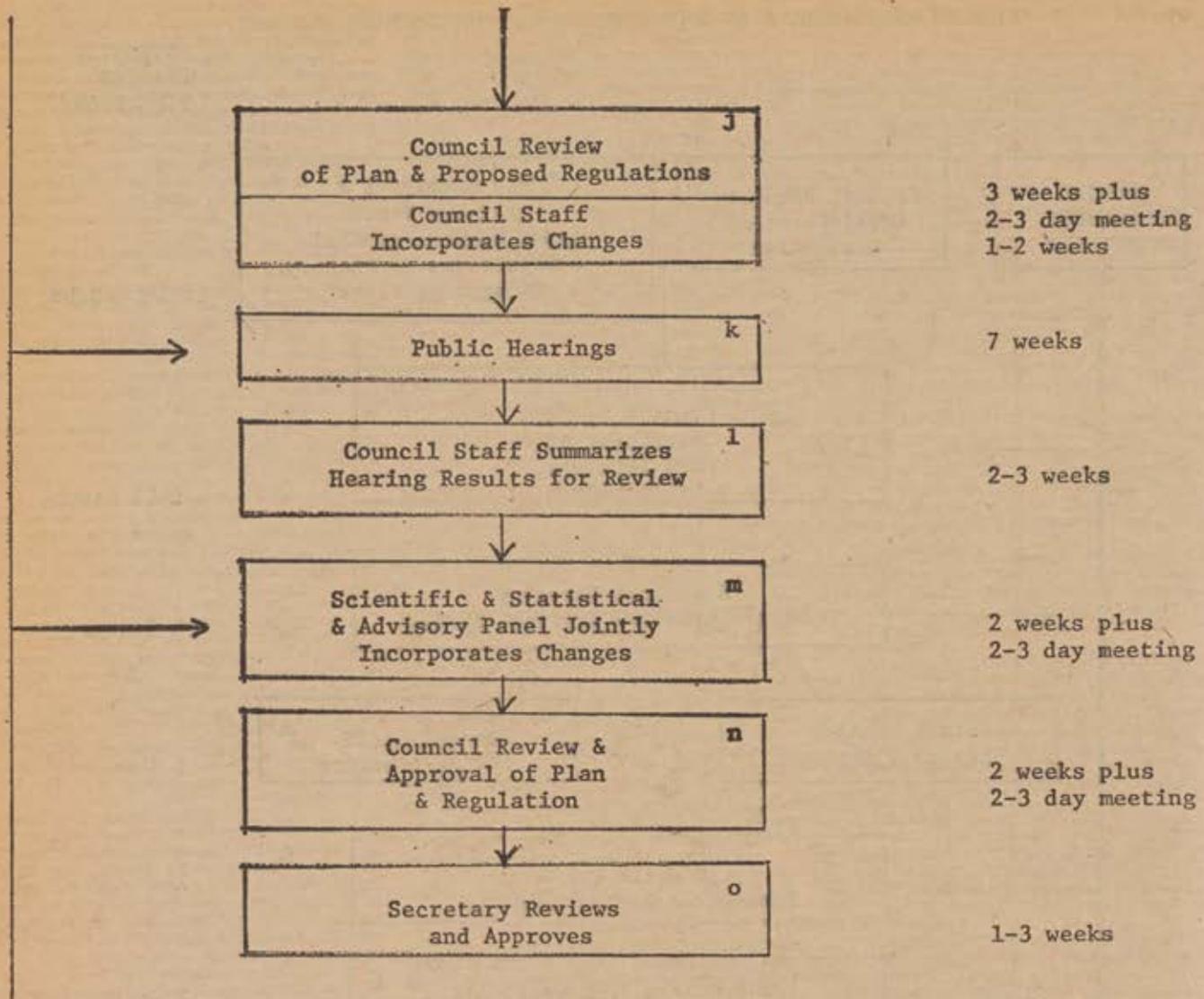
NOTE.—If the public hearing comments are such that a review and the development of recommendations by either or both of the Scientific and Statistical Committee and the Advisory Panel are not necessary, then the Council Chairman may direct that some or all members of these bodies meet with the Council and eliminate procedure step "m" in the attached flow chart.

(n) The Council reviews the public comments and recommendations by the Advisory Panel and Scientific and Statistical Committee and instructs staff in revision of the plan. The approved revised plan is transmitted to the Secretary by the staff on instruction by the Council along with proposed regulations, if any.

FISHERY MANAGEMENT PLAN ORGANIZATION AND DEVELOPMENT DIAGRAM

ESTIMATED
ELAPSED
TIME FRAME





FISHERY MANAGEMENT PLAN ORGANIZATION AND DEVELOPMENT PROCEDURE (PROVIDED SECRETARY DISAPPROVES PLAN)

(a) Because of the statutory time constraints of 45 days for Council revision of a plan which the Secretary disapproves, the Secretary should immediately notify Council staff so that they can advertise meeting dates and agenda in the FEDERAL REGISTER.

(b) Council staff checks with Council Chairman and Chairman of the Scientific and Statistical Committee and the Advisory Panel and sets meeting dates and agenda which is transmitted to the FEDERAL REGISTER for publication.

(c) Council staff distributes copies of the Secretary's comments to all Council mem-

bers and members of the Scientific and Statistical Committee and Advisory Panel during the advertisement period for their review.

(d) The Scientific and Statistical Committee and the Advisory Panel meet to review the Secretary's comments and recommend changes to the Council. Council Management Committee participates in the discussion.

NOTE.—If the Secretary's comments are such that a review by either or both the Scientific and Statistical Committee and the Advisory Panel are not necessary, then the Council Chairman may direct that all or some members of these bodies meet with the Council and eliminate procedure steps "c", "d" and "e" in the attached flow chart.

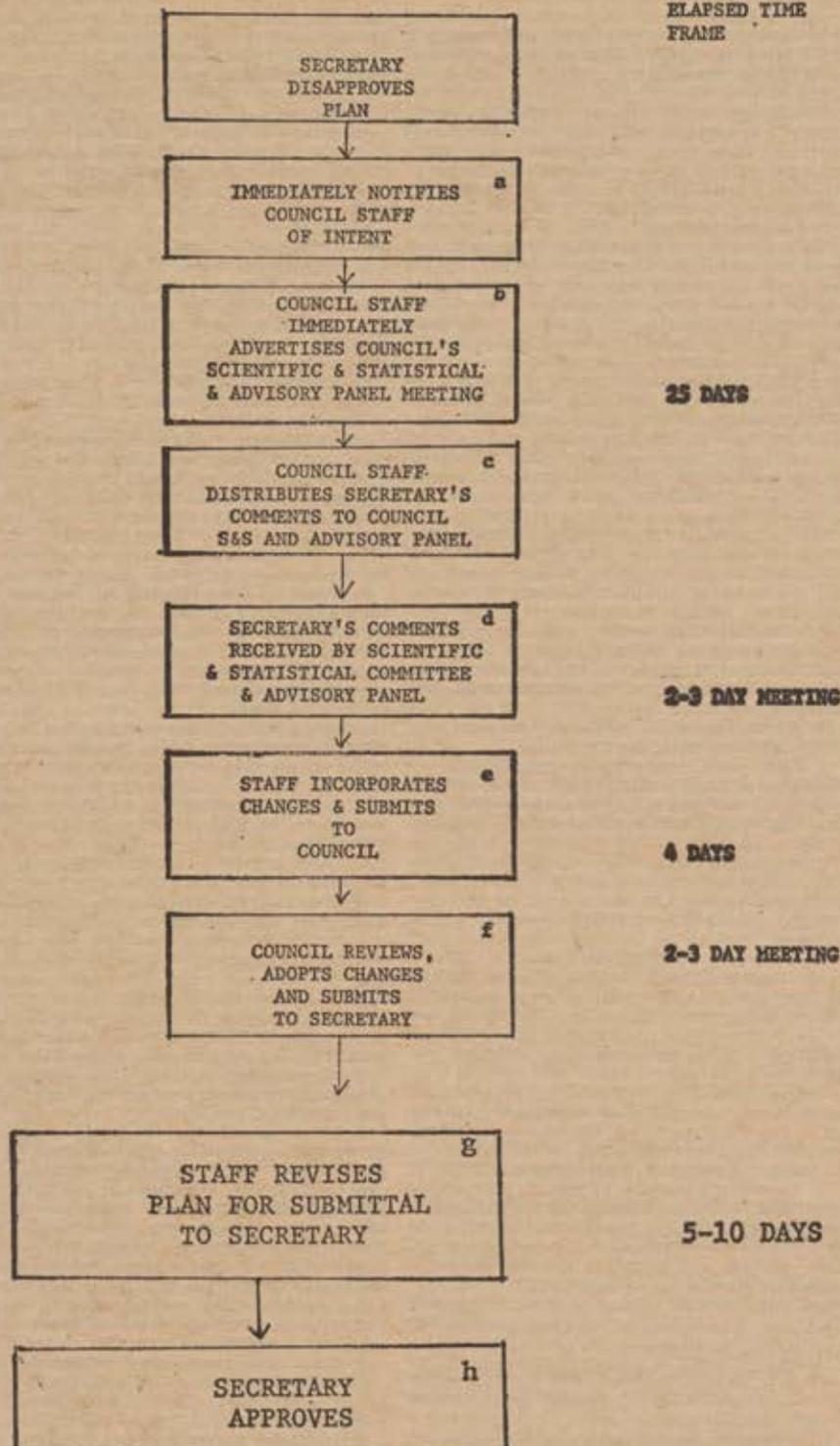
(e) Council staff summarizes the changes recommended by the Scientific and Statistical Committee and the Advisory Panel for presentation to Council.

(f) The Council meets and reviews the Secretary's comments and the recommendations of the Scientific and Statistical Committee and the Advisory Panel and revises the plan.

(g) The Council staff revises the management plan document according to the directives of the Council and submits to the Secretary.

(h) The Secretary approves the modified plan or disapproves it. If disapproved, the procedure steps return to item "a" in the attached flow chart and the process is repeated.

DIAGRAM OF PROCEDURE PROVIDED SECRETARY DISAPPROVES PLAN



(13) *Financial Management, Budget, Procurement and Property Management Procedures:* (a) Budget and Financial Management System: The Budget and Financial Management System of the Gulf of Mexico Fishery Management Council provides procedures for and controls over the elements of: budget formulation and execution, fiscal management, procurement and property management. The management of this system is the responsibility of the Administrative Officer. The following describe the existing Budget and Financial Management System.

1. Budget Formulation and Execution:

a. Budget data shall be accumulated at various levels according to the breakdown in the chart of accounts, as well as by various accounting periods, to provide current and projected fund usage guidelines as needed.

b. Procedures will be implemented to make comparisons of actual obligations with budgeted amounts.

c. Whenever appropriate or required, budgeted fiscal information will be related to performance and unit cost data.

d. Budgets and work plans will be prepared in response to the budget call, about November-December each year or as required during the year. Justifications will be prepared to support any requests for increased funds made at this time.

e. Amendments to budgetary proposals will be made when necessary.

2. Fiscal Management: The financial management system will be maintained to conform with requirements of the Department of Commerce pursuant to the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), OMB Circular A-110, Treasury Department (IRS) regulations, and applicable local requirements (State, municipal, et cetera). The Council fiscal year shall be the same as that of the Federal Government.

a. A bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage will be used as the depository for all Council funds advanced under grants and other agreements. Cash controls will be maintained over funds whether received by grant allowance checks, drawdowns against letters of credit, or as contributions for special projects.

b. Adherence will be made, as a minimum, to the principles in the accounting system accepted by the Gulf of Mexico Fishery Management Council.

c. Fiscal controls will be accomplished through a source document-supported cash accounting system capable of providing modified accrued expenditures as needed.

d. Records maintained will provide accurate, current and complete disclosure of awards, authorizations, income, obligations, unobligated balances, outlays and assets. Effective control will be maintained over all funds, property and other assets to assure their use solely for authorized purposes.

e. An accurate checkbook and files of source documents will be maintained to provide a necessary audit trail.

f. All checks issued will bear two authorizing signatures, these being the signatures of the Executive Director, and Administrative Officer or Technical Support Specialist.

g. Financial records, supporting documents, statistical records and all other records pertinent to an agreement shall be retained for a period of three years and/or

until they are either audited or approved for disposal under the authorities of the General Accounting Office, General Services Administration or the Department of Commerce.

h. A sequential numbering system will be used for the issuance of purchase orders. These documents will be maintained in a suspense file until service or merchandise is received and payment is made. Upon full liquidation of the obligation, purchase orders will be transferred to a completed documents file. Approval of purchase orders will be made by the Executive Director with delegated authority for approval to the Administrative Officer.

i. Travel authorizations will be issued prior to the performance of travel. These will be numbered sequentially and maintained in a file pending payment of the travel vouchers. Travel authorizations will be approved by the Executive Director with delegated authority for approval to the Administrative Officer. All travel as far as practicable, will be performed in accordance with government travel regulations.

j. Completed travel vouchers will be audited for conformance to current policies and compliance with existing travel allowances. Vouchers will be certified for payment by the Administrative Officer or the Executive Director.

k. Financial statements and reports shall be prepared as requested by the Council with at least one report submitted monthly, stating income and expenses and disclosing the cash balance. Other reports will be prepared as necessary to meet the requirements of other entities.

l. Payroll procedures will be established to assure prompt issuance of salary checks and to provide accurate and timely payroll information to employees and to Federal, State and local governments, as required. This will be accomplished by implementing the following:

Records of payroll compensation will be maintained in two categories: Council Members and Administrative Staff.

Pay records will indicate the number of hours worked, total earnings, deductions and net pay. Pay periods will be biweekly and pay records will be summarized each pay period.

Compensation checks will be issued from the Gulf of Mexico Fishery Management Council Office. They will be issued promptly to the members of the Administrative Staff at the close of each pay period, and promptly to Council members as valid salary-related data are received. A breakdown will be supplied with each salary check showing the hours and value of regular pay and premium pay earned, amounts for each of the deductions from gross pay, and the net pay. This information will be in a display of both biweekly and cumulative amounts.

m. Cash receipts and cash disbursements will be documented and kept current in a Cash Receipts and Disbursements Journal. Detailed transactions of income and expense and payroll summaries will be posted to these records. A running balance in the cash account will be maintained simultaneously.

When advances are made by a letter-of-credit method, the level of the cash on hand will be monitored to make drawdowns as close as possible to the time of making disbursements.

Detailed entries in the Journals will be summarized monthly by accounts as appearing in the Council's chart of accounts. This summary will provide the basic data for internal and external financial reporting.

An imprest fund will be maintained for small over-the-counter purchases up to \$25.00.

Cash, currency, checks on hand, check-books, and other equally significant fiscal records and materials will be retained in a combination-lock type safe or security cabinet.

(b) Procurement: 1. Definitions.—a. *Business* means any corporation, partnership, joint stock company, joint venture, or any legal entity through which goods or services are provided.

b. *Change Order* means a written order signed by the Executive Director directing the contractor to make changes which the Changes clause of the contract authorizes the Executive Director to order without the consent of the contractor.

c. *Construction* means the erection, alteration, or repair of a building, structure, or other improvement to real property.

d. *Contract* means all types of agreements and orders for the procurement, or disposal, or supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed price, cost, cost-plus-a-fixed fee, or incentive types; letter contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

e. *Conspicuously* means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.

f. *Confidential Information* means any which is available to an employee only because of his status as an employee and is not a matter of public knowledge or available to the public on request.

g. *Contract Modification* means any written alteration on the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of any existing contract.

h. *Contractor* shall mean any person having a contract with the Council.

i. *Debarment* means the disqualification of a person to receive invitations to bid or requests for proposals, or the award of a contract by the Council for a specified period of time.

j. *Employee* includes any individual other than council members drawing a salary from the Council and any nonsalaried or governmental employee performing services for the Council.

k. *Financial interest* shall mean: Ownership of any interest or involvement in any relationship from or as a result of which the owner has, within the past three years, received or is presently or in the future entitled to receive more than \$500.00 per year, or

Ownership of more than a 1 percent interest in any business, or holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.

l. *Gratuity* means a payment, loan, subscription, advance, deposit of money, services, offer of employment, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

m. *Immediate Family* means a spouse, children, grandchildren, parents, and brothers, sisters, and in-laws.

n. *Person* means any business, individual, union, committee, club or other organization or group of people.

o. *Procurement* includes purchasing, renting, leasing, or otherwise obtaining supplies or services. It also includes all functions that pertain to the obtaining of such supplies, services, and items, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

p. *Purchase Request* means a document requesting that a contract be obtained for a described item.

q. *Subcontractor* means any business which holds an agreement or purchase order to perform any part of the work or to make or furnish any article or service required for the performance of a Council-funded contract, or subcontract thereunder.

r. *Suspension* means the disqualification of any person to receive invitations for bid or requests for proposals, or to be awarded a contract by the Council for a temporary period pending the completion of an investigation, and any legal proceedings that may ensue.

s. *Supplies* includes all property except land or interest in land.

2. *Competition*. All purchases and contracts except purchases from federal sources shall be made on a competitive basis to the maximum practicable extent. Purchases from nonfederal sources shall be made by formal advertising or by negotiation.

3. *Purchasing Procedures*. The following procedures shall be used by the Council for all procurements:

a. Procurements of \$2,500 or more the Administrative Officer shall solicit a sufficient number of prospective bidders so as to elicit adequate competitive bids, open them simultaneously, and recommend award to the Executive Director of the responsible bidder whose bid is most advantageous to the Council, price and other factors considered.

b. Procurements ranging in value of less than \$2,500 but of \$500 or more, the Executive Director or his designee shall obtain quotations from at least two vendors and select the vendor whose quotation is most advantageous to the Council, price and other factors considered.

c. Procurements of less than \$500 in value may be made directly by the Executive Director or his designee without quotations or bids.

d. A record of all formal and informal quotations on bids shall be maintained by the Executive Director.

4. *Sources of Supply*. Irrespective of whether the procurement of supplies or services from nonfederal sources is to be effected by formal advertising or negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources as are deemed necessary by the Executive Director or his designee to assure such full and free competition as is consistent with procurement of types of supplies and services necessary to meet the requirements of the Council.

5. *Procurement from Government Sources*. Prior to the award of any contract for the purchase of supplies, federal sources which are available to the Council shall be considered and when such sources are most advantageous to the Council's needs, price and other factors considered, the procurement shall be made from federal supply sources. Competitive bids or letters are not required when the procurement list established by the Federal source is based upon a competitive bid procedure.

6. *Determination of Need*. When considering the necessity for a procurement (either goods or services), the Executive Director or his designee shall:

a. Validate the requirement with respect to need and extent.

b. Ensure that the procurement is not duplicating work already undertaken by another Council or governmental agency.

c. Be certain that the task cannot be accomplished by Council personnel.

7. *Lease v. Purchase*. Leasing will be used where it is in the Council's interest. The

criteria to be considered in deciding to lease rather than purchase include the following:

a. The Council requirement is of a short duration, and purchase would be more costly than leasing.

b. The probability that the equipment will become obsolete and that replacement within a short period will be necessary; and

c. The equipment is special or technical, and the lessor will provide the equipment, as well as maintenance and repair services, at a lower cost than would otherwise be available to the Council.

Lease versus purchase decisions are based on an economic analysis and the Council's files are documented to support the final decision.

8. *Specifications.* The word "specification" means a clear and accurate description of the technical requirements for material, product, or service, including the procedure by which it will be determined that the requirements have been met. Specifications for items or materials contain also preservation, packing, and marking requirements.

a. *Use of Federal Specifications.* In all purchases of property by the Council, specifications promulgated by the General Services Administration or the United States Department of Commerce shall be used unless the Executive Director or his designee determines that such specifications are inappropriate for Council purposes.

b. *Use of Council Specifications.* In the purchase of services such as consultants or technical advice the Council shall devise specifications. Such specifications may be prepared by Council staff, advisory panels, committees, or other sources selected by the Council.

9. *Award.* Unless all bids are rejected, award may be made by the Executive Director or his designee by written notice, within the time for acceptance specified in the bid, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Council, price and other factors considered. Award shall be made by mailing or otherwise furnishing to the successful bidder a properly executed award document or notice of award. All provisions of the invitations for bids, including any acceptable changes or additions made by the bidder in the bid, shall be clearly and accurately set forth in the award document.

10. *Non-Competitive Practices.* Non-competitive practices such as possible anti-trust violations and identical bids shall be reported by the Executive Director or his designee according to the procedures set out in Title 41 Code of Federal Regulations, Federal Procurement Regulations; Subpart 1-1.9 and 1-1.16.

11. *Use of Formal Advertising.* Contract for property and services are made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Formal advertising is not required when government sources of supply are used, provided the procurement list established by the government source is based upon a competitive bid procedure.

12. *Formal Advertising Defined.* Formal advertising means procurement by competitive bids and award. It involves the following basic steps:

a. *Preparation of the Invitation for Bids.* Preparation of the invitation for bids, describing the requirements of the Council clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related documents furnished prospective bidders for the purpose of bidding.

b. *Publishing the Invitation for Bids.* In procurement activities using formal advertising the Executive Director or his designee will select a means which will make information available to potential suppliers. Such means may include but is not limited to publication in local trade newspapers and journals and publications in the "Daily Journal of Commerce." When notice is given by publication, the Executive Director or his designee will publish the notice at least 30 days before the issuance of the invitation for bids or requests for proposals.

13. *Bid Processing. a. Receipt and Opening of Bids.*

Receipt. All bids received prior to the time set for opening shall be kept unopened in a locked receptacle. If a bid is opened by mistake, the person who opens the bid will immediately sign the envelope and deliver it to the Administrative Officer. The Administrative Officer shall immediately write on the envelope an explanation of the opening, the date and time opened, and sign the statement. No information shall be disclosed prior to the public bid opening.

Opening. The Administrative Officer shall decide when the set time for bid opening has arrived and shall so declare to those present. All bids received prior to the time set for opening shall then be publicly opened, recorded and when practicable, read aloud to the persons present. Bids may be examined by interested persons, but original bids may not be allowed to pass out of the hands of Council employees.

Awarding the Contract. After bids are publicly opened, they shall be tabulated and evaluated by the Executive Officer's designee and a recommendation shall be made to the Executive Director for award. Award shall be made to that responsible bidder whose bid conforms to the invitation for bids and will be most advantageous to the Council, price and other factors considered.

b. *Late Bids, Modification of Bids, or Withdrawal of Bids.*—Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids or

It was sent by mail or telegram (if authorized) and it is determined by the Executive Director or his designee that the late receipt was due solely to mishandling by the Council staff.

c. *Mistakes in Bids.*—Mistakes in bids shall be handled according to the provisions of Title 41, Code of Federal Regulations; Federal Procurement Regulations; part 1-2 S 1-2.406.

d. *Rejection of Bids.*—Bids may be rejected by the Executive Director or his designee as follows:

Nonconforming Bids. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected as non-responsive.

Debarred or Ineligible Bidders. Bids received from any person or concern debarred or ineligible shall be rejected.

Rejection of All Bids. The Executive Director or his designee may reject any and all bids. Each bidder shall be notified and the reason for rejection shall be stated.

e. *Content of Invitation for Bids.*—For supply and service contracts, invitations for bids shall contain the following information if applicable to the procurement involved: Name and address of Council. Date of Issuance. Date, hour, and place of opening. Number of pages.

A description of supplies or services to be furnished in sufficient detail to permit full and free competition.

The time of delivery or performance.

A statement in the invitation that "Bids must set forth full, accurate, and complete information as required by this Invitation for Bids (including attachments)."

Bid guarantee, performance and payment bond requirements, if any.

A requirement that all bids must allow a period for acceptance by the Executive Director or his designee of not less than a minimum period stipulated in the invitation for bids and that bids offering less than the minimum stipulated acceptance period will be rejected.

In the cases where bidders are required to have special technical qualifications due to the complexity of the equipment or service being procured, a statement of such qualification.

Directions for obtaining copies of any documents, such as plans, drawings, and specifications which have been incorporated by reference.

A statement of Council Policy regarding late bids, modification of bids, and withdrawal of bids.

f. *Basis of Selection.*—Records of formal advertised procurements will reflect the following as a basis of selection: Adequacy of Competition; Responsiveness of Bidder; Responsibility of Bidder.

g. *Adequacy of Competition.*—Two or more capable sources must be available to assure full and free competition. Two sources are not adequate when there are more sources fully qualified to compete in the area.

14. *Price Analysis.* When bids are received, the Executive Director's designee will conduct price analyses to determine the reasonableness of the bid price. The price analysis consists of an examination and evaluation of the prospective price without evaluating the separate cost elements such as labor, materials, overhead, et cetera, and proposed profit.

15. *Cost Principles and Procedures.* Title 41 Code of Federal Regulation; Federal Procurement Regulations; part 15, serve as a guide for contract cost principles and procedures.

16. *Preaward Surveys.* A preaward survey is an evaluation of a prospective contractor's performance capability under the terms of a proposed contract. Such evaluation is used by the Council staff as an aid in determining responsibility. The evaluation is accomplished by use of the following:

a. Data on hand,

b. Data from another purchaser such as state and federal agencies,

c. On site inspections of facilities to be used for performance of the proposed contract, or

d. Any other means deemed advisable by the Council staff.

17. *Review by Executive Director or his Designee:* When a procurement will be non-competitive (i.e., sole source), the Executive Director or his designee shall review the proposed action for assurance that competitive procurement is not feasible. This action includes both examination of the reasons for the procurement being non-competitive and steps to foster competitive conditions for subsequent procurements.

18. *Factors.* Factors considered in approving a sole source procurement include but are not limited to:

a. What capability does the proposed contractor have that is important to the specific effort and makes him clearly unique in comparison to another contractor in the same general field?

b. What prior experience of a highly specialized nature does the proposed contractor have that is vital to the proposed effort?

c. What facilities and equipment does the proposed contractor have that is specialized and vital to the effort?

d. Does the proposed contractor have a substantial investment of some kind that would have to be duplicated at the Council's expense by another source entering the field?

e. If schedules are involved, why are they critical and why can the proposed contractor best meet them?

f. If lack of drawings or specifications is a guiding factor, why is the proposed contractor best able to perform under those conditions? Why are drawings and specifications lacking? What is the leadtime required to get drawings and specifications suitable for completion?

g. Is the effort to be a continuation of a previous effort performed by the proposed contractor?

h. Is competition precluded because of the existence of patent rights, copyrights, or secret processes?

19. *Approval by NOAA.* Prior to the award of a sole source contract in excess of \$5,000, the Executive Director or his designee shall forward this review and justification to the appropriate NOAA Grants Officer for approval as required by OMB Circular A-110.

20. *Responsiveness of Bidder.* To be responsive, a bid should comply in all material respects with the invitation for bids, both as to the method and timeliness of submission and as to the substance of any resulting contract.

21. *Responsible Bidder.* A determination will be made and documented prior to award as to the responsibility of the bidder. This will be included in the procurement file. A bidder is considered responsible when it has been established that he has the technical capability, financial capacity and manpower required to perform as he has bid. To be responsible an offeror should:

a. Have adequate financial resources, or the ability to obtain such resources as required during performance of the contract;

b. Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments;

c. Have a satisfactory record of performance;

d. Have a satisfactory record of integrity and business ethics;

e. Be otherwise qualified and eligible to receive an award under applicable public policy laws and regulations.

22. *Sources of Information Regarding Responsibility of Prospective Contractors:*

a. Lists of debarred, suspended, or ineligible concerns or individuals;

b. Information existing within the Council's organization, including records on file and knowledge of personnel within the organization;

c. Other sources such as suppliers, subcontractors, and customers of the prospective contractor; banks and financing institutions; commercial credit agencies; state and Federal Government agencies; purchasing and trade associations; better business bureaus and chambers of commerce; and

d. The conduct of a preaward survey;

e. Where it is considered necessary, the Council staff may require prospective contractors to submit statements concerning their ability to meet any of the minimum standards.

23. *This section lists and prescribes the types of contracts and contract policies which will be used by the Council.*

a. *Firm Fixed Price Contract.* The firm fixed price contract is the type of contract that results from either public advertised procurements with sealed bids or negotiated procurements which have had adequate competition or consideration for the work to be performed by the state or quasi-public agency. The fixed price contract is particularly suitable for construction and for procurements of standard commercial items,

modified commercial items, or for items when specifications are reasonably definite. Price competition should exist, and costs should be predictable with reasonable certainty when this type of contract is used.

b. *Fixed Price Contract with Escalation.* When delivery or performance extends over a period of time, a contractor may seek to protect himself against unusual risk by listing a number of circumstances under which his offered price may need adjustment. This type of contract is used in the procurement of items that are directly affected by industry-wide wage rates for example.

c. *Fixed Price Incentive Contract.* An incentive contract is aimed at motivating the contractor to increase his efficiency and reduce his costs while producing the best possible item. A fixed price incentive contract will provide for establishment of the final contract price by application of an agreed upon formula relating profit to total actual contract costs. This type of contract should not be used where there is insufficient cost experience with the item or services being produced and where insufficient competition exists to ensure competitive pricing.

d. *Cost Contract.* This is the simplest of the cost reimbursement type of contract. Under this type of contract, the contractor receives no fee but the buyer agrees to reimburse the contractor for allowable costs. Cost contracts are usually entered into for work done by educational and other non-profit institutions and would include established indirect costs as determined acceptable for other federal contracts for each such entity.

e. *Letter Contracts.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of manufacture of supplies, or performance of service, including but not limited to, planning and the procurement of necessary materials. This type of contract is intended to service one essential purpose—to get the contractor started without delay, for in emergencies time may not permit negotiation of a definitive contract. To protect the buyer's interest, letter contracts normally include agreement:

That the contractor will commence work without delay;

As to the extent and method of payment in case of contract termination for convenience or default;

That the contractor will not incur monetary obligations in excess of the limit set for them in the letter contract;

As to the anticipated type of definitive contract to be entered into at a later date;

As to certain definitive contract clauses;

That the contractor will be obligated to provide price and cost information that can be reasonably expected by the buyer within one month; and

That the contractor will enter into negotiations promptly and in good faith to arrive at a definitive contract with the buyer.

f. *Purchase Orders.* Purchase orders are a simplified form of a definitive contract that normally contains preprinted contractual provisions. They are normally used when supplies or services are bought on a fixed-price basis, and the price does not exceed \$2,500.

g. *Cost-Plus-Percent-Of-Cost Contracts.* The cost plus a percentage of cost contract is prohibited by federal law and will not be used by the Council.

24. *Responsibility.* Contract administration is the responsibility of the Executive Director. The Executive Director may act for the Council to award, amend or modify a contract or take any action to change a contractual commitment on behalf of the Council. The Executive Director and the Council staff see that administrative functions are

performed to achieve the desired results and to protect the Council's interest. The Executive Director is also responsible for maintaining a complete file of documentation related to each contract. The Executive Director shall designate a member of the Council staff to act as Contract Monitor upon the award of a contract.

25. *Council Staff.* The Council staff is responsible for the technical and project managerial aspects of contract administration. They ensure compliance with the technical requirements of the contract, determine the degree and acceptability of progress by the contractor, and when appropriate, certify to such progress by the contractor. All correspondence between the contract monitor and the contractor should be coordinated with the Executive Director and a copy provided for the contract file. Duties of a staff member assigned to monitor a contract include:

a. Familiarization with the terms and conditions of the contract in order to assure compliance with the provisions thereof.

b. After award, the holding of discussions with the contractor to arrive at a common understanding of individual responsibilities and working arrangements. Such discussions should occur immediately after award and as required throughout the period of the contract performance. Such meetings are not meant to be negotiations of tasks to be performed. Tasks and their scope must be decided during formal contract negotiations prior to award.

c. The arrangement of a schedule of operation in accordance with the contract requirements and certification, when appropriate, of satisfactory accomplishment on the contractor's requests for progress and final payments. Performance reports should show work actually accomplished. The Executive Director should be promptly informed of delays in progress of work and of any problems encountered that may require contract amendments or other administrative action.

d. Recommending to the Executive Director any proposed changes in specifications, extra work extensions in contract time or any other technical matter arising under the contract.

e. The initiation and acquisition of approvals that may be necessary for changes in the statement of work requirements which would require a contract modification.

f. Monitoring to assure that no work authorizations or orders to the contract, either oral or written, are issued unless authorized according to Council policy.

g. The furnishing of Council material to the contractor as may be provided in the contract and authorized by the Executive Director.

h. Obtaining and evaluating all technical and progress reports from the contractor required by the contract.

i. Evaluating contractor progress.

j. Reviewing the contract at least 90 days prior to scheduled completion date to determine any need for modification or renewal of the contract or extension of performance time. The Executive Director should be notified at least 60 days prior to scheduled completion of a contract if any extension of the contract period will be required or if a need for additional work under the contract is anticipated. The Executive Director should also be notified upon satisfactory completion of work under a contract.

k. Recommending the disposition of any problems which might arise in the areas of rights in data, patents, Council property, and other subjects addressed in the contract provisions.

l. Representing the best interests of the Council in all dealings with contractor.

26. *Post-Award Orientation.* Before performance of the contract begins, the Con-

tract Monitor designated by the Executive Director shall call a post-award conference to ensure that the contractor fully understands every contractual provision. Subjects discussed should include as appropriate:

- a. The statement of work content to ensure proper interpretation.
- b. The specifications, when applicable.
- c. The contractor's plan for the conduct of the contract.
- d. The contractor's performance reports, content, and dates of submittal.
- e. The contract provisions which are germane, for example, the key personnel clause, progress payments, et cetera.
- f. Council furnished property.

(In less complex contracts, a post-award letter may be sufficient. When used, the letter is to identify the Contract Monitor and call attention to the reporting requirements.)

27. Contractor Performance Reports and Requests for Payment. The Contract Monitor should evaluate the contractor's performance at each interval when progress payments or performance reports are due. If the performance has been poor, or the contractor non-responsive, the Contract Monitor should arrange a discussion, in detail, with the contractor concerning performance shortcomings and proposed corrective action. Where contract requirements are not adequately met, final payment should be withheld until corrective action has been taken to the satisfaction of the Executive Director.

28. Acceptance of Contract Deliverables. It is the Contract Monitor's responsibility to determine that the work is complete and conforms with the technical requirements of the contract. Once formal acceptance has been accomplished, the contractor is normally excused from further performance or correction of unsatisfactory work. The Contract Monitor should provide written notification to the Executive Director when the contract work has been judged complete and technically acceptable.

29. Delinquencies. When a delinquency appears imminent, prompt action must be taken to protect the Council's rights. In administering a delinquent contract, Council staff should do nothing that might waive the Council's rights to terminate for default. In the event of a delinquency not of a minor nature, the Executive Director may take one of the following actions:

- a. Extend the contract delivery schedule.
- b. Terminate the contract for default.
- c. Terminate the contract for the convenience of the Council.

d. Terminate the contract on the basis of agreement for a no-cost settlement.

e. Obtain a written agreement from the Contractor that the Council's consent to continued performance will not operate as a waiver of either its rights to terminate for the existing default, or any other of its rights.

30. Contract Modification. A contract modification is considered to be any written alteration of contract provisions, i.e., work statement, specification, period of performance, time and rate of delivery, quantity, price, cost, fee, or other provisions of an existing contract whether accomplished in accordance with a contract provision or by mutual actions of the parties to the contract.

31. Approval Authority. Only the Executive Director has the authority to approve a contract modification.

32. Processing Contract Modifications. The Contract Monitor is responsible for monitoring the contract and recommending changes in existing contracts. In such capacity, he will generally be responsible for initiating the necessary documents involving technical changes. In preparing the documents, he shall review the statement of work and the applicable specifications and

then delineate the proposed changes thereto. The Contract Monitor should also evaluate whether these proposed changes are within the general scope of the contract or are considered new procurement and set forth the rationale supporting his position. If the Contract Monitor believes the changes to be in the general scope, the proposed changes, recommendations, and rationale are forwarded to the Executive Director for concurrence. If the modification is adjudged to be "new work" then the minimum standards for competition must be met as set forth in these regulations. New work cannot be added on to existing contracts without the appropriate considerations of procuring through competitive means.

33. Contract Termination. a. Types.

Completion. Most contracts are in force until satisfactory completion, or in the case of cost reimbursement contracts, until other satisfactory results are achieved or the funds allocated for their performance have been exhausted.

Termination for Convenience. The Executive Director may terminate for the convenience of the Council at any time during performance even though the contractor is performing properly; the contractor assumes this risk under the contract terms whenever he does business with a federal grantee. When the Council makes use of this right, however, it compensates the contractor for his cost and earned fee or profit for his preparations and for any completed and accepted work that relates to the terminated part of the contract. Termination for convenience would be used in cases where the Council has a change in requirements or a change in funding priority of projects. Other examples would be loss of key contractor scientific or engineering personnel; unsatisfactory progress; or changes in emphasis by the Council.

Termination for Default. The Council may terminate for default when the contractor fails to perform his part of the bargain properly.

b. Procedures. Generally, the provisions of the contract will govern procedures to be followed in termination. It is the duty of the Contract Monitor to recommend the termination of a contract to the Executive Director. The Executive Director shall instruct the Contract Monitor in the settlement process with the contractor.

c. Closing Contracts. Upon completion of the contract work, the Council shall close out the contract as rapidly and as effectively as possible and make final payment to the contractor. To this end, the Executive Director shall ensure that all work is promptly inspected to the extent necessary to determine acceptability. The Executive Director should also call upon the Contract Monitor to determine that the work is complete and conforms with the technical requirements of the contract, and that all items contractually required have been submitted and are acceptable.

34. Procedures for processing claims arising out of contracts entered into by the Council.

a. Authority of the Executive Director. The Executive Director is authorized to settle, compromise, pay or otherwise adjust any claim by or against, or any controversy with, a contractor or bidder relating to a contract entered into by the Council, including a claim or controversy initiated after award of a contract, based on breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. In the event a settlement or compromise involves or could involve adjustments and/or payments aggregating \$10,000 or more, then the Executive Director shall prepare written justification and obtain approval in advance, from the full Council and its legal advisor.

When a claim cannot be resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the contractor and shall state the reasons for the action taken on the claim, and shall inform the contractor of his right to administrative relief as provided in this section. The decision of the Executive Director is final and shall be conclusive unless fraudulent, or the contractor appeals to the Council. If the Executive Director does not issue a written decision within one hundred and twenty (120) days after receipt of a claim, or within such longer period as might be established by the parties to the contract in writing, then the contractor may proceed as if an adverse decision has been received.

b. Authority of the Administrative Officer. The Administrative Officer is authorized subject to the approval of the Executive Director of any settlement, to negotiate with contractors in order to settle any claim which may arise under a contract entered into by the Council.

c. Appeal to the Council. The Council has jurisdiction over each controversy arising under, or in connection with, the interpretation, performance or payment of a contract of the Council provided that:

The contractor has not instituted action over such controversy in court, and

The contractor has mailed notice to the Council of his election to appeal within 90 days of his receipt of the decision from the Executive Director, or at the contractor's election, within a reasonable time after the Executive Director fails or refuses to issue a decision.

d. Hearing before Council. The Council shall hold appeal hearings to the fullest extent possible in an informal, expeditious, and inexpensive manner and shall issue a decision in writing or take other appropriate action on each appeal submitted and shall provide a copy of the decision to the contractor and the Executive Director to be included in the contract file.

e. Bid Protests. The Council shall have authority to determine protests and other controversies of prospective bidders, bidders or contractors in connection with the solicitation or selection for award of a contract.

f. Filing of Protest. Any prospective bidder, bidder or contractor who is aggrieved in connection with the solicitation of selection for award of a contract may file a protest with the Council. The protest or notice of other controversy must be filed promptly and in any event within two calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversy must be in writing.

g. Decision. The Council shall promptly issue a decision in writing and in no case more than thirty (30) calendar days after receipt of such protest or notice of other controversy, unless the parties agree in writing to a longer period. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

h. Effect of Decision. The decision by the Council shall be final and conclusive.

35. It is the policy of the Council to purchase goods and services in a fair and impartial manner. Employees and Council members shall discharge their duties and responsibilities in a manner which will inspire confidence in the integrity of the Council. Any effort to realize personal gain through Council activities or employment beyond remuneration provided by the Council, is a violation of a public trust, as is any conduct which would create a justifiable impression in the public that such trust is being violated.

36. *Conflicts of Interests.* It shall be improper for any employee or Council member to participate directly or indirectly through decision, approval, disapproval, recommendations, preparation or any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or otherwise, in any:

- a. Proceeding or application;
- b. Request for ruling or other determination;
- c. Claim or controversy; or
- d. Other matter pertaining to any contracts, grant, subcontract, or subgrant, and any solicitation or proposal therefor, where to his knowledge there is a financial interest possessed by:

Himself or his immediate family;

A business other than a public agency in which he or a member of his immediate family serves as an officer, director, trustee, partner, or employee; or

Any person or business with whom he or a member of his immediate family is negotiating or has an arrangement concerning prospective employment. (Notice of this prohibition shall be conspicuously set forth in every contract, and solicitations therefor.)

37. *Any employee or council member who has or obtains any benefit from any contract with a business in which the employee or Council member has a financial interest, shall report such benefit to the full Council. In the event that such employee or Council member knows or should have known of such benefit, and fails to report such benefit to the full Council, he shall be in violation of the ethical standards of this section. However, this provision shall not apply to a contract with a business where the employee's or Council's interest in the business has been placed in an independently managed trust.*

(Notice of this prohibition shall be conspicuously set forth in every contract or solicitation therefor.)

38. *Gratuities.* It is improper for any person to offer, give or agree to any employee or Council member or for any employee or Council member to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- a. An official action taken or to be taken, or which could be taken; or
- b. A legal duty violated or to be violated, or which could be violated by such employee or former employee.

39. *Kickbacks.* It is improper for any payment, gratuity, or benefit to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(The prohibition against gratuities and kickbacks shall be conspicuously set forth in every contract, and solicitations therefor.)

40. *Representation of Contractor.* Every person, before being awarded a contract with this Council, shall represent that he has not retained a person to solicit or secure the contract with this Council upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business or an attorney rendering professional legal services, employed, consistent with applicable canons of ethics.

41. *Intentional Violation Unlawful.* The intentional violation of the representation specified in Subsection 40 above is cause for termination of a contract.

(The representation prescribed in Subsection 40 shall be conspicuously set forth in all contracts, and solicitations therefor.)

42. *Restriction on Employment of Present and Former Council Employees.*

a. *Contemporaneous Employment Prohibited.* It shall be improper for any Council employee or member to become or be an employee of a party contracting with the Council, while in the service of the Council. Notice of this provision shall be conspicuously set forth in every contract, and solicitations therefor. This does not apply to non-profit organizations such as State governmental agencies and educational institutions.

b. *Permanent Disqualification of Former Employees.* For a period of two years after Council employment, it shall be improper for a former employee to knowingly act as agent or attorney for anyone other than the Council in connection with any judicial or other proceeding, application, request for a ruling, or other determination, contract, grant, claim, controversy, charge, or other particular matter involving a contract, where the Council is a party or has a direct and substantial interest and in which he participated personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise while so employed.

c. *Post-Employment Restriction on Representation.* It shall be improper for a person having been an employee of the Council, within one year after his employment has ceased, to appear personally before the Council or its committees or membership in connection with any proceeding, application, claim, request or other particular matter involving a contract where the Council is a party or directly or substantially interested and which was under his official responsibility as an employee, or member of the Council at any time within a period of one year prior to the termination of such responsibility.

The term "official responsibility" as used herein, means the direct administrative or operating authority whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Council actions.

d. *Disqualification of Partners.* It shall be unlawful for a person, being a partner of an employee, Council member, former employee or former Council member, to act as agent or attorney for anyone other than the Council, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, or other particular matter involving a contract where the Council is a part or has a direct and substantial interest and in which such employee or Council member participates or has participated personally and substantially as a Council employee or member through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is or was the subject of his official responsibility.

e. *Use of Confidential Information.* It shall be improper for any employee, Council member, former employee, or former Council member of this Council to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

43. *Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising.* Generally, procurements may be negotiated by the Council through the Executive Director if:

- a. The public exigency will not permit the delay incident to advertising;
- b. The material or service to be procured is available from only one person or firm (sole-source);
- c. The aggregate amount does not exceed \$10,000;

d. The contract is for personal or professional services or for any service to be rendered by a state or quasi-public agency including a university, college, or other educational institution;

e. The material or services are to be procured and used outside the limits of the United States and its possessions;

f. No acceptable bids have been received after formal advertising;

g. The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental, or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial initial investment for manufacture; or

h. The procurements are otherwise authorized by law, rules, or regulations.

(Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.)

44. *Property Management.* All durable or capitalized equipment will be accounted for by an inventory system.

a. A property number will be assigned to all capitalized equipment and property inventory cards maintained on all such equipment.

b. A physical inventory of all property and equipment will be made at least once every two years.

c. The leasing, renting and acquisition of all property and space will be done in a manner consistent with customary practices observed in contracts by public entities.

d. All requests for capital equipment will be transmitted to the NOAA Grants Office for review and approval before commitment of grant funds for this purpose.

e. Fire and theft insurance will be carried on all property, capitalized and non-capitalized, in an amount equal to at least the replacement value of the equipment.

APPENDIX I: GULF OF MEXICO FISHERY MANAGEMENT COUNCIL STAFF FUNCTIONS

EXECUTIVE DIRECTOR

The Executive Director's duties shall involve the implementation of the Council's business, policies, and determinations of fishery management activities as they directly affect the public.

While technical, scientific and statistical advice to the Council will be furnished through advisory committees, the Executive Director will manage all Council programs and technical teams authorized by the Council and will coordinate input to the Council from advisory, scientific, technical and other committees.

The Executive Director shall also direct an administrative support staff whose tasks will be that of assisting the Executive Director in carrying out functions.

The Executive Director will be responsible for accounting for and controlling resources allocated to the Council and at the direction of the Council. He/she shall be responsible for the financial management system of the Council, effective control over the accountability for all funds, property and other assets, and for complying with the provisions of OMB Circular A-110 for grants and grant proposals.

He/she will be responsible for developing agendas for public meetings; preparing reports; acting as official spokesperson for the Council, when delegated; establishing, maintaining and supervising the administrative support staff to carry out support functions; maintaining an understanding of the program and presenting that view to the public

when necessary; carrying out decisions of the Council; and any other assignments received from the Council. As the principal full-time employee of the Council, the Executive Director will be the primary contact with the public and will have extensive responsibilities for preparation of news releases, in the name of the Chairman, on programs and achievements of the Council.

ADMINISTRATIVE OFFICER

Assists the Executive Director in the formulation and development of policy, procedures and programs and in initiating actions and making and implementing decisions involved in the overall management of the Council's operations. Responsible for providing effective administrative services in support of the Council's program activities, involving planning, implementing, directing and evaluating all of the administrative service activities in coordination with the Executive Director.

Duties

1. Directs and coordinates the work of the administrative staff. Responsible for the development and implementation of policies, methods and procedures involving specialties and activities as follows:

a. *Budget and Finance.*—Development of budgets and justifications. Establishment and operation of accounting system, including appropriation and fund control, cost, accrued expenditure and business-type features as necessary to the needs of the Council.

b. *Personnel Management.*—All phases of personnel management, including position classification, wage administration, recruitment, placement, performance evaluation, employee development, employee management relations and services and personnel records.

c. *Property Management.*—The acquisition and disposition of all personal property and services of competitive bid contracting, negotiated contract and the procedures for the maintenance and care of personal property and records; the maintenance of property accountability records and development of cost and custody reports; the operation of a records management program, including creation and disposal; the acquisition and release of office space for office, and other purposes; the obtaining of transportation and communications services; and the provision of mail, messenger, filing and other general office services. Also included are safety activities.

d. *General.*—Serves as the principal assistant and advisor to the Executive Director on administrative management matters. Assists and advises him/her through positive recommendations in the executive implementation of Council-wide policies and guidelines; participates in conferences and meetings with the Council members, other Federal agencies, and State or other public and private organizations to explain, negotiate and defend administrative management policies and programs of the Council; and frequently represents the Executive Director with authority to make firm commitments on matters within the sphere of his/her responsibility, including the employment and training of personnel, direction of travel and overtime, financial adjustments and contract awards. Contracts with State fishery agencies, educational institutions, and others. Aids in all phases of management plan development as directed by the Executive Director.

e. *Supervisory Responsibility.*—Directly supervises the Office Manager and one or more clerical personnel. Through the Office Manager, normally supervises all clerical personnel.

f. *Technical Monitoring.*—May be directed by the Executive Director to monitor progress

of contractual agreements for the development of technical data and documents.

g. *Supervision Received.*—Under direct supervision of the Executive Director. In the absence of the Executive Director is under direct supervision of the Technical Support Specialist.

TECHNICAL SUPPORT SPECIALIST

Is charged with formulation and development of fisheries management plans in coordination with the Executive Director. Is responsible for direct coordination of management plans development with the Council, Council Subcommittees, Scientific and Statistical Committee, Advisory Panels, Federal agencies, contractors and subcontractors, task groups and the Executive Director. Is in charge of drafting final management plans and environmental impact statements in the format required by the Secretary under P. L. 94-265 in coordination with the Executive Director and staff. Serves as staff officer in charge in the absence of the Executive Director.

Duties

1. Directs the development of management plans and the work of the staff in this development task under the supervision of the Executive Director.

a. Develops and maintains the mechanism for acquisition of the data base required for the management plans through the available sources, such as National Marine Fisheries Service laboratories, State and university laboratories, and other agencies of institutions.

b. Coordinates and directs the compilation of these data into a management plan format through staff assignments, use of contractors and subcontractors, task force groups, support by NMFS laboratories and other groups.

c. Coordinates all phases of plan development with the Scientific and Statistical Committee, the Advisory Panels, the Council and the Executive Director.

d. Attends public hearings on plan development to present scientific data.

e. Monitors management plan effectiveness and reports to the Executive Director with proposed modifications.

f. Determines the research needed to strengthen the management data base for each fishery and develops and presents research proposals in coordination with the Executive Director.

g. *General.*—Assists and advises the Executive Director on technical matters relating to management plan development and monitoring and on policy matters relating to Council operations, policies and guidelines; participates in conferences and meetings with Council members, State and Federal agencies, public and private organizations and associations; explains and defends programs of the Council; frequently represents the Executive Director with authority to make commitments. Directs and coordinates the work of the staff in developing management plans and compiling data.

h. *Supervisory Responsibility.*—Serves as staff officer in charge of all staff personnel in the absence of the Executive Director. Serves as immediate supervisor to the Assistant Technical Support Specialist and through him/her the Office Manager. Directly supervises one or more clerical personnel.

i. *Technical Monitoring.*—Monitors contractual agreements for the development of technical data and documents by contractors, subcontractors, task force groups and the progress of federal technical support groups in the development of such data and documents.

ASSISTANT TECHNICAL SUPPORT SPECIALIST

Assists the Technical Support Specialist in preparation, review and coordination of fisheries management plan development. Compiles and analyzes socio-economic and other technical data. Coordinates and reviews manuscript preparation. Meets with Scientific and Statistical Committee and Advisory Panels at direction of Technical Support Specialist. Monitors work and progress of contractors, subcontractors, task groups and National Marine Fisheries Service technical support groups in preparation of fisheries management plans.

Duties

1. Assists and advises Technical Support Specialist and Executive Director on fishery management plan development.

2. Physically compiles and analyzes socio-economic and other technical data for management plans according to directions of the Technical Support Specialist.

3. Confers with consultants, Advisory Panels, Scientific and Statistical Committee members, state, university and federal scientists on socio-economic and other aspects of plan development and summarizes their input for inclusion in the plans.

4. Supports all aspects of plan development, analysis, review and monitoring as directed.

5. *General:* Assists and advises the Technical Support Specialist and the Executive Director on socio-economic and technical matters relating to management plan development and monitoring. Serves as chief officer in charge of technical support in absence of Technical Support Specialist. Participates in meetings and conferences with Council members, State and Federal agencies, University groups, the public and fisheries associations at the direction of the Technical Support Specialist.

Supervisory Responsibility.—Serves as staff officer in charge of all staff personnel in the absence of the Executive Director, Technical Support Specialist and the Administrative Officer.

ADMINISTRATIVE ASSISTANT TO EXECUTIVE DIRECTOR

Serves as secretary to the Executive Director and office assistant to the Administrative Officer. Ensures that clerical work and secretarial staff are organized to be responsive and provide efficient use of staff. Directs daily routines of clerical personnel and supervises purchase of office materials and supplies. Attends Council and committee meetings (when required) and prepares and transmits all pertinent documents to Council.

Duties

1. Performs accounting and bookkeeping duties as required and prepares pertinent accounting reports.

2. Receives supervisor's telephone and personal callers and screens those which in his/her judgment can be handled by the supervisor's subordinates or other offices and tactfully refers them as appropriate. Personally takes care of many matters and questions including answering substantive questions not requiring research or technical knowledge.

3. Keeps supervisor's calendar and makes necessary arrangements for conferences (including all travel arrangements). Assembles background material for supervisor. Attends the meetings and prepares reports of the proceedings.

4. Receives and reads incoming correspondence, reports, instructions, etc. Screens out those items which can be handled personally, forwarding the rest to supervisor or

NOTICES

subordinates together with necessary background material.

5. Prepares replies personally for inquiries such as requests for instruction concerning the correct procedure in filing job applications or securing consideration of special cases when these are matters over which supervisor has control and when these are matters not involving controversial questions, drafts replies to general inquiries not requiring a technical knowledge of the program or programs under his/her supervisor's control.

6. Reviews outgoing correspondence which is being submitted to supervisor for signature or clearance for format, typographical accuracy, conformance with procedural instructions, to determine that all necessary background material is attached to the file, etc.

7. Maintains records of incoming and outgoing correspondence and action documents and follows up on work in process.

8. Assembles and summarizes information from files and documents in the office or other available sources for use of supervisor on the basis of general instructions as to the nature of the information wanted and its purpose. Obtains documents, files and background information for supervisor on the basis of general instructions as to the nature of the subject matter.

9. Procures supplies, equipment, repair and maintenance services and the like through agency channels.

10. Other duties as assigned.

Supervisory Responsibility.—Coordinates and directs clerical personnel under the supervision of the Administrative Officer and other executive offices.

SECRETARY

Serves as Secretary to the Administrative offices of Council staff. Relieves supervisor of routine administrative and miscellaneous clerical work. Based upon a good working knowledge of the organization, programs and services, resolves problems associated with the administrative and clerical work of the office.

Duties

1. Receives supervisor's calls and greets visitors and directs to supervisor's attention only those contacts needing his attention or action. Takes care of routine matters, and on the basis of knowledge of the programs and operations, refers other inquiries to appropriate personnel. Personally responds to routine and non-technical requests for information such as status reports, suspense data for matters requiring compliance, travel order requests and similar information.

2. Maintains supervisor's calendar and schedules appointments.

3. Composes correspondence on administrative and clerical functions for the staff and routine correspondence on other subjects as requested by the supervisor. Reads outgoing correspondence for procedural and grammatical accuracy. Maintains suspense records on all correspondence and action documents and follows up to ensure timely reply or action.

4. Takes and transcribes dictation of correspondence, reports and telephone conversations involving both technical and specialized terminology.

5. Prepares in final form all types of documentation and forms incident to the staff and office management.

6. Reads directives and instructional material pertaining to administrative practices and clerical procedures in order to be aware of new, revised or amended procedures for such matters as preparation and processing of travel orders, forms, filing, mail procedures, security forms and procedures, etc. Provides guidance and assistance on applicable procedures, instructions and regulation to other clerical personnel assigned to the staff.

7. Other duties as assigned.

CLERK-TYPIST

1. Serves as office receptionist; greets visitors; answers telephone; transfers calls and takes messages.

2. Receives and reviews mail (except classified mail); distributes mail to appropriate party; handles outgoing mail for office.

3. Transcribes, from tapes, reports, correspondence, other as assigned involving both technical and specialized terminology. Types intermediate drafts when requested. Uses reference sources such as dictionaries, correspondence manuals, travel handbooks, etc.

4. Prepares travel orders, special travel orders, blanket travel orders for Council and staff. Assists in travel arrangements and accommodations. Assists in the preparation of travel vouchers; types all travel vouchers and xeroxes all pertinent data for records.

5. Maintains mailing lists: addresses, phone numbers and social security numbers (if required).

6. Assembles and prepares time and attendance cards; maintains general files.

7. Other duties as assigned.

[FR Doc.77-26339 Filed 9-12-77; 8:45 am]

Federal Register

TUESDAY, SEPTEMBER 13, 1977

PART IV



**DEPARTMENT OF
HEALTH,
EDUCATION, AND
WELFARE**

Food and Drug Administration



MEDICAL DEVICES

Classification Procedures

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Food and Drug Administration

[21 CFR Parts 16, 20, 860]

[Docket No. 77N-0156]

MEDICAL DEVICES

Classification Procedures

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes criteria and procedures for classifying devices intended for human use into classes of regulatory control sufficient to provide reasonable assurance of the safety and effectiveness of such devices. The proposal is made under provisions of sections 513 and 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c, 371(a)). The proposal would add a new Part 860 (21 CFR Part 860) to prescribe criteria and procedures for the classification of devices into classes of regulatory control, the consideration of evidence of safety and effectiveness of devices, and the submission and review of petitions for reclassification of devices. It also prescribes the circumstances under which information and data associated with the classification or reclassification of devices will be released to the public.

DATE: Comments by November 14, 1977. The Commissioner proposes that final regulations based on this proposal shall be effective on the date of their publication in the FEDERAL REGISTER.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Joseph Sheehan, Bureau of Medical Devices (HFK-122), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, Md. 20910 (301-427-7114).

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295), amending the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040 et seq. (21 U.S.C. 201 et seq.)), hereinafter referred to as "the act," became law on May 28, 1976. Section 513(c) of the act (21 U.S.C. 360c(c)) requires the Secretary of Health, Education, and Welfare to prescribe, by regulation, procedures for review and recommendations by classification panels regarding the classification of medical devices into regulatory control classes.

As stated in an FDA notice (FEDERAL REGISTER of June 4, 1976 (41 FR 22620)), concerning the implementation of the amendments, authority under the act is vested in the Commissioner under § 5.1 (21 CFR 5.1). The notice also stated that among the proposed implementing regulations to be published in the future in

the FEDERAL REGISTER would be proposed regulations concerning procedures for the classification of medical devices.

The agency has been following and will continue to follow the procedures for device classification contained in this proposal until final regulations are published. The agency will proceed with publication of proposed regulations classifying devices before promulgating the final classification procedures regulations. There is no requirement that the final classification procedures regulations be promulgated before the publication of panel recommendations and proposed regulations classifying devices, especially because the regulations proposed here essentially codify the procedures FDA has been following since enactment of the amendments.

**PRE-ENACTMENT CLASSIFICATION
RECOMMENDATIONS**

Anticipating eventual enactment of medical device legislation, FDA initiated in 1973 a preliminary classification of medical devices. A list of approximately 8,000 devices had been compiled in 1971, and 13 classification panels, plus a Diagnostic Products Advisory Committee, had been established by 1975. The panels made recommendations for classifying medical devices into different classes of regulatory control using criteria contained in legislative proposals before Congress during this period. The procedures that finally evolved during this preliminary classification process were published in a FEDERAL REGISTER notice on May 19, 1975 (40 FR 21848).

The panels were organized according to the various fields of clinical medicine and fundamental sciences in which devices intended for human use are used. The panels were composed of experts of diverse backgrounds, skilled in the use of, or experienced in the development, manufacture, or use of, medical devices.

Under section 513(b) of the act, the Commissioner may either establish classification panels or use panels established before the date of enactment of the amendments. The Commissioner finds that the objectives of the 13 classification panels established before enactment satisfy the requirements of the amendments. He has, however, rechartered each panel and directed it to reconsider its previous recommendations in light of the statutory classification criteria and other requirements of the legislation. In determining what recommendation to make to the Commissioner with respect to the classification of a device, a panel may use information obtained, findings developed, and judgments reached before enactment of the amendments (Ref. 1, at p. 39).

As noted above, the Commissioner decided to retain the 13 medical device classification panels that were established before enactment of the amendments and rechartered them by a notice published in the FEDERAL REGISTER of August 25, 1976 (41 FR 35877). In addition, the six subcommittees of the Diagnostic Products Advisory Committee were chartered as separate classification

panels (41 FR 35878, August 25, 1976). As a result, there are now 19 chartered classification panels. This number may be reduced in the future. The titles of the classification panels and names of members have been filed with and are available for review at the office of the Hearing Clerk (HFC-20), Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

SUMMARY OF STATUTORY REQUIREMENTS

Section 513 of the act establishes three classes of regulatory control for medical devices and requires FDA to classify all devices intended for human use into one of those classes. They are: Class I, General Controls; class II, Performance Standards; and class III, Premarket Approval.

Section 513(a)(1)(A) of the act defines class I devices as those devices (1) for which there is sufficient information to determine that the provisions of the act with respect to adulteration; misbranding; registration; banning; defect notification; repair, replacement, or refund; records and reports; and good manufacturing practices (referred to as "general controls" hereafter) will provide reasonable assurance of the safety and effectiveness of the device or (2) for which there is insufficient information to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance but which are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health and do not present a potential unreasonable risk of illness or injury. Class I devices are to be regulated under the general controls provisions of the act.

Section 513(a)(1)(B) of the act defines class II devices as those devices for which general controls alone are insufficient to provide reasonable assurance of safety and effectiveness and for which there is sufficient information to establish a performance standard to provide such assurance. Class II devices will be subject to performance standards to be established under section 514 of the act. The policy that FDA intends to develop and apply with respect to performance standards was the subject of a FEDERAL REGISTER notice on August 12, 1976 (41 FR 34099). A proposed procedural regulation governing section 514 of the act will be published in the FEDERAL REGISTER in the near future.

Section 513(a)(1)(C) of the act defines class III devices as those devices for which there is insufficient information to determine that general controls will assure their safety and effectiveness and for which there is insufficient information to establish a performance standard to provide such assurance, and which are purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or which present a potential unreasonable risk of illness or injury.

Class III devices are subject, under section 515 of the act, to premarket approval. The requirements of the act with respect to premarket approval procedures and requirements will be the subject of a proposed regulation, which will be published in the FEDERAL REGISTER in the future.

Under section 513(a)(2) of the act, the safety and effectiveness of a device are to be determined with respect to the persons for whose use the device is represented or intended; with respect to the conditions of use prescribed, recommended, or suggested in the labeling of the device; and weighing any probable benefit to health from the use of the device against any probable risk of illness or injury from such use. The effectiveness of a device is to be determined on the basis of well-controlled investigations, including clinical investigations where appropriate, by experts qualified by training and experience to evaluate the effectiveness of a device. The Commissioner may authorize the effectiveness of a device to be evaluated on the basis of other valid scientific evidence if he determines such evidence to be sufficient.

Section 513(b) of the act requires the Commissioner to establish panels of experts or use panels of experts already established to make recommendations with respect to the classification of devices. These panels must consist of persons who are qualified by training and experience to evaluate the safety and effectiveness of the devices and who, to the extent feasible, possess skill in the use of, or experience in the development, manufacture, or utilization of, the devices. Each panel must consist of members with adequately diversified expertise in clinical and administrative medicine, engineering, biological and physical sciences, and other related professions. Each panel must also include, as nonvoting members, a representative of consumer interests and a representative of interests of the device manufacturing industry.

Section 513(c)(1) of the act provides that the panels are to be organized according to the various fields of clinical medicine and fundamental sciences in which devices are used. The Commissioner must refer a device to the appropriate panel for its review and recommendation with respect to the classification of the device. In making their reviews, the panels are required to provide an opportunity, to the maximum extent practicable, for interested persons to submit data and views on the classification of devices.

Section 513(c)(2) of the act provides that a panel recommendation on the classification of a device must include a summary of the reasons for the recommendation; a summary of the data upon which the recommendation is based; an identification of the risks to health (if any) presented by the device; and, to the extent practicable, a recommendation for the assignment of a priority for the application to the device of the requirements of section 514 of the act, regarding performance standards, or section 515 of the act, regarding premarket ap-

proval, if recommended to be classified in class II or class III, respectively.

Further, section 513(c)(2) of the act provides that a panel recommendation for the classification of a device in class I must include a recommendation on whether the device should be exempted from one or more of the requirements of section 510 of the act (registration), section 519 of the act (records and reports), or section 520(f) of the act (good manufacturing practices). Under section 513(d) of the act, the Commissioner, when promulgating a regulation classifying a device in class I, must state which, if any, of these requirements will be made inapplicable and his reasons for making such requirement(s) inapplicable.

Section 513(c) of the act contains special provisions for panel recommendations on the classification of a device that is intended to be implanted in the human body or is purported or represented to be for a use in supporting or sustaining human life. The panel must recommend that such a device be classified in class III unless it determines that such classification is not necessary to assure the safety and effectiveness of the device, in which case it must set forth the reasons in its classification recommendation. Similarly, under section 513(d) of the act, the Commissioner is required to classify implants and life-supporting and life-sustaining devices in class III, unless he determines that such classification is not necessary to assure the safety and effectiveness of the device. A proposed regulation classifying such a device in a class other than class III must be accompanied by a full statement of the Commissioner's reasons for not classifying it in class III and an identification of the risks to health (if any) presented by the device.

Section 513(d) of the act requires the Commissioner to publish in the FEDERAL REGISTER panel recommendations and proposed classification regulations. After providing an opportunity for comment, the Commissioner must by final regulation classify the device. This subsection also authorizes the Commissioner, in his discretion, to establish priorities to be used in promulgating a performance standard or requiring premarket approval for class II and class III devices, respectively.

Section 513(e) of the act provides that, based upon new information relevant to the classification of a device, the Commissioner may, upon his own initiative or upon petition of any interested person, change the classification of a device and revoke any performance standard or premarket approval requirement with respect to the device. The Commissioner is authorized, but not required, to obtain classification panel review and recommendations with respect to a proposed change in classification under this subsection. If he does obtain panel review, the resulting panel recommendations must be published in the FEDERAL REGISTER. A regulation changing the classification of a device

from class III to class II may provide that the classification will not take effect until the effective date of a performance standard for the device.

The classification procedures contained in section 513(b)-(d) of the act, and discussed above, apply to the initial classification of "old" devices, i.e., those which either were in commercial distribution before the date of enactment of the amendments or are substantially equivalent to devices in commercial distribution before that date. Section 513(f) of the act contains special provisions for the classification of "new" devices, i.e., those which were not in commercial distribution before the date of enactment and are not substantially equivalent to any which were in distribution. Such a device is automatically classified in class III unless it is substantially equivalent to another new device that has been reclassified to class I or II.

Section 513(f) of the act also contains provisions allowing the manufacturer or importer of a device classified by statute in class III to petition for reclassification in class I or class II. Within 30 days after the filing of such a petition, the Commissioner must notify the petitioner of any deficiencies in the petition that prevent him from making a decision on it. After it has been determined that the petition contains no such deficiency, the Commissioner must refer the petition to the appropriate classification panel for review. The panels must provide an opportunity for interested persons to submit data and views. A panel recommendation for the classification of a device in class I must include a recommendation whether the device should be exempted from any of the requirements of section 510, 519, or 520(f) of the act and, where appropriate and practicable, priorities for the application of sections 514 and 515 of the act to class II and class III devices, respectively. Under section 513(f) of the act, if a petitioner seeks the reclassification of a device that is intended to be implanted or is purported or represented to be for a life-supporting or life-sustaining use, the panel must recommend that the petition be denied unless the panel finds that classification in class III is not necessary to provide reasonable assurance of the safety and effectiveness of the device. The panel must make its recommendation to the Commissioner within 90 days of the date of referral of a petition to reclassify. Panel recommendations on petitions to reclassify under section 513(f) of the act must be published for comment in the FEDERAL REGISTER. Within 90 days after receipt of the panel recommendation, and no more than 210 days after the filing of the petition, the Commissioner must by order deny or approve the petition. If the Commissioner approves the petition, he must reclassify the device by order in class I or class II. An order under this section reclassifying a device in class I must state whether the device is to be exempted from any of the requirements of section 510, 519 or 520(f) of the act. The Com-

missioner must deny any petition for reclassification of a device that is intended to be implanted or is purported or represented to be for a use in supporting or sustaining human life, unless the Commissioner determines that classification in class III is not necessary to provide reasonable assurance of the safety and effectiveness of the device.

Section 513(g) of the act provides that any person seeking information respecting the class in which a device has been classified or the requirements applicable to a device under the act is entitled to receive a written statement of the information sought within 60 days of receipt by the Commissioner of a written request.

The regulations proposed herein also implement other sections of the act that affect classification, i.e., sections 514(b), 515(b) and 520(1) of the act. Section 514(b) of the act requires the Commissioner, when initiating a proceeding for the development of a performance standard for a class II device, to publish in the FEDERAL REGISTER a notice of an opportunity to request a change in classification of the device based on new information relevant to the classification of the device. Section 515(b) of the act requires that the same type of notice be included in a notice of proposed rulemaking initiating a proceeding to require premarket approval of a class III device. A request to change classification of a device in response to a notice issued pursuant to section 514(b) or 515(b) of the act must be filed within 15 days of publication of the notice. The Commissioner must then consult with the appropriate classification panel and, within 60 days of publication of the notice, by order published in the FEDERAL REGISTER, either deny the request or give notice of his intention to initiate a change in classification under section 513(e) of the act.

Section 520(1) provides that any device intended for human use that (1) had an approved or pending new drug application (NDA) on the date of enactment; (2) had in effect an investigational new drug exemption (IND) under section 505(i) of the act on the date of enactment; (3) is substantially equivalent to a device that had an approved or pending NDA or an effective IND; (4) had been declared by the Commissioner to be a new drug before the date of enactment; or (5) had legal actions pending with respect to it in a United States court on the date of enactment for an alleged violation of new drug requirements is automatically classified in class III. The manufacturer or importer of a device classified in class III by subsection 520(1) of the act may petition for reclassification of the device. Within 30 days after the filing of such a petition, the Commissioner must notify the petitioner of any deficiencies in the petition that prevent him from making a decision on it. After receipt of a petition adequate for review, the Commissioner must afford the petitioner an opportunity for an informal hearing and consult with the appropriate classification panel. Within 180 days after the filing of that petition,

the Commissioner must, by order, either deny the petition or order the classification of the device in class I or class II.

ADMINISTRATIVE PRACTICES AND PROCEDURES REGULATIONS APPLICABLE TO CLASSIFICATION PANELS

In addition to the regulations proposed for Part 860, classification panels, as advisory committees, have been and will continue to be subject to the regulations at 21 CFR Part 14, which prescribe administrative practices and procedures for public advisory committees, including rules for conducting meetings and hearings before advisory committees. These regulations became final by publication in the FEDERAL REGISTER of November 26, 1976 (41 FR 52148), were recodified in the FEDERAL REGISTER of March 22, 1977 (42 FR 15553), and, with the May 19, 1975 notice concerning interim classification, essentially satisfy the requirement in section 513(c) of the act for procedural regulations governing the review and recommendations made by device classification panels. As described above, the 19 existing classification panels have been chartered and are operating in accordance with these regulations and the applicable requirements of section 513 of the act and will so continue in carrying out their functions under the proposed Part 860.

CONFORMING CHANGES IN OTHER FDA REGULATIONS

The new procedures for classification proposed in Part 860 would require corresponding changes in other existing agency regulations in Title 21 of the Code of Federal Regulations. A brief summary of these changes follows.

Hearings under section 520(1) of the act. Section 16.1 (21 CFR 16.1) would be amended to provide that the opportunity for an informal hearing in connection with petitions for reclassification under § 860.136 would be conducted in accordance with the procedures governing regulatory hearings. The Commissioner believes that the regulatory hearing procedures in 21 CFR Part 16 are consistent with the intent of Congress that an informal hearing regarding medical devices balance differing needs (Ref. 1 at p. 53).

Public disclosure of data and information. Section 20.100(c) (21 CFR 20.100(c)) would be amended to add a new sentence establishing the special rules of § 860.5 governing the disclosure and the use by the Commissioner of any data and information submitted either to him or to classification panels in connection with classification or reclassification of devices.

PROPOSED REGULATION

Scope. Proposed § 860.1 defines the scope of Part 860. Generally, Part 860 prescribes the criteria and procedures to be used by classification panels and the Commissioner in the classification and reclassification of devices under sections 513, 514(b), 515(b) and 520(1) of the act. In addition, it supplements Part 14 (21 CFR Part 14) by providing procedures for participation by interested

persons in proceedings to classify and reclassify devices, prescribes the kinds of data acceptable for determining safety and effectiveness of devices, and prescribes rules governing use and release of information submitted to classification panels.

Definitions. Proposed § 860.3 defines terms used in Part 860. The proposed definitions of the three classes of regulatory control at proposed § 860.3(c) are adapted from section 513(a)(1) of the act. Consistent with the legislative history, the Commissioner considers the class definitions to be flexible guides permitting placement of a device in the class which provides controls adequate to reasonably assure safe and effective use of the device in actual practice (Ref. 1 at pp. 15-17, 34-36). In evaluating a device for safety and effectiveness for purposes of determining the appropriate class of regulatory control, classification panels and the Commissioner may consider the actual uses to which a device is put as well as those which are described in the labeling or promotional material for the device. Further, a device which has more than one use may be classified in one class for one of its uses and another for a second use. Although no device can be regulated adequately in Class I or class II unless there are adequate data and information establishing its safety and effectiveness, a device for which there are such data and information may nevertheless require regulation in class III because of the public health concerns posed by its use. In determining whether the controls provided by class I or class II are adequate to provide reasonable assurance of the safe and effective use of a device in actual practice, classification panels and the Commissioner may consider such practical matters as, for example, the degree of difficulty of enforcing general controls with respect to the particular device through judicial action and the length of time required to develop and promulgate a performance standard for the particular device. Such practical matters are relevant to the determination of whether the controls provided by class I or class II are adequate in light of the particular health concerns posed by a particular device. Finally, if the manufacturer or importer of a class III device believes that the device can be regulated adequately by a performance standard, he may submit a proposed standard to FDA and petition for reclassification of the device to class II in accordance with proposed Subpart C of Part 860.

The proposed definition of "implant" provides that devices not intended to remain in the human body for 30 days or more will not be regarded as implants for purposes of the act's special provisions regarding implants, unless necessary to protect human health. This is consistent with the intent of Congress as expressed in the legislative history (Ref. 2, at p. 58).

The proposed definition of "life-supporting or life-sustaining device" was adapted from the legislative history (Ref. 2, at p. 58). Generally, a device must be used in the restoration or continuation

of a bodily function important to life to be a life-supporting or life-sustaining device.

In § 860.3(f), the Commissioner is also proposing a definition of "classification questionnaire." In the May 19, 1975 notice concerning classification, an 18-question classification logic system was included which has since been conformed to the classification provisions in the act as enacted. The classification questionnaire is intended only to assist in determining the proper device classification by facilitating the application of the criteria in proposed § 860.3(c).

Besides the 18-question classification questionnaire that will be used for most devices, a separate six-question questionnaire has been developed for use in classifying *in vivo* diagnostic products, which are a kind of device. This separate questionnaire is desirable because of the different characteristics of *in vitro* diagnostic products.

The current classification questionnaires read as follows:

GENERAL DEVICE CLASSIFICATION QUESTIONNAIRE

Question 1: Is the device custom made?

Answer: Yes—Go to question 2. No—Go to question 3.

Question 2: Although the device is custom made, can standards be applied?

Answer: Yes or No—Go to question 17.

Question 3: Is the device life-sustaining or life-supporting?

Answer: Yes—Go to question 5. No—Go to question 4.

Question 4: Is the device or diagnostic information derived from use of the device potentially hazardous to life or good health when properly used?

Answer: Yes—Go to question 5. No—Go to question 7. Do not know—Go to question 5.

Question 5: Is the device of such a nature that: (a) Sufficient scientific and medical data exist from which adequate standards governing the device safety and efficacy could not be established; and, (b) development and application of such a standard would be adequate to control the device?

Answer: Yes—Go to question 7. No—Go to question 6. Do not know—Go to question 6.

Question 6: Is the device currently in use and marketed in the United States?

Answer: Yes or No—Go to question 7.

Question 7: When the device is used, is it remote from the body? (Remote means no physical or energy connection to the body, nor is it used as a part of a delivery system for gases, fluids, or other materials to or from the body.)

Answer: Yes—Go to question 14. No—Go to question 8. (Device is not remote if it is:

(1) Associated with the body through some form of energy transmission or conduction or used as a delivery system for gases, fluids or other materials to or from the body; (2) used on surface of the body; (3) used in contact with an internal body surface or cavity or used as a short-term implant; and/or (4) used as a long-term implant that is designed to be inserted into the body and reside indefinitely within the body.) Do not know—Go to question 8.

Question 8: Is the device powered by a non-manual external or internal source (such as electrical, pneumatic, nuclear, etc.)?

Answer: Yes—Go to question 9. No—Go to question 13.

Question 9: Will the use of the device or failure of power or device power source present a potential hazard to the patient?

Answer: Yes or No—Go to question 10. Do not know—Go to question 10.

Question 10: Does the device emit and/or inject any form of energy to or into the body?

Answer: Yes—Go to question 11. No—Go to question 13.

Question 11: Have the energy levels used been shown to be acceptable?

Answer: Yes or No—Go to question 12.

Question 12: Will malfunction of the device result in safe energy levels?

Answer: Yes or No—Go to question 13. Do not know—Go to question 13.

Question 13: Does the device use material for contact with the body which is generally acceptable or has known and acceptable properties which can be provided with no additional control requirements?

Answer: Yes or No—Go to question 14. Do not know—Go to question 14.

Question 14: Does the device have any known hazards, limitations, or shortcomings which can be avoided by promulgation of Federal regulations applicable to the device in question?

Answer: Yes or No—Go to question 15.

Question 15: If the device performs some measurement function, should the accuracy, reproducibility, or limitations of the information supplied be clearly indicated to the user by appropriate labeling, instructions, or precautions?

Answer: Yes—Go to question 16. Special labeling may be required to indicate the accuracy, reproducibility, or limitations of the information supplied by the device. No—Go to question 16.

Question 16: Does the device have performance characteristics which should be maintained at a satisfactory level, such level having general agreement among the user groups?

Answer: Yes or No—Go to question 17.

Question 17: Is the device used with other devices in such a way that the system in which it is used can be hazardous if the system is not assembled, used, or maintained in a satisfactory fashion?

Answer: Yes or do not know—Special labeling may be required to warn the user that the device may be hazardous if the system is not assembled, used, or maintained in a satisfactory fashion.

Question 18: Is the device potentially hazardous to the fetus or the gonads when properly used?

Answer: Yes or do not know—The device will be reviewed by the obstetrical and gynecological panel and the classifying panel jointly for further classification.

IN VITRO DIAGNOSTIC PRODUCT CLASSIFICATION QUESTIONNAIRE

Question 1: Is the *in vitro* diagnostic product or information derived from the use of the diagnostic product potentially hazardous to life, health, or well being when put to its intended use?

Answer: Yes or No—Go to question 2.

Question 2: Are general controls (class I), adequate to ensure the safe and effective use of the product?

Answer: Yes—Go to question 5. No—Go to question 3.

Question 3: Considering the nature and complexity of the product and available scientific and medical data, is it possible to develop a standard or set of standards to control the safety or effectiveness of the diagnostic product?

Answer: Yes—Go to question 5. No—Go to question 4.

Question 4: Can some components or characteristics of the product be adequately controlled by standards? Specify.

Answer: Yes or No—Go to question 5.

Question 5: Are there any special problems relating to the product that require special attention? (For example, special labeling requirements including areas such as warnings)? Identify the problem.

Answer: Yes—Go on to question 6.

Question 6: Does the product require some form of certification? Define.

The Commissioner is also proposing a definition of "supplemental data sheet." The supplemental data sheet has been prepared to gather together and report information relevant to the classification and reclassification of a device and is to be used by classification panels and may be used in petitions for reclassification to satisfy the requirements of proposed § 860.123(a)(3).

The classification questionnaire and supplemental data sheet may be changed from time to time as the agency gains experience in their use. Current copies may be obtained from the Classification Coordinator (HFK-400), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910.

The proposed definition of "generic type of device" is intended to identify those device products that are so similar that they can be considered the same type of device for purposes of applying the regulatory controls provided by the act. The definition of "generic type of device" is important for proposed Part 860 because actions taken on both classification and reclassification apply to all devices which are within the same generic type of device and which are substantially equivalent. This approach is necessary to enable the Commissioner to provide similar regulatory treatment for essentially identical products of different manufacturers or importers.

Confidentiality and use of data and information submitted in connection with classification and reclassification. Proposed § 860.5 governs the availability for public disclosure and the use by the Commissioner of any data and information submitted to the classification panels or the Commissioner in connection with the classification and reclassification of devices under proposed Part 860.

The policy expressed in § 860.5(c) concerning the availability for public disclosure of safety and effectiveness data submitted in connection with classification codifies rules announced in the May 19, 1975, notice on interim medical device classification procedures and is consistent with the legislative history of the amendments (Ref. 1, at pp. 48-50).

Proposed § 860.5(d) governs the availability for public disclosure of the contents of reclassification petitions submitted under proposed Subpart C of Part 860. The general rule is that both the fact of its existence and the entire contents of any petition for reclassification are available for public disclosure upon filing. The exception to this general rule applies to the disclosure of the contents of reclassification petitions submitted under proposed § 860.134 or § 860.136. The contents of such petitions will not be available for public disclosure during the period following submission in which

the petition is reviewed for deficiencies. At such time as such petition is determined to contain no deficiencies which prevent the Commissioner from making a decision on it, the contents of the petition will become available for public disclosure without further notice to the petitioner. Because the Commissioner gives a narrow construction to the term "deficiency," it is expected that the contents of the great majority of petitions submitted under § 860.134 and § 860.136 will be available for disclosure promptly after submission. If deficiencies are found, the contents of the petition nevertheless will become available for public disclosure 20 days following notice to petitioner of the deficiencies unless within that 20 days the petitioner satisfies the Commissioner that any or all of the petition's contents are exempt from disclosure under 21 CFR Part 20 or withdraws the petition from consideration.

The general rule that the contents of reclassification petitions are disclosable upon submission is based, in part, on the need to comply with the requirements for provision of opportunity for public comment deriving from several sources: (1) contained in section 513(f) (2) (B) (ii) and (C) (ii) of the act; (2) applicable to section 513(e) rulemaking proceedings by the Administrative Procedure Act; and (3) made applicable to section 520(1) (2) reclassification proceedings by virtue of the applicability of reclassification decisions to the entire generic type of device as well as the particular device for which a petitioner seeks reclassification. Further, the Commissioner has determined that a petitioner necessarily surrenders the confidentiality of any otherwise confidential data and information submitted in support of his argument that adequate information exists to regulate a current class III device by means of general controls or a performance standard. The exception to this general rule, which temporarily protects from public disclosure all data and information in petitions submitted under § 860.134 or § 860.136 while the petition is reviewed for deficiencies, is intended only to protect the otherwise confidential data and information of a petitioner whose petition is never considered on its merits due to deficiencies in it. As noted above, the entire contents of such petitions become available immediately upon a determination that the petition contains no deficiencies. For this reason, petitioners should not include in their petitions any data or information that is unnecessary to a decision on the petition, especially if it is information or data the petitioner would wish to keep confidential. An example of such information might be secret manufacturing methods when the method of manufacture is not relevant to the safety and effectiveness of the device.

Proposed § 860.5(e) sets forth the provision in section 520(c) of the act which prohibits the Commissioner from using as a basis for reclassification of a device from class III to class II information that is reported to or otherwise obtained by him under certain provisions of the act

and falls within the exemption from public disclosure for trade secrets and other confidential commercial information contained in § 20.61 (21 CFR 20.61). Proposed § 860.5(e) also states the Commissioner's determination that a petitioner voluntarily surrenders the confidentiality of all data and information contained in any petition filed under § 860.130 and § 860.132 and in nondeficient petitions filed under § 860.134 and § 860.136 and that, therefore, the prohibition in section 520(c) of the act does not apply to such data and information.

Determination of safety and effectiveness. Proposed § 860.7 prescribes the rules to be followed by FDA and classification panels in reviewing evidence concerning the safety and effectiveness of devices in connection with classification and related activities. This section recognizes that rules in this area must be flexible because of the variety of devices.

Proposed § 860.7(b) requires determinations of the safety and effectiveness of devices to include consideration of certain factors: the persons who are to use a device, the conditions of use for the device, the probable benefits and probable risks from use of the device, and the reliability of the device. This paragraph implements section 513(a) (2) of the act, as explained in the legislative history (Ref. 1, at pp. 16-17).

Proposed § 860.7 (c) through (e) explains the evidence that FDA will regard as valid scientific evidence to show whether a device is safe and effective. These proposed requirements are stated in general terms because of the difficulty of prescribing specific rules that are appropriate for all devices. In appropriate cases, FDA may issue guidelines under § 10.90(b) (21 CFR 10.90(b)) to set forth principles to be followed in investigations of particular types of devices to provide reasonable assurance that a device is safe and effective. In the future, the product development protocol provisions of the act may also be used by FDA and product sponsors to identify with more particularity the types of investigations required to demonstrate safety or effectiveness.

Proposed § 860.7(f) would implement the requirement in section 513(a) (3) (A) of the act that the effectiveness of a device, for purposes of classification, performance standards, and premarket approval, is "to be determined, in accordance with regulations promulgated by the Secretary, on the basis of well-controlled investigations, including clinical investigations where appropriate, by experts qualified by training and experience to evaluate the effectiveness of the devices, from which investigations it can fairly and responsibly be concluded by qualified experts that the device will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling of the device." The act authorizes the Commissioner to allow use of valid scientific evidence other than well-controlled investigations to establish effectiveness, a provision that is

implemented in proposed § 860.7(e) (2). The principles of well-controlled investigations are adapted from regulations applicable to new drugs in 21 CFR 314.111(a) (5) (ii), implementing section 505 (d) of the act (21 U.S.C. 355(d)). The Commissioner recognizes that certain of these principles may not be applicable to many devices, such as the provisions concerning placebo control.

Proposed § 860.7(g) explains that it is the responsibility of device manufacturers and importers to assure that the panels and FDA have adequate information to provide reasonable assurance that their devices are safe and effective for their conditions of use. The failure of a manufacturer or importer of a device to present to FDA adequate valid scientific evidence to show there is reasonable assurance of the safety and effectiveness of the device, if regulated in class I or class II, may be supportive of a determination that the device should be classified in class III (Ref. 1, at p. 40).

Proposed § 860.7(g) would also enable the Commissioner to require that a manufacturer, importer, or distributor of a device make reports or provide other information bearing upon a device's classification and whether there is reasonable assurance of the safety and effectiveness of a device or whether it is adulterated or misbranded under the act. This provision is authorized by section 519 of the act, and any requirement under § 860.7 (g) for a report or other information must be issued in accordance with the restrictions of that section. Thus, requests for submission of a report or other information concerning a device shall state the reason or purpose for the request, must identify to the fullest extent practicable the desired report or information, may not require identification of individual patients in most cases, and may not be directed to a person exempt from such a requirement under section 519(b) of the act.

The Commissioner does not believe that proposed § 860.7(g) imposes requirements unduly burdensome to device manufacturers, importers, or distributors taking into account the cost of complying with such requirements and the need for protection of the public health and the implementation of the act. The Commissioner intends to implement this provision on a selective basis and use it only when other sources of information do not permit him to make a sound decision on classification or otherwise to determine the safety or effectiveness of a device. In addition, section 519(a) (5) of the act places statutory restrictions on the application of reporting requirements to manufacturers, importers, and distributors of devices that have been classified in class I. The Commission advises that the classification regulations placing certain devices in class I may provide for a class I device to be exempt from some or all of the recordkeeping and reporting requirements. These are additional assurances that the authority in section 519 of the act, implemented in part in proposed § 860.7(g), is used fairly and in a manner that is not unduly burdensome.

Classification—Subpart B. Proposed Subpart B sets forth the procedures for classification of devices. Certain provisions of proposed Subpart B, i.e., § 860.93 regarding classifications of implants, life-saving or life-supporting devices and § 860.95 regarding exemptions from sections 510, 519, and 520(f) of the act, apply also to reclassification of devices.

Classification procedures for "old devices". Proposed § 860.84 explains the procedures and criteria to be applied in the original classification of "old devices" into one of the three classes of regulatory control (class I, class II, and class III). The procedures apply to the classification of devices that either were in commercial distribution before May 28, 1976, or are substantially equivalent to devices in commercial distribution before that date. Section 860.84 does not apply to devices classified by statute in class III because they are either "new" and not substantially equivalent to an old device or were regarded formerly as new drugs, in accordance with sections 513(f) and 520(1) of the act, respectively. The procedures in proposed § 860.84 are based on the provisions of section 513 (b) through (d) of the act, described above in this preamble. The Commissioner notes that final determinations on the classification of devices are for the Commissioner alone to make and advises that persons should not rely upon panel recommendations in determining their course of action with respect to particular devices in which they have an interest.

The panel recommendation includes all the information listed in proposed § 860.84(d) (1) through (6) and, when submitted to the Commissioner in final form, will be published in its entirety together with a proposed classification regulation. The summary of data to be included with the recommendation in accordance with proposed § 860.84(d) (2) need not be an exhaustive recitation of all the data considered by the panel, but shall include a brief statement of the most important facts justifying the recommendation. The summary is, however, to be accompanied by a list of references to sources containing the data considered by the panel and used as a basis for its recommendation.

Classification of implants, life-supporting or life-sustaining devices. Proposed § 860.93 sets forth special requirements with respect to the classification and reclassification of implants and life-supporting or life-sustaining devices. Section 513 of the act requires that such devices be classified or, in the case of a petition for reclassification, remain in class III unless it is specifically determined that such classification is not necessary to assure the safety and effectiveness of the device and that determination is documented by scientific evidence.

Exemptions from sections 510, 519, and 520(f) of the act. Proposed § 860.95 provides that a class I device may be exempted from the requirements of the act under section 510 (registration, product listing, and premarket notification)

section 519 (records and reports), and section 520(f) (good manufacturing practice regulations) if such requirements are not necessary to provide reasonable assurance of the safety and effectiveness of the device, in accordance with section 513 of the act. A device may be exempted from these sections in whole or in part. Thus, a device may be subject to only part of the good manufacturing practices requirements or only to certain records and reports requirements; and, though a device may be exempted from the registration requirements, the manufacturing establishment nevertheless may be required to register if it manufactures another device that is not exempt from the registration requirements.

Reclassification—Subpart C. Proposed Subpart C sets forth requirements for the reclassification of devices in accordance with sections 513 (e) and (f), 514(b), and 520(1) of the act.

General. Proposed § 860.120 explains that proposed Subpart C sets forth procedures for the implementation of the reclassification provisions of the Act. It is important to note that the criteria for determining the proper class for a device are the same when considering reclassification of a device as when considering the initial classification under proposed § 860.84. These criteria are set forth in proposed § 860.3(c). It should be noted further that the reclassification of a particular device results in the reclassification of all substantially equivalent devices within that generic type, as defined in proposed § 860.3(d). This is to ensure that the devices that are of the same generic type which are also substantially equivalent will be subject to the same level of regulatory control and that no manufacturer will gain reclassification only of his device when there are no significant differences between his device and a competitor's device that relates to safety and effectiveness. The consideration of a reclassification petition may result in the creation of new generic types of devices.

Petitions for reclassification. Proposed § 860.123 prescribes the form and content of petitions for reclassification, including requests for change in classification submitted under sections 514(b) and 515(b) of the act. Petitions that are not in accordance with proposed § 860.123 may be considered by the Commissioner to be deficient and not acceptable for consideration. Petitioners will be provided opportunity to supplement a deficient petition. A petition will be considered deficient only in those unusual circumstances in which the Commissioner is unable to make any decision on it, as, for example, when one of the elements set forth in proposed § 860.123(a) (1)-(6) is inadvertently omitted from the petition. The failure of a petitioner to provide acceptable valid scientific evidence establishing the safety and effectiveness of the device is not a reason to consider a petition deficient, but usually will be a reason for denying a petition. Petitions for reclassification are not considered to be citizen petitions and, thus, are not

subject to the requirements applicable to such petitions contained in 21 CFR 10.30.

Reclassification petitions must include a completed classification questionnaire and supplemental data sheet. The Commissioner believes that the types of information required for these forms are necessary in considering the reclassification of a device. The information contained in these forms will be compared by a panel with the information contained in the completed forms that the panels used as a basis for the original classification recommendation, if the device was classified under a procedure requiring a panel recommendation.

Sections 513(e), 514(b), and 515(b) of the act require reclassification petitions to be based on new information. A petition filed under any of these sections of the act must clearly state the new information upon which the petition is based. It is intended that this requirement will isolate the issues raised by such petitions and will assure that the petition is based upon new information in accordance with the act. The petition must also be accompanied by copies of the source documents from which the new information is derived.

Consultation with panels. Proposed § 860.125 prescribes the methods by which the Commissioner may consult with a classification panel with respect to reclassification of a device. Though a preference is stated for having consultation occur in the context of discussion at a panel meeting, the Commissioner retains the prerogative to choose another method when he considers it appropriate under the circumstances. The more important and complex the subject matter, the more likely it will be that the Commissioner will choose to have consultation through discussion at a panel meeting.

General procedures under section 513 (e) of the act. Proposed § 860.130 governs the procedures for reclassification under section 513(e) of the act. Petitions for reclassification under this section must be based upon new information respecting the classification of the device that suggests that some different level of regulatory control is required to provide reasonable assurance of the safety and effectiveness of the device. The Commissioner may initiate a reclassification proceeding under this section if he determines that the controls applicable to another regulatory class are more appropriate for a device and the device meets the classification criteria for that other class. Reclassification under proposed § 860.130 will be effected by regulation.

Procedures when the Commissioner initiates a performance standard or pre-market approval proceeding under section 514(b) or 515(b) of the act. Proposed § 860.132 governs the procedures for requesting a change in classification after the Commissioner initiates a proceeding to develop a performance standard or to require premarket approval for a device under section 514(b) or 515(b) of the act. If the Commissioner grants the request, the proceeding to effect reclassification will be conducted in ac-

cordance with proposed § 860.130, and reclassification will be effected by a regulation. A request for a change in classification under this section must meet the requirements of proposed § 860.123 with respect to form and content of petitions for reclassification. The Commissioner believes that the information required by that section is necessary to act on requests for change in classification in the short period of time allowed by the act.

Procedures for "new devices" under section 513(f) of the act. Proposed § 860.134 prescribes procedures for reclassification of devices classified in class III by statute in accordance with section 513(f) of the act, as described above in this preamble. The Commissioner stresses that the determination that a new device is or is not substantially equivalent to a pre-enactment device for purposes of the application of section 513(f) of the act and proposed § 860.134 is one left to FDA subjects to judicial review. The panel's review of devices for safety and effectiveness under proposed § 860.134 will follow the same procedures applicable to reviews under proposed § 860.84(c) for the original classification of "old" devices, including the preparation of a recommendation in accordance with proposed § 860.84(d). Reclassification under this proposed section is effected by order in the form of a letter to the petitioner. The Commissioner anticipates that reclassification effected by order under this section will be codified periodically by regulation to facilitate the public's access to the decision.

Procedures for transitional products under section 520(l) of the act. Proposed § 860.136 establishes procedures for the reclassification of devices that had been regarded as new drugs before the date of enactment and are considered to be automatically in class III under section 520(l) of the act. The informal hearing provided for in section 520(l) (2) of the act in connection with petitions for reclassification under this section will be conducted in accordance with the procedures governing regulatory hearings before the Food and Drug Administration (21 CFR Part 16). The Commissioner considers the procedures provided there to satisfy the procedural requirements for an informal hearing in section 201(y) of the act (21 U.S.C. 321(y)). Reclassification under this proposed section will be effected by order in the form of a letter to the petitioner. As with reclassifications effected by order under proposed § 860.134 for "new devices," the Commissioner anticipates that reclassifications effected by order under this section will be codified periodically by regulation to facilitate access by the public.

REFERENCES

Background data and information on which the Commissioner relies in proposing this regulation have been placed on file for public review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857. The following is a list of these documents:

1. House Report No. 94-853, Medical Device Amendments, February 29, 1976 (Committee on Interstate and Foreign Commerce).

2. House Report No. 94-1090, Medical Device Amendments, May 6, 1976 (Committee of Conference).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 514, 515, 519, 520, and 701(a)), 52 Stat. 1055, 90 Stat. 540-559, 564-575 (21 U.S.C. 380c, 360d, 360e, 360i, 360j, and 371(a)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Parts 16 and 20 be amended and Part 860 be added, to read as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. Part 16 is amended in § 16.1 by redesignating paragraph (b) (26) as (b) (30) and adding new paragraph (b) (26), and designating paragraph (b) (27)-(29) "reserved," to read as follows:

§ 16.1 Scope.

- (b) * * *
- (26) Section 860.136, relating to petitions for reclassification of a medical device currently in class III by operation of section 520(l) (1) of the Federal Food, Drug, and Cosmetic Act.
- (27)-(29) [Reserved]
- (30) Any other provision in the regulations in this chapter under which a party who is adversely affected by regulatory action is entitled to an opportunity for a hearing, and no other procedural provisions in this part are by regulation applicable to such hearing.

PART 20—PUBLIC INFORMATION

2. Part 20 is amended in § 20.100 by adding new paragraph (c) (29), to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

- (c) * * *
- (29) Data and information submitted for medical device products, in § 860.5 of this chapter.

3. Part 860 is added to read as follows:

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

Subpart A—General

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|--------|---|
| Sec. | Scope. |
| 860.1 | Definitions. |
| 860.3 | Confidentiality and use of data and information submitted in connection with classification and reclassification. |
| 860.5 | Determination of safety and effectiveness. |
| 860.7 | Subpart B—Classification |
| 860.84 | Classification procedures for "old devices." |
| 860.93 | Classification of implants, life-supporting or life-sustaining devices. |
| 860.95 | Exemptions from sections 510, 519, and 520(f) of the act. |

Subpart C—Reclassification

- | | |
|---------|--|
| 860.120 | General. |
| 860.123 | Reclassification petition: content and form. |

- | | |
|---------|---|
| Sec. | |
| 860.125 | Consultation with panels. |
| 860.130 | General procedures under section 513(e) of the act. |
| 860.132 | Procedures when the Commissioner initiates a performance standard or premarket approval proceeding under section 514(b) or 515(b) of the act. |
| 860.134 | Procedures for "new devices" under section 513(f) of the act. |
| 860.136 | Procedures for transitional products under section 520(l) of the act. |

AUTHORITY: Secs. 513, 514, 515, 519, 520, and 701(a), 52 Stat. 1055, 90 Stat. 540-559, 564-574 (21 U.S.C. 360c, 360d, 360e, 360i, 360j, and 371(a)) unless otherwise noted.

Subpart A—General

§ 860.1 Scope.

(a) This part implements sections 513, 514(b), 515(b), and 520(l) of the act with respect to the classification and reclassification of devices intended for human use.

(b) This part prescribes the criteria and procedures to be used by classification panels in making their recommendations and by the Commissioner in making his determinations regarding the class of regulatory control (class I, class II, or class III) appropriate for particular devices. This part also supplements the general Food and Drug Administration procedures concerning advisory committees (Part 14 of this chapter), providing procedures for manufacturers, importers, and other interested persons to participate in proceedings to classify and reclassify devices. This part also provides information with respect to the kind of data acceptable for determination of the safety and effectiveness of devices and prescribes the circumstances under which information submitted to classification panels and to the Commissioner in connection with classification and reclassification proceedings will be released to the public.

§ 860.3 Definitions.

§ 860.3 Definitions.

For the purposes of this part, the following definitions are set:

- (a) "Act" means the Federal Food, Drug, and Cosmetic Act.
- (b) "Commissioner" means the Commissioner of Food and Drugs, Food and Drug Administration, United States Department of Health, Education, and Welfare, or his designee.

(c) "Class" means one of the three categories of regulatory control for medical devices, defined below:

(1) "Class I" means the class for a device that is subject only to the general controls authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration), 516 (banned devices), 518 (notification and other remedies), 519 (records and reports), and 520 (general provisions) of the act. A device is in class I if (i) general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device, or (ii) there is insufficient information to determine that the general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device or to establish a performance

standard to provide such assurance, but the device is not life-supporting or life-sustaining or for a use which is of substantial importance in preventing impairment of human health and does not present a potential unreasonable risk of illness or injury.

(2) "Class II" means the class for a device that is or will eventually be subject to the requirements of a performance standard promulgated in accordance with section 514 of the act. A device is in class II if the general controls by themselves are insufficient to provide reasonable assurance of its safety and effectiveness and there is sufficient information to establish a performance standard to provide such assurance.

(3) "Class III" means the class for a device for which premarket approval is or will be required in accordance with section 515 of the act. A device is in class III if insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of its safety and effectiveness and if insufficient information exists to establish a performance standard to provide such assurance and, in addition, the device is life-supporting or life-sustaining, or for a use which is of substantial importance in preventing impairment of human health, or the device presents a potential unreasonable risk of illness or injury.

(d) "Implant" means a device that is placed into surgically or naturally formed cavities of the human body. Unless otherwise determined by the Commissioner on the basis of the need to protect human health, a device is regarded as an implant for the purpose of this part only if it is intended to remain implanted continuously for a period of 30 days or more.

(e) "Life-supporting or life-sustaining device" means a device that is intended to be used for restoration, maintenance, or continuation of a bodily function(s) important to the continuation of human life or yields information that is to be used for restoration, maintenance, or continuation of such function.

(f) "Classification questionnaire" means a specific series of questions prepared by the Commissioner for use by classification panels in preparing recommendations to the Commissioner regarding classification and by petitioners who submit petitions for reclassification. The questions relate to the safety and effectiveness characteristics of a device and the answers are intended to assist in determining the proper classification for a device.

(g) "Supplemental data sheet" means information which is compiled by classification panels and submitted in petitions for reclassification and which consists of:

(1) A summary of the reasons for the recommendation (or petition);

(2) A summary of the data upon which the recommendation (or petition) is based;

(3) An identification of the risks to health (if any) presented by the device;

(4) To the extent practicable, a recommendation for the assignment of a

priority for the application of the performance standards or premarket approval provisions of the act to a class II or class III device;

(5) A recommendation whether the device should be exempted from any of the requirements of registration, record-keeping and reporting, or good manufacturing practice regulations;

(6) In the case of an implant or life-supporting or life-sustaining device for which classification in class III is not recommended, a statement of the reasons for not recommending classification in Class III;

(7) Identification of any needed restrictions on the use of the device, e.g., whether the device requires special labeling, should be banned, or should be used only upon authorization of a physician; and

(8) Any existing standards applicable to the device, device subassemblies, or device materials.

(h) "Classification panel" means one of the several advisory committees established by the Commissioner under section 513 of the act and Part 14 of this chapter for the purpose of making recommendations to the Commissioner on the classification and reclassification of devices and for other purposes prescribed by the act or the Commissioner.

(i) "Generic type of device" means a grouping of devices that do not differ significantly in purpose, design, materials, energy source, function, or any other feature related to safety and effectiveness, and for which similar regulatory controls will be sufficient to provide reasonable assurance of safety and effectiveness.

§ 860.5 Confidentiality and use of data and information submitted in connection with classification and reclassification.

(a) This section governs the availability for public disclosure and the use by the Commissioner of data and information submitted to classification panels or to the Commissioner in connection with the classification or reclassification of devices under this part.

(b) In general, data and information submitted to classification panels in connection with the classification of devices under § 860.84 shall be available immediately for public disclosure upon request. However, except as provided by the special rules in paragraph (c) of this section, this provision does not apply to data and information exempt from public disclosure in accordance with Part 20 of this chapter which data and information shall only be available in accordance with Part 20.

(c) (1) Safety and effectiveness data submitted to classification panels or to the Commissioner in connection with the classification of a device under § 860.84 and not previously disclosed to the public, as defined in § 20.81 of this chapter, shall be regarded as confidential if the device is classified in class III. Because it is not known whether a device is classified in class III until publication of a final regulation under § 860.84, all such safety and effectiveness data that

have not been previously disclosed are not available for public disclosure unless and until the device is classified in class I or II, in which case the procedure in paragraph (c) (2) of this section applies.

(2) Thirty days after publication of a final regulation under § 860.84 classifying a device is class I or class II, safety and effectiveness data submitted for that device that has been regarded as confidential under paragraph (c) (1) of this section will be available for public disclosure and placed on public display in the office of the Hearing Clerk, Food and Drug Administration unless, within that 30 day period, the person who submitted the data demonstrates that the data still fall within the exemption for trade secrets and confidential commercial information described in § 20.61 of this chapter. Safety and effectiveness data submitted for a device that has been classified in class III by regulation in accordance with § 860.84 shall remain confidential and unavailable for public disclosure, so long as such data have not been disclosed to the public as defined in § 20.81 of this chapter.

(3) Because device classification affects generic types of devices, the classification panels and the Commissioner may consider safety and effectiveness data developed concerning a particular device in making determinations under § 860.84 concerning the initial classification of any other device that is in the same generic type or that otherwise possesses similar characteristics, regardless of whether such data currently are regarded as confidential under paragraph (c) (1) of this section.

(d) (1) The fact of its existence and the contents of a petition for reclassification filed in accordance with § 860.130 or § 860.132 are available for public disclosure at the time the petition is filed.

(2) The fact of the existence of a petition for reclassification filed in accordance with § 860.134 or § 860.136 is available for public disclosure at the time the petition is filed. The contents of such a petition are not available for public disclosure for the period of time following receipt (not longer than 30 days) during which the petition is reviewed for any deficiencies that prevent the Commissioner from making a decision on it. When, within that 30 days, it is determined that the petition contains no deficiencies that prevent the Commissioner from making a decision on it, the entire contents of the petition will be available for public disclosure and subject to consideration by classification panels and by the Commissioner in making a decision on the petition. If during this 30-day period of time the petition is found to contain deficiencies that prevent the Commissioner from making a decision on it, the petitioner will be so notified and provided an opportunity to correct the deficiencies. The contents of the petition will become available for public disclosure 20 days after notice to the petitioner of deficiencies in the petition except to the extent the petitioner, within that 20 days, satisfies the Commissioner that any or all of the petition's contents are exempt from disclo-

sure under Part 20 of this chapter. At such time as the deficiencies have been corrected by the petitioner, the entire contents of the petition will be available for public disclosure and subject to consideration by classification panels and by the Commissioner in making a decision on the petition.

(e) No information reported to or otherwise obtained by the Commissioner under sections 513, 514, 515, 516, 518, 519, 520(f), 520(g), or 704 of the act that falls within the exemption described in § 20.61 of this chapter for trade secrets and confidential commercial information may be disclosed by the Commissioner or used as the basis for reclassification of a device from class III to class II. The exemption described in § 20.61 does not apply to any data or information contained in any petition for reclassification submitted in accordance with § 860.130 or § 860.132, or in a petition submitted in accordance with § 860.134 or § 860.136 that has been determined to contain no deficiencies that prevent the Commissioner from making a decision on it. Accordingly, all data and information contained in such petitions may be disclosed by the Commissioner and used as the basis for reclassification of a device from class III to class II.

(f) For purposes of this section, safety and effectiveness data include data and results derived from all studies and tests of a device on animals and humans and from all studies and tests of the device itself intended to establish or determine its safety and effectiveness.

§ 860.7 Determination of safety and effectiveness.

(a) Because of their great variety, there is no single standard of safety and effectiveness, or of evidence to show device safety or effectiveness, that is applicable to all devices. The classification panels, in reviewing evidence concerning the safety and effectiveness of a device and in preparing advice to the Commissioner, and the Commissioner, in making determinations concerning the safety and effectiveness of a device, shall apply the rules in this section.

(b) For purposes of classification, establishment of performance standards for a class II device, and premarket approval of a class III device, determination of the safety and effectiveness of a device shall include consideration of the following, among other relevant factors:

(1) The persons for whose use the device is represented or intended;

(2) The conditions of use for the device, including conditions of use prescribed, recommended, or suggested in the labeling of the device and other intended conditions of use, including those prescribed, recommended, or suggested in the advertising for the device;

(3) The probable benefit to health from the use of the device weighed against any probable injury or illness from such use; and

(4) The reliability of the device.

(c) (1) Although any form of evidence may be submitted to the Food and Drug Administration to show whether a de-

vice is safe and effective, the agency relies only on valid scientific evidence to determine that there is reasonable assurance that a device is safe and effective. The Commissioner, in his discretion, after considering the nature of the device and the rules in this section, shall determine whether particular evidence submitted or otherwise available to him is valid scientific evidence for the purpose of determining the safety or effectiveness of a particular device and whether available evidence taken as a whole is adequate to determine that there is reasonable assurance that a device is safe and effective for its conditions of use.

(2) Valid scientific evidence is evidence from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. The evidence required may vary according to the characteristics of the device, its conditions of use, the existence and adequacy of warnings and other restrictions, and the extent of experience with its use. Valid scientific evidence includes well-controlled investigations, partially controlled and uncontrolled studies, well-documented case histories by qualified experts, and, in some cases, reports of significant human experience of a marketed device. Isolated case reports, random experience, reports lacking the details to permit scientific evaluation, or unsubstantiated opinion are not regarded as valid scientific evidence to show safety or effectiveness, although such information may be considered if relevant to a determination that a device is not safe or effective.

(d) (1) There is reasonable assurance that a device is safe when it can be determined, based on valid scientific evidence, that the benefits from the use of the device for its intended uses and conditions of use, with adequate directions for use and warnings against unsafe use, outweigh the risks. The valid scientific evidence used to determine the safety of any device shall include adequate efforts to demonstrate the absence of unreasonable risk of illness or injury associated with the use of the device under its intended uses and conditions of use.

(2) Among the types of evidence that may be required, when appropriate, to determine that there is reasonable assurance that a device is safe are investigations using laboratory animals, other nonclinical investigations, including *in vitro* studies, and investigations involving human subjects.

(e) (1) There is reasonable assurance that a device is effective when it can be determined based on valid scientific evidence that, in a significant portion of the target population, the use of the device for its intended uses and conditions of use, with adequate directions for use and warnings against unsafe use, will provide clinically significant results.

(2) The valid scientific evidence used to determine the effectiveness of a device shall include well-controlled investigations, as defined in paragraph (f) of this section, unless the Food and Drug Administration determines that other valid

scientific evidence exists that is sufficient to determine the effectiveness of a device and authorizes reliance on such other valid scientific evidence, without well-controlled investigations. The Commissioner may make such a determination where the requirement of well-controlled investigations in paragraph (f) of this section is not reasonably applicable to the device or essential to the validity of the evidence of effectiveness.

(f) The following principles have been developed over a period of years and are recognized by the scientific community as the essentials of well-controlled clinical investigations. They provide the basis for the determination whether there is reasonable assurance that a device is effective based on well-controlled investigations and are also useful in assessing the weight to be given to other valid scientific evidence permitted under this section.

(1) The plan or protocol for the study and the report of the results of a well-controlled investigation shall include the following:

(i) A clear statement of the objectives of the study.

(ii) A method of selection of the subjects that:

(a) Provides adequate assurance that the subjects are suitable for the purposes of the study, provides diagnostic criteria of the condition to be treated or diagnosed, provides confirmatory laboratory tests where appropriate, and, in the case of a device to prevent a disease or condition, provides evidence of susceptibility and exposure to the condition against which prophylaxis is desired.

(b) Assigns the subjects to test groups, if used, in such a way as to minimize bias.

(c) Assures comparability in test and any control groups of pertinent variables, such as sex, severity or duration of the disease, and use of therapy other than the test device.

(iii) An explanation of the methods of observation and recording of results, including the variables measured, quantitation, assessment of any subject's response, and steps taken to minimize bias regarding subjects and observers.

(iv) A comparison of the results of treatment or diagnosis with a control in such a fashion as to permit quantitative evaluation. The precise nature of the control must be stated and an explanation given of the methods used to minimize bias on the part of the observers and the analysts of the data. Level and methods of "blinding," if appropriate and used, are to be documented. Generally, four types of comparisons are recognized:

(a) *No treatment.* Where objective measurements of effectiveness are available and placebo effect is negligible, comparison of the objective results in comparable groups of treated and untreated patients.

(b) *Placebo control.* Where there may be a placebo effect with the use of a device, comparison of the results of use of the device with an ineffective device under conditions of use designed to resemble the conditions of use of the de-

vice under investigation as far as possible.

(c) *Active treatment control.* An effective regimen of therapy may be used for comparison, e.g., where the condition treated is such that no treatment or use of a placebo would be inappropriate or contrary to the interest of the patient.

(d) *Historical control.* In certain circumstances, such as those involving diseases with high and predictable mortality, with signs and symptoms of predictable duration or severity, or in the case of prophylaxis, where morbidity is predictable, the results of use of the device may be compared quantitatively with prior experience historically derived from the adequately documented natural history of the disease or condition in comparable patients or populations with not treatment or with a regimen (therapeutic, diagnostic, prophylactic) the effectiveness of which is established.

(v) A summary of the methods of analysis and an evaluation of data derived from the study, including any appropriate statistical methods.

(2) A well-controlled investigation shall involve use of a test device that is standardized in its composition or design and performance, to give significance to the results of the investigation.

(g) (1) It is the responsibility of each manufacturer and importer of a device to assure that adequate information exists to provide reasonable assurance that the device is safe and effective for its intended uses and conditions of use. The failure of a manufacturer or importer of a device to present to the Food and Drug Administration adequate, valid, scientific evidence showing that there is reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone, or by general controls and performance standards, may be supportive of a determination that the device should be classified in class III.

(2) The Commissioner may require that a manufacturer, importer, or distributor make reports or provide other information bearing upon a device's classification and whether there is reasonable assurance of the safety and effectiveness of a device or whether it is adulterated or misbranded under the act.

(3) A requirement for a report or other information under this paragraph shall comply with section 519 of the act; shall state the reason or purpose for such request and identify to the fullest extent practicable the needed report or information; shall not be imposed on a manufacturer, importer, or distributor of a classified device that has been exempted from such a requirement in accordance with § 860.95; shall prescribe time for compliance with the requirement; may be issued in the form of a general regulation or notice published in the FEDERAL REGISTER or an order to a particular manufacturer, importer, or distributor; and may prescribe the form and manner in which the report or information is to be provided.

(4) Whenever required information has been previously submitted to the

Food and Drug Administration, that information need not be resubmitted, but may be incorporated by reference.

Subpart B—Classification

§ 860.84 Classification procedures for "old devices."

(a) This subpart sets forth procedures for the original classification of a device that either was in commercial distribution before May 28, 1976, or is substantially equivalent to a device that was in commercial distribution before that date. Such device shall be classified by regulation in either class I (general controls), class II (performance standards), or class III (premarket approval), depending on the level of regulatory control required to provide reasonable assurance of the safety and effectiveness of the device (§ 860.3(c)). This subpart does not apply to a product that is classified in class III by statute under section 520(1) (1) through (3) of the act because it was previously regarded as a new drug, but does apply to any product subject to section 520(1) (4) of the act that was previously regarded as an antibiotic drug. The procedures for classification of a device under this section are described in paragraphs (b) through (f) below.

(b) The Commissioner refers the device to the appropriate classification panel organized and operated in accordance with section 513 (b) and (c) of the act and Part 14 of this chapter.

(c) In order to make recommendations to the Food and Drug Administration on the class of regulatory control (class I, class II, or class III) appropriate for the device, the panel reviews the device for safety and effectiveness. In so doing, the panel:

(1) Considers the factors described in § 860.7 relating to determinations of safety and effectiveness;

(2) Determines the safety and effectiveness of the device on the basis of the types of scientific evidence described in § 860.7;

(3) Answers the question in the classification questionnaire that are appropriate for the device;

(4) Completes a supplemental data sheet for the device;

(5) Provides, to the maximum extent practicable, an opportunity for interested persons to submit data and views on the classification of the device in accordance with Part 14 of this chapter.

(d) Based on its review for safety and effectiveness and applying the definitions for each class in § 860.3(c), the panel makes a recommendation regarding the classification of the device and submits it to the Commissioner. The recommendation includes:

(1) A summary of the reasons for the recommendation;

(2) A summary of the data upon which the recommendation is based, accompanied by references to sources containing such data;

(3) An identification of the risks to health (if any) presented by the device with respect to which the recommendation is made;

(4) In the case of a recommendation for classification in class I, a recommendation as to exemption of the device from the requirements of one or more of the following sections of the act: section 510 (registration, product listing, and premarket notification); section 519 (records and reports); and section 520(f) (good manufacturing practice regulations) in accordance with § 860.95;

(5) In the case of a recommendation for classification in class II or class III, to the extent practicable, a recommendation for the assignment of a priority to the device for the promulgation of a performance standard for, or application of a premarket approval requirement to, the device;

(6) In the case of an implant or a life-supporting or life-sustaining device into class I or class II, a statement of why premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device, accompanied by references to supporting documentation and data that meet the requirements of § 860.7, and an identification of the risks to health, if any, presented by the device.

A panel recommendation is regarded as preliminary until the Food and Drug Administration has reviewed the proposed panel recommendation, discussed it with the panel if appropriate, and published a proposed regulation classifying the device. Preliminary panel recommendations are filed in the Hearing Clerk's office upon receipt and are available to the public upon request.

(e) The Commissioner publishes the panel's recommendation in the FEDERAL REGISTER, together with a proposed regulation classifying the device, and provides an opportunity for interested persons to submit comments on the recommendation and proposed regulation.

(f) The Commissioner reviews the comments and issues a final regulation classifying the device, which shall:

(1) If classifying the device in class I, prescribe which of the requirements of sections 510, 519, and 520(f) of the act shall not apply to the device and state the reasons for making the requirements inapplicable, in accordance with § 860.95;

(2) If classifying the device in class II or class III, at the discretion of the Commissioner, establish priorities to be used for the promulgation of a performance standard for, or application of a premarket approval requirement to, the device;

(3) If classifying an implant, or life-supporting or life-sustaining device, be in accordance with § 860.93(b).

§ 860.93 Classification of implants, life-supporting or life-sustaining devices.

(a) The classification panel shall recommend classification in class III of any implant or life-supporting or life-sustaining device unless the panel determines that classification in class III is not necessary to provide reasonable assurance of the safety and effectiveness

of the device. If the panel recommends classification or reclassification of such a device in a class other than class III, it shall set forth in its recommendation the reasons for so doing together with references to supporting documentation and data that meet the requirements of § 860.7, and an identification of the risks to health, if any, presented by the device.

(b) The Commissioner shall classify any impant or life-supporting or life-sustaining device in class III unless he determines that such classification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. If the Commissioner proposes to classify or reclassify the device in a class other than class III, the regulation or order effecting such classification or reclassification shall be accompanied by a full statement of the reasons for not classifying or not retaining the device in class III, which may be in the form of concurrence with a panel's reasons for its recommendation, together with supporting documentation and data that meet the requirements of § 860.7, and an identification of the risks to health, if any, presented by the device.

§ 860.95 Exemptions from sections 510, 519, and 520(f) of the act.

(a) If a panel recommends that a device be classified or reclassified in class I, it shall recommend to the Commissioner whether the device should be exempted from the requirements of one or more of the following sections of the act: section 510 (registration, product listing, and premarket notification), section 519 (records and reports), and section 520(f) (good) manufacturing practice regulations).

(b) A regulation or an order classifying or reclassifying a device in class I shall state the requirements of sections 510, 519, and 520(f) of the act from which the device is to be exempted, if any, together with the reasons for granting such exemption.

(c) Exemptions will be granted under this section only upon a determination that the requirements from which the device is exempted are not necessary to provide reasonable assurance of the safety and effectiveness of the device.

Subpart C—Reclassification

§ 860.120 General.

Sections 513(e), 513(f), 514(b), 515(b), and 520(1) of the act provide for reclassification of a device and prescribe procedures for effecting reclassification. The purposes of Subpart C are to:

(a) Set forth the requirements as to form and content of petitions for reclassification;

(b) Describe the circumstances in which each of the five reclassification provisions apply; and

(c) Explain the procedures for reclassification prescribed in the five reclassification sections of the act.

The criteria for determining the proper class for a device are set forth in § 860.3(c). The reclassification of any specific device within a generic type of device causes the reclassification of all

substantially equivalent devices within that generic type. Accordingly, a petition for the reclassification of any specific device shall be regarded as a petition for reclassification of all substantially equivalent devices within the same generic type.

§ 860.123 Reclassification petition: content and form.

(a) Unless otherwise provided in writing by the Commissioner, all petitions for reclassification of a device, regardless of the section of the act under which they are filed, shall include the following:

(1) A specification of the generic type of device for which reclassification is requested.

(2) A statement of the action requested by the petition, e.g., "it is requested that _____ device(s) be reclassified from class III to class II."

(3) A completed supplemental data sheet applicable to the device for which reclassification is requested.

(4) A completed classification questionnaire applicable to the device for which reclassification is requested.

(5) A statement of the basis for disagreement with the present classification status of the device.

(6) A full statement of the reasons and supporting data meeting the requirement of § 860.7 demonstrating why the device should not be classified in its present classification and how the proposed classification will provide reasonable assurance of the safety and effectiveness of the device.

(7) Representative data and information known to the petitioner which are unfavorable to the petitioner's position.

(8) If the petition is based on new information under section 513(e), 514(b), or 515(b) of the act, a summary of the new information upon which the petition is based.

(9) Copies of source documents from which new information used to support the petition have been obtained (attached as appendices to the petition).

(b) Each petition submitted pursuant to this section shall be:

(1) Addressed to the Food and Drug Administration, Bureau of Medical Devices, Document Control Center (HFK-20), 8757 Georgia Ave., Silver Spring, Md. 20910;

(2) Marked clearly with the section of the act under which the petition is being submitted, i.e., "513(e)," "513(f)," "514(b)," "515(b)," or "520(1) Petition";

(3) Bound into a volume or volumes, where necessary; and

(4) Submitted in quintuplicate.

§ 860.125 Consultation with panels.

(a) When the Commissioner is required to refer a reclassification petition to a classification panel for its recommendation under § 860.134, or is required or chooses to have consultation with a panel concerning a reclassification petition, such as under § 860.132 and § 860.136, the Food and Drug Administration shall distribute a copy of the petition to each panel member and shall consult

with the panel in one of the following ways:

(1) Consultation by telephone with a majority of current voting panel members;

(2) Consultation by mail with a majority of current voting panel members;

(3) Discussion at a panel meeting with or without the issuance of a formal recommendation by the panel.

(b) The method of consultation chosen by the Commissioner will depend on the importance and complexity of the subject matter involved and the need for rapid action. When time and circumstances permit, the Commissioner will consult with a panel through discussion at a panel meeting.

(c) When a petition is submitted under § 860.134 for a "new device," the Commissioner's consultation with the panel shall include obtaining a recommendation that includes the information set forth in § 860.84(d).

§ 860.130 General procedures under section 513(e) of the act.

(a) Section 513(e) of the act applies to all reclassification proceedings under the act except those initiated by a manufacturer or importer for reclassification of a device currently in class III by operation of either section 513(f) or 520(1) of the act. See §§ 860.134 and 860.136, respectively.

(b) A proceeding to reclassify a device under section 513(e) may be initiated:

(1) On the initiative of the Commissioner alone;

(2) On the initiative of the Commissioner in response to a request for change in classification based on new information, under section 514(b) or 515(b) of the act (see § 860.132); or

(3) In response to the petition of an interested person, based on new information, filed in accordance with § 860.123.

(c) A proceeding to reclassify a device under section 513(e) shall be conducted in accordance with the rule making procedures in § 10.40 of this chapter, except that the Commissioner may secure a recommendation with respect to a proposed reclassification from the classification panel to which the device was last referred. If a proposed reclassification is submitted to a panel for its recommendation, the panel will consider it in accordance with the consultation procedures of § 860.125. Any recommendation submitted to the Commissioner by the panel shall be published in the FEDERAL REGISTER.

(d) If a device is reclassified under this section, the regulation effecting the reclassification may revoke any performance standard or premarket approval requirement that is no longer applicable to the device because of the change in classification.

(e) A regulation under this section changing the classification of a device from class III to class II may provide that such classification shall not take effect until the effective date of a performance standard established under section 514 of the act for the device.

§ 860.132 Procedures when the Commissioner initiates a performance standard or premarket approval proceeding under section 514(b) or 515(b) of the act.

(a) Sections 514(b) and 515(b) of the act require the Commissioner to provide, by notice in the FEDERAL REGISTER, the opportunity for interested parties to request a change in the classification of a device based on new information relevant to its classification when, for that device, the Commissioner initiates a proceeding either to develop a performance standard for a class II device or to promulgate a regulation requiring premarket approval for a class III device. In either case, if the Commissioner agrees that the new information warrants a change in classification, he will give notice of his intent to initiate a proceeding under section 513(e) of the act and § 860.130 to effect such a change.

(b) The procedures for effecting a change in classification under sections 514(b) and 515(b) of the act are as follows:

(1) Within 15 days after publication of the Commissioner's notice referred to in paragraph (a) of this section, a petition for reclassification is filed by an interested person in accordance with § 860.123.

(2) The Commissioner has consultation regarding the petition with the appropriate classification panel in accordance with § 860.125.

(3) Within 60 days after publication of the notice referred to in paragraph (a) of this section, the Commissioner, by order published in the FEDERAL REGISTER, either denies the petition or gives notice of his intent to initiate a change in classification in accordance with § 860.130.

§ 860.134 Procedures for "new devices" under section 513(f) of the act.

(a) Section 513(f) (2) of the act applies to reclassification proceedings initiated by a manufacturer or importer for reclassification of a device currently in class III by operation of section 513(f) (1) of the act. This category includes any device that was first introduced or delivered for introduction into interstate commerce for commercial distribution after May 28, 1976, unless:

(1) It is substantially equivalent to another device that was in commercial distribution before that date and had not been regulated before that date as a new drug; or

(2) It is substantially equivalent to another device that was not in commercial distribution before such date but has been classified in class I or class II; or,

(3) The Commissioner has classified the device in class I or class II in response to a petition for reclassification under this section.

The determination that a device is not "substantially equivalent" for purposes of the application of this section is made by the Food and Drug Administration. If the manufacturer or importer believes that a device is not "substan-

tially equivalent" but that it should not be in class III under the criteria in § 860.3(c), it may petition for reclassification under this section. If the manufacturer or importer believes that a device is "substantially equivalent" and desires to proceed to market the device, the Food and Drug Administration will have an opportunity to determine whether the device is "substantially equivalent" on the basis of the premarket notification the manufacturer or importer is required to submit in accordance with Part 807 of this chapter.

(b) The procedures for effecting reclassification under section 513(f) of the act are as follows:

(1) The manufacturer or importer of the device petitions for the reclassification of the device in accordance with § 860.123.

(2) Within 30 days after the filing of a petition, the Commissioner notifies the petitioner of any deficiencies in the petition that prevent him from making a decision on it, allowing the petitioner to supplement a deficient petition. If the supplementary material or explanation of the petition is deemed sufficient to permit the Commissioner to make a decision on the petition, the petitioner is so notified.

(3) After determining that the petition has no deficiencies that preclude a decision on it, the Commissioner refers the petition to the appropriate classification panel for its review and recommendation respecting approval or denial of the petition.

(4) Within 90 days after the date of referral of the petition, the panel, after following the same review procedures set forth in § 860.84(c) for the original classification of an "old" device, submits its recommendation to the Commissioner containing the information set forth in § 860.84(d). A panel recommendation is regarded as preliminary until the Food and Drug Administration has reviewed the proposed panel recommendation, discussed it with the panel if appropriate, and developed a proposed reclassification order. Preliminary panel recommendations are filed in the Hearing Clerk's office upon receipt and are available to the public upon request.

(5) The panel recommendation is published in the FEDERAL REGISTER as soon as practicable and opportunity is provided for interested persons to provide comments on the recommendation.

(6) Within 90 days after receiving the panel's recommendation (and no more than 210 days after the date of filing of the petition), the Commissioner denies or approves the petition by order in the form of a letter to the petitioner. If the Commissioner approves the petition, the order will classify the device into class I or class II, as appropriate under the criteria set forth in § 860.3(c) and subject to the applicable requirements of § 860.93 relating to the classification of implants, life-supporting or life-sustaining devices and § 860.95 relating to exemptions from certain requirements of the act.

(7) Within a reasonable time after issuance of an order effecting reclassifica-

tion under this section, the Commissioner announces the reclassification by notice published in the FEDERAL REGISTER.

§ 860.136 Procedures for transitional products under section 520(l) of the act.

(a) Section 520(l) (2) of the act applies to reclassification proceedings initiated by a manufacturer or importer for reclassification of a device currently in class III by operation of section 520(l) (1) of the act. This applies to any device that was regarded as a "new drug" before May 28, 1976.

(b) The procedures for effecting reclassification under section 520(l) are as follows:

(1) The manufacturer or importer of the device files a petition for the reclassification of the device in accordance with § 860.123.

(2) Within 30 days after the filing of the petition, the Commissioner notifies the petitioner of any deficiencies in the petition that prevent him from making a decision on it, allowing the petitioner to supplement a deficient petition. If the supplementary material or explanation of the petition is deemed acceptable, the petitioner is so notified.

(3) The Commissioner provides the petitioner an opportunity for an informal hearing conducted in accordance with Part 16 of this chapter.

(4) The Commissioner has consultation regarding the petition with the appropriate classification panel in accordance with § 860.125.

(5) Within 180 days after the filing of the petition (where the Commissioner has determined it to be adequate for review), the Commissioner by order in the form of a letter to the petitioner either denies the petition or classifies the device in class I or class II, in accordance with the criteria set forth in § 860.3(c).

(6) Within a reasonable time after issuance of an order effecting reclassification under this section, the Commissioner announces the reclassification by notice published in the FEDERAL REGISTER.

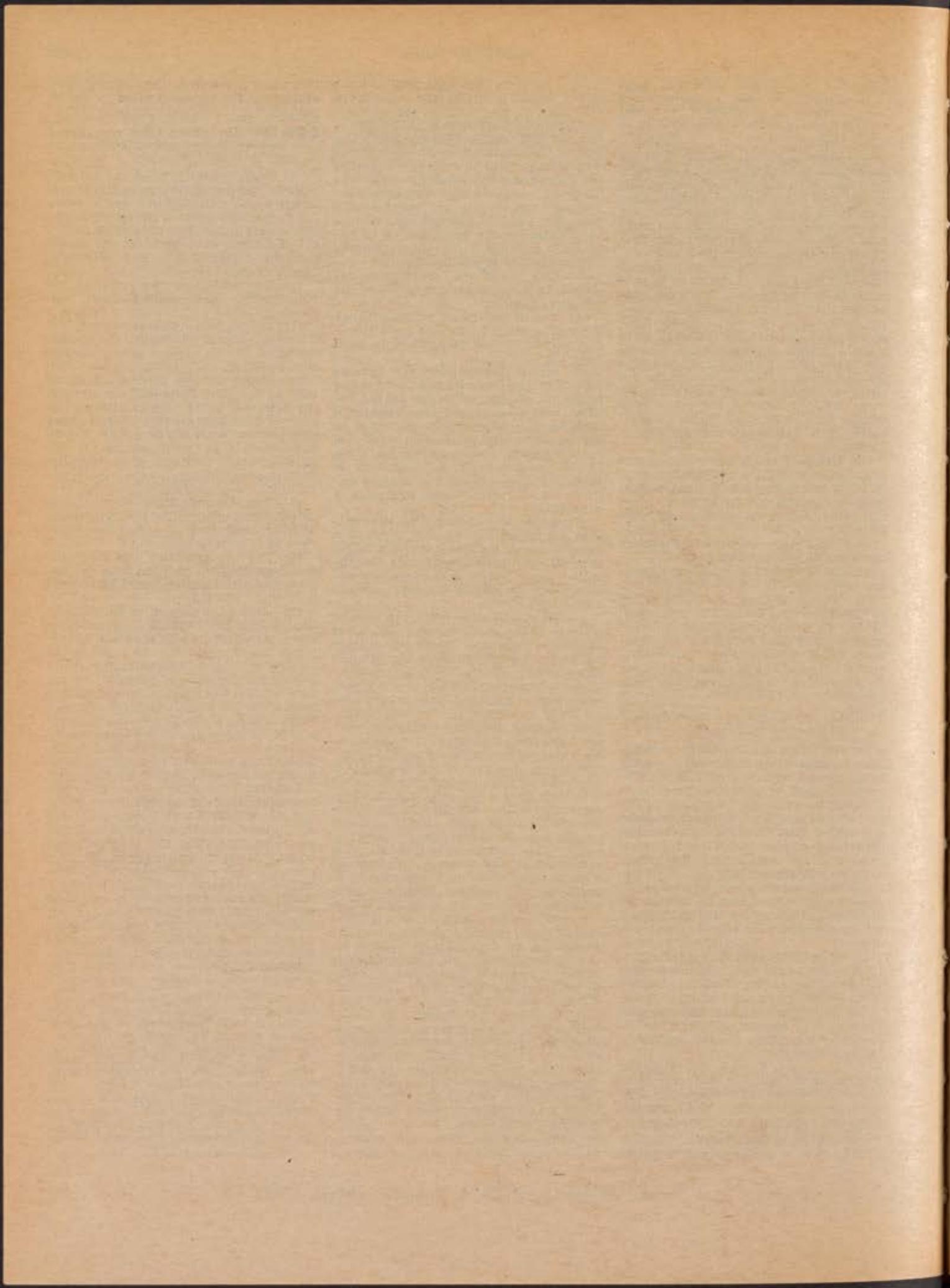
Interested persons may, on or before November 14, 1977, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107. A copy of the inflation impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: September 1, 1977.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 77-26388 Filed 9-12-77; 8:45 am]



**Register
Federal**

TUESDAY, SEPTEMBER 13, 1977

PART V



**COMMODITY
FUTURES TRADING
COMMISSION**

■

**MINIMUM FINANCIAL
AND RELATED REPORTING
REQUIREMENTS**

Public Hearings

THE UNIVERSITY OF CHICAGO
FUTURES TRADING
COMMISSION

MINIMUM THRESHOLD
AND RELATED REQUIREMENTS

**COMMODITY FUTURES TRADING
COMMISSION**

[17 CFR Part 1]

**MINIMUM FINANCIAL AND RELATED
REPORTING REQUIREMENTS**

Public Hearings

AGENCY: Commodity Futures Trading Commission.

ACTION: Public hearings.

SUMMARY: The Commodity Futures Trading Commission will hold public hearings on Wednesday, October 5, and Thursday, October 6, 1977, to receive oral statements on its proposed revisions to its minimum financial and related reporting requirements.

DATES: Hearings: 10 a.m. October 5, and 10 a.m. October 6, 1977.

ADDRESS: 5th Floor Hearing Room, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C.

**FOR FURTHER INFORMATION CON-
TACT:**

Mrs. Jane Stuckey, Office of the Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581 (202-254-6126).

SUPPLEMENTARY INFORMATION:

The Commission's proposed revisions to its minimum financial and related reporting requirements were publicly announced in the FEDERAL REGISTER on October 15, 1976 (41 FR 45706), May 26, 1977 (42 FR 27166), June 22, 1977 (42 FR 31740), and August 1, 1977 (42 FR 39036).

Persons who wish to appear at the hearings should forward an outline of their proposed statement to Mrs. Stuckey at the above address in time for it to be received by September 30, 1977.

Persons making statements before the Commission may be accompanied by persons of their own choosing, who may

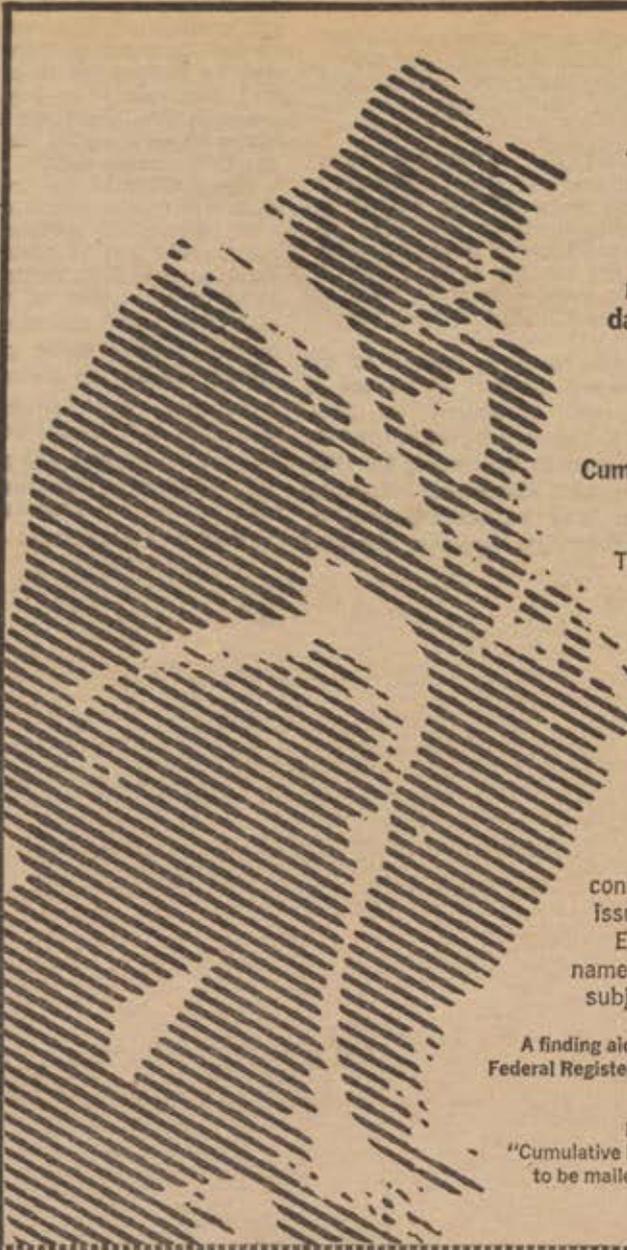
advise or assist the speaker in responding to questions or otherwise assure that full information is developed for the use of the Commission. Oral presentations will be limited to 15 minutes. During and subsequent to any person's oral presentation, questions may be asked either by members of the Commission or the Commission staff.

The Commission recognizes that members of the public may have questions. Therefore, provision will be made for persons having questions to submit those questions in an informal written form to a member of the Commission staff who will have discretion whether or not to pose those questions to the person making the presentation.

Issued in Washington, D.C., on September 7, 1977, by the Commission.

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

[FR Doc.77-26523 Filed 9-12-77;8:45 am]



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