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TUESDAY, OCTOBER 4, 1977

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1934

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

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

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

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ICC—Lease and interchange of vehicles; safety inspection of augmenting equipment..... 39666; 8–5–77

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

S. 275..... Pub. L. 95–113
Food and Agriculture Act of 1977. (Sept. 29, 1977; 91 Stat. 913). Price: $2.20.

S. 1731..... Pub. L. 95–114
Armed Forces, physicians and dentists, etc., special pay provisions, extension. (Sept. 30, 1977; 91 Stat. 1046). Price: $.50.

presidential documents

[3195–01]

Title 3—The President

PROCLAMATION 4529

American Education Week, 1977

By the President of the United States of America

A Proclamation

At the base of any democracy must lie a commitment to education for all.

Americans, accordingly, have an enormous stake in the vitality of our schools.

Parents, instead of being strangers to the classrooms in which their children spend so much of their lives, must become partners with teachers.

But parents and teachers cannot do the job alone. In our attitudes and our actions, in a hundred different ways, each of us influences young people toward education or away from it. This is the significance of this year's theme for American Education Week: "Working Together for Education".

By sharing our expertise and interests with the schools, we can all enrich educational programs and help determine the course along which our young people will lead America in the years to come.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week beginning November 13, 1977, as American Education Week.

I ask every American to consider how he or she can work with our Nation's educational community to help America prepare its youngsters to meet the responsibilities they will some day assume.

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

Jimmy Carter

[FR Doc.77–29226 Filed 9–30–77;1:02 pm]

[3195–01]

PROCLAMATION 4530

National Forest Products Week, 1977

By the President of the United States of America

A Proclamation

From the time the first explorers and settlers set foot on this land, the abundant products of America's forests have been regarded as a major resource. Today they still provide a significant portion of our materials for construction, furniture and other important industries and create millions of jobs.

Unlike many of our precious natural resources, our forest products can be replenished. The need to make optimum use of these important resources must be balanced with vital environmental concerns, so that we make the best possible use of our forest lands, preserving the irreplaceable, conserving the beauty and ecological balance while providing important raw materials for our Nation's economic well-being. Small, private non-industrial interests own 59 per cent of our commercial forest land. We encourage them to make wise use of this land. As a Nation we must all work together to prevent and control pollution, fires, insects and diseases that damage our forests, while striving to maintain and improve fish and wildlife habitats.

In recognition of the importance of America's forest resources and in the contributions of the forest products industry to our Nation's growth, the Congress has, by joint resolution of September 13, 1960 (74 Stat. 898), designated the week beginning the third Sunday of October in each year as National Forest Products Week and has requested the President to issue an annual proclamation calling for its observance.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby call upon the people of the United States to observe the week beginning October 16, 1977, as National Forest Products Week, with activities and ceremonies designed to direct public attention to, and demonstrate our gratitude for, the forest resources with which we are blessed.

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

Jimmy Carter

[FR Doc.77-29256 Filed 9-30-77;4:14 pm]

[3195–01]

PROCLAMATION 4531

Country Music Month, 1977

By the President of the United States of America

A Proclamation

Country music, once the simple expression of America's isolated hill country and farms, has spread to our most sophisticated cities. It has always told of the basic human emotions and experiences—of childhood heroes and lost places, forgotten dreams and everyday goodness and disappointments as well as great sadness, love and loneliness, honor and humor. It vibrates with the passions and scenes that make up our common heritage. Country music is as universal as a sunset and as personal as a baby's smile. It is fitting that we acknowledge the importance of a form that reflects so much the lives and hopes of the people who make up our Nation and pay tribute to the talented people who have contributed to its growing popularity.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, ask the people of this Nation to mark the month of October 1977, with suitable observances as Country Music Month.

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

Jimmy Carter

[FR Doc.77–29277 Filed 9–30–77;5:04 pm]

EDITORIAL NOTE: The President's message to the Country Music Association in Nashville, Tenn., on Country Music Month, dated Sept. 28, 1977, is printed in the Weekly Compilation of Presidential Documents (vol. 13, no. 40).

[3195–01]

Executive Order 12011 September 30, 1977

Exemption of G. Joseph Minetti from Mandatory Retirement

G. Joseph Minetti, Member, Civil Aeronautics Board, became subject to mandatory retirement for age on July 31, 1977, under the provisions of Section 8335 of Title 5 of the United States Code unless exempted by Executive Order. Mr. Minetti was exempted from mandatory retirement until September 30, 1977, by Executive Order No. 12006 of July 29, 1977.

In my judgment, the public interest requires that G. Joseph Minetti continue to be exempted from such mandatory retirement.

NOW, THEREFORE, by virtue of the authority vested in me by subsection (c) of Section 8335 of Title 5 of the United States Code, I hereby exempt G. Joseph Minetti from mandatory retirement until October 31, 1977.

Jimmy Carter

THE WHITE HOUSE,
September 30, 1977.

[FR Doc.77–29279 Filed 9–30–77;5:09 pm]

rules and regulations

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

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

[6325–01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Agriculture Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Confidential Assistant to the Executive Assistant to the Secretary is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3313(a)(41) is added as set out below:

§ 213.3313 Department of Agriculture.

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

(41) One Confidential Assistant to the Executive Assistant to the Secretary.

* * * * *

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

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

[FR Doc.77–28942 Filed 10–3–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Export-Import Bank of the United States

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Secretary (Steno) to the Senior Vice President—Director Credits and Financial Guarantees is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3342(t) is added as set out below:

§ 213.3342 Export-Import Bank of the United States.

* * * * *

(t) One Secretary (Steno) to the Senior Vice President—Direct Credits and Financial Guarantees.

(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.77–28943 Filed 10–3–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Federal Maritime Commission

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Secretary to the Confidential Assistant to the Chairman is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3367(f) is added as set out below:

§ 213.3367 Federal Maritime Commission.

* * * * *

(f) One Secretary to the Confidential Assistant to the Chairman.

(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.77–28944 Filed 10–3–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Justice Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Staff Assistant to the Assistant Attorney General, Antitrust Division, is excepted from the competitive service under Schedule C because it is confidential in nature.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3310(d)(3) is added as set out below:

§ 213.3310 Department of Justice.

* * * * *

(d) *Antitrust Division.* * * *

(3) One Staff Assistant to the Assistant Attorney General.

(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.77–28945 Filed 10–3–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

State Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Special Assistant to the Deputy Secretary is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3304(a)(21) is amended as set out below:

§ 213.3304 Department of State.

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

(21) One Secretary (Steno) and two Special Assistants to the Deputy Secretary.

* * * * *

(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.77–28946 Filed 10–3–77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Transportation Department

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The following positions are excepted under Schedule C because they are confidential in nature: One additional position of Secretary (Steno) to the Secretary of Transportation and one position of Policy Advisor to the Admin-

istrator, National Highway Traffic Safety Administration.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3394(a)(49) and (i)(6) are added as set out below:

§ 213.3394 Department of Transportation.

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

(49) One Secretary (Steno) to the Secretary.

* * * * *

(i) *National Highway Traffic Safety Administration.* * * *

(6) One Policy Advisor to the Administrator.

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

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

[FR Doc.77-28947 Filed 10-3-77;8:45 am]

[6325–01]

PART 213—EXCEPTED SERVICE

Entire Executive Civil Service

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This amendment reflects the Conservation Corps name change and the CETA title change applicable to this exception and caused by the enactment of Pub. L. 95–93. The amendment further provides expansion of the period of employment under this authority in order to meet the staffing needs during the period in which examination for the positions is impracticable.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202–632–4533.

Accordingly, 5 CFR 213.3102(hh) is amended as set out below:

§ 213.3102 Entire Executive Civil Service.

* * * * *

(hh) Positions as needed not in excess of GS–13, whose incumbents will implement the Young Adult Conservation Corps program and are to be paid out of funds allocated under title VIII of the Comprehensive Employment and Training Act of 1973, as amended. Employment under this exception is not to exceed 36 months from the date that funds are received by heads of Executive agencies for this program under title VIII of CETA. No new appointments may be made under this authority after 18 months from the above referenced date.

(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.77-29239 Filed 10-3-77;8:45 a.m.]

[3410–02]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to revise 7 CFR Part 53 Subpart A, and to delete the grade standards for meats in 7 CFR Part 53 Subpart B. On April 18, 1977, a notice was published in the FEDERAL REGISTER (42 FR 20165) transferring the responsibilities relating to meat grading and standardization from the Agricultural Marketing Service to the Food Safety and Quality Service and to the separation of livestock grading and standardization from meat grading and standardization, the activities were carried out under the same regulations. The revision of Part 53 is necessary so that the livestock grading and standardization programs will continue to have regulations and standards under which to operate.

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Paul M. Fuller, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–6231).

SUPPLEMENTARY INFORMATION: Since former Part 53 Subpart A is applicable to both agencies, former Subpart A will be adopted with editorial changes by Food Safety and Quality Service. Prior will appear in Chapter 7 Part 2853. Part 53, Subpart B will be separated, with the standards relating to livestock being retained in Part 53 Subpart B and the standards relating to meats being adopted by Food Safety and Quality Service and appearing in Part 2853.

This document is a revision of the former Part 53 which deletes meat grading regulations and standards for meat and references to meat grading and products. This document and the document prepared by Food Safety and Quality Service, which appears elsewhere in this issue of the FEDERAL REGISTER and which incoporates the regulations and standards removed from the former Part 53 into the new Part 2853 are being published simultaneously. It has been determined that this document does not substantially affect any member of the public. Under the administrative procedure provisions in 5 U.S.C. 553, it is found to be impracticable, unnecessary, and contrary to public interest to delay the effectiveness of this rule until 30 days after publication in the FEDERAL REGISTER in that (1) no substantive rule or change of rule is involved and (2) revisions are editorial changes only.

Accordingly, the title of 7 CFR Part 53 is hereby revised by deleting the words "meats, prepared meats, and meat products" so that the title of Part 53 reads "Livestock (grading, certification and standards)." Section 53.1 is revised to remove references to meat grading products. Sections 53.18 through 53.28 will be deleted and §§ 53.29 through 53.32 wil be renumbered 53.18 through 53.21. Minor editorial revisions of the sections in Part 53 Subpart A will delete references to meat grading and standardization and add references to livestock and standardization. In Subpart B of Part 53 §§ 53.100 through 53.119 and §§ 53.140 through 53.145 will be deleted.

Therefore the title of Part 53 is revised to read as set forth above and the text of Part 53 is revised to read as follows:

(Agricultural Marketing Act of 1946, Sections 203, 205, 60 Stat. 1090, 7 U.S.C. 1622, 1624.)

Done at Washington, D.C., on this 27th day of September 1977.

IRVING W. THOMAS,
Acting Deputy Administrator, Program Operations.

Subpart A—Regulations

DEFINITIONS

Sec.
53.1 Meaning of words.
53.2 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

ADMINISTRATION

53.3 Authority.

SERVICE

53.4 Kind of service.
53.5 Availability of service.
53.8 How to obtain service.
53.9 Order of furnishing service.
53.10 When request for servile deemed made.
53.11 Withdrawal of application or request for service.
53.12 Authority of agent.
53.13 Denial or withdrawal of service.
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53.15 Accessibility to livestock.
53.16 Official certificates.
53.17 Advance information concerning service rendered.

CHARGES FOR SERVICE

53.18 Fees and other charges for service.
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MISCELLANEOUS

53.20 Identification.
53.21 Errors in service.

VEALERS AND SLAUGHTER CALVES

53.120 Differentiation between vealers and calves.
53.121 Classes of vealers and calves.
53.122 Application of standards.
53.123 Specifications for official United States standards for grades of vealers.
53.124 Specifications for official United States standards for grades of slaughter calves.

SLAUGHTER LAMBS, YEARLINGS, AND SHEEP

53.130 Market sheep.
53.131 Slaughter classes and market groups.
53.132 Application of standards.
53.133 Specifications for official United States standards for grades of slaughter lambs (quality).
53.134 Specifications for official United States standards for grades of slaughter yearlings and sheep (quality).
53.135 Specifications for official United States standards for grades of slaughter lambs, yearlings, and sheep (yield).

SWINE

53.150 Swine.
53.151 Slaughter and feeder swine classes.
53.152 Application for standards for grades of slaughter barrows and gilts.
53.153 Specifications for official United States standards for grades of slaughter barrows and gilts.
53.154 Application of standards for grades of slaughter sows.
53.155 Specifications for official United States standards for grades of slaughte sows.
53.158 Application of standards for grades of feeder pigs.
53.159 Specifications for official United States standards for grades of feeder pigs.

CATTLE

53.201 Cattle
53.202 Classes of slaughter and feeder cattle.
53.203 Application of standards for grades of slaughter cattle.
53.204 Specifications for official United States standards for grades of slaughter steers, heifers, and cows (quality).
53.205 Specifications for official U.S. standards for grades of slaughter bullocks (quality).
53.206 Specifications for official United States standards for grades of slaughter cattle (yields).
53.208 Feeder cattle grades.
53.209 Specifications for official United States standards for grades of feeder cattle (steers, heifers, and cows).

Subpart A—Regulations

DEFINITIONS

§ 53.1 Meaning of words.

Words used in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand. For the purpose of such regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Acceptance service. The service established and conducted under the regulations for the determination and certification or other identification of the compliance of livestock with specifications.

Act. The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087, as amended by Pub. Law 272, 84th Congr., 69 Stat. 553, 7 U.S.C. 1621–1627).

Administrator. The Administrator of the Agricultural Marketing Service, or any officer or employee of the Agricultural Marketing Service to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

Agricultural Marketing Service. The Agricultural Marketing Service of the Department.

Applicant. Any person who has applied for service under the regulations.

Branch. The Livestock Market News Branch of the Division.

Chief. The Chief of the Branch, or any officer or employee of the Branch to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

Class. A subdivision of livestock based on essential physical characteristics that differentiate between major groups of the same kind of species.

Compliance. Conformity of livestock to the specifications under which the livestock was purchased or sold, with particular reference to the weight, quality or other characteristics of livestock.

Cooperative agreement. A cooperative agreement between the Agricultural Marketing Service and another Federal agency or a State agency, or other agency, organization or person as specified in the Agricultural Marketing Act of 1946, as amended, for conducting the service.

Department. The United States Department of Agriculture.

Director. The Director of the Division or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

Division. Livestock, Poultry, Grain and Seed Division.

Financially interested person. Any person having a financial interest in the livestock involved, including but not limited to the shipper, receiver, producer, seller, buyer, or carrier of the livestock or products.

Grade. (1) As a noun, this term means an important commercial subdivision of livestock based on certain definite and preference determining factors, such as, but not limited to, conformation, finish, and muscling in livestock.

(2) As a verb, this term means to determine the class, grade, or other quality of livestock according to applicable standards for such livestock in Subpart B of this part.

Grading service. The service established and conducted under the regulations for the determination and certification or other identification of the class, grade, or other quality of livestock under standards.

Legal holiday. Those days designated as legal public holidays in title 5, United States Code, section 6103(a).

Livestock. Cattle, sheep, swine, or goats.

Official grader. An employee of the Department or other person authorized by the Department to determine and certify or otherwise identify the class, grade, other quality, or compliance of livestock under the regulations.

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Regulations. The regulations in this subpart.

Service. Grading service or acceptance service.

Specifications. Description with respect to the class, grade, other quality, quantity or condition of livestock approved by the Administrator, and available for use by the industry regardless of the origin of the descriptions.

Standards. The standards of the Department contained in Subpart B of this part.

Supervisor. An official person designated by the Director or Chief to supervise and maintain uniformity and accuracy of service under the regulations.

§ 53.2 Designation of official certificates, memoranda, marks, other identifications for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, including that prescribed in § 53.16, used under the regulations to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of livestock with applicable specifications.

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, determining compliance, or inspecting, pursuant to the regulations, any processing or plant-operation report made by an authorized person in connection with grading, determining compliance, inspecting, or sampling under the regulations, and any report made by an authorized person of services performed pursuant to the regulations.

(c) "Official mark" or "other official identification" means any form of mark or other identification, used under the regulations in marking livestock thereof, to show inspection, class, grade, quality, size, quantity, or condition of the livestock (including the compliance of livestock with applicable specifications), or to maintain the identity of livestock for which service is provided under the regulations.

ADMINISTRATION

§ 53.3 Authority.

The Director is charged with the administration of the regulations and the Act insofar as they relate to livestock.

SERVICE

§ 53.4 Kind of service.

Grading service under the regulations shall consist of the determination and certification and other identification, upon request by the applicant, of the class, grade, or other quality of livestock under applicable standards in Subpart B of this part. Class, grade and other quality may be determined under said standards for livestock. Acceptance service under the regulations shall consist of the determination of the conformity of livestock to specifications approved by the Director or Chief and the certification and other identification of such livestock in accordance with specifications, upon request by the applicant.

§ 53.5 Availability of service.

Service under these regulations may be made available with respect to livestock shipped or received in interstate commerce, and with respect to the livestock not so shipped or received if the Director or Chief determines that the furnishing of service for such livestock would facilitate the marketing, distribution, processing, or utilization of agricultural products through commercial channels. Also, such service may be made available under a cooperative agreement. Service under these regulations shall be provided without discrimination as to race, color, sex, creed, or national origin.

§ 53.8 How to obtain service.

(a) *Application.* Any person may apply to the Director or Chief for service under the regulations with respect to livestock in which the applicant is financially interested. The application shall be made on a form approved by the Director.

(b) *Notice of eligibility for service.* The applicant for service will be notified whether his application is approved.

(c) *Request by applicant for service—*(1) *Noncommitment.* Upon notification of the approval of an application for service, the applicant may, from time to time as desired, make oral or written requests for service under the regulations with respect to specific livestock for which the service is to be furnished under such application. Such requests shall be made at a market news office either directly or through any employee of the Agricultural Marketing Service who may be designated for such purposes.

§ 53.9 Order of furnishing service.

Service under the regulations shall be furnished to applicants in the order in which requests therefor are received, insofar as consistent with good management, efficiency and economy. Precedence will be given, when necessary, to requests made by any government agency or any regular user of the service.

§ 53.10 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by a market news office. Records showing the date and time of the request shall be made and kept in such office.

§ 53.11 Withdrawal of application or request for service.

An application or a request for service under the regulations may be withdrawn by the applicant at any time before the application is approved or prior to performance of service, upon payment, in accordance with §§ 53.18 and 53.19 of any expenses already incurred by the Agricultural Marketing Service in connection therewith.

§ 53.12 Authority of agent.

Proof of the authority of any person making an application or a request for service under the regulations on behalf of any other person may be required at the discretion of the Director or Chief or the official in charge of the market news office or other employee receiving the application or request under § 53.8.

§ 53.13 Denial or withdrawal of service.

(a) *For misconduct—*(1) *Bases for denial or withdrawal.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of his employment or agency, (i) has wilfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under the regulations; (ii) has given or attempted to give, as a loan or for any other purpose, any money, favor, or other thing of value, to any employee of the Department authorized to perform any function under the regulations; (iii) has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of his duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means; (iv) has knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification; (v) has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device; (vi) has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device, or of any livestock bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification, or (vii) has in any manner not specified in this paragraph violated subsection 203(h) of the Act: *Provided,* That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Director or Chief without delay that he has possession of such item and, surrenders it to the Director or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Director or Chief: *And provided, further,* That paragraph (a)(1)(ii) through (vi) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application for service under the regulations by the principal person. An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of his employment or agency, has committed any of the offenses specified in paragraph (a)(1)(i) through (vii) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person (*a*) in case the service is or would be performed at an establishment operated (*1*) by a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph, or (2) by a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service are currently being withheld and who has any authority with respect to the establishment where service is or would be performed, or (*b*) in case the service is or would be performed with respect to any livestock in which any corporation, partnership, or other person within paragraph (a)(1)(vii)(*a*)(*1*) of this section has a contract or other financial interest.

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the rules of practice governing withdrawal of inspection and grading service under the Agricultural Marketing Act of 1946 as contained in Part 50 of this chapter.

(b) *For miscellaneous reasons.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing, by the official in charge of the appropriate market news office with the concurrence of the Director or Chief (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure to pay for service; (3) for other noncompliance with the conditions on which service is available as provided in the regulations, except matters covered by paragraph (a) of this section; or (4) in case the person is a partnership, corporation, or other person from whom the benefits of the service are currently being withheld under paragraph (a) of this section. Notice of such denial or withdrawal, and the reasons therefor, shall promptly be given to the person involved.

(c) *Filing of records.* The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.

§ 53.14 Financial interest of official grader.

No official grader shall grade or determine compliance of any livestock in which he or any of his relatives by blood or marriage is directly or indirectly financially interested.

§ 53.15 Accessibility to livestock.

(a) The applicant shall cause livestock with respect to which service is requested, to be made easily accessible for examination and to be so placed, with adequate illuminating facilities, as to disclose their class, grade, other quality, and compliance. Supervisors and other employees of the Department responsible for maintaining uniformity and accuracy of service under the regulations shall have access to all parts of establishments covered by approved applications for service under the regulations, for the purpose of examining all livestock in the establishments which have been or are to be graded or examined for compliance with specifications.

§ 53.16 Official certificates.

(a) *Required; exception.* The official grader shall prepare, sign, and issue a livestock acceptance certificate covering livestock for which compliance has been determined.

(b) Where weight is certified, the word "Not" shall be deleted from the phrases "Weights Not Verified."

(c) *Distribution.* The original certificate, and not to exceed two copies, shall be delivered or mailed to the applicant or other person designated by him. The remaining copies shall be forwarded as required by agency, division, and branch instructions. Additional copies will be furnished to any person financially interested in livestock involved with the concurrence of the applicant and upon payment of fees, as provided in § 53.18 (d).

§ 53.17 Advance information concerning service rendered.

Upon request of any applicant, all or any part of the contents of any certificate issued to him under the regulations, or other notification concerning the determination of class, grade, other quality, or compliance of livestock for such applicant may be transmitted by telegraph or telephone to him, or to any person designated by him, at his expense.

CHARGES FOR SERVICE

§ 53.18 Fees and other charges for service.

Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in § 53.8.

(a) *Fees based on hourly rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the time required for the preparation of certificates and travel of the official grader in connection with the performance of the service. A minimum charge for one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform the service may be less than 30 minutes. The base hourly rate shall be $19.00 per hour for work performed between the hours of 6 a.m. and 6 p.m. Monday through Friday, except on legal holidays; $23.00 per hour for work performed before 6 a.m. or after 6 p.m. Monday through Friday, and anytime Saturday or Sunday except on legal holidays; and $38.00 per hour for all work performed on legal holidays.

(b) *Travel charges.* (1) When service is requested at a place so distant from an official grader's headquarters, or place of prior assignment on a circuit routing, that a total of one-half hour or more is required for the grader to travel to such place and back to the headquarters or to the next place of assignment on a circuitous routing, the charge for such service shall include a mileage charge administratively determined by the Chief, and travel tolls if applicable, for such travel prorated against all the applicants furnished the service involved on an equitable basis, or, where the travel is made by public transportation (including hired vehicle), a fee equal to the actual cost thereof. However, the applicant will not be charged a new mileage rate without notification before the service is rendered.

(c) *Per diem charges.* When service is requested at a place away from the official grader's headquarters, the fee for such service shall include a per diem charge if the employee performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants will cover the same period of time for which the grader receives per diem reimbursement. The per diem rate will be administratively determined by the Chief. However, the applicant will not be charged a new per diem rate without notification before the service is rendered.

(d) *Fees for extra copies of certificates.* In addition to copies of certificates furnished under § 53.16, any financially interested person may obtain not to exceed three copies of any such certificate within one year from its date of issuance upon payment of a fee of $1.00, and not to exceed three copies of any such certificate at any time thereafter, while a copy of such certificate is on file in the Department, upon payment of a fee of $5.00.

(e) *Other charges.* When costs, other than costs specified in paragraphs (a), (b), (c) and (d) of this section, are involved in providing the services, the applicant will be charged for these costs. The amount of these charges will be determined administratively by the Chief. However, the applicant will not be charged for such cost without notification before the service is rendered of the charge for such item of expense.

§ 53.19 Payment of fees and other charges.

Fees and other charges for service shall be paid in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the service is furnished. Upon receipt of billing for fees and other charges for service the applicant shall remit by check, draft, or money order, made payable to the Agricultural Marketing Service, U.S.D.A., payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official grader or other authorized official.

MISCELLANEOUS

§ 53.20 Identification.

All official graders and supervisors shall have their Agricultural Marketing Service identification cards in their possession at all times while they are performing any function under the regulations and shall identify themselves by such cards upon request.

§ 53.21 Errors in service.

When an official grader, supervisor, or other responsible employee of the Branch has evidence of misgrading, or of incorrect certification or other incorrect determination or identification as to the class, grade, other quality, or compliance of livestock he shall report the matter to his immediate supervisor. The supervisor will investigate the matter and, if he deems advisable, will report it to the owner or his agent. The supervisor shall take appropriate action to correct errors found in the determination or identification of class, grade or other quality or compliance of livestock if the livestock is still owned by the person who owned them when, and are still located at the establishment where, the incorrect service was rendered and if such service was rendered by a grader under the jurisdiction of such supervisor, and the supervisor shall take adequate measures to prevent the recurrence of such errors.

Subpart B

Standards

VEALERS AND SLAUGHTER CALVES

§ 53.120 Differentiation between vealers and calves.

Young bovine animals are segregated for market purposes as vealers or calves and this differentiation is intended to reflect the kind of carcass (veal or calf)

they will produce. The differentiation between veal and calf carcasses is based very largely on the color of their lean and this is determined almost entirely by the extent to which the animal's diet has consisted of milk or a milk replacer. Therefore, the differentiation between vealers and calves is based primarily on evidences of type of feeding and age. Vealers that have subsisted largely on milk usually are less than 3 months of age. However, animals that have been raised on milk replacer rations frequently will be considerably more mature. In no case, though, may such an animal be considered a vealer if its evidences of maturity indicate that it is too mature to be classed as calf. Since vealers have consumed little, if any, roughages, they have the characteristic trimness of middle associated with limited paunch development. Calves are usually between 3 and 8 months of age, have subsisted partially or entirely on feeds other than milk or milk replacers for a substantial period of time, and have developed the heavier middles and other physical characteristics associated with maturity beyond the vealer stage.

§ 53.121 Classes of vealers and calves.

There are three classes of vealers and calves, based on sex condition—steers, heifers, and bulls. While recognition may sometimes be given to these different classes on the market, especially bull calves approaching beef in maturity, the market desirability of all three classes is sufficiently similar to permit them to be graded on the same standards.

§ 53.122 Application of standards.

(a) The grade of a vealer or slaughter calf is determined by a composite evaluation of two general considerations which influence carcass excellence, (1) conformation and (2) fatness, maturity, and other factors responsible for differences in quality of the lean flesh.

(b) Conformation refers to the general body proportions of the animal and to the ratio of meat to bone. Although primarily determined by the inherent muscular and skeletal systems, it is also influenced by the degree of fatness. Excellent conformation in vealers and slaughter calves is denoted by a wide-topped, straight-lined, thick-fleshed individual that is deep and full in the twist.

(c) In grading vealers and slaughter calves, quality of the lean flesh must necessarily be evaluated indirectly from consideration, primarily, of the quantity, distribution, and type of fat or finish. Limited consideration is also given to such factors as the refinement of hair, hide, and bone and the smoothness and symmetry of the body. Finish is evaluated by noting variations in fullness in the brisket, flanks, and cod or udder and the apparent thickness of the fat covering over the back, loin, ribs, and legs.

(d) Since relatively few vealers or calves have an identical development of conformation and quality, it is obvious that each grade will include animals having various combinations of these two characteristics. Examples of how conformation and quality are combined into the final quality grade are included in each of the grade descriptions. However, the principles governing the compensation of variations in development of quality and conformation are as follows: In each of the grades superior quality is permitted to compensate for deficient conformation, without limit. The reverse type of compensation—superior conformation for inferior quality—is not permitted in the Prime and Choice grades. To qualify for one of these grades, a slaughter animal must have the minimum requirements specified for quality regardless of how much the conformation may exceed the minimum specified. In all other grades, such compensation is permitted but only to the extent of one-third of a grade of deficient quality. For both types of compensation, the rate of compensation is equal—a given degree of superior quality compensates for the same degree of deficient conformation and vice versa.

(e) Other factors—such as heredity and management—also may affect the development of grade-determining characteristics in vealers and calves. Although these factors do not lend themselves to descriptions in the standards, the use of factual information of this nature is justified in determining the grade of vealers and slaughter calves.

(f) Vealers or calves qualifying for any particular grade may vary with respect to the relative development of the individual grade factors. In fact, some will qualify for a particular grade although they have some characteristics more nearly typical of animals of another grade. Because it is impractical to describe the nearly infinite number of such recognizable combinations of characteristics, the standards describe only vealers and calves which have a relatively similar development of individual conformation and quality factors and which are also representative of the lower limits of each grade.

§ 53.123 Specifications for official United States standards for grades of vealers.

(a) *Prime.* (1) Vealers possessing minimum qualifications for the Prime grade tend to be moderately thick muscled throughout. They are moderately wide over the back and loin, and shoulders and hips are usually moderately neat and smoothly laid in, with only a slight tendency toward prominence. The loin, rump, and rounds appear almost flat, with little evidence of fullness. Prime grade vealers tend to have a very thin fat covering over the back, loin, and upper ribs. The brisket, rear flanks, and cod or udder are slightly full. Prime grade vealers usually present a moderately refined appearance.

(2) To qualify for the Prime grade, vealers must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Prime. However, quality superior to that specified as the minimum for the Prime grade may compensate, without limit, for conformation inferior to that specified as the minimum for Prime at the rate indicated in the following example: Vealers which have quality equivalent to the midpoint of the Prime grade may have conformation equivalent to the midpoint of the Choice grade and remain eligible for Prime.

(b) *Choice.* (1) Vealers possessing minimum qualifications for Choice tend to be slightly thick muscled throughout. They are slightly wide over the back and loin, the shoulders and hips are slightly prominent, and the neck is slightly long and thin. The loin, rump, and rounds have a very slightly sunken or hollowed-out appearance. The fat covering is very limited and is discernible only over portions of the back and loin. The brisket, rear flanks, and cod or udder have small fat deposits but have no apparent fullness. Choice grade vealers are usually moderately smooth and slightly refined in appearance.

(2) To qualify for the Choice grade, vealers must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Choice. However, quality which is superior to that specified as the minimum for the Choice grade may compensate, without limit, for conformation which is inferior to that specified as the minimum for Choice at the rate indicated in the following example: Vealers which have quality equivalent to the midpoint of the Choice grade may have conformation equivalent to the midpoint of the Good grade and remain eligible for Choice.

(c) *Good.* (1) Vealers possessing minimum requirements for the Good grade tend to be thinly muscled throughout. They are narrow over the back, loin, and rump and shallow in the twist. They have a distinctly sunken or hollowed-out appearance over the back, loin, and rounds. Hips and shoulders appear moderately prominent. There is practically no fat covering on any part of the animal's body. Such vealers may show the heavy bones, thick hide, prominent hips and shoulders associated with coarseness, or they may show the small bones, tight hide, and angularity denoting overrefinement.

(2) Quality superior to that specified as the minimum for the Good grade may compensate, without limit, for conformation inferior to that specified as the minimum for Good at the rate indicated in the following example: Vealers with quality equivalent to the midpoint of the Good grade may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, vealers with conformation at least one-third of a grade superior to that specified as minimum for the Good grade may have quality equal to the lower limit of the upper third of the Standard grade and remain eligible for Good.

(d) *Standard.* (1) Vealers possessing minimum requirements for the Standard grade tend to be very thinly muscled throughout and tend to be very narrow over the back, loin, and rump and very shallow in the twist. Hips and shoulders are very prominent, and the crops, back, loin, rump, and rounds present a very sunken or hollowed-out appearance. They show no evidence of any fat covering. Standard vealers tend to be of low quality. The bones and joints are usually disproportionately large and the hide is either thick or tight and inelastic.

(2) Quality superior to that specified as minimum for the Standard grade may compensate, without limit, for conformation inferior to that specified as minimum for the Standard grade at the rate indicated in the following example: Vealers with quality equivalent to the midpoint of the Standard grade may have conformation equivalent to the midpoint of the Utility grade and remain eligible for Standard. Also, vealers with conformation at least one-third of a grade superior to that specified as minimum for the Standard grade may have quality equal to the lower limit of the upper third of the Utility grade and remain eligible for Standard.

(e) *Utility.* The Utility grade includes vealers whose characteristics are inferior to those specified as minimum for the Standard grade.

§ 53.124 Specifications for official United States standards for grades of slaughter calves.

(a) *Prime.* (1) Calves possessing minimum qualifications for the Prime grade tend to be moderately thick muscled throughout. They are moderately wide over the back and loin, and shoulders and hips are usually moderately neat and smoothly laid in. There is a slight fullness or plumpness over the crops, loin, rump, and rounds which contributes to a rather well-rounded appearance. Prime grade calves tend to have a slightly thick fat covering over the back, loin, rump, and upper ribs. The brisket, rear flanks, and cod or udder are moderately full. Prime grade calves usually present a moderately refined appearance.

(2) To qualify for the Prime grade, slaughter calves must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Prime. However, quality superior to that specified as the minimum for the Prime grade may compensate, without limit, for conformation inferior to that specified as the minimum for Prime at the rate indicated in the following example: Slaughter calves which have quality equivalent to the midpoint of the Prime grade may have conformation equivalent to the midpoint of the Choice grade and remain eligible for Prime.

(b) *Choice.* (1) Calves possessing minimum qualifications for the Choice grade tend to be slightly thick muscled throughout. They are slightly wide over the back and loin. The neck is slightly long and thin. The loin, rump, and rounds are almost flat and have little or no evidence of fullness. The shoulders and hips are moderately neat and smoothly laid in but may appear slightly prominent. There is a thin fat covering over the back, loin, and upper ribs. The brisket, rear flanks, and cod or udder tend to be slightly full. Choice grade calves are usually moderately smooth and slightly refined in appearance.

(2) To qualify for the Choice grade, slaughter calves must possess the minimum evidences of quality specified regardless of the extent to which their conformation may exceed the minimum requirements for Choice. However, quality which is superior to that specified as the minimum for the Choice grade may compensate, without limit, for conformation which is inferior to that specified as the minimum for Choice at the rate indicated in the following example: Slaughter calves which have quality equivalent to the midpoint of the Choice grade may have conformation equivalent to the midpoint of the Good grade and remain eligible for Choice.

(c) *Good.* (1) Calves possessing minimum requirements for the Good grade tend to be thinly muscled throughout. They are narrow over the back, loin, and rump and shallow in the twist and have a slightly sunken or hollowed-out appearance over the back, loin, and rounds. Hips and shoulders appear somewhat prominent. There is a very thin fat covering that is discernible only over the back and loin. Such calves may show the heavy bones, thick hide, prominent hips and shoulders associated with coarseness; or they may show the small bones, tight hide, and angularity denoting overrefinement.

(2) Quality superior to that specified as the minimum for the Good grade may compensate, without limit, for conformation inferior to that specified as the minimum for Good at the rate indicated in the following example: Calves with quality equivalent to the midpoint of the Good grade may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, calves with conformation at least one-third of a grade superior to that specified as minimum for the Good grade may have quality equal to the lower limit of the upper third of the Standard grade and remain eligible for Good.

(d) *Standard.* (1) Calves possessing minimum requirements for the Standard grade tend to be very thinly muscled throughout and are very narrow over the back, loin, and rump, and very shallow in the twist. Hips and shoulders are very prominent and the crops, back, loin, rump, and rounds present a very sunken or hollowed-out appearance. There is practically no fat on any part of the animal's body. The bones and joints are usually disproportionately large, and the hide is either thick or tight and inelastic.

(2) Quality superior to that specified as minimum for the Standard grade may compensate, without limit, for conformation inferior to that specified as minimum for the Standard grade at the rate indicated in the following example: Calves with quality equivalent to the midpoint of the Standard grade may have conformation equivalent to the midpoint of the Utility grade and remain eligible for Standard. Also, calves with conformation at least one-third of a grade superior to that specified as minimum for the Standard grade may have quality equal to the lower limit of the upper third of the Utility grade and remain eligible for Standard.

(e) *Utility.* The Utility grade includes slaughter calves whose characteristics are inferior to those specified as minimum for the Standard grade.

SLAUGHTER LAMBS, YEARLINGS, AND SHEEP

§ 53.130 Market sheep.

The official standards for market sheep, developed by the United States Department of Agriculture, provide for segregation according to (a) use as slaughter animals or feeders; (b) class or sex conditions; (c) age group; and (d) grade, which is determined by the apparent relative excellence and desirability of the individual animal for a particular use.

§ 53.131 Slaughter classes and market groups.

The classes of slaughter sheep are ram, ewe, and wether; the age groups are lambs, yearlings, and sheep. Definitions of the respective classes and age groups are as follows:

(a) *Ram.* A ram is an uncastrated male ovine.

(b) *Ewe.* A ewe is a female ovine.

(c) *Wether.* A male ovine castrated when young and prior to developing the secondary physical characteristics of a ram.

(d) *Lamb.* A lamb is an immature ovine, usually under 14 months of age, that has not cut its first pair of permanent incisor teeth.

(e) *Yearling.* A yearling is an ovine usually between one and two years of age, that has cut its first pair of permanent incisor teeth but has not cut the second pair.

(f) *Sheep.* A sheep is an ovine, usually over 24 months of age, that has cut its second pair of permanent incisor teeth.

§ 53.132 Application of standards.

(a) *Grade factors.* Grades of slaughter ovines are intended to be directly related to the grades of the carcasses they produce. To accomplish this, these slaughter ovine grade standards are based on factors which are directly related to the quality grades and the yield grades of ovine carcasses. The standards are written so that the quality and yield grade standards are contained in separate sections. The quality grade standards are divided into two sections applicable to slaughter lambs and slaughter yearlings and sheep. There are five quality grades—Prime, Choice, Good, Utility,

Cull—applicable to slaughter lambs, yearlings, and sheep, except that sheep are not eligible for Prime. Also, there are five yield grades applicable to all classes of slaughter ovines, denoted by numbers 1 through 5, with Yield Grade 1 representing the highest degree of cutability.

(b) *General principles.* (1) The determination of the carcass grade that the slaughter animal will produce requires the exercise of well-regulated judgment. Each animal presents a different combination of the grade-determining factors. Animals frequently have characteristics associated with two or more grades. Therefore, a composite evaluation of all inherent physical characteristics is essential for accuracy in determining grade.

(2) The accurate determination of the grade of a slaughter lamb or sheep requires handling in addition to visual observation. The length and density of the fleece varies greatly with individuals and the thickness and firmness of the flesh covering of wooled lambs and sheep can only be roughly estimated without handling. The technique used in handling usually varies with the degree of precision in mind as well as the experience of the grader. Experienced graders may find one quick handling satisfactory. This usually consists of placing one open hand over the back and ribs in simultaneous motion. The thumb extends just over the backbone, while the fingers, which are held close together, cover the rib section and pressure is applied very lightly with a slight lateral and forward and backward motion. The generally accepted technique of handling sheep where time permits, and especially when noting slight differences between individuals, is to handle forward from the dock to neck with the open hand, fingers together, laid flat and with a slight lateral motion. Both hands may then be used, one on each side, in a similar manner to determine the fleshing over the shoulders, ribs, and hips. Regardless of the method, considerable experience is necessary in handling lambs or sheep to accurately determine the grade.

(c) *Quality grades.* (1) The quality grade of a slaughter lamb or sheep is determined by a composite evaluation of two general considerations which influence carcass excellence: Conformation and quality—fatness, maturity, and other indicators of differences in palatability of the lean flesh.

(2) Conformation refers to the general body proportions of the animal and to the ratio of meat to bone. Although primarily determined by the inherent muscular and skeletal systems, it is also influenced by the degree of fatness. Excellent conformation in slaughter lambs and sheep is denoted by a compact, wide-topped, thick-fleshed individual that has a large plump leg. Fullness and thickness should be especially evident in the portions of the body producing the more desirable cuts of meat—loin, hotel rack, and leg.

(3) In grading slaughter lamb and sheep, quality of the lean flesh must necessarily be evaluated indirectly from consideration primarily of the quantity, distribution, and type of fat or finish in relation to the maturity of the animal being graded. Limited consideration is also given to such factors as character of bone and smoothness and symmetry of body. Finish is evaluated by noting variations in the fullness and apparent thickness of the fat covering over the back, loin, ribs, and legs. A high degree of desirable finish is evidenced by a firm, smooth layer of fat which is uniformly distributed over the body.

(4) Although the market designation of slaughter lambs and sheep is usually made by classes, the quality standards are intended to apply to all classes without regard to sex condition. However, male animals which have thick heavy necks and shoulders typical of uncastrated males are discounted in grade in proportion to the extent to which these characteristics are developed. Such discounts may vary from less than half a grade in young lambs in which such characteristics are barely noticeable to as much as two full grades in mature rams in which such characteristics are very pronounced.

(d) *Yield grades.* (1) The yield grades for slaughter lambs, yearlings, and sheep are based on the same factors used in the official yield grade standards for ovine carcasses. These factors are as follows:

(i) *Thickness of fat over ribeye.* As the amount of external fat increases, the percent of retail cuts decreases and the numerical yield grade increases. Assuming no change in the other factors, each 0.15 inch change in adjusted fat thickness over the ribeye changes the yield grade by a full grade.

(ii) *Percent of kidney and pelvic fat.* As the amount of these fats increases, the percent of retail cuts decreases. A change of 4 percent of the carcass weight in kidney and pelvic fat changes the yield grade by a full grade.

(iii) *Leg conformation grade.* An increase in the conformation grade of the legs increases the percent of retail cuts. A change of two full grades in conformation of the legs changes the yield grade by approximately one-third of a yield grade.

(2) When evaluating slaughter ovines for yield grade, each of these factors can be estimated and the yield grade determined therefrom by using the equation contained in the official standards for yield grades of lamb, yearling mutton, and mutton carcasses. However, a more practical method of appraising slaughter ovines for yield grade is to use only two factors normally considered in evaluating live ovines—leg conformation and degree of fatness. In this approach, the degree of fatness largely accounts for the effects of thickness of fat over the ribeye and the percent of kidney and pelvic fat.

(3) The overall fatness of an animal can be determined best by giving particular attention to those parts on which fat is deposited at a faster-than-average rate. These include the back, loin, rump, flank, brisket, cod or udder. As ovines increase in fatness, these parts become progressively fuller, thicker, and more distended in relation to the thickness and fullness of the other parts, particularly the legs. However, since an animal's thickness of muscling also affects the development of its various parts, this also needs to be considered when evaluating the degree of fatness. In thinly muscled ovines with a low degree of finish, the width of the back usually will be greater than the width through the center of the legs. Conversely, in thickly muscled ovines with a low degree of finish, the thickness through the legs will be greater than through the back and the back will be full and rounded. At an intermediate degree of fatness, ovines which are thinly muscled will be considerably wider through the back than through the leg and will be nearly flat across the back. Thickly muscled ovines that have an intermediate degree of fatness will be about the same width through the legs as through the back and the back will appear only slightly rounded. Very fat ovines will be wider through the back than through the legs, but this difference will be greater in thinly muscled ovines than in those that are thickly muscled. As ovines increase in fatness, they also become deeper bodied because of large deposits of fat in the flanks and brisket and along the underline. In determining yield grade, variations in fatness are very much more important than variations in conformation of the leg.

(e) *Other considerations.* (1) Other factors such as sex, heredity, and management also may affect the development of grade-determining characteristics in slaughter ovines. Although these factors do not lend themselves to descriptions in the standards, the use of factual information of this nature is justified in determining the grade of slaughter ovines. The ability to make proper allowances for the effects of genetic and management factors on the appearance of grade-determining characteristics must be developed through experience.

(2) Slaughter ovines qualifying for any particular grade may vary with respect to the relative development of their individual grade factors. In fact, some will qualify for a particular grade although they have some characteristics more typical of ovines of another grade. Because it is impractical to describe the nearly infinite number of such recognizable combinations of characteristics, the standards describe only ovines which have a relatively similar development of the various quality and yield grade-determining factors and which are near the lower limits of quality or yield for the grade. However, examples of the extent to which superiority in quality-indicating characteristics may compensate for defi-

ciencies in conformation, and vice versa, are indicated for each quality grade. In the quality grade standards, the requirements are given for two maturity groups. In the yield grade standards ovines with two levels of muscling are described and specific examples in terms of carcass characteristics also are included.

§ 53.133 Specifications for official U.S. standards for grades of slaughter lambs (quality).[1]

(a) *Prime.* (1) Lambs possessing the minimum requirements for the Prime grade are moderately lowset and blocky and thick-fleshed. They are moderately wide over the back, loin, and rump. Shoulders and hips are usually moderately smooth. The twist is moderately deep and full and the legs are moderately large and plump. They generally present a well-rounded appearance due to a slight fullness or plumpness over the crops, loin, and rump. Relatively young lambs, under seven months of age, tend to have a moderately thin fat covering over the back, ribs, loin, and rump. In handling, the backbone and ribs are readily discernible. Older, more mature lambs have a slightly thin fat covering over the back, ribs, loin, and rump. In handling, the backbone and ribs are slightly discernible. Prime lambs exhibit evidences of rather high quality. The bones tend to be proportionately small, the joints tend to be smooth, and the body tends to be trim, smooth, and symmetrical.

(2) To qualify for the Prime grade, a lamb must possess the minimum qualifications for finish regardless of the extent that its conformation may exceed the minimum requirements for Prime. However, a development of finish which is superior to that specified as minimum for the Prime grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified for Prime as indicated in the following example: A lamb which has evidences of finish equivalent to the midpoint of the Prime grade may have conformation equivalent to the mid-point of the Choice grade and remain eligible for Prime. However, in no instance may a lamb be graded Prime which has a development of conformation inferior to that specified as minimum for the Choice grade.

(b) *Choice.* (1) Lambs possessing the minimum requirements for the Choice grade tend to be slightly lowset and blocky and thick-fleshed. They tend to be slightly wide over the back, loin, and rump. The shoulders and hips are usually slightly smooth but may exhibit a slight tendency toward prominence. The twist tends to be slightly deep and full, and the legs tend to be slightly thick and plump. Relatively young lambs, under seven months of age, have a thin fat covering over the back, ribs, loin, and rump. In handling, the backbone and ribs are moderately prominent. Older, more mature lambs have a moderately thin fat covering over the back, ribs, loin, and rump. In handling, the backbone and ribs are slightly prominent. Choice lambs usually present a moderately refined appearance.

(2) A lamb which has conformation equivalent to at least the mid-point of the Choice grade may have a development of finish equivalent to the minimum for the upper one-third of the Good grade and remain eligible for Choice. Also, a development of finish which is superior to that specified as minimum for the Choice grade may compensate on an equal basis, for a development of conformation which is inferior to that specified for Choice as indicated in the following example: A lamb which has a development of finish equivalent to the mid-point of the Choice grade may have conformation equivalent to the midpoint of the Good grade and remain eligible for Choice. However, in no instance may a lamb be graded Choice which has a development of conformation inferior to that specified as minimum for the Good grade.

(c) *Good.* (1) Lambs possessing the minimum requirements for the Good grade are moderately rangy and upstanding and thin-fleshed. They are slightly narrow over the back, loin, and rump. Hips and shoulders are moderately prominent. The twist is slightly shallow and the legs are slightly small and thin. Relatively young lambs, under seven months of age, have slightly more than a very thin, uneven fat covering over the back, loin, and upper ribs. In handling, the shoulders, backbone, hips, and ribs are prominent. Older, more mature lambs have slightly more than a thin fat covering over the back, ribs, and loin. In handling, the bones of the shoulders, backbone, hips, and ribs are rather prominent. Lambs of this grade may present evidences of slightly low quality. The bones and joints are usually moderately large, and the body is somewhat lacking in symmetry and smoothness.

(2) A lamb which has conformation equivalent to at least the midpoint of the Good grade may have a development of finish equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. Also, a development of finish which is superior to that specified as minimum for the Good grade may compensate for a development of conformation which is inferior to that specified for Good on the basis of one-half grade of superior finish for one-third grade of deficient conformation as indicated in the following example: A lamb which has a development of finish equivalent to the midpoint of the Good grade may have conformation equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. However, in no instance may a lamb be graded Good which has a development of conformation inferior to that specified as minimum for the Utility grade.

(d) *Utility.* (1) Lambs meeting the minimum requirements for the Utility grade are very rangy and angular. They are very thin-fleshed, very narrow over the back, loin, and rump, and very shallow in the twist. The hips are very prominent and the shoulders are usually open, rough, and prominent. The legs are very small and thin, and present a slightly concave appearance. Regardless of age, Utility lambs show no visible evidence of fat covering. In handling, bones of the shoulders, backbone, hips, and ribs are very prominent. Utility grade lambs are of rather low quality. The bones and joints are proportionately large and the body is very rough and unsymmetrical.

(2) A lamb which has conformation equivalent to at least the midpoint of the Utility grade may have a development of finish equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility. Also, a development of finish which is superior to that specified as minimum for the Utility grade may compensate for a development of conformation which is inferior to that specified for Utility on the basis of one-half grade of superior finish for one-third grade of deficient conformation as indicated in the following example: A lamb which has a development of finish equivalent to the midpoint of the Utility grade may have conformation equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility.

(e) *Cull.* (1) Typical Cull grade lambs are extremely rangy, angular, and thin-fleshed and extremely narrow and shallow bodied. Shoulders and hips are very prominent. The legs are extremely small and thin and present a very concave appearance. In handling, the bones of the shoulders, backbone, hips, and ribs are extremely prominent and the entire bony framework is very evident. The general appearance is that of low quality. The relative proportion of meat to bone is quite low, joints appear large, and the body is very unsymmetrical.

§ 53.134 Specifications for official U.S. standards for grades of slaughter yearlings and sheep (quality).[1]

(a) *Prime.* (1) Slaughter sheep older than yearlings are not eligible for the Prime grade.

(2) Yearling sheep possessing the minimum requirements for the Prime grade are moderately lowset and blocky and thick-fleshed. They are moderately wide over the back, loin, and rump. Shoulders and hips are usually moderately smooth. The twist is moderately deep and full, and the legs are moderately large and plump. There is a rather distinct fullness or plumpness evident over the crops, loins, and rump which contributes to a well-rounded appearance. There is a slightly thick fat covering over the back, ribs, loin, and rump. In handling, the backbone and ribs are hardly discernible. Prime slaughter yearling sheep exhibit evidences of rather high quality. The bones tend to be proportionately small, the joints tend to be smooth, and the body tends to be trim, smooth, and symmetrical.

[1] 34 F.R. 243, Jan. 8, 1969.

[1] 34 F.R. 243, Jan. 8, 1969.

(3) To qualify for the Prime grade, a yearling must possess the minimum qualifications for finish regardless of the extent that its conformation may exceed the minimum requirements for Prime. However, a development of finish which is superior to that specified as minimum for the Prime grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified for Prime as indicated in the following example: A yearling which has a development of finish equivalent to the mid-point of the Prime grade may have conformation equivalent to the midpoint of the Choice grade and remain eligible for Prime. However, in no instance may a yearling be graded Prime which has a development of conformation inferior to that specified as minimum for the Choice grade.

(4) Yearlings which are otherwise eligible for the Prime grade but which have excessive external fat are not eligible for Prime.

(b) *Choice.* (1) Slaughter sheep possessing the minimum requirements for the Choice grade tend to be slightly low-set and blocky and thick-fleshed. They tend to be slightly wide over the back, loin, and rump. The shoulders and hips are usually slightly smooth but may show a slight tendency toward prominence. The twist tends to be slightly deep and full and the legs tend to be slightly thick and plump. Yearling sheep have a slightly thin fat covering over the back, ribs, loin, and rump. In handling, the backbone and ribs are readily discernible. Mature sheep have a slightly thick fat covering over the back, ribs, loin, and rump. In handling, the backbone and ribs are slightly discernible. Choice slaughter sheep usually present a moderately refined appearance.

(2) A sheep which has conformation equivalent to at least the midpoint of the Choice grade may have a development of finish equivalent to the minimum for the upper one-third of the Good grade and remain eligible for Choice. Also, a development of finish which is superior to that specified as minimum for the Choice grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified for Choice as indicated in the following example: A sheep which has a development of finish equivalent to the mid-point of the Choice grade may have conformation equivalent to the mid-point of the Good grade and remain eligible for Choice. However, in no instance may a sheep be graded Choice which has a development of conformation inferior to that specified as minimum for the Good grade.

(3) Yearlings which are otherwise eligible for the Prime grade but which have excessive external fat are included in the Choice grade. Sheep which are otherwise eligible for the Choice grade but which have excessive external fat are not eligible for Choice.

(c) *Good.* (1) Slaughter sheep possessing the minimum requirements for the Good grade are slightly rangy and upstanding and thin-fleshed. They are slightly narrow over the back, loin, and rump. Hips and shoulders are moderately prominent. The twist is slightly shallow and the legs slightly small and thin. Yearling sheep have slightly more than a moderately thin fat covering over the back, loin, and upper ribs. In handling, the shoulders, backbone, hips, and ribs are rather prominent. Mature sheep have a slightly thin fat covering over the back, ribs, and loin. In handling, the bones of the shoulders, backbone, hips, and ribs are slightly prominent. Sheep of this grade may present evidences of slightly low quality. The body is somewhat lacking in symmetry and smoothness.

(2) A sheep which has conformation equivalent to at least the mid-point of the Good grade may have a development of finish equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. Also, a development of finish which is superior to that specified as minimum for the Good grade may compensate for a development of conformation which is inferior to that specified for Good on the basis of one-half grade of superior finish for one-third grade of deficient conformation as indicated in the following example: A sheep which has evidences of finish equivalent to the mid-point of the Good grade may have conformation equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. However, in no instance may a sheep be graded Good which has a development of conformation inferior to that specified as minimum for the Utility grade.

(d) *Utility.* (1) Slaughter sheep meeting the minimum requirements for the Utility grade are very rangy and angular. They are very thin-fleshed, very narrow over the back, loin, and rump, and very shallow in the twist. The hips are very prominent and the shoulders are usually open, rough, and prominent. The legs are very small and thin and present a slightly concave appearance. Regardless of age, Utility grade slaughter sheep show no visible evidences of fat covering. In handling, the bones of the shoulders, backbone, hips, and ribs are so thinly covered that they are very prominent. Utility grade slaughter sheep are of rather low quality. The bones and joints are proportionately large and the body is very rough and unsymmetrical.

(2) A sheep which has conformation equivalent to at least the mid-point of the Utility grade may have a development of finish equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility. Also, a development of finish which is superior to that specified as minimum for the Utility grade may compensate for a development of conformation which is inferior to that specified for Utility on the basis of one-half grade of superior finish for one-third grade of deficient conformation as indicated in the following example: A sheep which has a development of finish equivalent to the midpoint of the Utility grade may have conformation equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility.

(e) *Cull.* (1) Typical Cull grade sheep are extremely rangy, angular, and thin-fleshed and extremely narrow and shallow bodied. Shoulders and hips are very prominent. The legs are extremely small and thin and present a very concave appearance. In handling, the bones of the shoulders, backbone, hips, and ribs are extremely prominent and the entire bony framework is very evident. The general appearance is that of low quality. The relative proportion of meat to bone is quite low, joints appear large, and the body is very unsymmetrical.

§ 53.135 Specifications for official U.S. standards for grades of slaughter lambs, yearlings, and sheep (yield).

(a) *Yield Grade 1.* (1) Yield Grade 1 slaughter lambs, yearlings, and sheep produce carcasses which have very high yields of boneless retail cuts. Ovines with characteristics qualifying them for the lower limits of Yield Grade 1 (near the borderline between Yield Grade 1 and Yield Grade 2) will differ considerably because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled ovines typical of the minimum of this grade have a high proportion of lean to bone. They are moderately wide and usually the width through the shoulders and legs is greater than through the back. The top is well-rounded with no evidence of flatness and the back and loin are moderately full and plump. The legs are moderately large and plump and the width through the middle part of the legs is greater than through the back. The shoulders and hips are slightly prominent. These ovines have only a thin covering of external fat over the back and loin and a slightly thick covering of fat over the rump and down over the ribs. They are shallow through the flanks and the brisket and cod or udder have little evidence of fullness. In handling, the backbone, ribs, and ends of bones at the loin edge are moderately prominent. A carcass produced from slaughter ovines of this description might have 0.1 inch of fat over the ribeye and a low Prime leg conformation grade.

(b) *Yield Grade 2.* (1) Yield Grade 2 slaughter lambs, yearlings, and sheep produce carcasses with high yields of boneless retail cuts. Ovines with characteristics qualifying them for the lower limits of Yield Grade 2 (near the borderline between Yield Grade 2 and Yield Grade 3) will differ considerably because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled ovines typical of the minimum of this grade have a high proportion of lean to bone. They are wide through the back and loin and have slightly greater width through the shoulders and legs than through the back. The top is well-rounded with little evidence of flatness and the back and

loin are full and plump. The legs are large and plump and the width through the middle part of the legs is slightly greater than through the back. The shoulders and hips are slightly smooth. These ovines have a slightly thin layer of external fat over the back and loin and a thick covering of fat over the rump and down over the ribs. They are slightly shallow through the flanks and the brisket and cod or udder are slightly full. In handling, the backbone, ribs and ends of bones at the loin edge are readily discernible. A carcass produced from slaughter ovines of this description might have 0.2 inch of fat over the ribeye and an average Prime Leg conformation grade.

(3) Thinly muscled ovines typical of the minimum of this grade have a relatively low proportion of lean to bone. They tend to be slightly narrow over the back, loin, and rump. The legs tend to be slightly small and thin and the width over the back is slightly greater than through the legs. The shoulders and hips tend to be moderately prominent. These ovines have a thin covering of external fat over the back and loin and a moderately thick covering of fat over the rump and down over the ribs. They tend to be slightly shallow through the flanks. The brisket and cod or udder have little evidence of fullness. In handling, the backbone, ribs, and ends of the bones at the loin edge are moderately prominent. A carcass produced from slaughter ovines of this description might have 0.15 inch of fat over the ribeye and high Good leg conformation grade.

(c) *Yield Grade 3.* (1) Yield Grade 3 slaughter lambs, yearlings, and sheep produce carcasses with intermediate yields of boneless retail cuts. Ovines with characteristics qualifying them for the lower limits of Yield Grade 3 (near the borderline between Yield Grade 3 and Yield Grade 4) will differ considerably because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled ovines typical of the minimum of this grade have a high proportion of lean to bone. They are very wide through the back and loin and are uniform in width from front to rear. The top is nearly flat with only a slight tendency toward roundness. The back and loin are very full and plump. The legs are very large and plump. The shoulders and hips are moderately smooth. These ovines have a slightly thick covering of fat over the back and loin and a very thick covering of fat over the rump and down over the ribs. The flanks are slightly deep and full and the brisket and cod or udder are moderately full. In handling, the backbone, ribs, and ends of bones at the loin edge are moderately discernible. A carcass produced from slaughter ovines of this description might have 0.3 inch of fat over the ribeye and a high Prime leg conformation grade.

(3) Thinly muscled ovines typical of the minimum of this grade have a relatively low proportion of lean to bone. They tend to be slightly wide over the back, loin and rump. The legs tend to be slightly thick and plump. The width over the back is moderately greater than through the legs. The shoulders and hips are slightly prominent. These ovines have a slightly thin covering of external fat over the back and loin and a thick covering of fat over the rump and down over the ribs. The flanks tend to be slightly deep and full. The brisket and cod or udder are slightly full. In handling, the backbone, ribs, and ends of bones at the loin edge tend to be moderately discernible. A carcass produced from slaughter ovines of this description might have 0.25 inch of fat over the ribeye and a low Choice leg conformation grade.

(d) *Yield Grade 4.* (1) Yield Grade 4 slaughter lambs, yearlings, and sheep produce carcasses with moderately low yields of boneless retail cuts. Ovines with characteristics qualifying them for the lower limits of Yield Grade 4 (near the borderline between Yield Grade 4 and Yield Grade 5) will differ considerably because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled ovines typical of the minimum of this grade have a high proportion of lean to bone. They are extremely wide through the back and loin and are slightly wider over the top than through the shoulders and legs. The back and loin are extremely full and plump. The legs are extremely large and plump. The shoulders and hips are smooth. These ovines have a moderately thick covering of fat over the back and loin, and an extremely thick covering of fat over the rump and down over the ribs. The flanks are moderately deep and full and the brisket and cod or udder are full. In handling, the backbone, ribs, and ends of bones at the loin edge are slightly discernible. A carcass produced from slaughter ovines of this description might have 0.4 inch of fat over the ribeye and a high Prime leg conformation grade.

(3) Thinly muscled ovines typical of the minimum of this grade have a relatively low proportion of lean to bone. They tend to be moderately wide over the back, loin, and rump. The legs tend to be moderately thick and plump. They are wider over the back than through the legs. The shoulders and hips are slightly smooth. These ovines have a slightly thick covering of external fat over the back and loin and a very thick covering of fat over the rump and down over the ribs. The flanks are slightly deep and full. The brisket and cod or udder are moderately full. In handling, the backbone, ribs, and ends of bones at the loin edge tend to be slightly discernible. A carcass produced from slaughter ovines of this description might have 0.35 inch of fat over the ribeye and an average Choice leg conformation grade.

(e) *Yield Grade 5.* Yield Grade 5 slaughter lambs, yearlings, and sheep produce carcasses with low yields of boneless retail cuts. Ovines of this grade consist of those not meeting the minimum requirements of Yield Grade 4 because of either more fat or a lower leg conformation grade or a combination of these characteristics.

SWINE

§ 53.150 Swine.

The official standards for swine developed by the U.S. Department of Agriculture provide for segregation first according to intended use—slaughter or feeder—then as to class, as determined by sex condition, and then as to grade, which is determined by the apparent relative excellence and desirability of the animal for a particular use. Differentiation between slaughter and feeder swine is based solely on their intended use rather than on specific identifiable characteristics of the swine. Slaughter swine are those which are intended for slaughter immediately or in the near future. Feeder swine are those which are intended for slaughter after a period of feeding.

§ 53.151 Slaughter and feeder swine classes.

There are five classes of slaughter and feeder swine. Definitions of the respective classes are as follows:

(a) *Barrow.* A barrow is a male swine castrated when young and before development of the secondary physical characteristics of a boar.

(b) *Gilt.* A gilt is a young female swine that has not produced young and has not reached an advanced stage of pregnancy.

(c) *Sow.* A sow is a mature female swine that usually shows evidence of having reproduced or having reached an advanced stage of pregnancy.

(d) *Boar.* A boar is an uncastrated male swine.

(e) *Stag.* A stag is a male swine castrated after development or beginning of development of the secondary physical characteristics of a boar. Typical stags are somewhat coarse and lack balance—the head and shoulders are more fully developed than the hindquarter parts, bones and joints are large, the skin is thick and rough, and the hair is coarse.

§ 53.152 Application of standards for grades of slaughter barrows and gilts.

(a) Grades of slaughter barrows and gilts are intended to be directly related to the grades of the carcasses they produce. To accomplish this, the slaughter barrow and gilt grades are predicated on the same two general considerations that provide the basis for the grades of barrow and gilt carcasses: (1) Quality of the lean, and (2) expected combined carcass yields of the four lean cuts (ham, loin, picnic shoulder, and Boston butt).

(b) With respect to quality, two general levels are considered: One for barrows and gilts with characteristics which indicate that the carcass lean will have acceptable quality and acceptable belly

thickness and one for barrows and gilts with characteristics which indicate that the carcass lean will have unacceptable quality and/or the belly will be of unacceptable thickness. Since carcass indices of lean quality are not directly evident in barrows and gilts, some other factors in which differences can be noted must be used to evaluate quality. Therefore, the amount and distribution of external finish, firmness of fat, and firmness of lean are used as quality-indicating factors.

(c) Barrows and gilts with characteristics which indicate that the carcass lean will have an unacceptable level of quality and/or the belly will be of unacceptable thickness are graded U.S. Utility. Also graded U.S. Utility—regardless of their development of other quality-indicating characteristics—are slaughter barrows and gilts with indications that their carcasses will be soft and oily.

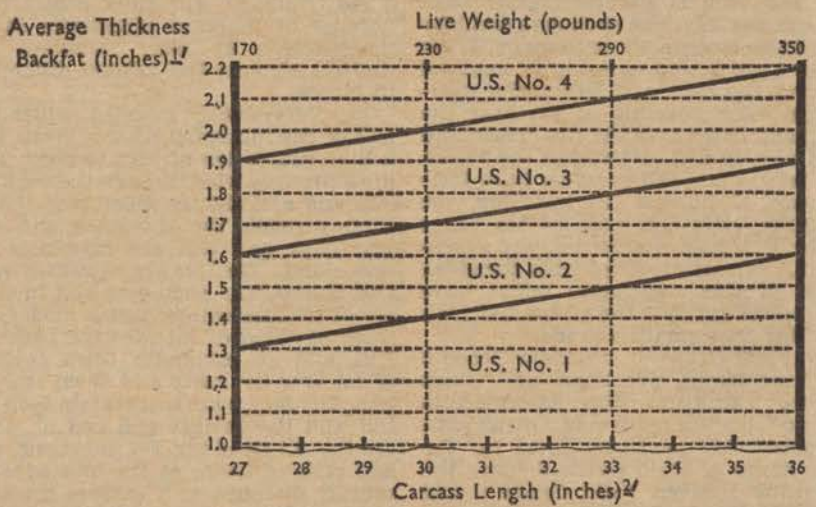
(d) Four grades—U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4—are provided for barrows and gilts with characteristics which indicate that the carcass lean will have an acceptable level of quality. These grades are based entirely on the expected combined carcass yields of the four lean cuts.

(e) Average backfat thickness in relation to carcass length or live weight is used as a guide to expected yields of the four lean cuts in these standards. In grading barrows and gilts, these factors normally are appraised visually; live weight is the only one that can be readily determined in the live animal. The average backfat thickness appraisal includes consideration of the distribution of fat on other parts of the animal in addition to those points on the back where it is measured on the carcass.

(f) Barrows and gilts will produce carcasses that vary in yields of four lean cuts because of variations in their degree of fatness (expressed as average thickness of backfat), and in their degree of muscling (thickness of muscling in relation to skeletal size). Since many slaughter swine have a normal development of muscling for their degree of fatness, in determining their grade the average thickness of backfat and carcass length or live weight are the only factors considered. These relationships are illustrated in Figure I for barrows and gilts weighing 170 to 350 pounds that will produce carcasses 27 to 36 inches long. For slaughter swine of other lengths or weights, average backfat thickness requirements for the various grades can be determined by an extension of the lines in this figure. The degree of muscling specified for each of the four grades decreases progressively from the U.S. No. 1 grade through the U.S. No. 4 grade. This reflects the fact that among barrows and gilts of the same weight, the fatter animals normally have a lesser degree of muscling. For purposes of these standards six degrees of muscling are recognized: Very thick, thick, moderately thick, slightly thin, thin, and very thin. These degrees are intended to cover the entire range of muscling present among slaughter swine. The degrees specified as typical for barrows and gilts at the minimum of the U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades are, respectively: Thick, moderately thick, slightly thin, and thin. For animals having a development of muscling which is different from that normally associated with their degree of fatness, the average backfat thickness-carcass length or average backfat thickness-live weight relationships for the various grades are different from those shown in Figure I. Consideration is given such unusual developments of muscling as follows: In each grade, superior muscling is permitted to compensate for greater fatness of the rate of one full degree of superior muscling for a one-tenth inch increase in average backfat. Except for the U.S. No. 1 grade, the reverse type of compensation is also permitted and at the same rate; one-tenth inch less fat compensates for a full degree of inferior muscling. In the U.S. No. 1 grade, this type of compensation is limited to one full degree of inferior muscling; barrows and gilts which have less than moderately thick muscling but which otherwise qualify for the U.S. No. 1 grade are graded U.S. No. 2.

(g) In no case, however, may variations-from-normal muscling alter the final grade more than one full grade.

RELATIONSHIP BETWEEN AVERAGE THICKNESS OF BACKFAT, WEIGHT OR CARCASS LENGTH, AND GRADE FOR BARROWS AND GILTS WITH MUSCLING TYPICAL OF THEIR DEGREE OF FATNESS.



1/ An average of three measurements including the skin made opposite the first and last ribs and the last lumbar vertebra. It also reflects adjustment, as appropriate, to compensate for variations - from - normal fat distribution.

2/ Carcass length is measured from the anterior point of the aitch bone to the anterior edge of the first rib.

Figure I

(h) In evaluating barrows and gilts for fatness and muscling, variations in the degree of fatness have a greater effect on the yield of the lean cuts than do variations in muscling. The fatness and muscling evaluations can best be made simultaneously. This is accomplished by considering the development of the various parts based on an understanding of how the appearance of each part is affected by variations in muscling and fatness. While the muscling of most swine develops uniformly, fat is normally deposited at a considerably faster rate on some parts than on others. Therefore, muscling can be appraised best by giving primary consideration to the parts least affected by fatness, such as the ham. Differences in thickness and fullness of the ham—with appropriate adjustments for the effects of variations in fatness—are the best indicators of the overall degree of muscling in slaughter barrows and gilts. Conversely, the overall fatness of barrows and gilts can be determined best by observing those parts on which fat is deposited at a faster-than-average rate. These include the edge of the loin, the rear flank, the shoulder, the jowls, and the belly. As swine increase in fatness, these parts appear progressively fuller, thicker, and more distended in relation to the thicknes and fullness of the other parts, especially the thickness through the hams. In thinly muscled swine with a low degree of fatness, the width of the back usually will be greater than the width through the center of the hams. The back on either side of the backbone will appear sloping and flat. Conversely, in thickly muscled swine with a similar degree of fatness, the thickness through the hams will be greater than through the back and the back will appear full and well rounded. Very fat swine will be wider through the

back than through the hams, but this difference will be greater in thinly muscled swine than in those that are thickly muscled. Such swine with thin muscling also will have a distinct break from the back into the sides, while those with thick muscling will be nearly flat on top but will have a less distinct break into the sides. As slaughter swine increase in fatness, they also become deeper bodied because of deposits of fat in the flanks and along the underline. The bulge of the flanks, best observed when the animal walks, and the thickness and fullness of the jowls are other indications of fatness.

(i) Barrows and gilts qualifying for the U.S. No. 1, U.S. No. 2, U.S. No. 3, or U.S. No. 4 grades may vary with respect to the relative development of the individual grade factors. In fact, some will qualify for a particular grade although they have some characteristics more nearly typical of another grade. Because it is impractical to describe the nearly infinite number of such recognizable combinations of characteristics, the standards for each grade describe only barrows and gilts whose expected carcass yield of the four lean cuts is at the lower limit of each grade and which have a development of muscling that is normal for such swine.

(j) Other factors such as heredity and management also may affect the development of the grade-determining characteristics in slaughter swine. Although these factors do not lend themselves to description in the standards, the use of factual information of this nature is justifiable in determining the grade of barrows and gilts. The ability to make proper allowances for the effects of genetic and management factors on the appearance of grade-determining characteristics must be developed through experience.

[33 F.R. 9249, June 22, 1968]

§ 53.153 Specifications for official U.S. standards for grades of slaughter barrows and gilts.

(a) *U.S. No. 1.* Barrows and gilts in this grade will produce carcasses with acceptable lean quality and acceptable belly thickness and a high percentage of lean cuts. Swine near the borderline between the U.S. No. 1 and U.S. No. 2 grades are thickly muscled in the hams, loins, and shoulders. The width through the hams is nearly equal to the width through the shoulders and both are wider than the back. The back is slightly full, is well rounded, and blends smoothly into the sides. The sides are moderately long and smooth. The rear flank is slightly full and its depth is less than the depth of the fore flank. The jowls are firm and slightly thick and full. A development of muscling superior to that specified as minimum for the U.S. No. 1 grade may compensate for a development of fatness which is greater than that indicated in Figure I as maximum for the U.S. No. 1 grade at the rate of one full degree of muscling for one-tenth of an inch greater thickness of backfat. For example, a barrow or gilt with very thick muscling may have one-tenth of an inch more backfat than that indicated in Figure I as maximum for this grade and remain eligible for the U.S. No. 1 grade. The reverse type of compensation is also permitted at the same rate—except that in no case may a barrow or gilt be graded U.S. No. 1 with less than moderately thick muscling.

(b) *U.S. No. 2.* Slaughter barrows and gilts in this grade will produce carcasses with acceptable lean quality, acceptable belly thickness, and a slightly high percentage of lean cuts. Swine near the borderline between the U.S. No. 2 and U.S. No. 3 grades are moderately thickly muscled in the hams, loins, and shoulders. The width through the shoulders is slightly more than the width through the hams. The back is moderately full and is slightly rounded but with a slight break into the sides. The sides are slightly short and smooth. The rear flank is moderately full and its depth is slightly less than the depth of the fore flank. The jowls are moderately thick and full. A development of muscling superior to that specified as minimum for the U.S. No. 2 grade may compensate for a development of fatness which is greater than that indicated in Figure I as maximum for the U.S. No. 2 grade at the rate of one full degree of muscling for one-tenth of an inch greater thickness of backfat. For example, a barrow or gilt with thick muscling may have one-tenth of an inch more backfat than that indicated in Figure I as maximum for this grade and remain eligible for the U.S. No. 2 grade. The reverse type of compensation is also permitted at the same rate. For example, a barrow or gilt with slightly thin muscling may have one-tenth of an inch less backfat than that indicated in Figure I as maximum for this grade and remain eligible for the U.S. No. 2 grade.

(c) *U.S. No. 3.* Slaughter barrows and gilts in this grade will produce carcasses with acceptable lean quality and acceptable belly thickness and a slightly low percentage of four lean cuts. Swine near the borderline between the U.S. No. 3 and U.S. No. 4 grades are slightly thinly muscled in the hams, loins, and shoulders. The width through the shoulders is definitely greater than the width through the hams. The back is full and nearly flat with a pronounced break into the sides. The sides are short and smooth. The rear flank is full and its depth is equal to the depth of the fore flank. The jowls are thick and full. A development of muscling superior to that specified as minimum for the U.S. No. 3 grade may compensate for a development of fatness which is greater than that indicated in Figure I as maximum for the U.S. No. 3 grade at the rate of one full degree of muscling for one-tenth of an inch greater thickness of backfat. For example, a barrow or gilt with moderately thick muscling may have one-tenth of an inch more backfat than that indicated in Figure I as maximum for this grade and remain eligible for the U.S. No. 3 grade. The reverse type of compensation is also permitted at the same rate. For example, a barrow or gilt with thin muscling may have one-tenth of an inch less backfat than that indicated in Figure I as maximum for this grade and remain eligible for the U.S. No. 3 grade.

(d) *U.S. No. 4.* Barrows and gilts in this grade will produce carcasses with acceptable lean quality and acceptable belly thickness. However, they are fatter and less muscular and will have a lower carcass yield of the four lean cuts than those in the U.S. No. 3 grade.

(e) *U.S. Utility.* Barrows and gilts typical of this grade will have a thin covering of fat. The sides are wrinkled and the flanks are shallow and thin. Barrows and gilts in this grade will produce carcasses with unacceptable lean quality and/or unacceptable belly thickness.

§ 53.154 Application of standards for grades of slaughter sows.

(a) The standards for grades of slaughter sows are based on (1) differences in yields of lean cuts and of fat cuts and (2) differences in quality of cuts. These characteristics vary rather consistently from one grade to another. The U.S. No. 1 grade has about the minimum degree of finish necessary to produce pork carcasses with quality characteristics indicative of acceptable palatability in the cuts. The U. S. No. 2 grade is overfinished and the U. S. No. 3 grade is decidedly overfinished in relation to the minimum finish associated with acceptable palatability. Yields of lean cuts are lower and yields of fat cuts are higher, in proportion to the degree of overfinish, in these grades than in the U.S. No. 1 grade. Medium grade sows are underfinished and produce carcasses which are soft and have indications of insufficient quality for acceptably palatable cuts. Cull grade sows are decidedly underfinished and the pork is soft and watery with little or no marbling and low palatability.

(b) The grades for slaughter sows are closely related to the grades for sow carcasses, and the desired objective in grading sows is the accurate prediction of the carcass grade that will be produced. Degree of finish is an important factor in grading, and the expected average back fat thickness of carcasses produced by each grade of slaughter sows forms a part of the standards. The results of study of carcass measurement and cutting data show that carcasses equal in fat thickness are approximately equal in yields of cuts regardless of differences in weight. Therefore, the expected back fat thickness of carcasses from each grade of slaughter sows is the same at all weights. The following

table outlines the carcass fat thickness guides for each grade of slaughter sows.

Grade:	*Average back fat thickness*
U. S. No. 1	1.5 to 1.9 inches.
U. S. No. 2	1.9 to 2.3 inches.
U. S. No. 3	2.3 or more inches
Medium	1.1 to 1.5 inches.
Cull	Less than 1.1 inches.

(c) The standards for grades also include descriptive specifications of the characteristics of slaughter sows with the minimum degree of finish for each grade. Application of the standards requires an accurate appraisal of these live animal characteristics indicative of carcass finish and grade. No attempt is made to describe in the standards the many combinations of characteristics which may qualify an animal for a particular grade, and sound judgment is required to appropriately analyze varying combinations.

(d) Slaughter sows that have produced several litters of pigs may show considerable roughness along the underline due to extensive development of mammary tissue. In addition, sows from which pigs were weaned only a short time prior to grading may show evidence that the mammary tissue is still active in milk production and not completely dry. Since smoothness and dryness of the underline have little effect on the basic grade determining factors, no provision is made in the standards for altering the grade of slaughter sows due to differences in these characteristics. It is recognized that the value determining factors to be considered in marketing sows include dryness and smoothness as well as such other factors as weight, degree of finish, quality, and fill. However, consideration of all such factors in determining grade would require a complicated system with a great number of grades in order to make each grade sufficiently restrictive to be practical and useful. Therefore, the grades outlined in these standards identify differences in slaughter sows with respect to yields of cuts and quality. They were designed as practical aids in evaluating slaughter sows when used in conjunction with other factors such as weight, fill, smoothness, and dryness.

§ 53.155 Specifications for official United States standards for grades of slaughter sows.

(a) *U.S. No. 1 grade.* U.S. No. 1 grade slaughter sows have an intermediate degree of finish near the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for U. S. No. 1 grade are moderately long and slightly wide in relation to weight. Width of body is rather uniform from top to bottom and from front to rear. The back, from side to side, is moderately full and thick with a well-rounded appearance and blends smoothly into the sides. The sides are moderately long and slightly thick; the flanks are slightly thick and full. Depth at the rear flank may be slightly less than depth at the fore flank. Hams are usually moderately thick and full with a slightly thick covering of fat. Jowls are usually moderately thick and full but appear trim. Sows in this grade produce U. S. No. 1 grade carcasses.

(b) *U. S. No. 2 grade.* U. S. No. 2 grade slaughter sows have a moderately high degree of finish that is somewhat greater than the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for the U. S. No. 2 grade are slightly short and moderately wide in relation to weight. Width of body is often greater over the top than at the underline and tends to be slightly greater through the shoulders than through the hams. The back, from side to side, is full and thick and appears slightly flat with a noticeable break into the sides. The sides are slightly short and moderately thick; the flanks are moderately thick and full. Depth at the rear flank is nearly equal to depth at the fore flank. Hams are usually thick and full with a moderately thick covering of fat, especially over the lower part. Jowls are usually full and thick, and the neck appears rather short. Sows in this grade produce U. S. No. 2 grade carcasses.

(c) *U. S. No. 3 grade.* U. S. No. 3 grade slaughter sows have a high degree of finish that is considerably greater than the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for U. S. No. 3 grade are short and wide in relation to weight. Width of body is often somewhat greater over the top than at the underline and tends to be greater through the shoulders than through the hams. The back, from side to side, is very full and thick and appears nearly flat with a pronounced break into the sides. The sides are short and thick; the flanks are thick and full. Depth at the rear flank is equal to depth at the fore flank. Hams are usually very thick and full with a thick covering of fat especially over the lower part. Jowls are usually very full and thick, and the neck appears short. Sows of this grade produce U. S. No. 3 grade carcasses.

(d) *Medium grade.* Medium grade slaughter sows have a low degree of finish which is somewhat less than the minimum required to produce pork cuts of acceptable palatability. Sows with the minimum finish for Medium grade are long and moderately narrow in relation to weight. Width of body is often less over the top than at the underline and tends to be slightly less through the shoulders than through the hams. The back, from side to side, is moderately thin and appears rather peaked at the center with a distinct slope toward the sides. The hips are moderately prominent. The sides are long and moderately thin; the flanks are thin. Depth at the rear flank is less than depth at the fore flank. Hams are usually moderately thin and flat and taper toward the shank. Jowls are usually slightly thin and flat, and the neck appears rather long. Sows in this grade produce Medium grade carcasses.

(e) *Cull grade.* Cull grade slaughter sows have a very low degree of finish which is considerably lower than that required to produce pork cuts of acceptable palatability. Sows with the finish typical of the Cull grade are long and narrow in relation to weight. Width of body is often somewhat less over the top than at the underline and tends to be less through the shoulders than through the hams. The back, from side to side, is thin and lacks fullness and is peaked at the center with a decided slope toward the sides. The hips are prominent. The sides are very long and thin; the flanks are very thin. Depth at the rear flank is considerably less than depth at the fore flank. Hams are usually thin and flat with a definite taper toward the shank. Jowls are usually thin and flat, and the neck appears long. Sows in this grade produce Cull grade carcasses.

§ 53.158 Application of standards for grades of feeder pigs.

(a) The grade of a feeder pig is determined by evaluating two general value-determining characteristics—its logical slaughter potential and its thriftiness.

(b) The logical slaughter potential of a thrifty feeder pig is its expected slaughter grade at a market weight of 220 pounds after a normal feeding period. In these feeder pig standards, logical slaughter potential is determined by a composite appraisal of the development of the muscular system and the skeletal system. Both of these factors have an important effect on the development of lean and fat as the animal grows and fattens, and therefore, on the expected slaughter and carcass grade.

(c) Thriftiness in a feeder pig is its apparent ability to gain weight rapidly and efficiently. Size for age, health, and other general indications of thriftiness are considered in appraising the thriftiness of feeder pigs.

(d) The standards provide for six grades of feeder pigs—U.S. No. 1, U.S. No. 2, U.S. No. 3, U.S. No. 4, U.S. Utility, and U.S. Cull. Except for the U.S. Cull grade, these names correspond to the five grade names for slaughter swine and pork carcasses. The U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades include all pigs which are thrifty. Differentiation between the U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades is based entirely on differences in logical slaughter potential. Feeder pigs in the U.S. No. 1 grade have sufficient muscling and frame to reach a market weight of 220 pounds with a minimum degree of finish. Feeder pigs in the U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades usually have

progressively less muscling and less frame and are expected to have progressively more finish when marketed at 220 pounds. The U.S. Utility and U.S. Cull grades include only pigs which lack thriftiness. Differentiation between the U.S. Utility and U.S. Cull grades is based entirely on differences in thriftiness.

(e) Most feeder pigs are marketed when relatively young and before reaching a weight of 125 pounds. At this age, sex condition exerts little influence on the basic factors determining the feeder grade. Therefore, these standards are equally applicable for grading barrow, gilt, and boar pigs, although it is recognized that sex condition may influence the market price in some instances. It is assumed that boar pigs will be castrated prior to developing the secondary physical characteristics of a boar. Sows, stags, and mature boars are seldom used as feeder animals, and these standards do not apply to those classes.

(f) Only one combination of muscling and skeletal characteristics is described in the standards for the U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades. However, feeder pigs qualifying for the U.S. No. 1, U.S. No. 2, U.S. No. 3 or U.S. No. 4 grades may vary with respect to the relative development of the individual grade factors. In fact, some will qualify for a particular grade although they have some characteristics more nearly typical of another grade, except that feeder pigs in the U.S. No. 1 grade must have at least moderately thick muscling. Feeder pigs with other characteristics of the U.S. No. 1 grade, but with less than moderately thick muscling would be in the U.S. No. 2 grade. Since no attempt is made to describe the numerous combinations of characteristics that may qualify a feeder pig for a specific grade, making appropriate compensations for varying combinations of characteristics requires the use of sound judgment.

§ 53.159 Specifications for official United States standards for grades of feeder pigs.

(a) *U.S. No. 1.* Feeder pigs in this grade near the borderline of the U.S. No. 2 grade are long and have thick muscling throughout. Thickness of muscling is particularly evident in thick and full hams and shoulders. The hams and shoulders are thicker than the back, which is well rounded. They usually present a well-balanced appearance. In no case may a feeder pig be graded U.S. No. 1 with less than moderately thick muscling. Feeder pigs in this grade are expected to produce U.S. No. 1 grade carcasses when slaughtered at 220 pounds.

(b) *U.S. No. 2.* Feeder pigs in this grade near the borderline of the U.S. No. 3 grade are moderately long and have moderately thick muscling throughout. Thickness of muscling is particularly evident in moderately thick and full hams and shoulders. The back usually appears slightly full and well-rounded. They usually present a well-balanced appearance. This grade also includes feeder pigs which otherwise qualify for the U.S. No. 1 grade but have less than moderately thick muscling. Feeder pigs in this grade are expected to produce U.S. No. 8 grade carcasses when slaughtered at 220 pounds.

(c) *U.S. No. 3.* Feeder pigs in this grade near the borderline of the U.S. No. 4 grade are slightly short and have slightly thin muscling throughout. The hams and shoulders are slightly thin and flat and the back usually appears moderately full and thick. Feeder pigs in this grade are expected to produce U.S. No. 3 grade carcasses when slaughtered at 220 pounds.

(d) *U.S. No. 4.* Feeder pigs typical of the U.S. No. 4 grade are short and have thin muscling throughout. The hams are thin and rather flat, particularly in the lower parts toward the shanks. The back usually appears slightly flat and the width at the topline usually is greater than at the underline. Feeder pigs in this grade are expected to produce U.S. No. 4 grade carcasses when slaughtered at 220 pounds.

(e) *U.S. Utility.* Feeder pigs typical of this grade are small for their age and appear unthrifty. They often have a rough, unkempt appearance indicating the effects of disease or poor care. The hams and shoulders usually are thin and flat and taper toward the shanks. The back is thin and lacks fullness. Pigs in this grade near the borderline of the U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades are slightly small for their age and appear slightly unthrifty. It is recognized that U.S. Utility grade feeder pigs will produce U.S. No. 1, U.S. No. 2, U.S. No. 3, or U.S. No. 4 grade carcasses when slaughtered at 220 pounds provided their unthrifty condition is corrected. U.S. Utility grade feeder pigs whose unthrifty condition is not corrected will produce U.S. Utility grade carcasses.

(f) *U.S. Cull.* Feeder pigs typical of this grade are very deficient in thriftiness because of poor care or disease. They can be expected to reach a normal market weight only after an extremely long and costly feeding period, if at all.

CATTLE

§ 53.201 Cattle.

The official standards for live cattle developed by the United States Department of Agriculture provide for segregation first according to use—slaughter and feeder—then as to class, which is determined by sex condition, and then as to grade, which is determined by the apparent relative excellence and desirability of the animal for its particular use. Differentiation between slaughter and feeder cattle is based solely on their intended use rather than on specific identifiable characteristics of the cattle. Slaughter cattle are those which are intended use rather than on specific in the very near future. Feeder cattle are those which are intended for slaughter after a period of feeding. However, under some economic conditions specific kinds of cattle may be considered as feeders whereas under other economic conditions they might be considered as slaughter cattle.

§ 53.202 Classes of slaughter and feeder cattle.

The classes of slaughter and feeder cattle are steers, bullocks, bulls, heifers, and cows. Definitions of the respective classes are as follows:

(a) *Steer.* A steer is a male bovine castrated when young and which has not begun to develop the secondary physical characteristics of a bull.

(b) *Bullock.* A bullock is a young (under approximately 24 months of age) male bovine (castrated or uncastrated) that has developed or begun to develop the secondary physical characteristics of a bull.

(c) *Bull.* A bull is a mature (approximately 24 months of age or older) uncastrated, male bovine. However, for the purpose of these standards, any mature, castrated, male bovine which has developed or begun to develop the secondary physical characteristics of an uncastrated male also will be considered a bull.

(d) *Cow.* A cow is a female bovine that has developed through reproduction or with age, the relatively prominent hips, large middle, and other physical characteristics typical of mature females.

(e) *Heifer.* A heifer is an immature female bovine that has not developed the physical characteristics typical of cows.

§ 53.203 Application of Standards for Grades of Slaughter Cattle.

(a) *General.* Grades of slaughter cattle are intended to be directly related to the grades of the carcasses they produce. To accomplish this, these slaughter cattle grade standards are based on factors which are related to the grades of beef carcasses. The quality and yield grade standards are contained in separate sections of the standards. The quality grade standards are further divided into two sections applicable to (1) steers, heifers, and cows and (2) bullocks. Eight quality designations--Prime, Choice, Good, Standard, Commercial, Utility, Cutter, and Canner—are applicable to steers and heifers. Except for Prime, the same designations also apply to cows. The quality designations for bullocks are Prime, Choice, Good, Standard, and Utility. There are five yield grades, which are applicable to all classes of slaughter cattle and are designated by numbers 1 through 5, with Yield Grade 1 representing the highest degree of cutability. The grades of slaughter cattle shall be a combination of both their quality and yield grades, except that slaughter bulls are yield graded only.

(b) (1) *Quality Grades.* Slaughter cattle quality grades are based on an evaluation of factors related to the palatability of the lean, herein referred to as "quality." Quality in slaughter cattle is evaluated primarily by the amount and distribution of finish, the firmness of muscling, and the physical characteristics of the animal associated with maturity. Progressive changes in maturity past 30 months of age and in the amount and distribution of finish and firmness of muscling have opposite effects on

quality. Therefore, for cattle over 30 months of age in each grade, the standards require a progressively greater development of the other quality-indicating factors. In cattle under about 30 months of age, a progressively greater development of the other quality-indicating characteristics is not required.

(2) Since carcass indices of quality are not directly evident in slaughter cattle, some other factors in which differences can be noted must be used to evaluate their quality. Therefore, the amount of external finish is included as a major grade factor herein, even though cattle with a specific degree of fatness may have widely varying degrees of quality. Identification of differences in quality among cattle with the same degree of fatness is based on distribution of finish and firmness of muscling. Descriptions of these factors are included in the specifications. For example, cattle which have more fullness of the brisket, flank, twist, and cod or udder and which have firmer muscling than that indicated by any particular degree of fatness are considered to have higher quality than indicated by that degree of fatness.

(3) The approximate maximum age limitation for the Prime, Choice, Good, and Standard grades of steers, heifers, and cows is 42 months. The Commercial grade for steers, heifers, and cows includes only cattle over approximately 42 months. There are no age limitations for the Utility, Cutter, and Canner grades of steers, heifers, and cows. The maximum age limitation for all grades of bullocks is approximately 24 months.[1]

(c) *Yield Grades.* (1) The yield grades for slaughter cattle are based on the same factors as used in the official yield grade standards for beef carcasses. Those factors and the change in each which is required to make a full yield grade change are as follows:

Factor	Effect of increase on yield grade [1]	Approximate change in each factor required to make a full yield grade change [2]
Thickness of fat over ribeye.	Decreases	4/10 in.
Percent of kidney, pelvic, and heart fat.	do	5%.
Carcass weight	do	260 lb.
Area of ribeye	Increases	3 in.[2]

[1] The yield grades are denoted by numbers 1 through 5 with Yield Grade 1 representing the highest cutability or yield of closely trimmed retail cuts. Thus, an "increase" in cutability means a smaller yield grade number while a "decrease" in cutability means a larger yield grade number

[2] This assumes no change in the other factors.

(2) When evaluating slaughter cattle for yield grade, each of these factors can be estimated and the yield grade determined therefrom by using the equation contained in the official standards for grades of carcass beef. However, a more practical method of appraising slaughter cattle for yield grade is to use only two factors normally considered in evaluating live cattle—muscling and fatness.

(3) In the latter approach to determining yield grade, evaluation of the thickness and fullness of muscling in relation to skeletal size largely accounts for the effects of two of the factors—area of ribeye and carcass weight. By the same token, an appraisal of the degree of external fatness largely accounts for the effects of thickness of fat over the ribeye and the percent of kidney, pelvic, and heart fat.

(4) These fatness and muscling evaluations can best be made simultaneously. This is accomplished by considering the development of the various parts based on an understanding of how each part is affected by variations in muscling and fatness. While muscling of most cattle develops uniformly, fat is normally deposited at a considerably faster rate on some parts than on others. Therefore, muscling can be appraised best by giving primary consideration to the parts least affected by fatness, such as the round and the forearm. Differences in thickness and fullness of these parts—with appropriate adjustments for the effects of variations in fatness—are the best indicators of the overall degree of muscling in live cattle.

(5) On the other hand, the overall fatness of an animal can be determined best by observing those parts on which fat is deposited at a faster-than-average rate. These include the back, loin, rump, flank, cod or udder, twist, and brisket. As cattle increase in fatness, these parts appear progressively fuller, thicker, and more distended in relation to the thickness and fullness of the other parts, particularly the round. In thinly muscled cattle with a low degree of finish, the width of the back usually will be greater than the width through the center of the round. The back on either side of the backbone also will be flat or slightly sunken. Conversely, in thickly muscled cattle with a similar degree of finish, the thickness through the rounds will be greater than through the back and the back will appear full and rounded. At an intermediate degree of fatness, cattle which are thickly muscled will be about the same width through the round and back and the back will appear only slightly rounded. Thinly muscled cattle with an intermediate degree of finish will be considerably wider through the back than through the round and will be nearly flat across the back. Very fat cattle will be wider through the back than through the round, but this difference will be greater in thinly muscled cattle than in those that are thickly muscled. Such cattle with thin muscling also will have a distinct break from the back into the sides, while those with thick muscling will be nearly flat on top but will have a less distinct break into the sides. As cattle increase in fatness, they also become deeper bodied because of large deposits of fat in the flanks and brisket and along the underline. Fullness of the twist and cod or udder and the bulge of the flanks, best observed when an animal walks, are other indications of fatness.

(6) In determining yield grade, variations in fatness are much more important than variations in muscling.

(d) *Other considerations.* (1) Other factors such as heredity and management also may affect the development of the grade-determining characteristics in slaughter cattle. Although these factors do not lend themselves to description in the standards, the use of factual information of this nature is justifiable in determining the grade of slaughter cattle.

(2) Slaughter cattle qualifying for any particular grade may vary with respect to the relative development of the individual grade factors. In fact, some will qualify for a particular grade although they have some characteristics more nearly typical of cattle of another grade. Because it is impractical to describe the nearly infinite number of recognizable combinations of characteristics, quality and yield grade standards describe only cattle which have a relatively similar development of the various quality and yield grade determining factors and which are near the lower limits of these grades. The requirements are given for two maturity groups in the quality grade standards for steers, heifers, and cows—but for only one maturity group for bullocks. In the yield grade standards, cattle with two levels of muscling are described and specific examples in terms of carcass characteristics also are included.

§ 53.204 Specifications for Official United States Standards for Grades of Slaughter Steers, Heifers, and Cows (Quality).

(a) *Prime.* (1) Slaughter steers and heifers 30 to 42 months of age possessing the minimum qualifications for Prime have a fat covering over the crops, back, ribs, loin, and rump that tends to be thick. The brisket, flanks, and cod or udder appear full and distended and the muscling is very firm. The fat covering tends to be smooth with only slight indications of patchiness. Steers and heifers under 30 months of age have a moderately thick but smooth covering of fat which extends over the back, ribs, loin, and rump. The brisket, flanks, and cod or udder show a marked fullness and the muscling is firm.

(2) Cattle qualifying for the minimum of the Prime grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Cattle with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described for the Prime grade. Such cattle have less width of back and loin and are less uniform in width than normal for the Prime grade. The thick, full muscling gives the back and loin a well-

[1] Maximum maturity limits for bullock carcasses are the same as those described in the beef carcass grade standards for steers, heifers, and cows at about 30 months of age. However, bullocks develop carcass indicators of maturity at younger chronological ages than steers. Therefore, the approximate age at which bullocks develop carcass indicators of maximum maturity is shown herein as 24 months rather than 30 months

rounded appearance with very little evidence of flatness. The thickness through the middle part of the rounds is greater than over the top and the thick muscling through the shoulders causes them to be slightly prominent. Although such cattle have a lower degree of fatness over the back and loin than described as typical, evidence of more fatness than described is noticeable in the brisket, flanks, twist, and cod or udder and the muscling is firmer than described. Conversely, cattle with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described for the Prime grade. The distribution of fat is not typical, for it is thicker over the crops, back, loin, and rump than described while the brisket, flanks, twist, and cod or udder indicate less fatness. Such cattle are wide and nearly flat over the back and loin and there is a sharp break from these parts into the sides. The width over the back is much greater than through the rounds and shoulders.

(3) Cows are not eligible for the Prime grade.

(b) *Choice.* (1) Slaughter steers, heifers, and cows 30 to 42 months of age possessing the minimum qualifications for Choice have a fat covering over the crops, back, loin, rump, and ribs that tends to be moderately thick. The brisket, flanks, and cod or udder show a marked fullness and the muscling is firm. Cattle under 30 months of age carry a slightly thick fat covering over the top. The brisket, flanks, and cod or udder appear moderately full and the muscling is moderately firm.

(2) Cattle qualifying for the minimum of the Choice grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Cattle with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described for the Choice grade. Such cattle are less uniform in width than normal for the Choice grade. The thick, full muscling over the top results in a rounded appearance with little evidence of flatness. The thickness through the middle part of the rounds is greater than over the top and the thick muscling through the shoulders causes them to be slightly prominent. Although such cattle have a lower degree of fatness over the back and loin than described as typical, evidence of more fatness than described is especially noticeable in the brisket, flanks, twist, and cod or udder and the muscling is firmer than described. Conversely, cattle with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described for the Choice grade. The distribution of fat is not typical, for it is thicker over the crops, back, loin, and rump than described but with evidence of less fatness in the brisket, flanks, twist, and cod or udder. The back and loin break sharply into the sides and the width over the back is much greater than through the rounds and shoulders.

(c) *Good.* (1) Slaughter steers, heifers, and cows 30 to 42 months of age possessing the minimum qualifications for Good have a fat covering that tends to be slightly thin with some fullness evident in the brisket, flanks, twist, and cod or udder and the muscling is firm. Cattle under 30 months of age have a thin fat covering which is largely restricted to the back and loin. The brisket, flanks, twist, and cod or udder are slightly full and the muscling is slightly firm.

(2) Cattle qualifying for the minimum of the Good grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Cattle with higher cutability than normal for the grade are thickly muscled and have a lower degree of fatness than described for the Good grade. Such cattle are less uniform in width than normal for the grade. The thick, full muscling through the back gives the back and loin a well-rounded appearance. The thickness through the middle part of the rounds is greater than over the top and the thick muscling through the shoulders causes them to be prominent. Evidence of more fatness than described is especially noticeable in the brisket, flanks, twist, and cod or udder and the muscling is firmer than described. Conversely, cattle with lower cutability than normal for the grade are thinly muscled and have a higher degree of fatness than described for the Good grade. The distribution of fat is not typical, for it is thicker over the crops, back, loin, and rump than described while the brisket, flanks, twist, and cod or udder indicate less fatness. Such cattle are nearly flat over the back and loin and the width over the back is greater than through the rounds and shoulders.

(d) *Standard.* (1) Slaughter steers, heifers, and cows 30 to 42 months of age possessing the minimum qualifications for Standard have a fat covering primarily over the back, loin, and ribs which tends to be very thin. Cattle under 30 months of age have a very thin covering of fat which is largely restricted to the back, loin, and upper ribs.

(2) Cattle qualifying for the minimum of this grade vary relatively little in their degree of fatness. Therefore, the range in cutability among cattle that qualify for this grade is somewhat less than in the higher grades. Most of the cutability differences among cattle qualifying for this grade are due to a wide range in muscling. Cattle with higher cutability than normal for this grade may have a slightly lower degree of fatness than described but will have thick, well-rounded backs, wide loins, and prominent, thickly muscled shoulders. The width through the rounds will be greater than over the back. Cattle with lower cutability than normal for this grade may have slightly more finish than described and will be upstanding and narrow. The loin, rump, and rounds will appear slightly sunken.

(e) *Commercial.* (1) The Commercial grade is limited to steers, heifers, and cows over approximately 42 months of age. Slaughter cattle possessing the minimum qualifications for Commercial and which slightly exceed the minimum maturity for the Commercial grade have a slightly thick fat covering over the back, ribs, loin, and rump and the muscling is moderately firm. Very mature cattle usually have at least a moderately thick fat covering over the back, ribs, loin, and rump and considerable patchiness frequently is evident about the tailhead. The brisket, flanks, and cod or udder appear to be moderately full and the muscling is firm.

(2) Cattle qualifying for the minimum of the Commercial grade will differ considerably in cutability because of widely varying combinations of muscling and degree of fatness. Cattle with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described for the Commercial grade. The thick, full muscling over the top results in a rounded appearance with little evidence of flatness. The thickness through the middle part of the rounds is greater than over the top and the thick muscling through the shoulders causes them to be slightly prominent. Although such cattle have less thickness of fat over the back and loin than described as typical, evidence of more fatness than described is especially noticeable in the brisket, flanks, twist, and cod or udder and the muscling is firmer than described. Conversely, cattle with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described for the Commercial grade. The distribution of fat is not typical, being thicker over the crops, back, loin, and rump than described while the brisket, flanks, twist, and cod or udder indicate less fatness. The back and loin break sharply into the sides and the width over the back is much greater than through the rounds and shoulders.

(f) *Utility.* (1) The minimum degree of finish required for slaughter steers, heifers, and cows to qualify for the Utility grade varies throughout the range of maturity permitted in this grade from a very thin covering of fat for cattle under 30 months of age to a slightly thick fat covering, generally restricted to the back, loin, and rump for the very mature cattle in this grade. In such mature cattle, the crops are slightly thin and the brisket, flanks, and cod or udder indicate very slight fullness.

(2) Cattle qualifying for the minimum of the Utility grade vary somewhat in cutability especially among older animals. Those under 42 months of age are required to have very little fatness to qualify for the minimum of the grade; thus most of the variation in cutability of such cattle is due to differences in muscling. Cattle over 42 months of age will vary in their degree of fatness as well as muscling. Thus, cattle with thicker muscling than normal and less external fat than specified for this grade will have higher cutability than cattle with thinner muscling and more fatness.

(g) *Cutter.* (1) In slaughter cattle in the Cutter grade, the degree of finish ranges from practically none in cattle under 30 months of age to very mature cattle which have only a very thin covering of fat.

(2) The range in cutability among cattle that qualify for the minimum of this grade will be narrow because of

very small variations in fatness and muscling.

(h) *Canner.* Canner grade cattle are those which are inferior to the minimum specified for the Cutter grade.

§ 53.205 Specifications for Official United States Standards for Grades of Slaughter Bullocks (Quality).

(a) *Prime.* (1) Slaughter bullocks possessing the minimum qualifications for the Prime grade have a moderately thick but smooth covering of fat which extends over the back, ribs, loin, and rump. The brisket and flanks show a marked fullness and the muscling is firm.

(2) Bullocks qualifying for the minimum of the Prime grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Bullocks with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described as minimum for the Prime grade. Such bullocks have less width of back and loin and are less uniform in width than described as typical for the Prime grade but the muscling is firmer than described. Conversely, bullocks with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described as minimum for the Prime grade.

(b) *Choice.* (1) Slaughter bullocks possessing minimum qualifications for the Choice grade carry a slightly thick fat covering over the top. The brisket and flanks appear moderately full and the muscling is moderately firm.

(2) Bullocks qualifying for the minimum of the Choice grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Bullocks with higher cutability than normal for this grade are thickly muscled and have a lower degree of fatness than described as minimum for the Choice grade but the muscling is firmer than described. Conversely, bullocks with lower cutability than normal for this grade are thinly muscled and have a higher degree of fatness than described as minimum for the Choice grade.

(c) *Good.* (1) Bullocks possessing minimum qualifications for the Good grade have a thin fat covering which is largely restricted to the back and loin. The brisket and flanks are slightly full and the muscling is slightly firm.

(2) Bullocks qualifying for the minimum of the Good grade will differ considerably in cutability because of varying combinations of muscling and degree of fatness. Bullocks with higher cutability than normal for the grade are thickly muscled and have a lower degree of fatness than described as minimum for the Good grade. Such bullocks are less uniform in width than described as typical of the grade but the muscling is firmer than described. Conversely, bullocks with lower cutability than normal for this grade have thinner muscling and a higher degree of fatness than described as minimum for the Good grade.

(d) *Standard.* (1) Slaughter bullocks possessing minimum qualifications for the Standard grade have only a very thin covering of fat which is largely restricted to the back, loin, and upper rib.

(2) Bullocks qualifying for the minimum of this grade vary relatively little in their degree of fatness. Therefore, the range in cutability among bullocks that qualify for this grade is somewhat less than in the higher grades. Most of the cutability differences among bullocks qualifying for this grade are due to a wide range in muscling. Bullocks with higher cutability than normal for this grade may have a slightly lower degree of fatness than described but will have thick, well-rounded backs, wide loins, and prominent, thickly muscled shoulders. The width through the rounds will be greater than over the back. Bullocks with lower cutability than normal for this grade may have slightly more finish than described and will be upstanding and narrow. The loin, rump, and rounds will appear slightly sunken.

(e) *Utility.* The Utility grade includes only those bullocks that do not meet the minimum requirements specified for the Standard grade.

§ 53.206 Specifications for Official United States Standards for Grades of Slaughter Cattle (Yield).

(a) *Yield Grade 1.* (1) Yield Grade 1 slaughter cattle produce carcasses with very high yields of boneless retail cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 1 (near the borderline between Yield Grade 1 and Yield Grade 2) will differ considerably in appearance because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They are moderately wide and the width through the shoulders and rounds is greater than through the back. The top is well-rounded with no evidence of flatness, and the back and loin are thick and full. The rounds are deep, thick, and full and the width through the middle part of the rounds is greater than through the back. The shoulders are slightly prominent and the forearms are thick and full. These cattle have only a thin covering of fat over the back and rump. The flanks are slightly shallow and the brisket and cod or udder have little evidence of fullness. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.3 of an inch of fat over the ribeye and about 13.0 square inches of ribeye area.

(3) Because of the relatively low proportion of lean to bone, practically no thinly muscled cattle produce carcasses with an exceptionally high yield of boneless retail cuts. Therefore, it is unlikely that thinly muscled cattle will qualify for Yield Grade 1.

(4) Cattle qualifying for the minimum of Yield Grade 1 will differ widely in quality grade as a result of variations in distribution of finish and firmness of muscling. For example, young cattle which have considerable firmness of muscling and considerably greater deposits of fat in the brisket, flanks, twist, and cod or udder than described for Yield Grade 1 ordinarily will qualify for the Good or Choice grade. However, such cattle with typical or less than typical deposits of fat in the brisket, flanks, twist, and cod or udder usually will qualify for the Standard or Utility grade.

(b) *Yield Grade 2.* (1) Yield Grade 2 slaughter cattle produce carcasses with high yields of boneless retail cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 2 (near the borderline between Yield Grade 2 and Yield Grade 3) will differ considerably in appearance because of differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They are wide through the back and loin and have slightly greater width through the shoulders and rounds than through the back. The top is well-rounded with little evidence of flatness and the back and loin are thick and full. The rounds are thick, full, and deep and the thickness through the middle part of the rounds is greater than that over the top. The shoulders are slightly prominent and the forearms are thick and full. There is a slightly thick covering of fat over the back and rump and the flanks are slightly deep. The brisket and cod or udder are slightly full. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.6 of an inch of fat over the ribeye and about 12.5 square inches of ribeye area.

(3) Thinly muscled cattle typical of the minimum of this grade have a relatively low proportion of lean to bone. They tend to be flat and slightly narrow over the back and have slightly long, flat rounds. They are slightly wider over the back than through the rounds. The shoulders are slightly prominent and the forearms are only slightly thick. These cattle have a thin covering of fat over the back and rump. The flanks are slightly shallow and thin and the brisket and cod or udder have little evidence of fullness. Slaughter cattle of this description producing 600 pound carcasses usually have 0.3 of an inch of fat over the ribeye and about 10.0 square inches of ribeye area.

(4) Cattle qualifying for the minimum of Yield Grade 2 will differ greatly in quality grade as a result of variations in distribution of finish and firmness of muscling. For example, young cattle which have considerable firmness of muscling and typical or greater deposits of fat in the brisket, flanks, twist, and cod or udder than described for Yield Grade 2 ordinarily will qualify for Prime or Choice. Conversely, such cattle with less than typical deposits of fat in the brisket, flanks, twist, and cod or udder usually will qualify for the Good or Standard grade.

(c) *Yield Grade 3.* (1) Yield Grade 3 slaughter cattle produce carcasses with intermediate yields of boneless retail

cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 3 (near the borderline between Yield Grade 3 and 4) will differ considerably in appearance because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They are very wide through the back and loin and are uniform in width from front to rear. The back or top is nearly flat with only a slight tendency toward roundness and there is a slight break into the sides. The back and loin are very full and thick. The rounds are deep, thick, and full. The shoulders are smooth and the forearms are thick and full. There is a moderately thick covering of fat over the back and rump. The flanks are deep and full and the brisket and cod or udder are full. Slaughter cattle of this desecription producing 6C0-pound carcasses usually have about 0.9 of an inch of fat over the ribeye and about 12.0 square inches of ribeye area.

(3) Thinly muscled cattle typical of the minimum of this grade have a relatively low proportion of lean to bone. They are flat and slightly wide over the back and loin and are wider over the back than through the rounds. The shoulders are slightly smooth and the forearms are only slightly thick. These cattle tend to have a slightly thick covering of fat over the back and rump. The flanks are slightly deep and full and the brisket and cod or udder are slightly full. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.6 of an inch of fat over the ribeye and about 9.5 square inches of ribeye area.

(4) Cattle qualifying for the minimum of Yield Grade 3 will differ greatly in quality grade as a result of wide variations in distribution of finish and firmness of muscling. Cattle with higher quality than normal for the minimum of this grade will have very firm muscling and will have greater deposits of fat in the brisket, flanks, twist, and cod or udder than described for Yield Grade 3 and will normally qualify for the Prime or Choice grade. Conversely, cattle with lower quality than normal for the minimum of this grade will have less deposits of fat in the brisket, flanks, twist, and cod or udder than described herein, and may only qualify for the Good grade.

(d) *Yield Grade 4.* (1) Yield Grade 4 slaughter cattle produce carcasses with moderately low yields of boneless retail cuts. Cattle with characteristics qualifying them for the lower limits of Yield Grade 4 (near the borderline between Yield Grades 4 and 5) will differ considerably in appearance because of inherent differences in the development of their muscling and skeletal systems and related differences in fatness.

(2) Very thickly muscled cattle typical of the minimum of this grade have a high proportion of lean to bone. They appear wider over the top than through the shoulders or rounds. The back and loin are very thick and full, nearly flat, and break sharply into the sides. The rounds are deep, thick, and full. The shoulders are smooth and the forearms are thick and full. These cattle have a thick covering of fat over the back and rump. The flanks are very deep and full and the brisket and cod or udder are very full. Slaughter cattle of this description producing 600-pound carcasses usually have about 1.1 inches of fat over the ribeye and about 11.5 square inches of ribeye area.

(3) Thinly muscled cattle typical of the minimum of this grade have a relatively low ratio of lean to bone. They are flat over the back and loin and much wider through the back than through the shoulders or rounds. The rounds tend to be long and flat. The shoulders are smooth and the forearms are slightly thick. The cattle have a moderately thick covering of fat over the back and rump and the back breaks sharply into the sides. The flanks are deep and full and the brisket and cod or udder are full. Slaughter cattle of this description producing 600-pound carcasses usually have about 0.9 of an inch of fat over the ribeye and about 9.0 square inches of ribeye area.

(4) Cattle qualifying for the minimum of Yield Grade 4 will differ somewhat in quality grade as a result of variations in distribution of the finish and firmness of muscling. Most cattle at the minimum of this grade will qualify for the Prime or Choice grade. However, some cattle at the minimum of Yield Grade 4 with less deposits of fat in the brisket, flanks, twist, and cod or udder than described as typical may only qualify for the Good grade.

(e) *Yield Grade 5.* (1) Yield Grade 5 slaughter cattle produce carcasses with low yields of boneless retail cuts. Cattle of this grade consist of those not meeting the minimum requirements for Yield Grade 4 because of either more fat or less muscle or a combination of these characteristics.

(2) Because of the high degree of finish required for cattle of this grade, the range in quality grades will be somewhat small. Practically all cattle of this grade will qualify for either the Prime or Choice grade.

§ 53.208 Feeder cattle grades.

(a) *Grade factors.* (1) The term "cattle" as used in these standards includes bovines of all ages.

(2) The grade of a feeder animal is determined from a composite evaluation of two general value-determining characteristics—its logical slaughter potential (as beef) and its thriftiness.

(3) The logical slaughter potential of an animal is its slaughter grade at that stage of its development as beef—not as veal or calf—when its carcass quality grade and its carcass conformation grade would be equal.

(4) Animals expected to produce superior slaughter conformation—and therefore have a superior logical slaughter potential—have very thick muscling in relation to their height and length. They also have wide, deep, rugged frames; short, wide heads; moderately large bones and smooth, refined joints; and practically always have a very high proportion of beef breeding. Animals expected to produce inferior slaughter conformation—and an inferior logical slaughter potential—have very thin muscling in relation to their height and length. They also are lacking in ruggedness; have long, narrow heads; have either very small or large, coarse bones; and practically always have little or no beef breeding.

(5) Thriftiness refers to the ability of a feeder animal to gain weight and fatten rapidly and efficiently. Extremely thrifty cattle are healthy, have wide, roomy middles with well-sprung ribs, are large for their age, and have an alert manner.

(b) *General principles.* (1) While the grade of a feeder animal is determined from a composite evaluation of its logical slaughter potential and its thriftiness, the logical slaughter potential is given primary consideration. Thus, conformation, or inherent muscular development, is the most important single factor affecting the grade of a feeder animal.

(2) In these feeder cattle standards conformation is determined by appraising the development of the muscular system in relation to the development of the skeletal system. Degree of fatness is not a factor. However, since the grade standards include detailed descriptions of the various parts of the animal and since this appearance may be influenced to a considerable extent by variations in fatness, the standards for all of the grades describe animals that have a slightly thin covering of fat. When grading animals which have either a greater or lesser degree of fatness than that on which the standards are based, proper allowances must be made for the effect of these differences on the appearance of the various parts.

(3) Cattle deposit fat at a relatively faster rate over the loin and back, and in the flank, cod, twist, and brisket than they do on other parts of their bodies. Therefore, as cattle increase in fatness, these parts appear progressively fuller, thicker, and more distended in relation to the thickness through the rear quarter and to the fullness of the forearm and gaskin. Since relatively little fat is deposited over these latter parts, their appearance is affected relatively little by variations in fatness. In evaluating the conformation of feeder cattle, it is important to properly evaluate the muscling in all parts of the animal. However, since variations in fatness and variations in the spring of the ribs make it especially difficult to precisely evaluate the muscling in the loin and back, major emphasis should be placed on the development of muscling in the rear quarter as an indicator of overall muscling. Unless proper allowance is made for variations in fatness, animals carrying considerable finish may be assumed to have greater thickness of muscling

throughout their loins and backs than actually is the case, whereas those which are very thin may be more muscular in these parts than their appearance might indicate.

(4) Thriftiness is a factor affecting the grade of a feeder animal only when the animal is relatively less thrifty than normally associated with a particular development as described for the various grades. In such a case, the final grade of the feeder animal may be lowered from that indicated by other grade factors. The amount of this reduction in grade will vary from practically none to one full grade, dependent upon the degree of unthriftiness and the grade involved. For example, a feeder animal otherwise eligible for the Utility grade would have its final grade lowered little, if any, due to a lack of thriftiness as compared with that specified for that grade. However, since Prime grade feeders are expected to have a high degree of thriftiness, the final grade of a feeder animal otherwise eligible for that grade might be lowered one full grade if its thriftiness were considerably less than that indicated for Prime. On the other hand, superior thriftiness as compared with that described for each of the grades cannot compensate for a relatively lower slaughter potential, i.e., the final grade of a feeder may be no higher than its logical slaughter potential.

(5) Maturity is not normally a factor in determining the grade of a feeder animal. However, the animal's likely maturity at the time it reaches its logical slaughter potential must be considered in relation to certain approximate maximum and minimum maturity limits for various grades of slaughter cattle. These are as follows: Prime, 36 months maximum; Choice, 42 months maximum; Good and Standard, 48 months maximum; Commercial, 48 months minimum. There are no maturity limits for the Utility, Cutter, and Canner grades.

(6) The standards for grades of feeder cattle—like those for slaughter cattle—are designed to cover the full range of variability in cattle. This being the case, at any stage in their development, cattle may be graded either as feeder or slaughter animals. The slaughter grade of most feeder cattle generally would be lower than their grade as feeders. For example, many Prime or Choice grade feeder cattle would grade only Standard as slaughter cattle. However, this situation does not always prevail. Some feeder cattle, particularly in the lower grades, may have characteristics which indicate that their carcass quality would have a relatively higher degree of development than their conformation. Since the carcass quality of such an animal would be relatively higher than its logical slaughter potential, its grade as a slaughter animal could be higher than its feeder grade. For example, an animal might have had a logical slaughter potential of the upper part of the Utility grade and, therefore, its feeder grade would be Utility. However, if such an animal had a carcass quality equal to the upper part of the Standard grade, its slaughter grade would be Standard.

(7) Because it is impractical to describe the nearly limitless number of recognizable combinations of characteristics which feeder animals might have and qualify for a particular grade, the standards for each grade describe only animals which have a similar development of the various grade factors which are generally representative of the lower limits of each grade. The following standards for grades of feeder cattle apply only to steers, heifers, and cows. Stags and bulls are used as feeders only infrequently; therefore, standards for grades of those classes are not included herein.

§ 53.209 Specifications for official United States standards for grades of feeder cattle (steers, heifers, and cows).

(a) *Prime.* Feeder cattle which possess typical minimum qualifications for the Prime grade are extremely thrifty and are very large for their age, breed considered. They are very thickly muscled throughout. They are wide through the chest with well sprung ribs and are moderately wide and thick through the crops, back, and loin. The rounds tend to be thick and the twist is moderately deep. They usually have straight top and bottom lines and usually are moderately deep in the fore and rear flanks. The legs tend to be short, are set wide apart, and usually are straight. The head is usually short and wide and the neck usually is short and thick. They have large, rugged frames with moderately large but refined bone. They have a high degree of symmetry and smoothness throughout, and usually show no evidence of nonbeef breeding. They have a logical slaughter potential of Prime. Only steers and heifers are eligible for the Prime grade.

(b) *Choice.* Feeder cattle which possess typical minimum qualifications for the Choice grade are very thrifty and are large for their age, breed considered. They are thickly muscled throughout. They are moderately wide through the chest with a moderate spring of ribs and are slightly wide and thick through the crops, back, and loin. The rounds are slightly thick and the twist is slightly deep. They usually have straight top lines and usually are moderately deep in the fore and rear flanks. The legs are slightly short, and are set moderately wide apart and usually are straight. The head usually is moderately short and wide and the neck usually is slightly short and thick. They have moderately large, rugged frames, and the bone usually is moderately large, but may be slightly fine or slightly large and coarse. They have a moderate degree of symmetry and smoothness throughout and usually show a very high proportion of beef breeding. They have a logical slaughter potential of Choice.

(c) *Good.* Feeder cattle which possess typical minimum qualifications for the Good grade are thrifty but may be slightly small for their age, breed considered. They are slightly thick muscled throughout. They are slightly narrow through the chest and may be slightly deficient in spring of rib. They are slightly narrow through the crops, back, and loin. The muscles of the rump are slightly sunken and the hips and shoulder joints are slightly prominent. The rounds are slightly thin and the twist is slightly shallow. They usually have moderately straight top lines but may lack depth in the rear flank. The legs tend to be slightly long, are set slightly wide apart, and frequently are crooked. The head is usually slightly short and wide and the neck usually is slightly long and thin. They have a slightly large frame and the bone usually is slightly fine, although it may also be slightly large and coarse. They are slightly irregular and rough in appearance and usually are predominantly of beef breeding. They have a logical slaughter potential of Good.

(d) *Standard.* Feeder cattle which possess typical minimum qualifications for the Standard grade are only moderately thrifty and are moderately small for their age, breed considered. They are slightly thin muscled and are angular, rough, and irregular in appearance throughout. They tend to be narrow through the chest and through the crops, and the muscles of the back, loin, and rump tend to be slightly sunken. Hips and shoulder joints are prominent. The rounds are thin and slightly concave and the twist is shallow. They usually have an uneven top line and may lack depth in the rear flank. The legs are long, set close together, and are usually crooked. The head usually is long and narrow and the neck usually long and thin. They have a slightly small frame and the bone is usually moderately fine, although it also may be moderately large and course. They are usually predominantly of nonbeef breeding and have a logical slaughter potential of Standard.

(e) *Commercial.* The Commercial grade for feeder cattle is restricted to cattle that will be too mature for the Good or Standard grade when they reach their logical slaughter potential. These will usually be cows. Cattle possessing typical minimum qualifications for the Commercial grade are moderately thrifty but are slightly thin muscled and are angular, rough, and irregular in appearance throughout. They tend to be narrow through the chest and crops, and the muscles of the back, loin, and rump tend to be slightly sunken. Hips and shoulder joints are prominent. The rounds are thin and slightly concave and the twist is shallow. They usually have an uneven top line and may lack depth in the rear flank. The legs are long and set close together. The head usually is long and narrow and the neck usually long and thin. Although cattle near the lower limits of the grade may be predominantly of nonbeef breeding, the majority of feeder cattle in this grade are predominantly of beef breeding. They have a logical slaughter potential of Commercial.

(f) *Utility.* Feeder cattle which possess typical minimum qualifications for the Utility grade are slightly unthrifty and are small for their age, breed considered. They are thinly muscled throughout and are very angular, rough, and irregular in appearance. They are very narrow through the chest and the crops and the muscles of the back, loin, and rump are sunken. Hips and shoulder joints are very prominent. The rounds are very thin and concave and the twist is very shallow. They usually have an irregular top line and are cut up in the rear flank. The legs are very long, are set very close together, and are usually rooked. The head usually is very long and narrow and the neck usually is decidedly long and thin. They have a very small frame and the bone usually is very fine, although it also may be large and coarse. They usually have little or no evidence of beef breeding and have a logical slaughter potential of Utility.

(g) *Inferior.* Feeder cattle inferior to those described for Utility are graded Inferior.

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[3410-02]

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

[Lemon Reg., 112, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to Final Rule.

SUMMARY: This amendment increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period September 25–October 1, 1977. The amendment recognizes that demand for lemons has improved, since the regulation was issued. This action will increase the supply of lemons available to consumers.

DATES: Weekly regulation period September 25–October 1, 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: (a) *Findings.* (1) Pursuant to the amended marketing agreement and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, 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 Lemon Administrative Committee, established under the marketing agreement and order, and other available information, it is found that the limitation of handling of lemons, as provided in this amendment will tend to effectuate the declared policy of the act.

(2) Demand in the lemon markets has improved since the regulation was issued. Amendment of the regulation is necessary to permit lemon handlers to ship a larger quantity of lemons to market to supply the increased demand. The amendment will increase the quantity permitted to be shipped by 20,000 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 upon which this amendment is based became available 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 lemons.

§ 910.412 [Amended]

(b) *Order, as amended.* Paragraph (a) (1) of § 910.412 Lemon Regulation 112 (42 FR 48325) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period September 25, 1977, through October 1, 1977, is established at 225,000 cartons."

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

Dated: September 28, 1977.

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

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[3410-37]

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

PART 2853—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final Rule.

SUMMARY: The purpose of this rule is to recodify the meat grading regulations and carcass grade standards which were formerly administered by the Livestock Division, Agricultural Marketing Service, USDA, under 7 CFR Part 53, to a new 7 CFR Part 2853, to be administered by the Meat Quality Division, Food Safety and Quality Service, USDA.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On April 18, 1977, a notice was published in the FEDERAL REGISTER (42 FR 20165) transferring various responsibilities and functions, including meat grading and standardization, from the Agricultural Marketing Service to the new Food Safety and Quality Service. On June 27, 1977, another notice was published in the FEDERAL REGISTER (42 FR 32514) establishing a new Chapter XXVIII in the Code of Federal Regulations for the purpose of recodification of functions assigned to the Food Safety and Quality Service. Accordingly, the meat grading regulations and carcass grade standards which formerly appeared in 7 CFR Part 53 are being transferred to 7 CFR Part 2853 under the new Chapter XXVIII.

Only incidental narrative changes were made in the regulations during the recodification process to (1) alphabetize definitions, (2) renumber various sections, (3) change references from Agricultural Marketing Service, Livestock Division, to Food Safety and Quality Service, Meat Quality Division, (4) eliminate references to livestock in the regulations, and (5) include reference to the Department's Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 CFR Part 1 Subpart H). Inasmuch as no substantive rule or change of rule is involved and these changes do not substantially affect any member of the public, under the administrative procedure provisions of 5 U.S.C. 553, it is found impracticable, unnecessary, and contrary to the public interest to delay the effectiveness of this rule until 30 days after publication in the FEDERAL REGISTER.

Accordingly, the regulations and standards under the Agricultural Marketing Act of 1946 as they relate to meats, prepared meats, and meat products, are codified under 7 CFR Part 2853 as set forth below.

Done at Washington, D.C., on this 26th day of September 1977.

JOSEPH A. POWERS,
Acting Administrator, Food Safety and Quality Service.

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AUTHORITY: Sec. 203, 60 Stat. 1087, as amended; sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1622 and 1624); 19 FR 74, as amended.

Subpart A—Regulations

DEFINITIONS

§ 2853.1 Meaning of words.

Words used in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand. For the purposes of such regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Acceptance service. The service established and conducted under the regulations for the determination and certification or other identification of the compliance of products with specifications.

Administrator. The Administrator of the Food Safety and Quality Service, or any officer or employee of the Food Safety and Quality Service to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

Animals. Cattle, sheep, swine, or goats.

Applicant. Any person who has applied for service under the regulations.

Branch. The Meat Grading Branch of the Division.

Carcass. The commercially prepared or dressed body of any animal intended for human food.

Carcass Data Service. The service established and conducted under the regulations to provide producers and other interested persons with data on carcass characteristics.

Chief. The Chief of the Branch, or any officer or employee of the Branch to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

Class. A subdivision of a product based on essential physical characteristics that differentiate between major groups of the same kind of species.

Compliance. Conformity of a product to the specifications under which the product was purchased or sold, with particular reference to the quality, cleanliness, state of refrigeration, method of processing, and trim of products.

Cooperative agreement. A cooperative agreement between the Food Safety and Quality Service and another Federal agency or a State agency, or other agency, organization or person as specified in the Agricultural Marketing Act of 1946, as amended, for conducting the service.

Department. The United States Department of Agriculture.

Director. The Director of the Division, or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

Division. The Meat Quality Division of the Food Safety and Quality Service.

Fabricating. Cutting into wholesale or retail cuts, dicing or grinding.

Federal Meat Inspection. The meat inspection system conducted under the Federal Meat Inspection Act as amended by the Wholesome Meat Act (21 U.S.C. 601 et seq.) and the regulations thereunder (9 CFR Chapter III, Subchapter A).

Financially interested person. Any person having a financial interest in the products involved, including but not limited to the shipper, receiver, producer, seller, buyer, or carrier of the products.

Food Safety and Quality Service. The Food Safety and Quality Service of the Department.

Grade. (1) As a noun, this term means an important commercial subdivision of a product based on certain definite and preference determining factors, such as, but not limited to, conformation, finish, and quality in meats. (2) As a verb, this term means to determine the class, grade, or other quality of a product according to applicable standards for such product in Subpart B of this part.

Grading Service. The service established and conducted under the regulations for the determination and certification or other identification of the class, grade, or other quality of products under standards.

Immediate container. The carton, can, pot, tin, casing, wrapper, or other receptacle or covering constituting the basic unit in which products are directly contained or wrapped when packed in the customary manner for delivery to the meat trade or to consumers.

Legal Holiday. Those days designated as legal public holidays in title 5, United States Code, section 6103(a).

Livestock. Bovine, ovine, porcine.

Meat. The edible part of the muscle of an animal, which is skeletal, or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, and which is intended for human food, with or without the accompanying and overlying fat and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. This term does

not include the muscle found in the lips, snout, or ears.

Meat by-products. All edible parts (other than meat and prepared meats) intended for human food, derived from one or more animals, and including but not limited to such organs and parts as livers, kidneys, sweetbreads, brains, lungs, spleens, stomachs, tripe, lips, snouts, and ears.

Meat food products. Any articles intended for human food (other than meat, prepared meats, and meat by-products) which are derived or prepared in whole or in substantial and definite part, from any portion of any animal, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

Office of grading. The office of an official grader.

Official grader. An employee of the Department or other person authorized by the Department to determine and certify or otherwise identify the class, grade, other quality, or compliance of products under the regulations.

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Prepared meats. The products intended for human food which are obtained by subjecting meat to drying, curing, smoking, cooking, grinding, seasoning, or flavoring, or to any combination of such procedures, and to which no considerable quantity of any substance other than meat or meat byproducts has been added.

Processing. Drying, curing, smoking, cooking, seasoning, or flavoring or any combination of such processes, with or without fabricating.

Products. Meats, prepared meats, meat by-products, or meat food products.

Quality. A combination of the inherent properties of a product which determines its relative degree of excellence.

Quality grade. An important commercial subdivision of meat based on separate evaluations of two general considerations: (1) The quality or the palatibility-indicating characteristics of lean and, (2) the conformation of the carcass or primal cut.

Service. Grading service or acceptance service.

Shipping container. The receptacle or covering in which one or more immediate containers of products are packed for transportation.

Specifications. Descriptions with respect to the class, grade, other quality, quantity or condition of products, approved by the Administrator, and available for use by the industry regardless of the origin of the descriptions.

Standards. The standards of the Department contained in Subpart B of this part.

Supervisor of grading. An official grader or other person designated by the Director or Chief to supervise and maintain uniformity and accuracy of service under the regulations.

The Act. The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087, as amended by Pub. L. 272, 84th Cong., 69 Stat. 553, 7 U.S.C. 1621–1627).

The regulations. The regulations in this subpart.

Yield grade. The designation related to the quantity of trimmed, boneless, major retail cuts to be derived from the carcass or wholesale cuts—rounds or legs, loins, ribs, or racks, and chucks or shoulders—referred to as yield grade in Subpart B of this part.

§ 2853.2 Designation of official certificates, memoranda, marks, other identifications, and devices for purposes of the Agricultural Marketing Act.

Subsection 203(h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, provides criminal penalties for various specified offenses relating to official certificates, memoranda, marks or other identifications, and devices for making such marks or identifications, issued or authorized under section 203 of said act, and certain misrepresentations concerning the inspection or grading of agricultural products under said section. For the purposes of said subsection and the provisions in this part, the terms listed below shall have the respective meanings specified:

(a) "Official certificate" means any form of certification, either written or printed, used under the regulations to certify with respect to the inspection, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

(b) "Official memorandum" means any initial record of findings made by an authorized person in the process of grading, determining compliance, inspecting, or sampling pursuant to the regulations, any processing or plant-operation report made by an authorized person in connection with grading, determining compliance, inspecting, or sampling under the regulations, and any report made by an authorized person of services performed pursuant to the regulations.

(c) "Official mark" or "other official identification" means any form of mark or other identification, including those prescribed in § 2853.17; used under the regulations in marking any products, or the immediate or shipping containers thereof, to show inspection, class, grade, quality, size, quantity, or condition of the products (including the compliance of products with applicable specifications), or to maintain the identity of products for which service is provided under the regulations.

(d) "Official device" means any roller, stamp, brand or other device used under the regulations to mark any products, or the immediate or shipping containers, thereof, with any official mark or other official identification.

ADMINISTRATION

§ 2853.3 Authority.

The Chief is charged with the administration, under the general supervision and direction of the Director, of the regulations and the Act insofar as they relate to products.

[30 F.R. 4157, Mar. 31, 1965]

SERVICE

§ 2853.4 Kind of service.

Grading service under the regulations shall consist of the determination and certification and other identification, upon request by the applicant, of the class, grade, or other quality of products under applicable standards in Subpart B of this part. Class, grade and other quality may be determined under said standards for meat of cattle, sheep, or swine in carcass form or for wholesale cuts of such meat, other than pork wholesale cuts. Acceptance service under the regulations shall consist of the determination of the conformity of products to specifications approved by the Director or Chief and the certification and other identification of such livestock or products in accordance with specifications, upon request by the applicant. Determination as to product compliance with specifications for ingredient content or method of preparation may be based upon information received from the inspection system having jurisdiction over the products involved. The Carcass Data Service, under the regulations, shall consist of the evaluation of carcass characteristics, in accordance with applicable official United States Standards which appear in Supart B of this part, of carcasses of animals identified with the official eartag as shown in § 2853.17, the recording of such data, and transmittal of the data to, or as directed by, the applicant for the service.

§ 2853.5 Availability of service.

Service under these regulations may be made available with respect to products shipped or received in interstate commerce, and with respect to the products not so shipped or received if the Director or Chief determines that the furnishing of service for such products would facilitate the marketing, distribution, processing, or utilization of agricultural products through commercial channels. Also, such service may be made available under a cooperative agreement. Service under these regulations shall be provided without discrimination as to race, color, sex, creed, or national origin. Service will be furnished for products only if they were derived from animals slaughtered in federally inspected establishments or operated under State meat inspection in a State other than one designated in 9 CFR 331.2. Service under these regulations will be furnished for imported meat only if it is marked so that the name of the country of origin appears on most of the major retail cuts.

The mark of foreign origin shall be imprinted by roller brand or handstamp and shall be applied so that the imprint is at least 2 inches from the backbone of lamb, 3 inches from the backbone of veal and calf, and 4 inches from the backbone of beef carcasses. The mark of foreign origin shall be repeated parallel to the backbone of the carcass so as to appear on each round, rump, full loin, rib, and chuck of each bovine and ovine carcass in letters at least one-fourth of an inch high, with no more than three-fourths of an inch space between impressions. Imprints of each such brand shall be submitted to the Chief for the determination of compliance with these regulations prior to use of the brand on meats offered for Federal grading. It shall be the responsibility of the applicant to notify the meat grader performing the service whenever imported meat is offered for grading.

§ 2853.6 How to obtain service.

(a) *Application.* Any person may apply to the Director or Chief for service under the regulations with respect to products in which the applicant is financially interested. The application shall be made on a form approved by the Director. In any case in which the service is intended to be furnished at an establishment not operated by the applicant, the application shall be approved by the operator of such establishment and such approval shall constitute an authorization for any employees of the Department to enter the establishment for the purpose of performing their functions under the regulations. The application shall state: (1) The name and address of the establishment at which service is desired; (2) the name and post office address of the applicant; (3) the financial interest of the applicant in the products, except where application is made by an official of a Government agency in his official capacity; and (4) the signature of the applicant (or the signature and title of his representative). The application shall indicate the legal status of the applicant as an individual, partnership, corporation, or other form of legal entity. Any change in such status, at any time while service is being received, shall be promptly reported to the Director or Chief by the person receiving the service.

(b) *Notice of eligibility for service.* The applicant for service at any establishment will be notified whether his application is approved.

(c) *Request by applicant for service—*

(1) *Noncommitment.* Upon notification of the approval on an application for service, the applicant may, from time to time as desired, make oral or written requests for service under the regulations with respect to specific products for which the service is to be furnished under such application. Such requests shall be made at an office for grading either directly or through any employee of the Food Safety and Quality Service who may be designated for such purposes.

(2) *Commitment.* If desired, the applicant may enter into an agreement with the Food Safety and Quality Service for the furnishing of service on a weekly commitment basis, whereby the applicant agrees to pay for 8 hours of service per day, 5 days per week, Monday through Friday, as provided in § 2853.27(b), and the Food Safety and Quality Service agrees to make an official grader available to perform such service for the applicant. However, the Food Safety and Quality Service reserves the right to use any grader assigned to a plant under such a commitment to perform service for other applicants, when, in the opinion of the Chief, the grader is not needed to perform service for the applicant. An applicant who terminates a commitment, and within 1 year after cancellation is granted a new commitment at his request, shall pay for the moving costs actually incurred by the Food Safety and Quality Service to cover the transfer of the grader who will service the applicant's new commitment. If more than one applicant is involved in the reapplication for a canceled meat grading commitment requiring the transfer of the grader, the moving costs will be prorated among the applicants according to each applicant's committed portion of the grader's services. However, the moving costs will be charged only to those applicants who were parties to the previously canceled commitment. An applicant may, for periods of 3 montrs or less, enter into an agreement by memorandum with the Food Safety and Quality Service for the furnishing of service on a weekly basis. In the latter case, transfer of graders would not be involved and charges will be made in accordance with § 2853.27.

§ 2853.7 Order of furnishing service.

Service under the regulations shall be furnished to applicants in the order in which requests therefor are received, insofar as consistent with good management, efficiency and economy. Precedence will be given, when necessary, to requests made by any government agency or any regular user of the service, and to requests for appeal service under § 2853.20.

§ 2853.8 When request for service deemed made.

A request for service under the regulations shall be deemed to be made when received by an office of grading. Records showing the date and time of the request shall be made and kept in such office. However, in the case of the Carcass Data Service, the purchase of official USDA eartags shall constitute a request for such service and the requisition form used to purchase the eartags shall be kept in the designated office of record.

§ 2853.9 Withdrawal of application or request for service.

An application or a request for service under the regulations may be withdrawn by the applicant at any time before the application is approved or prior to performance of service, upon payment, in accordance with §§ 2853.27 and 2853.28, of any expenses already incurred by the Food Safety and Quality Service in connection therewith.

§ 2853.10 Authority of agent.

Proof of the authority of any person making an application or a request for service under the regulations on behalf of any other person may be required at the discretion of the Director or Chief or the official in charge of the office of grading or other employee receiving the application or request under § 2853.6.

§ 2853.11 Denial or withdrawal of service.

(a) *For misconduct—*(1) *Bases for denial or withdrawal.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person who, or whose employee or agent in the scope of his employment or agency, (i) has wilfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under the regulations; (ii) has given or attempted to give, as a loan or for any other purpose, any money, favor, or other thing of value, to any employee of the Department authorized to perform any function under the regulations; (iii) has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee of the Department in the performance of his duties under the regulations by intimidation, threats, assaults, abuse, or any other improper means; (iv) has knowingly falsely made, issued, altered, forged, or counterfeited any official certificate, memorandum, mark, or other identification, or device for making any such mark or identification; (v) has knowingly uttered, published, or used as true any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device; (vi) has knowingly obtained or retained possession of any such falsely made, issued, altered, forged, or counterfeited certificate, memorandum, mark, identification, or device, or of any such official device, or of any product bearing any such falsely made, issued, altered, forged, or counterfeited mark or identification, or of any carcass or wholesale or retail cut bearing any designation specified in subdivision (vii) of this subparagraph which has not been federally graded or derived from a carcass graded as being of the indicated grade: (vii) has applied the designation "Prime," "Choice," "Good," "Standard," "Commercial," "Utility," "Cutter," "Canner," "Cull," "Medium," "No. 1," "No. 2," "No. 3," "No. 4," "Yield Grade 1," "Yield Grade 2," "Yield Grade 3," "Yield Grade 4," or "Yield Grade 5" by stamp, or brand directly on any carcass, wholesale cut, or retail cut of any carcass, as part of a grade designation; or (viii) has applied to immediate containers or shipping containers of carcasses, wholesale cuts, or retail cuts, grade designations specified in paragraph (a)(1)(vii) of this section, when such carcasses, wholesale cuts, or

retail cuts contained therein have not been federally graded; or (ix) has in any manner not specified in this paragraph violated subsection 203(h) of the Act: *Provided,* That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Director or Chief without delay that he has possession of such item and, in the case of an official device, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Director or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Director or Chief: *And provided, further,* That paragraph (a)(1)(ii) through (viii) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application for service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which he has made application for service if, with the knowledge of such operator, any other person conducting any operations in such establishment has committed any of the offenses specified in paragraph (a)(1)(i) through (ix) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person (*a*) in case the service is or would be performed at an establishment operated (*1*) by a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph, or (*2*) by a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service are currently being withheld and who has any authority with respect to the establishment where service is or would be performed, or (*b*) in case the service is or would be performed with respect to any product in which any corporation, partnership, or other person within paragraph (a)(1)(ix)(*a*)(*1*) of this section has a contract or other financial interest.

(2) *Procedure.* All cases arising under this paragraph shall be conducted in accordance with the rules of practice governing withdrawal of inspection and grading service under the Agricultural Marketing Act of 1946 as contained in Part 2850 of this chapter and/or the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary as contained in 7 CFR Part 1, Subpart H, as applicable.

(b) *For miscellaneous reasons.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing by the official in charge of the appropriate office of grading, with the concurrence of the Director or Chief (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure to pay for service; (3) in case the application or request relates to products which are not eligible for service under § 2853.5 or which are unclean or are in an unclean establishment; (4) for other noncompliance with the conditions on which service is available as provided in the regulations, except matters covered by paragraph (a) of this section; or (5) in case the person is a partnership, corporation, or other person from whom the benefits of the service or currently being withheld under pargaraph (a) of this section. Notice of such denial or withdrawal, and the reasons therefor, shall promptly be given to the person involved.

(c) ***Filing of records.*** **The final orders in formal proceedings under paragraph (a) of this section to deny or withdraw the service under the regulations (except orders required for good cause to be held confidential and not cited as precedents) and other records in such proceedings (except those required for good cause to be held confidential) shall be filed with the Hearing Clerk and shall be available for inspection by persons having a proper interest therein.**

§ 2853.12 Financial interest of official grader.

No official grader shall grade or determine compliance of any products in which he or any of his relatives by blood or marriage is directly or indirectly financially interested.

§ 2853.13 Accessibility and refrigeration of products; access to establishments.

(a) The applicant shall cause products, with respect to which service is requested, to be made easily accessible for examination and to be so placed, with adequate illuminating facilities, as to disclose their class, grade, other quality, and compliance. Supervisors of grading and other employees of the Department responsible for maintaining uniformity and accuracy of service under the regulations shall have access to all parts of establishments covered by approved applications for service under the regulations, for the purpose of examining all products in the establishments which have been or are to be graded or examined for compliance with specifications or which bear any marks of grade or compliance.

(b) Grading service will be furnished for meat in carcass form or wholesale cuts only if properly chilled. Determination of class, grade, or other quality of carcass meat or wholesale cuts of meat under the standards in Subpart B of this part will not be made if such carcass meat or wholesale cuts are in a frozen state.

§ 2853.14 Official certificates.

(a) *Required; exception.* **The official grader shall prepare, sign, and issue either (1) an official Agricultural Prod-**

ucts Grading Certificate for products graded by him, or (2) an official Agricultural Products Acceptance Certificate covering products for which he has determined compliance except in the Beef Carcass Data Service as provided for in § 2853.4. In the latter case, complete records of the services shall be furnished to the office of grading.

(b) *Form.* (1) The following forms constitute forms of official certificates for products under the regulations.

FORM LS-3 (5-15-72)

AUTHORIZATION NO. | FY | MONTH | DAY | CERTIFICATE NO. LG-

APPLICANT NO. 4 4

NAME OF APPLICANT

ADDRESS

SUBCENTER NO. 4

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
LIVESTOCK DIVISION

AGRICULTURAL PRODUCTS GRADING CERTIFICATE

This certificate is receivable by all officers and all Courts of the United States as prima facie evidence of the truth of the statements therein contained. *(This certificate does not excuse failure to comply with any of the regulatory laws enforced by the United States Department of Agriculture.)*

DESCRIPTION OF PRODUCT	GRADE OR OTHER QUALITY	NUMBER SLAUGHTERED BY SPECIES	PIECES GRADED	SO OR Y	SPECIES	CAR-CUT	GRADE	YIELD	PRODUCTION TIME
		LG							/4
		LG							/4
		LG							/4
		LG							/4
		LG							/4
		LG							/4
		LG							/4
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		LG							/4
		LG							/4
		LG WAITING TIME LA				/4	TRAVEL TIME	LB	/4

BASE HOURS →	L 1		/4
NIGHT, SAT., SUN. HOURS →	L 2		/4
HOLIDAY HOURS →	L 3		/4
PER DIEM DAYS →	L 6		/4
MILES →	L 7		
TOTAL OTHER EXPENSES →	Z 7 $	R A	

I CERTIFY that in compliance with the Federal Meat and Livestock Grading Regulations (7 CFR Subpart 53A, as amended) under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), I examined the product or products described above, at the time and place stated, and found that at said time and place the class, grade, and other quality thereof were as stated above and such product or products complied with any specifications listed, with any qualifications noted above.

WEIGHTS NOT VERIFIED:

SIGNATURE OF GRADER

FORM LS-5-1 (5-15-72)

AUTHORIZATION NO. | FY | MONTH | DAY | CERTIFICATE NO. LS-

APPLICANT NO. 4 4

NAME OF APPLICANT

ADDRESS

SUBCENTER NO. 4

SHIPPER OR SELLER NAME AND ADDRESS

RECEIVER OR BUYER NAME AND ADDRESS

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
LIVESTOCK DIVISION

AGRICULTURAL PRODUCTS ACCEPTANCE CERTIFICATE

This certificate is receivable by all officers and all Courts of the United States as prima facie evidence of the truth of the statements therein contained. (This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture.)

LOCATION / DESCRIPTION OF PRODUCT	SPECIFICATION AND ITEM NUMBER	WEIGHT RANGE	GRADE OR OTHER QUALITY	ACCEPTED UNITS	ACCEPTED POUNDS	PRODUCTION TIME	CAT. CODE
					L S	/4	
					L S	/4	
					L S	/4	
					L S	/4	
					L S	/4	
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					L S	/4	
	L S WAITING TIME L A			/4	TRAVEL TIME L B	/4	
BASE HOURS →	L 1			/4			
NIGHT, SAT, SUN HOURS L 2	/4 HOL. HOURS L 3			/4			
LAB HOURS → L 4	/4 LAB OTHER L 5 $						
PER DIEM DAYS →	L 6			/4			
MILES →	L 7						
TOTAL OTHER EXPENSES →	Z 7 5		R A				

I CERTIFY that in compliance with the Federal Meat and Livestock Grading Regulations (7 CFR Subpart 53A, as amended) under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), I examined the product or products described above, at the time and place stated, and found that at said time, and place the class, grade, and other quality thereof were as stated above and such product or products complied with any specifications listed, with any qualifications noted above.

WEIGHTS NOT VERIFIED:

SIGNATURE OF GRADER

Where weight is certified, the word "Not" shall be deleted from the phrases "Weights Not Verified."

(2) Where determination of ingredient content or method of preparation of products in acceptance service is based on a certification of the facts by the inspection system having jurisdiction of the products, this fact shall be stated on the certificates.

(c) *Distribution.* The original certificate, and not to exceed two copies, shall be delivered or mailed to the applicant or other person designated by him. The remaining copies shall be forwarded as required by agency, division, and branch instructions. Additional copies will be furnished to any person financially interested in the products involved with the concurrence of the applicant and upon payment of fees, as provided in § 2853.27.

§ 2853.15 Advance information concerning service rendered.

Upon request of any applicant, all or any part of the contents of any certificate issued to him under the regulations, or other notification concerning the determination of class, grade, other quality, or compliance of products for such applicant may be transmitted by telegraph or telephone to him, or to any person designated by him, at his expense.

§ 2853.16 Marking of products.

All products for which class and grade under the standards in Subpart B of this part, or compliance, is determined under the regulations, or the immediate and shipping containers thereof, shall be stamped, branded, or otherwise marked with an appropriate official identification: *Provided,* That except as otherwise directed by the Chief, such marking will not be required when an applicant only desires official certificates. The marking of products, or their containers, as required by this section shall be done by official graders or under their immediate supervision.

§ 2853.17 Official identifications.

(a) A shield enclosing the letters "USDA" and code identification letters of the grader performing the service, as shown below, constitutes a form of official identification under the regulations for preliminary grade of carcasses and wholesale cuts.



Figure 1.

(b) A shield enclosing the letters "USDA" as shown below with the appropriate quality grade designation "Prime," "Choice," "Good," "Standard," "Commercial," "Utility," Cutter," "Canner," or "Cull," as provided in the standards in Subpart B of this part and accompanied when necessary by the class designation "Bullock," "Veal," "Calf," "Lamb," "Yearling Mutton," or "Mutton," constitutes a form of official identification under the regulations to show the quality grade, and where necessary the class, under said standards, of steer, heifer, and cow beef, bullock beef, veal, calf, lamb, yearling mutton and mutton. The code identification letters of the grader performing the service will appear intermittently outside the shield.



Figure 2.

(c) A shield enclosing the letters "USDA" and the words "Yield Grade," as shown below, with the appropriate yield grade designation "1," "2," "3," "4," or "5" as provided in the standards in Subpart B of this part constitutes a form of official identification under the regulations to show the yield grade under said standards. When yield graded, bull and bullock carcasses and eligible cuts from bull and bullock carcasses will be identified with the class designation "Bull" and "Bullock," respectively. The code identification letters of the grader performing the service will appear outside the shield.



Figure 1.

(d) The letters "USDA" with the appropriate grade designation "1," "2," "3," "4," "Utility," or "Cull" enclosed in a shield as shown below, as provided in standards in Subpart B of this part, constitutes a form of official identification under the regulations to show the grade under said standards of barrow, gilt, and sow pork carcasses.



Figure 2.

(e) The following constitute forms of official identification under the regulations to show compliance of products:



Figure 1



Figure 2



Figure 3

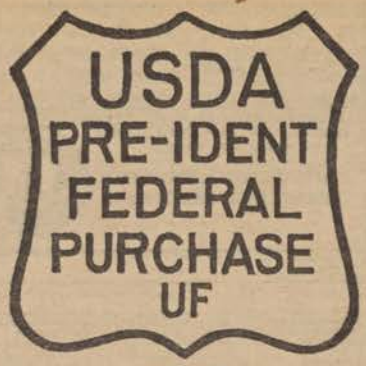


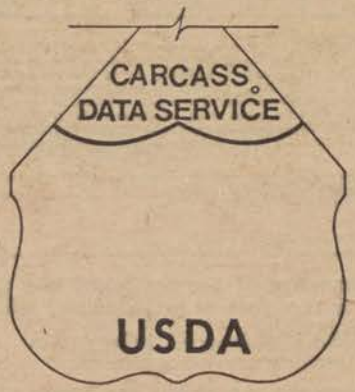
Figure 4



Figure 5

The letters "AC," "XE," and "UF" shown in figures 1, 2, 3, and 4 are examples, respectively, of the code identification letters of the official grader performing the service.

(f) A shield-shaped eartag enclosing the letters "USDA," the words "Carcass Data Service," as shown below, and a serial number constitutes a form of official identification under the regulations for livestock and carcasses. Other information may appear on the backside of the eartag at the option of the purchasers.



§ 2853.18 Custody of identification devices.

All identification devices used in marking products or the containers thereof under the regulations, including those indicating compliance with specifications approved by the Chief, shall be kept in the custody of the Branch, and accurate records shall be kept by the Branch of all such devices. Each office of grading shall keep a record of the devices assigned to it. Such devices shall be distributed only to persons authorized by the Department, who shall keep the devices in their possession or control at all times and maintain complete records of such devices.

Upon request, applicants shall provide a metal cabinet(s) or locker(s) for the secure storage of official meat grading equipment and identification devices for each Federal meat grader assigned to their establishment. Such cabinet(s) or locker(s) shall be capable of being locked with a special Government-owned lock and shall be placed in an easily accessible and reasonably secure location within the applicant's establishment.

APPEAL SERVICE

§ 2853.19 What is appeal service; marking products on appeal; requirements for appeal; certain determinations not appealable.

(a) Appeal service is a redetermination of the class, grade, other quality, or compliance of product when the applicant for the appeal service formally challenges the correctness of the original determination. Only a person who has title to, or is a party to a contract for the sale of, a product may request appeal service with respect to such product and if the original determination of class, grade, other quality or compliance is found on appeal to have been in error all incorrect marks of class, grade, other quality and compliance will be removed from the product, and if the person having title to the product so requests, correct marks as determined on the appeal will be applied to the product. Examination requested to determine the class, grade, other quality, or compliance of a product which has been altered or has undergone a material change since the original service, or examination of product requested for the purpose of obtaining an up-to-date certificate and not involving any question as to the correctness of the original service for the product involved, shall be considered equivalent to original service and not appeal service.

(b) Grade determinations for the following cannot be appealed: any lot of a product consisting of less than ten similar units; wholesale cuts, or other subdivisions of meat originally graded as larger units; and veal and calf carcasses originally graded with hides on. Moreover, appeal service will not be furnished with respect to product that has been altered or has undergone any material change since the original service.

§ 2853.20 Request for appeal service.

Except as otherwise provided in § 2853.19, a request for appeal service with respect to any product under the regulations may be made by any person who is financially interested in the product when he disagrees with the determination as to class, grade, other quality, or compliance of the product as shown by the markings on the product or its containers, or as stated in the applicable certificate. A request for appeal service shall be filed with the Chief, directly or through the official grader who performed the original service or the official in charge of the office of grading to which such grader was assigned at the

time of the service, or through the nearest office of grading. The request shall state the reasons therefor and may be accompanied by a copy of any previous certificate or report, or any other information which the applicant may have received regarding the product at the time of the original service. Such request may be made orally (including by telephone) or in writing (including by telegram). If made orally, the person receiving the request may require that it be confirmed in writing. Requests for appeal service received through an official grader or an office of grading shall be transmitted promptly to the Chief for instructions.

§ 2853.21 When request for appeal service may be withdrawn.

A request for appeal service may be withdrawn by the applicant at any time before the appeal service has been performed, upon payment of any expenses already incurred under the regulations by the Branch in connection therewith.

§ 2853.22 Denial or withdrawal of appeal service.

A request for appeal service may be rejected or such service may be otherwise denied to or withdrawn from any person, without a hearing, in accordance with the procedure set forth in § 2853.11(b), if it shall appear that the person or product involved is not eligible for appeal service under § 2853.19, or that the identity of the product has been lost; or for any of the causes set forth in § 2853.11(b). Appeal service may also be denied to, or withdrawn from, any person in any case under § 2853.11(a), in accordance with the procedure set forth in said section.

§ 2853.23 Who shall perform appeal service.

Appeal service for products shall be performed by official graders designated by the Chief or by the official in charge of an office of grading when so authorized by the Chief, and shall be conducted jointly by two official graders, or more when practicable. No official grader shall perform appeal service for any product for which he previously performed the service.

§ 2853.24 Appeal certificates.

Immediately after appeal service has been performed for any products, a certificate designated as an "appeal certificate" shall be prepared, signed, and issued referring specifically to the original certificate and stating the class, grade, other quality, or compliance of the products as shown by the appeal service.

§ 2853.25 Superseded certificates.

The appeal certificate shall supersede the original certificate which, thereupon, shall become null and void and shall not thereafter be deemed to show the class, grade, other quality, or compliance of the products described therein. However, the fees charged for the original service shall not be remitted. If the original and all copies of the superseded certificate are not delivered to the official with whom the request for appeal service is filed, the official graders issuing the appeal certificate shall forward notice of such issuance and of the cancellation of the original certificate to such persons as they may deem necessary to prevent fraudulent use of the superseded certificate.

§ 2853.26 Application of other regulations to appeal service.

The regulations in § 2853.1 through § 2853.18 and § 2853.27 through § 2853.30 shall apply to appeal service except insofar as they are manifestly inapplicable.

CHARGES FOR SERVICE

§ 2853.27 Fees and other charges for service.

Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in § 2853.6.

(a) *Fees based on hourly rates.* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the time required for the preparation of certificates and travel of the official grader in connection with the performance of the service. A minimum charge for one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform the service may be less than 30 minutes. The base hourly rate shall be $19.00 per hour for work performed between the hours of 6 a.m. and 6 p.m. Monday through Friday, except on legal holidays; $23.00 per hour for work performed before 6 a.m. or after 6 p.m. Monday through Friday, and anytime Saturday or Sunday except on legal holidays; and $38.00 per hour for all work performed on legal holidays.

(b) *Fees for service on commitment basis.* Minimum fees for service performed under a commitment agreement shall be on the basis of 8 hours per day, Monday through Friday, calculated at the hourly rates in accordance with paragraph (a) of this section. Hours worked on Saturdays, Sundays, legal holidays, and in excess of 8 hours per day will be charged at the appropriate hourly rate in accordance with paragraph (a) of this section. The Food Safety and Quality Service reserves the right under such a commitment to use any grader assigned to the plant on a commitment basis to perform service for other applicants as provided in § 2853.6(c), crediting the commitment applicant with the number of hours charged to the other applicants, provided the allowable credit hours, plus hours actually worked for the applicants, do not exceed 8 hours on any day, Monday through Friday.

(c) *Travel Charges.* When service is requested at a place so distant from an official grader's headquarters, or place of prior assignment on a circuitous routing that a total of one-half hour or more is required for the grader to travel to such place and back to the headquarters, or to the next place of assignment on a circuitous routing, the charge for such service shall include a mileage charge administratively determined by the Chief, and travel tolls, if applicable, for such travel prorated against all the applicants furnished the service involved on an equitable basis, or where the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. However, the applicant will not be charged a new mileage rate without notification before the service is rendered.

(d) *Per diem charges.* When service is requested at a place away from the official grader's headquarters, the fee for such service shall include a per diem charge if the employee performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants will cover the same period of time for which the grader receives per diem reimbursement. The per diem rate will be administratively determined by the Chief. However, the applicant will not be charged a new per diem rate without notification before the service is rendered.

(e) *Fees for appeal service.* Fees for appeal service shall be determined on the basis of the time, of two official graders, required to render the service, calculated to the nearest fifteen minute period, including the time required for the preparation of certificates and travel of such graders in connection with the performance of the service, at the applicable hourly rate prescribed in paragraph (a) of this section, plus any travel charges and per diem for such graders ordinarily chargeable under paragraphs (c) and (d) of this section: *Provided,* That when on appeal it is found that there was error in the original determination equal to or exceeding ten percent of the total number of similar units of the products involved, no charge will be made for the appeal service unless a special agreement therefor was made with the applicant in advance.

(f) *Fees for extra copies of certificates.* In addition to copies of certificates furnished under § 2853.14, any financially interested person may obtain not to exceed three copies of any such certificate within one year from its date of issuance upon payment of a fee of $1.00, and not to exceed three copies of any such certificate at any time thereafter, while a copy of such certificate is on file in the Department, upon payment of a fee of $5.00.

(g) *Other charges.* When costs, other than costs specified in paragraphs (a), (b), (c), (d), (e), and (f) of this section, are involved in providing the services, the applicant will be charged for these costs. The amount of these charges will be determined administratively by the Chief. However, the applicant will not be charged for such cost without notification before the service is rendered of the charge for such item of expense.

§ 2853.28 Payment of fees and other charges.

Fees and other charges for service shall be paid in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the service is furnished. Upon receipt of billing for fees and other charges for service the applicant shall remit by check, draft, or money order, made payable to the Food Safety and Quality Service, U.S.D.A., payment for the service in accordance with directions on the billing, and such fees and charges shall be paid in advance if required by the official grader or other authorized official.

MISCELLANEOUS

§ 2853.29 Identification.

All official graders and supervisors of grading shall have their Food Safety and Quality Service identification cards in their possession at all times while they are performing any function under the regulations and shall identify themselves by such cards upon request.

§ 2853.30 Errors in service.

When an official grader, supervisor of grading, or other responsible employee of the Branch has evidence of misgrading, or of incorrect certification or other incorrect determination or identification as to the class, grade, other quality, or compliance of a product, he shall report the matter to his immediate supervisor. The supervisor of grading will investigate the matter and, if he deems advisable, will report it to the owner or his agent. The supervisor of grading shall take appropriate action to correct errors found in the determination or identification of class, grade or other quality or compliance of products if the products are still owned by the person who owned them when, and are still located at the establishment where, the incorrect service was rendered and if such service was rendered by a grader under the jurisdiction of such supervisor, and the supervisor of grading shall take adequate measures to prevent the recurrence of such errors.

Subpart B—Standards

CARCASS BEEF

§ 2853.102 Scope.

These standards for grades of beef are written primarily in terms of carcasses. However, they also are applicable to the grading of sides, quarters, and certain other parts of carcasses. To simplify phrasing of the standards, the words "carcass" and "carcasses" are used also to mean all parts of carcasses which are eligible for grading.

§ 2853.103 Classes of beef carcasses.

(a) Class determination of beef carcasses is based on evidences of maturity and apparent sex condition at the time of slaughter. The classes of beef carcasses are steers, bullocks, bulls, heifers, and cows. Carcasses from males—steers, bullocks, and bulls—are distinguished from carcasses from females—heifers and cows—as follows:

(1) Steer, bullock, and bull carcasses have a "pizzle muscle" (attachment of the penis) and related "pizzle eye" adjacent to the posterior end of the aitchbone.

(2) Steer, bullock, and bull carcasses have, if present, rather rough, irregular fat in the region of the cod. In heifer and cow carcasses, the fat in this region—if present—is much smoother.

(3) In steer, bullock, and bull carcasses, the area of lean exposed immediately ventral to the aitchbone is much smaller than in heifer and cow carcasses.

(b) Steer, bullock, and bull carcasses are distinguished by the following:

(1) In steer carcasses, the "pizzle muscle" is relatively small, light red in color, and fine in texture and the related "pizzle eye" is relatively small.

(2) In bullock and bull carcasses, the "pizzle muscle" is relatively large, dark red in color, and coarse in texture and the related "pizzle eye" is relatively large.

(3) Bullock and bull carcasses usually have a noticeable crest.

(4) Bullock and bull carcasses also usually have a noticeably developed small round muscle adjacent to the hipbone commonly referred to as the "jump muscle." However, in carcasses with a considerable amount of external fat, the development of this muscle may be obscured.

(5) Although the development of the secondary sex characteristics is given primary consideration in distinguishing steer carcasses from bullock or bull carcasses, this differentiation is also facilitated by consideration of the color and texture of the lean. In bullock and bull carcasses, the lean is frequently at least dark red in color with a dull, "muddy" appearance—and in some cases it may have an iridescent sheen. Also, it frequently has an "open" texture. In distinguishing between these classes when grading wholesale cuts in which the secondary sex characteristics are absent or normally not well developed—especially ribs and loins—consideration of the color and texture of the lean necessarily must receive the major emphasis.

(6) The distinction between bullock and bull carcasses is based solely on their evidences of skeletal maturity. Carcasses with the maximum maturity permitted in the bullock class have slightly red and slightly soft chine bones, and the cartilages on the ends of the thoracic vertebrae have some evidences of ossification; the sacral vertebrae are completely fused; the cartilages on the ends of the lumbar vertebrae are nearly completely ossified; and the rib bones are slightly wide and slightly flat. Bull carcasses have evidences of more advanced maturity.

(c) Heifer and cow carcasses are distinguished by the following:

(1) Heifer carcasses have a relatively small pelvic cavity and a slightly curved aitchbone. In cow carcasses, the pelvic cavity is relatively large and the aitchbone is nearly straight.

(2) In heifer carcasses, the udder usually will be present. In cow carcasses the udder usually will have been removed. However, neither of these are requirements.

§ 2853.104 Application of Standards for Grades of Carcass Beef.

(a) The grade of a steer, heifer, cow, or bullock carcass consists of separate evaluations of two general considerations: (1) The indicated percent of trimmed, boneless, major retail cuts to be derived from the carcass, herein referred to as the "yield grade," and (2) the palatability-indicating characteristics of the lean herein referred to as the "quality grade." When officially graded, the grade of a steer, heifer, cow, or bullock carcass consists of both the quality grade and the yield grade. Each of the quality and yield grade designations must remain on grade-identified carcasses, sides, quarters, and untrimmed wholesale cuts unless both such designations are removed. However, for subprimal and retail cuts, and for wholesale cuts which have been substantially trimmed of external fat, the yield grade designation may be removed. For labeling and other related purposes, the grade of such items may consist of the quality designation only. The grade of a bull carcass consists of the yield grade only.

(b) The carcass beef grade standards are written so that the quality grade and yield grade standards are contained in separate sections. The quality grade section is divided further into two separate sections applicable to carcasses from (1) steers, heifers, and cows, and (2) bullocks. Eight quality grade designations—Prime, Choice, Good, Standard, Commercial, Utility, Cutter, and Canner—are applicable to steer and heifer carcasses. Except for Prime, the same designations apply to cow carcasses. The quality grade designations for bullock carcasses are Prime, Choice, Good, Standard, and Utility. There are five yield grades applicable to all classes of beef, denoted by numbers 1 through 5, with Yield Grade 1 representing the highest degree of cutability.

(c) When officially graded, bullock and bull beef will be further identified for its sex condition; steer, heifer, and cow beef will not be so identified. The designated grades of bullock beef are not necessarily comparable in quality or cutability with a similarly designated grade of beef from steers, heifers, or cows. Neither is the cutability of a designated yield grade of bull beef necessarily comparable with a similarly designated yield grade of steer, heifer, cow, or bullock beef.

(d) The Department uses photographs and other objective aids in the correct interpretation and application of the standards.

(e) To determine the grade of a carcass, it must be split down the back into two sides and one or both sides must be partially separated into a hindquarter and forequarter by cutting it with a saw and knife insofar as practicable, as follows: A saw cut perpendicular to both the long axis and split surface of the vertebral column is made across the 12th

thoracic vertebra at a point which leaves not more than one-half of this vertebra on the hindquarters. The knife cut across the ribeye muscle starts—or terminates—opposite the above-described saw cut. From that point it extends across the ribeye muscle perpendicular to the outside skin surface of the carcass at an angle toward the hindquarter which is slightly greater (more nearly horizontal) than the angle made by the 13th rib with the vertebral column of the hindquarter posterior to that point. As a result of this cut, the outer end of the cut surface of the ribeye muscle is closer to the 12th rib than is the end next to the chine bone. Beyond the ribeye, the knife cut shall continue between the 12th and 13th ribs to a point which will adequately expose the distribution of fat and lean in this area. The knife cut may be made prior to or following the saw cut but must be smooth and even, such as would result from a single stroke of a very sharp knife.

(f) Other methods of ribbing may prevent an accurate evaluation of the grade determining characteristics. Therefore, carcasses ribbed by other methods will be eligible for grading only if an accurate grade determination can be made by the official grader under the standards.

(g) Beveling of the fat over the ribeye, application of pressure, or any other influences which alter the characteristics of the ribeye or the thickness of fat over the ribeye may prevent an accurate grade determination. Therefore, carcasses subjected to such influences may not be eligible for a grade determination. Also, carcasses with more than minor amounts of lean removed from the major sections of the round, loin, rib, or chuck will not be eligible for a grade determination.

(h) When both sides of a carcass have been ribbed prior to presentation for grading and the characteristics of the two ribeyes (area, marbling, color, texture, and firmness) would justify different quality and/or yield grades, the final grade of the carcass shall reflect the "highest" of each of these grades as determined from either side.

(i) The quality grade and yield grade descriptions are defined primarily in terms of beef carcasses. However, they also apply to the grading of hindquarters, forequarters, and certain individual primal cuts—loins, short loins, and ribs. A portion of these or other primal cuts as well as plates, flanks, shanks, and briskets likewise can be graded if attached by their natural attachments to a rib, loin, or short loin. Since bull carcasses are eligible for yield grade only, they may be graded only as carcasses, sides, or hindquarters. This is because yield grades for forequarters and forequarter cuts and for trimmed hindquarters and trimmed hindquarter cuts include consideration of standard percentages of kidney, pelvic, and heart fat based on the quality grade. Other special major cuts or carcasses ribbed other than between the 12th and 13th ribs may be approved for grading by the Food Safety and Quality Service provided such deviations are necessary to meet either the demand of export trade or changing trade practices. In such cases, grading shall be based on the requirements specified in these standards and shall be consistent with the normal development of grade characteristics in various parts of a carcass of the quality level involved.

(j) Carcasses qualifying for any particular grade may vary with respect to their relative development of the various grade factors. There will be carcasses which qualify for a particular grade, some of whose characteristics may be more nearly typical of another grade. For example, in comparison with the descriptions of maturity contained in the standards, a particular carcass might have a greater relative degree of ossification of the cartilages on the ends of its lumbar vertebrae than its other evidences of maturity. In such instances, the maturity of the carcass is not determined solely by the ossification of the lumbar vertebrae but neither is this ignored. All of the maturity-indicating factors are considered. In making any composite evaluation of two or more factors, it must be remembered that they seldom are developed to the same degree. Because it is impractical to describe the nearly limitless number of recognizable combinations of characteristics, the standards for each quality grade and yield grade describe only beef which has a relatively similar degree of development of the various factors affecting its quality and yield. Also, the quality grade and yield grade standards each describe beef which is representative of the lower limits of each quality grade and yield grade.

(k) For steer, heifer, and cow beef, quality of the lean is evaluated by considering its marbling and firmness as observed in a cut surface in relation to carcass evidences of maturity. The maturity of the carcass is determined by evaluating the size, shape, and ossification of the bones and cartilages—especially the split chine bones—and the color and texture of the lean flesh. In the split chine bones, ossification changes occur at an earlier stage of maturity in the posterior portion of the vertebral column (sacral vertebrae) and at progressively later stages of maturity in the lumbar and thoracic vertebrae. The ossification changes that occur in the cartilages on the ends of the split thoracic vertebrae are especially useful in evaluating maturity and these vertebrae are referred to frequently in the standards. Unless otherwise specified in the standards, whenever reference is made to the ossification of cartilages on the thoracic vertebrae, this shall be construed to refer to the cartilages attached to the thoracic vertebrae at the posterior end of the forequarter. The size and shape of the rib bones also are important considerations in evaluating differences in maturity. In the very youngest carcasses considered as "beef," the cartilages on the ends of the chine bones show no ossification, cartilage is evident on all of the vertebrae of the spinal column, and the sacral vertebrae show distinct separation. In addition, the split vertebrae usually are soft and porous and very red in color. In such carcasses, the rib bones have only a slight tendency toward flatness. In progressively more mature carcasses, ossification changes become evident first in the bones and cartilages of the sacral vertebrae, then in the lumbar vertebrae, and still later in the thoracic vertebrae. In beef which is very advanced in maturity, all the split vertebrae will be devoid of red color, very hard and flinty, and the cartilages on the ends of all the vertebrae will be entirely ossified. Likewise, with advancing maturity, the rib bones will become progressively wider and flatter until in very mature beef the ribs will be very wide and flat.

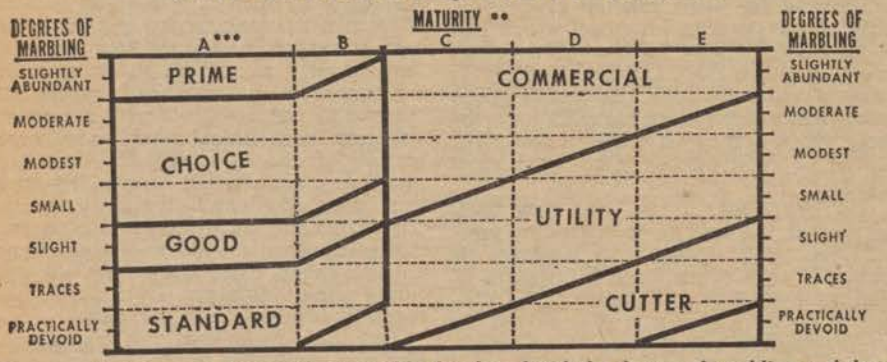
(l) In steer, heifer, and cow beef, the color and texture of the lean flesh also undergo progressive changes with advancing maturity. In the very youngest carcasses considered as "beef," the lean flesh will be very fine in texture and light grayish red in color. In progressively more mature carcasses, the texture of the lean will become progressively coarser and the color of the lean will become progressively darker red. In very mature beef, the lean flesh will be very coarse in texture and very dark red in color. Since color of lean also is affected by variations in quality, references to color of lean in the standards for a given degree of maturity vary slightly with different levels of quality. In determining the maturity of a carcass in which the skeletal evidences of maturity are different from those indicated by the color and texture of the lean, slightly more emphasis is placed on the characteristics of the bones and cartilages than on the characteristics of the lean. In no case can the overall maturity of the carcass be considered more than one full maturity group different from that indicated by its bones and cartilages.

(m) The preceding two paragraphs also are applicable to the determination of quality in bullock beef except for carcasses having darker colors of lean than specified in the standards for the quality level for which they would otherwise qualify. In such carcasses, maturity will be evaluated on the basis of skeletal characteristics only, and the final grade will be determined in accordance with the procedures specified in the standards for grading "dark-cutting beef."

(n) In determining compliance with the maximum maturity limits for the Prime, Choice, Good, and Standard grades for steer, heifer, and cow carcasses, color and texture of the lean are considered only when the maturity-indicating factors other than color and texture of the lean indicate only a slightly more advanced degree of maturity than that specified as maximum for these grades, and provided further that the lean is considerably finer in texture and lighter in color than normal for the grade and maturity involved. The same principle, in reverse, is likewise applicable to determining compliance with the minimum maturity limits of the Commercial grade.

(o) These standards are applicable to the grading of beef throughout the full range of maturity within which cattle are marketed. However, in steer, heifer, and cow carcasses, the range of maturity permitted within each of the grades varies considerably. The Prime, Choice, Good, and Standard grades are restricted to beef from young cattle; the Commercial grade is restricted to beef from cattle too mature for Prime, Choice, Good, and Standard, and the Utility, Cutter, and Canner grades may include beef from animals of all ages. By definition, bullock carcasses are restricted to those whose evidences of maturity do not exceed those specified for the juncture of the two youngest maturity groups referenced in the standards for steer, heifer, and cow carcasses. Except for the youngest maturity group, within any specified grade, the requirements for marbling increase progressively with evidences of advancing maturity. In the youngest maturity group, the marbling requirements do not increase progressively with evidences of advancing maturity. For each grade, the firmness requirements are different for each maturity group, but, within each maturity group, the firmness requirements do not increase progressively with evidences of advancing maturity. Also, regardless of the extent to which marbling may exceed the minimum of a grade, a carcass must meet the minimum firmness requirements for its maturity to qualify for that grade. To facilitate the application of these principles, the standards recognize five different maturity groups and seven different degrees of marbling. The five maturity groups are identified in Figure 1 as A, B, C, D, and E in order of increasing maturity. The limits of these five maturity groups are specified in the grade descriptions for steer, heifer, and cow carcasses. The A maturity portion of the figure is the only portion applicable to bullock carcasses. The degrees of marbling referenced in the specifications, in order of descending quantity are: Slightly abundant, moderate, modest, small, slight, traces, and practically devoid. However, for carcass evaluation programs and other purposes, three higher degrees are recognized—moderately abundant, abundant, and very abundant. Illustrations of the lower limits of nine of these ten degrees of marbling are available from the Department of Agriculture.

RELATIONSHIP BETWEEN MARBLING, MATURITY, AND CARCASS QUALITY GRADE *



*Assumes that firmness of lean is comparably developed with the degree of marbling and that the carcass is not a "dark cutter."
**Maturity increases from left to right (A through E).
***The A maturity portion of the Figure is the only portion applicable to bullock carcasses.

Figure 1

(p) The relationship between marbling, maturity, and quality grade is shown in Figure 1. This figure assumes that the firmness of lean is comparably developed with the degree of marbling and that the carcass is not a "dark cutter." From this figure it can be seen, for instance, that the minimum marbling requirement for Choice varies from a minimum small amount for carcasses throughout the youngest maturity group to a maximum small amount for carcasses having the maximum maturity permitted in Choice. Likewise, in the Commercial grade the minimum marbling requirement varies from a minimum small amount in beef with the minimum maturity permitted to a maximum moderate amount in beef from very mature animals. The marbling and other lean flesh characteristics specified for the various grades are based on their appearance in the ribeye muscle of properly chilled carcasses that are ribbed between the 12th and 13th ribs. For carcass evaluation programs and other purposes, in the Prime and Commercial grades, each additional degree of marbling (up to three) greater than specified as minimum for each of these grades is equal to one-third of a grade of higher quality.

(q) References to color of lean in the standards for steer, heifer, and cow beef involve only colors associated with changes in maturity. They are not intended to apply to colors of lean associated with so-called "dark-cutting beef." Dark-cutting beef is believed to be the result of a reduced sugar content of the lean at the time of slaughter. As a result, this condition does not have the same significance in grading as do the darker shades of red associated with advancing maturity. The dark color of the lean associated with "dark-cutting beef" is present in varying degrees from that which is barely evident to so-called "black cutters" in which the lean is actually nearly black in color and usually has a "gummy" texture. Although there is little or no evidence which indicates that the "dark cutting" condition has any adverse effect on palatability, it is considered in grading because of its effect on acceptability and value. Depending on the degree to which this characteristic is developed, the final grade of carcasses which otherwise would qualify for the Prime, Choice, or Good grades may be reduced as much as one full grade. In beef otherwise eligible for the Standard or Commercial grade, the final grade may be reduced as much as one-half of a grade. In the Utility, Cutter, and Canner grades, this condition is not considered.

(r) The yield grade of a beef carcass is determined by considering four characteristics: (1) The amount of external fat, (2) the amount of kidney, pelvic, and heart fat, (3) the area of the ribeye muscle, and (4) the carcass weight.

(s) The amount of external fat on a carcass is evaluated in terms of the thickness of this fat over the ribeye muscle, measured perpendicular to the outside surface at a point three-fourths of the length of the ribeye from its chine bone end. This measurement may be adjusted, as necessary, to reflect unusual amounts of fat on other parts of the carcass. In determining the amount of this adjustment, if any, particular attention is given to the amount of fat in such areas as the brisket, plate, flank, cod or udder, inside round, rump, and hips in relation to the actual thickness of fat over the ribeye. Thus, in a carcass which is fatter over other areas than is indicated by the fat measurement over the ribeye, the measurement is adjusted upward. Conversely, in a carcass which has less fat over the other areas than is indicated by the fat measurement over the ribeye, the measurement is adjusted downward. In many carcasses no such adjustment is necessary; however, an adjustment in the thickness of fat measurement of one-tenth or two-tenths of an inch is not uncommon. In some carcasses a greater adjustment may be necessary. As the amount of external fat increases, the percent of retail cuts decreases—each one-tenth inch change in adjusted fat thickness over the ribeye changes the yield grade by 25 percent of a yield grade.

(t) The amount of kidney, pelvic, and heart fat considered in determining the yield grade includes the kidney knob (kidney and surrounding fat), the lumbar and pelvic fat in the loin and round, and the heart fat in the chuck and brisket area which are removed in making closely trimmed retail cuts. The amount of these fats is evaluated subjectively and expressed as a percent of the carcass weight. As the amount of kidney, pelvic, and heart fat increases, the percent of retail cuts decreases—a change of 1 percent of the carcass weight in these fats changes the yield grade by 20 percent of a yield grade.

(u) The area of the ribeye is determined where this muscle is exposed by ribbing. This area usually is estimated

subjectively; however, it may be measured. Area of ribeye measurements may be made by means of a grid calibrated in tenths of a square inch or by other devices designated by the Food Safety and Quality Service of the U.S. Department of Agriculture.[1] An increase in the area of ribeye increases the percent of retail cuts—a change of 1 square inch in area of ribeye changes the yield grade by approximately 30 percent of a yield grade.

(v) Hot carcass weight (or chilled carcass weight x 102 percent) is used in determining the yield grade. As carcass weight increases, the percent of retail cuts decreases—a change of 100 pounds in hot carcass weight changes the yield grade by approximately 40 percent of a yield grade.

(w) The standards include a mathematical equation for determining yield grade. This grade is expressed as a whole number; any fractional part of a designation is always dropped. For example, if the computation results in a designation of 3.9, the final grade is 3—it is not rounded to 4.

(x) The yield grade standards for each of the first four yield grades list characteristics of two carcasses of two different weights together with descriptions of the usual fat deposition pattern on various areas of the carcass. These descriptions are not specific requirements—they are included only as illustrations of carcasses which are near the borderlines between groups. For example, the characteristics listed for Yield Grade 1 represent carcasses which are near the borderline of Yield Grades 1 and 2.

These descriptions facilitate the subjective determination of the yield grade without making detailed measurements and computations. The yield grade for most beef carcasses can be determined accurately on the basis of a visual appraisal.

§ 2853.105 Specifications for official United States standards for grades of carcass beef (yield).

(a) The yield grade of a beef carcass is determined on the basis of the following equation: Yield grade—2.50+ (2.50 x adjusted fat thickness, inches) + (0.20 x percent kidney, pelvic, and heart fat) + (0.0038 x hot carcass weight, pounds) — (0.32 x area ribeye, square inches).

(b) (1) The yield grade of a hindquarter, forequarter, or cut eligible for grading also is determined on the basis of the above equation in which the hot carcass weight is determined by multiplying the chilled weight of the cut by an appropriate factor as applicable to the cut and its style of preparation.

(2) The factors shown below shall be applicable to hindquarters and forequarters produced by ribbing as described herein, and to ribs, trimmed full loins, and trimmed short loins which are trimmed as described in Items 103, 172, and 173, respectively, of the Institutional Meat Purchase (IMP) Specifications for Fresh Beef—Series 100, as revised October 1961.

	Factor
Forequarter	3.90
Hindquarter	4.25
Rib	22.50
Loin, full, trimmed	12.75
Short Loin, trimmed	29.10

(3) A slightly larger factor, appropriate to reflect the weight of the cut as a percent of hot carcass weight, shall be used for ribs, full loins, or short loins which are more closely trimmed than described in the referenced IMP Specifications. Similarly, a smaller factor shall be used for determining the yield grade of these cuts when trimmed less closely than specified or when they include portions or all of adjacent cuts.

(4) In addition, for forequarters and forequarter cuts and for trimmed hindquarters and trimmed hindquarter cuts, the following standard percentages of kidney, pelvic, and heart fat, as applicable to the quality grade of the quarter or cut, also shall be used in the equation:

Grade:	*Kidney, pelvic, and heart fat percent*
Prime	4.5
Choice	3.5
Good	3.0
Standard	2.0
Commercial	4.0
Utility	2.0
Cutter and Canner	1.5

(5) For untrimmed hindquarters and for untrimmed hindquarter cuts, the quantity of kidney and pelvic fat is estimated as a percent of the hot side weight.

(c) The following descriptions provide a guide to the characteristics of carcasses in each yield grade to aid in determining yield grades subjectively.

(1) *Yield Grade 1.* (i) A carcass in yield grade 1 usually has only a thin layer of external fat over the ribs, loins, rumps, and clods and slight deposits of fat in the flanks and cod or udder. There is usually a very thin layer of fat over the outside of the rounds and over the tops of the shoulders and necks. Muscles are usually visible through the fat in many areas of the carcass.

(ii) A 500-pound carcass of this yield grade which is near the borderline of yield grades 1 and 2 might have three-tenths inch of fat over the ribeye, 11.5 square inches of ribeye, and 2.5 percent of its weight in kidney, pelvic, and heart fat.

(iii) An 800-pound carcass of this yield grade which is near the borderline of yield grades 1 and 2 might have four-tenths inch of fat over the ribeye, 16.0 square inches of ribeye, and 2.5 percent of its weight in kidney, pelvic, and heart fat.

(2) *Yield Grade 2.* (i) A carcass in yield grade 2 usually is nearly completely covered with fat but the lean is plainly visible through the fat over the outside of the rounds, the tops of shoulders, and the necks. There usually is a slightly thin layer of fat over the loins, ribs, and inside rounds and the fat over the rumps, hips, and clods usually is slightly thick. There are usually small deposits of fat in the flanks and cod or udder.

(ii) A 500-pound carcass of this yield grade which is near the borderline of yield grades 2 and 3 might have five-tenths inch of fat over the ribeye, 10.5 square inches of ribeye, and 3.5 percent of its weight in kidney, pelvic, and heart fat.

(iii) An 800-pound carcass of this yield grade which is near the borderline of yield grades 2 and 3 might have six-tenths inch of fat over the ribeye, 15.0 square inches of ribeye, and 3.5 percent of its weight in kidney, pelvic, and heart fat.

(3) *Yield Grade 3.* (i) A carcass in yield grade 3 usually is completely covered with fat and the lean usually is visible through the fat only on the necks and the lower part of the outside of the rounds. There usually is a slightly thick layer of fat over the loins, ribs, and inside rounds and the fat over the rumps, hips, and clods usually is moderately thick. There usually are slightly large deposits of fat in the flanks and cod or udder.

(ii) A 500-pound carcass of this yield grade which is near the borderline of yield grades 3 and 4 might have seven-tenths inch of fat over the ribeye, 9.5 square inches of ribeye, and 4.0 percent of its weight in kidney, pelvic, and heart fat.

(iii) An 800-pound carcass of this yield grade which is near the borderline of yield grades 3 and 4 might have eight-tenths inch of fat over the ribeye, 14.0 square inches of ribeye, and 4.5 percent of its weight in kidney, pelvic, and heart fat.

(4) *Yield Grade 4.* (i) A carcass in yield grade 4 usually is completely covered with fat. The only muscles usually visible are those on the shanks and over the outside of the plates and flanks. There usually is a moderately thick layer of fat over the loins, ribs, and inside rounds and the fat over the rumps, hips, and clods usually is thick. There usually are large deposits of fat in the flanks and cod or udder.

(ii) A 500-pound carcass of this yield grade which is near the borderline of yield grades 4 and 5 might have one inch of fat over the ribeye, 9.0 square inches of ribeye, and 4.5 percent of its carcass weight in kidney, pelvic, and heart fat.

(iii) A 800-pound carcass of this yield grade which is near the borderline of yield grades 4 and 5 might have one and one-tenth inch of fat over the ribeye, 13.5 square inches of ribeye, and 5.0 percent of its weight in kidney, pelvic and heart fat.

(5) *Yield Grade 5.* A carcass in yield grade 5 usually has more fat on all of the various parts, a smaller area of ribeye, and more kidney, pelvic, and heart fat than a carcass in yield grade 4.

[1] Information concerning such devices may be obtained from the Food Safety and Quality Service, Meat Quality Division.

§ 2853.106 Specifications for Official United States Standards for Grades of Carcass Beef (Quality—Steer, Heifer, Cow).

(a) *Prime.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Prime grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Prime grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidences of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is light red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum slightly abundant amount of marbling is required (see Figure 1) and the ribeye muscle is moderately firm.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to those at the maximum maturity permitted in the Prime grade, which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae that are partially ossified. In addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean tends to be fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from minimum slightly abundant to maximum slightly abundant (see Figure 1) and the ribeye muscle is firm.

(4) Beef produced from cows is not eligible for the Prime grade.

(b) *Choice.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Choice grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Choice grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is moderately light red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum small amount of marbling is required (see Figure 1) and the ribeye muscle may be slightly soft.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to those at the maximum maturity permitted in the Choice grade, which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae are partially ossified. In addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean tends to be fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum small amount to a maximum small amount (see Figure 1) and the ribeye muscle is slightly firm.

(c) *Good.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Good grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Good grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly light red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum slight amount of marbling is required (see Figure 1) and the ribeye may be moderately soft.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to those at the maximum maturity permitted in the Good grade which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae that are partially ossified. In addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean tends to be fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum slight amount to a maximum slight amount (see Figure 1) and the ribeye muscle may be slightly soft.

(d) *Standard.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Standard grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for two maturity groups which cover the entire range of maturity permitted in the Standard grade.

(2) Carcasses in the younger group range from the youngest that are eligible for the beef class to those at the juncture of the two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly dark red in color and is fine in texture. In carcasses throughout the range of maturity included in this group, a minimum practically devoid amount of marbling is required (see Figure 1) and the ribeye muscle may be soft.

(3) Carcasses in the older group range from those described above as representative of the juncture of the two groups to those at the maximum maturity permitted in the Standard grade, which have chine bones tinged with red and cartilages on the ends of the thoracic vertebrae that are partially ossified. In addition, the sacral vertebrae are completely fused, the cartilages on the ends of the lumbar vertebrae are completely ossified, and the cut surface of the lean is moderately fine in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from minimum practically devoid to maximum practically devoid (see Figure 1) and the ribeye muscle may be moderately soft.

(e) *Commercial.* (1) Commercial grade beef carcasses and wholesale cuts are restricted to those with evidences of more advanced maturity than permitted in the Standard grade. Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Commercial grade vary in their other indications of quality as evidenced in the ribeye muscle. Minimum quality characteristics are described for the youngest and the most mature of these groups. The requirements for the intermediate group are determined by interpolation between the requirements indicated for the two groups described.

(2) Carcasses in the youngest group permitted in the Commercial grade range from those with indications of maturity barely more advanced than described as maximum for the Standard grade to those with moderately hard, rather white chine bones and with cartilages on the ends of the thoracic vertebrae that show considerable ossification but the outlines of the cartilages are still plainly visible. In addition, the rib bones are moderately wide and flat and the ribeye muscle is moderately dark red and slightly coarse in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum small amount to a maximum small amount (see Figure 1) and the ribeye muscle is slightly firm.

(3) The youngest carcasses in the most mature group included in the Commercial grade have hard white chine bones

and the outlines of the cartilages on the ends of the thoracic vertebrae are barely visible, the rib bones are wide and flat, and the ribeye muscle is dark red and coarse in texture. The range in maturity in this group extends to include carcasses from the oldest animals marketed. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum moderate amount to a maximum moderate amount (see Figure 1) and the ribeye muscle is firm.

(f) *Utility.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Utility grade vary in their other indications of quality as evidenced in the ribeye muscle. Carcasses within the full range of maturity classified as beef are included in the Utility grade. Thus, five maturity groups are recognized. Minimum quality requirements are described for three of these groups—the first or youngest, the third or intermediate, and the fifth or the most mature. The requirements for the second and fourth maturity groups are determined by interpolation between the requirements described for their adjoining groups.

(2) Carcasses in the first or youngest maturity group range from the youngest that are eligible for the beef class to those at the juncture of the first two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly flat and the ribeye muscle is slightly dark red in color and fine in texture. In carcasses throughout the range of maturity included in this group, the ribeye muscle is devoid of marbling and may be soft and slightly watery.

(3) Carcasses in the third or intermediate maturity group range from those with indications of maturity barely more advanced than described as maximum for the Standard grade to those with moderately hard, rather white chine bones and with cartilages on the ends of the thoracic vertebrae that show considerable ossification but the outlines of the cartilages are still plainly visible. In addition, the rib bones are moderately wide and flat and the ribeye muscle is dark red in color and slightly coarse in texture. The minimum degree of marbling required increases with advancing maturity throughout this group from minimum practically devoid to maximum practically devoid (see Figure 1) and the ribeye muscle may be moderately soft.

(4) The youngest carcasses in the fifth or oldest maturity group have hard, white chine bones and the outlines of the cartilages on the ends of the thoracic vertebrae are barely visible, the rib bones are wide and flat, and the ribeye muscle is very dark red in color and coarse in texture. The range in maturity in this group extends to include carcasses from the oldest animals produced. The minimum degree of marbling required increases with advancing maturity throughout this group from a minimum slight amount to a maximum slight amount (see Figure 1) and the ribeye muscle is slightly firm.

(g) *Cutter.* (1) Depending on their degree of maturity, beef carcasses possessing the minimum requirements for the Cutter grade vary in their other indications of quality as evidenced in the ribeye muscle. Carcasses within the full range of maturity classified as beef are included in the Cutter grade. Thus, five maturity groups are recognized. Minimum quality requirements are described for three of these groups—the first or youngest, the third or intermediate, and the fifth or the most mature. The requirements for the second and fourth maturity groups are determined by interpolation between the requirements described for their adjoining groups.

(2) Carcasses in the first or youngest maturity group range from the youngest that are eligible for the beef class to those at the juncture of the first two maturity groups, which have slightly red and slightly soft chine bones and cartilages on the ends of the thoracic vertebrae that have some evidence of ossification. In addition, the sacral vertebrae are completely fused and the cartilages on the ends of the lumbar vertebrae are nearly completely ossified. The rib bones are slightly wide and slightly flat and the ribeye muscle is slightly dark red in color and fine in texture. In carcasses throughout the range of maturity included in this group, the ribeye muscle is devoid of marbling and may be very soft and watery.

(3) Carcasses in the third or intermediate maturity group range from those with indications of maturity barely more advanced than described as maximum for the Standard grade to those with moderately hard, rather white chine bones and with cartilages on the ends of the thoracic vertebrae that show considerable ossification but the outlines of the cartilages are still plainly visible. In addition, the rib bones are moderately wide and flat and the ribeye muscle is dark red in color and slightly coarse in texture. In carcasses throughout the range of maturity included in this group, the ribeye muscle is devoid of marbling and may be soft and watery.

(4) Carcasses in the fifth or oldest maturity group have hard white chine bones and the outlines of the cartilages on the ends of the thoracic vertebrae are barely visible, the rib bones are wide and flat, and the ribeye muscle is very dark red in color and coarse in texture. The range in maturity in this group extends to include carcasses from the oldest animals produced. The minimum degree of marbling required increases with advancing maturity throughout this group from minimum practically devoid to maximum practically devoid (see Figure 1) and the ribeye muscle is soft and slightly watery.

(h) *Canner.* The Canner grade includes only those carcasses that are inferior to the minimum requirements specified for the Cutter grade.

§ 2853.107 Specifications for Official United States Standards for Grades of Carcass Beef (Quality—Bullock).

(a) *Prime.* For the Prime grade, the minimum degree of marbling required is a minimum slightly abundant amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle is moderately firm and, in carcasses having the maximum maturity for this class, the ribeye is light red in color.

(b) *Choice.* For the Choice grade, the minimum degree of marbling required is a minimum small amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle may be slightly soft and, in carcasses having the maximum maturity for this class, the ribeye is moderately light red in color.

(c) *Good.* For the Good grade, the minimum degree of marbling required is a minimum slight amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle may be moderately soft and, in carcasses having the maximum maturity for this class, the ribeye is slightly light red in color.

(d) *Standard.* For the Standard grade, the minimum degree of marbling required is a minimum practically devoid amount for carcasses throughout the range of maturity permitted in the bullock class. The ribeye muscle may be soft and, in carcasses having the maximum maturity for this class, the ribeye is slightly dark red in color.

(e) *Utility.* The Utility grade includes only those carcasses that do not meet the minimum requirements specified for the Standard grade.

VEAL AND CALF CARCASSES

§ 2853.112 Scope.

These standards for grades of veal and calf are applicable to the grading of carcasses, sides, hindsaddles, hindquarters, foresaddles, and forequarters, and to the following primal wholesale cuts—legs, loins, racks, and shoulders. However, throughout these standards wherever the words "carcass" or "carcasses" are used these are intended to also mean such parts of carcasses and primal wholesale cuts.

§ 2853.113 Differentiation between veal, calf, and beef carcasses.

Differentiation between veal, calf, and beef carcasses is made primarily on the basis of the color of the lean, although such factors as texture of the lean; character of the fat; color, shape, size, and ossification of the bones and cartilages; and the general contour of the carcass are also given consideration. Typical veal carcasses have a grayish pink color of lean that is very smooth and velvety in texture and they also have a slightly soft, pliable character of fat and marrow, and very red rib bones. By contrast, typical calf carcasses have a grayish red color of lean, a flakier type of fat, and somewhat wider rib bones with less pronounced evidences of red color. Calf carcasses with maximum maturity for their

class have lean flesh that is usually not more than moderately red in color, their rib bones usually have a small amount of red and only a slight tendency toward flatness, and such carcasses are not noticeably "spready" or barrelly" in contour. Such carcasses, when split, have cartilages on the ends of the chine bones that are entirely cartilaginous, there is cartilage in evidence on all vertebrae of the spinal column, and the sacral vertebrae show distinct separation. Carcasses with evidences of more advanced maturity than described in this paragraph are classified as beef. Carcasses not classified as beef but whose color of lean is not comparable with their other evidences of maturity shall be classed as veal or calf in accordance with the following:

(a) Carcasses whose indications of maturity other than color of lean are within the veal class but whose color of lean is darker than dark grayish pink shall be classed as calf.

(b) Carcasses whose evidences of maturity other than color of lean are within the range included in the calf class shall be classed as veal provided they have a correspondingly lighter color of lean within the darker one-half of the range of color included in the veal class. For example, a carcass whose evidences of maturity other than color of lean are midway within the range of the calf class shall be classed as veal if its color of lean is not darker than midway within the darker one-half of the range of color included in the veal class.

(c) Carcasses with color of lean within the lighter one-half of the veal class shall be classed as veal provided their other evidences of maturity do not exceed that associated with the juncture of the calf and beef classes.

§ 2853.114 Classes of veal and calf carcasses.

Class determination is based on the apparent sex condition of the animal at time of slaughter. Hence, there are three classes of veal and calf carcasses—steers, heifers, and bulls. While recognition may sometimes be given to these different classes on the market, especially calf carcasses from bulls that are approaching beef in maturity, the characteristics of such carcasses are not sufficiently different from those of steers and heifers to warrant the development of separate standards for them. Therefore, the grade standards which follow are equally applicable to all classes of veal and calf carcasses.

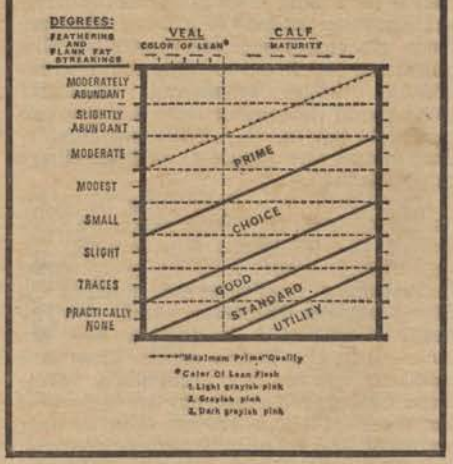
§ 2853.115 Application of standards.

(a) Veal and calf carcasses are graded on a composite evaluation of two general grade factors—conformation and quality. These factors are concerned with the proportions of lean, fat, and bone in the carcass and the quality of the lean.

(b) Conformation is the manner of formation of the carcass. The conformation descriptions included in each of the grade specifications refer to the thickness and fullness of the carcass and its various parts. Conformation is evaluated by averaging the conformation of the various parts of the carcass, considering not only the proportion that each part is of the carcass but also the general value of each part as compared with other parts. Superior conformation implies a high proportion of meat to bone and a high proportion of the weight of the carcass in the more valuable parts. It is reflected in carcasses which are thickly fleshed and full and thick in relation to their length and which have a plump, well-rounded appearance. Inferior conformation implies a low proportion of meat to bone and a low proportion of the weight of the carcass in the more valuable parts. It is reflected in carcasses which are very thinly fleshed, and very narrow in relation to their length, and which have a very angular, thin, sunken appearance.

(c) Quality of lean—in all veal carcasses, all unribbed calf carcasses, and in ribbed calf carcasses in which their degree of marbling is not a consideration—usually can be evaluated with a high degree of accuracy by giving equal consideration to the following factors, as available: (1) The amount of feathering (fat intermingled within the lean between the ribs) and (2) the quantity of fat streakings within and upon the inside flank muscles. (In making these evaluations, the amounts of feathering and flank fat streakings are considered in relation to color (veal) and maturity (calf).) In addition, however, consideration also may be given to other factors if, in the opinion of the grader, this will result in a more accurate quality assessment. Examples of such other factors include firmness of the lean, the distribution of feathering, the amount of fat covering over the diaphragm or "skirt", and the amount and character of the external and kidney and pelvic fat. In making these evaluations, feathering and flank fat streakings are categorized in descending order of quantity as follows: extremely abundant, very abundant, abundant, moderately abundant, slightly abundant, moderate, modest, small, slight, traces, practically none, and none. Figure 1 depicts the quality grade equivalent of various degrees of feathering and flank fat streakings in relation to color of lean (veal) or maturity (calf). From this figure it can be seen, for example, that the degrees of feathering or fat streakings associated with minimum Choice quality for veal increase from minimum traces for carcasses having the lightest color of lean to maximum traces for carcasses with a dark grayish pink color of lean.

FIGURE 1.—QUALITY GRADE EQUIVALENT OF VARIOUS DEGREES OF FEATHERING AND FLANK FAT STREAKINGS IN RELATION TO COLOR OF LEAN (VEAL) OR MATURITY (CALF).



(d) When grading cuts and marbling is not a requirement and when neither feathering nor flank fat streakings are available, quality is based on the firmness of the lean. The requirements relating to firmness of the lean are described in the specifications for each grade and are based on the following degrees in descending order of firmness; extremely firm, very firm, firm, moderately firm, slightly firm, slightly soft, moderately soft, soft, very soft, and extremely soft. However, no credit is given to additional firmness of lean beyond "maximum slightly firm" in veal or beyond "maximum moderately firm" in calf.

(e) When grading ribbed calf carcasses or portions of such carcasses in which their degree of marbling is a consideration, the quality evaluation of the lean is based entirely on the characteristics of the lean as exposed in a cut surface. The official standards for grades of beef recognize nine different degrees of marbling. In descending order of amount these are as follows: Abundant, moderately abundant, slightly abundant, moderate, modest, small, slight, traces, and practically devoid. Illustrations of the lower limits of eight of these nine degrees are available from the Department of Agriculture. These degrees of marbling and their illustrations also are used to describe and evaluate marbling in calf carcasses. Marbling requirements are included in each of the Prime, Choice, and Good grade specifications.

(f) To facilitate the application of the standards, no credit is given to degrees of feathering, flank fat streakings, or marbling beyond those associated with the quality grade equivalent of "Maximum Prime." "Maximum Prime" quality is represented by a development of each of these three factors which is two degrees greater than that specified as minimum for Prime.

(g) The quality indicating requirements referenced in the standards for each grade are based on their development in properly chilled carcasses and, when these relate to a cut surface of the lean, they are based on a cross section of the ribeye muscle between the 12th and 13th ribs. For legs and shoulders, these qualities shall be consistent with their normal development in relation to those specified for the ribeye muscle.

(h) The final grade of a carcass is based on a composite evaluation of its conformation and quality. Conformation and quality often are not developed to the same degree in a carcass and it is obvious that each grade will include various combinations of development of these two characteristics. Examples of how conformation and quality are combined into the final quality grade are included in each of the grade descriptions. However, the principles governing the compensations of variations in development of quality and conformation are as follows: In each of the grades a superior development of quality is permitted to compensate, without limit, for a deficient development of conformation. In this instance the rate of compensation in all grades is on an equal basis—a given degree of superior quality compensates for the same degree of deficient conformation. The reverse type of compensation—a superior development of conformation for an inferior development of quality—is not permitted in the Prime and Choice grades. In all other grades this type of compensation is permitted but only to the extent of one-third of a grade of deficient quality. The rate of this type of compensation is also on an equal basis—a given degree of superior conformation compensates for the same degree of deficient quality.

(i) The colors of lean referenced in the standards reflect only the colors as present in normally developed veal and calf carcasses. They are not intended to apply to colors of lean associated with so-called "dark cutting" veal or calf. This condition does not have the same significance in grading as do the darker shades of pink and red associated with advancing maturity. The dark color of the lean associated with "dark cutting" veal or calf is present in varying degrees from that which is barely evident to so-called "black cutters" in which the lean is actually nearly black in color and usually has a "gummy" texture. Dependent upon the degree to which this characteristic is developed, the final grade of carcasses which otherwise would qualify for the Prime, Choice, or Good grades may be reduced as much as one full grade. In veal or calf otherwise eligible for the Standard grade, the final grade may be reduced as much as one-half grade. In the Utility grade this condition is not considered.

(j) Carcasses qualifying for any particular grade may vary with respect to their relative development of the various grade factors and there will be carcasses which qualify for a particular grade, some of the characteristics of which may be typical of another grade. Because it is impractical to describe the nearly limitless number of such recognizable combinations of characteristics, the standards for each grade describe only a veal or calf carcass which has a relatively similar development of conformation and quality and which also represents the lower limit of each grade.

§ 2853.116 Specifications for official U.S. standards for grades of veal carcasses.

(a) *Prime.* (1) Veal carcasses with minimum Prime grade conformation tend to be moderately wide and thick in relation to their length. They are slightly thick-fleshed and have a slightly plump appearance. Legs are slightly thick and bulging. Loins and backs tend to be moderately full and plump. Shoulders and breasts tend to be moderately thick.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Prime quality for different colors of lean. The lean flesh is slightly firm, regardless of its color.

(3) A development of quality superior to that specified as minimum for the Prime grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Prime at an equal rate as indicated in the following example. A carcass which has midpoint Prime quality may have conformation equal to the midpoint of the Choice grade and remain eligible for Prime. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Prime grade, a carcass must have minimum Prime quality to be eligible for Prime.

(b) *Choice.* (1) Veal carcasses with minimum Choice grade conformation tend to be slightly wide and thick in relation to their length. They tend to be slightly thin-fleshed and have little or no evidence of plumpness. Loins, backs, and legs are slightly thin and nearly flat. Shoulders and breasts tend to be slightly thin.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Choice quality for different colors of lean. The lean flesh is slightly soft regardless of its color.

(3) A development of quality superior to that specified as minimum for the Choice grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Choice at an equal rate as indicated in the following example: A carcass which has midpoint Choice quality may have conformation equal to the midpoint of the Good grade and remain eligible for Choice. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Choice grade, a carcass must have minimum Choice quality to be eligible for Choice.

(c) *Good.* (1) Veal carcasses with minimum Good grade conformation are rangy, angular, and narrow in relation to their length. They are thinly fleshed. Legs are thin and tapering and slightly concave. Loins and back are depressed. Shoulders and breasts are thin.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Good quality for different colors of lean. The lean flesh is moderately soft regardless of its color.

(3) A development of quality superior to that specified as minimum for the Good grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Good at an equal rate as indicated in the following example: A carcass which has midpoint Good grade quality may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, a carcass which has conformation at least one-third grade superior to that specified as minimum for the Good grade may qualify for Good with a development of quality equivalent to the lower limit of the upper third of the Standard grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(d) *Standard.* (1) Veal carcasses with minimum Standard grade conformation are very rangy and angular and very narrow in relation to their length. They are very thinly fleshed. Legs are very thin and moderately concave. Loins and backs are very depressed. Shoulders and breasts are very thin.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Standard quality for different colors of lean. The lean flesh is soft regardless of its color.

(3) A development of quality superior to that specified as minimum for the Standard grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Standard at an equal rate as indicated in the following example: A carcass which has midpoint Standard quality may have conformation equal to the midpoint of the Utility grade and remain eligibility for Standard. Also, a carcass which has conformation at least one-third grade superior to that specified as minimum for the Standard grade may qualify for Standard with a development of quality equal to the minimum of the upper third of the Utility grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(e) *Utility.* The Utility grade includes those veal carcasses whose characteristics are inferior to those specified as minimum for the Standard grade.

§ 2853.117 Specifications for official United States standards for grades of calf carcasses.

(a) *Prime.* (1) Calf carcasses with minimum Prime grade conformation tend to be moderately wide and thick in relation to their length. They are moderately thick-fleshed and have a moderately plump appearance. Legs tend to be moderately thick and bulging. Loins

and backs tend to be moderately full and plump. Shoulders and breasts tend to be moderately thick.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Prime quality. The degree of marbling required for minimum Prime quality increases from minimum practically devoid for the very youngest carcasses classified as calf to a maximum moderate amount for carcasses with maturity at the juncture of the calf and beef classes. The lean flesh is moderately firm regardless of maturity.

(3) A development of quality superior to that specified as minimum for the Prime grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Prime at an equal rate as indicated in the following example: A carcass which has midpoint Prime quality may have conformation equal to the midpoint of the Choice grade and remain eligible for Prime. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Prime grade, a carcass must have minimum Prime quality to be eligible for Prime.

(b) *Choice.* (1) Calf carcasses with minimum Choice grade conformation tend to be slightly wide and thick in relation to their length. They tend to be slightly thick-fleshed and have a slightly plump appearance. Legs are slightly thick but have little evidence of plumpness. Loins and backs are very slightly full and plump. Shoulders and breasts are slightly thick.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Choice quality. The degree of marbling required for minimum Choice quality increases from minimum practically devoid for carcasses at midpoint calf maturity to a maximum slight amount for carcasses with maturity at the juncture of the calf and beef classes. Marbling is not required for Choice quality in carcasses which are less than midpoint calf in maturity. The lean flesh is slightly firm regardless of maturity.

(3) A development of quality superior to that specified as minimum for the Choice grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Choice at an equal rate as indicated in the following example: A carcass which has midpoint Choice quality may have conformation equal to the midpoint of the Good grade and remain eligible for Choice. However, regardless of the extent to which the conformation of a carcass exceeds the minimum of the Choice grade, a carcass must have minimum Choice quality to be eligible for Choice.

(c) *Good.* (1) Calf carcasses with minimum Good grade conformation tend to be rangy, angular, and narrow in relation to their length. They tend to be thinly fleshed. Legs are thin and tapering and very slightly concave. Loins and backs are slightly shallow and depressed. Shoulders and breasts are thin.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Good quality. The minimum degree of marbling required for Good quality decreases from typical traces for carcasses with maturity at the juncture of the calf and beef classes to minimum practically devoid for carcasses midway in maturity within the more mature half of the range of maturity included in the calf class. In less mature carcasses, marbling is not required for Good quality. The lean flesh is moderately soft regardless of maturity.

(3) A development of quality superior to that specified as minimum for the Good grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Good at an equal rate as indicated in the following example: A carcass which has midpoint Good grade quality may have conformation equivalent to the midpoint of the Standard grade and remain eligible for Good. Also, a carcass which has conformation at least one-third grade superior to that specified as minimum for the Good grade may quality for Good with a development of quality equivalent to the lower limit of the upper third of the Standard grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(d) *Standard.* (1) Calf carcasses with minimum Standard grade conformation are rangy, angular, and very narrow in relation to their length. They are very thinly fleshed. Legs are very shallow and depressed. Shoulders and breasts are very thin.

(2) Figure 1 in § 2853.115 depicts the degree of feathering and flank fat streakings associated with minimum Standard quality. The lean flesh is soft regardless of maturity.

(3) A development of quality which is superior to that specified as minimum for the Standard grade may compensate, without limit, for a development of conformation inferior to that specified as minimum for Standard at an equal rate as indicated in the following example: A carcass which has midpoint Standard quality may have conformation equal to the midpoint of the Utility grade and remain eligible for Standard. Also, a carcass which has conformation at least one-third grade superior to that specified for the minimum of the Standard grade may qualify for Standard with a development of quality equal to the lower limit of the upper third of the Utility grade. Compensation of superior conformation for inferior quality is limited to one-third grade of deficient quality.

(e) *Utility.* The Utility grade includes those calf carcasses whose characteristics are inferior to those specified as minimum for the Standard grade.

LAMB, YEARLING MUTTON, AND MUTTON CARCASSES

§ 2853.122 Differentiation between lamb, yearling mutton, and mutton carcasses.

Differentiation between lamb, yearling mutton, and mutton carcasses is made on the basis of differences that occur in the development of their muscular and skeletal systems. Typical lamb carcasses tend to have slightly wide and moderately flat rib bones and a light red color and fine texture of lean. To be classed as lamb, a carcass must have break joints on both its front shanks. By contrast, typical yearling mutton carcasses have moderately wide rib bones which tend to be flat and a slightly dark red color and slightly coarse texture of lean. Yearling mutton carcasses may have either break joints or "spool" joints on their front shanks. Typical mutton carcasses have wide, flat rib bones and a dark red color and coarse texture of lean. They always have spool joints on their front shanks. Regardless of their other characteristics, carcasses from which the front shanks have been removed will be assumed to have had "spool" joints and will be classed as yearling mutton or mutton on the basis of their other characteristics. In determining the maturity class of ovine carcasses, more consideration is given to the characteristics of the flesh than is given to the characteristics of the skeleton.

§ 2853.123 Application of standards.

(a) *Grade factors.* (1) The grade of an ovine carcass is based on separate evaluations of two general considerations: Palatability-indicating characteristics of the lean and conformation, herein referred to as "quality;" and the estimated percent of closely trimmed, boneless, major retail cuts to be derived from the carcass, herein referred to as "yield." (However, the grade of an ovine carcass when applied by Federal meat graders may consist of an identification for the quality grade, the yield grade, or a combination of both the quality and yield grades.) In previous grade standards for ovine carcasses, the Department used the term "quality" to refer only to the palatability-indicating characteristics of the lean without reference to conformation. Its use herein to include consideration of conformation is not intended to imply that variations in conformation are either directly or indirectly related to differences in palatability.

(2) The grade standards are written so that the quality and yield grade standards are contained in separate sections. The quality section is divided further into three separate sections applicable to carcasses from lambs, yearling mutton, and mutton. There are five quality grades—Prime, Choice, Good, Utility, and Cull—applicable to lamb, yearling mutton, and mutton carcasses, except that mutton carcasses are not eligible for Prime. There are five yield grades applicable to all classes of ovine carcasses, denoted by numbers 1 through 5, with Yield Grade 1 representing the highest degree of cutability.

(3) Carcasses qualifying for any particular grade may vary with respect to the relative development of their individual grade factors, and there will be carcasses which qualify for a particular grade in which the development of some

of these individual grade factors will be typical of other grades. Because it is impractical to describe the nearly limitless numbers of such recognizable combinations of characteristics, the standards for each quality and yield grade describe only carcasses which have a relatively similar development of individual factors and which are also representative of the lower limits of each grade. In the quality grade standards, examples of the extent to which superiority in quality may compensate for deficiencies in conformation, and vice versa, are indicated for each grade. In the Prime and Choice grades certain minimum requirements for external fat covering are also indicated.

(b) *Quality grades.* (1) The quality grade of an ovine carcass is based on separate evaluations of two general considerations: The quality or the palatability-indicating characteristics of the lean and the conformation of the carcass.

(2) Conformation is the manner of formation of the carcass with particular reference to the relative development of the muscular and skeletal systems, although it is also influenced to some extent, by the quantity and distribution of external finish. The conformation of a carcass is evaluated by averaging the conformation of its various component parts, giving consideration not only to the proportion that each cut is of the carcass weight but also to the general desirability of each cut as compared with other cuts. Superior conformation implies a high proportion of edible meat to bone and a high proportion of the weight of the carcass in the more demanded cuts and is reflected in carcasses which are very wide and thick in relation to their length and which have a very plump and full and well-rounded appearance. Inferior conformation implies a low proportion of edible meat to bone and a low proportion of the weight of the carcass in the more demanded cuts and is reflected in carcasses which are very narrow in relation to their length and which have a very angular, thin and sunken appearance. External fat in excess of that normally left on retail cuts is not considered in evaluating conformation.

(3) The quality of the lean flesh is best evaluated by consideration of its texture, firmness, and marbling, as observed in a cut surface, in relation to the apparent maturity of the animal from which the carcass was produced. However, in grading carcasses direct observation of these characteristics is not possible. Therefore, the quality of the lean is evaluated indirectly by giving equal consideration to: The quantity of fat intermingled within the lean between the ribs called "feathering," the streaking of fat within and upon the inside flank muscles, and the firmness of the fat and lean—all in relation to the apparent evidence of maturity.

(4) The ovine quality standards are intended to cover the full range of maturity within which ovines are marketed. The standards for Prime, Choice, and Good grades of lamb specify two general levels of development of the quality-indicating characteristics described in this section, dependent upon the apparent evidences of maturity attained by the lamb at the time of slaughter. The quality standards for Utility and Cull grades of lamb and for each grade of yearling mutton and mutton specify only one general level of development of the quality-indicating characteristics described, and these characteristics apply only to carcasses which are typical in maturity for their class. In order to qualify for a specific grade, yearling mutton or mutton carcasses with evidence of more advanced maturity than typical for their class are required to have a slightly greater development of these characteristics than described in the standards. Conversely, such carcasses with evidence of less maturity than typical for their class may qualify for a given grade with a slightly lesser development of these characteristics.

(5) The quality standards are intended to apply to all ovine carcasses without regard to the apparent sex condition of the animal at time of slaughter. However, carcasses from males which have thick, heavy necks and shoulders typical of uncastrated males are discounted in quality grade in accord with the extent to which these characteristics are developed. Such discounts may vary from less than one-half grade in carcasses from young lambs in which such characteristics are barely noticeable to as much as two full grades in carcasses from mature rams in which such characteristics are very pronounced.

(6) The quality standards for lamb, yearling mutton, and mutton carcasses contained in this subpart together provide for grading carcasses within the full range of maturity of the ovine species. Although the grade standards for this full range of maturity are contained in three separate standards, it is the intent that the three standards be considered as a continuous series. Therefore, in determining the grade of a carcass which has a degree of maturity that is not typical of that specified in one of the three standards, it is necessary to interpolate between the standard for the kind of carcass (lamb, yearling mutton, or mutton) being graded and the standard for the kind of carcass which is most closely adjacent to it in maturity.

(c) *Yield grades.* (1) The yield grade of an ovine carcass is determined by considering three characteristics: The amount of external fat, the amount of kidney and pelvic fat, and the conformation grade of the legs.

(2) The amount of external fat for carcasses with a normal distribution of this fat is evaluated in terms of its actual thickness over the center of the ribeye muscle and is measured perpendicular to the outside surface between the 12th and 13th ribs. On intact carcasses fat thickness is measured by probing. This measurement may be adjusted, as necessary, to reflect unusual amounts of fat on other parts of the carcass. In determining the amount of this adjustment, if any, particular attention is given to the amount of external fat on those parts where fat is deposited at a faster-than-average rate, particularly the rump, outside of the shoulders, breast, flank, and cod or udder. Thus, in a carcass which is fatter over these other parts than is normally associated with the actual fat thickness over the ribeye, the measurement is adjusted upward. Conversely, in a carcass which has less fat over these other parts than is normally associated with the actual fat thickness over the ribeye, the measurement is adjusted downward. In many carcasses no such adjustment is necessary; however, an adjustment in the thickness of fat measurement of 0.05 or 0.10 inch is not uncommon. In some carcasses a greater adjustment may be necessary. As a guide in making these adjustments, the standards for each yield grade include an additional related measurement—body wall thickness, which is measured 5 inches laterally from the middle of the backbone between the 12th and 13th ribs. As the amount of external fat increases, the percent of retail cuts decreases—each 0.05 inch change in adjusted fat thickness over the ribeye changes the yield grade by one-third of a grade.

(3) The amount of kidney and pelvic fat considered in determining the yield grade includes the kidney knob (kidney and surrounding fat) and the lumbar and pelvic fat in the loin and leg which are removed in making closely trimmed retail cuts. The amount of these fats is evaluated subjectively and expressed as a percent of the carcass weight. As the amount of kidney and pelvic fat increases, the percent of retail cuts decreases—a change of 1 percent of the carcass weight in kidney and pelvic fat changes the yield grade by one-fourth of a grade.

(4) The conformation grade of the legs is evaluated as described in the quality standards. The evaluation is made in terms of thirds of grades and coded using 15 for high Prime and 1 for low Cull. An increase in the conformation grade of the legs increases the percent of retail cuts—a change of one-third of a grade changes the yield grade by 5 percent of a grade.

(5) The yield grade descriptions are defined primarily in terms of carcasses. However, the yield grade standards also are applicable to the grading of sides, foresaddles, hindsaddles, forequarters, and hindquarters, and hotel racks, loins, and combinations of regular or trimmed wholesale cuts which include either a hotel rack or a loin.

(6) The standards include an equation for determining yield grade. The application of this equation usually results in a fractional grade. However, in normal grading operations any fractional part of a yield grade is dropped. For example, if the computation results in a yield grade of 3.9, the final yield grade is 3—it is not rounded to 4.

(7) The yield grade standards for each of the first four yield grades list characteristics of a carcass with descriptions

of the amount of external fat normally present on various parts of the carcass. These descriptions are not specific requirements—they are included only as illustrations of carcasses which are near the borderline between grades. For example, the characteristics listed for Yield Grade 1 represent a carcass which is near the borderline of Yield Grade 1 and Yield Grade 2. These descriptions facilitate the subjective determination of the yield grade without making detailed measurements and computations. The yield grade for most ovine carcasses can be determined accurately on the basis of a visual appraisal.

§ 2853.124 Specifications for official U.S. standards for grades of lamb carcasses (quality).

(a) *Prime.* (1) Lamb carcasses possessing minimum qualifications for the Prime grade are moderately wide and thick in relation to their length and have moderately plump and full legs; moderately wide and thick backs; and moderately thick and full shoulders.

(2) Requirements for quantities of interior fats and for firmness of lean and fat vary with changes in maturity. Carcasses from young lambs have moderately narrow, slightly flat rib bones; moderately red and moist and porous break joints; and a slightly dark pink color of inside flank muscles. Such carcasses have a modest amount of feathering between the ribs and a small quantity of fat streaking within and upon the inside flank muscles. Their lean flesh and exterior finish tend to be firm, and their flanks tend to be moderately full and firm.

(3) Carcasses from more mature lambs have slightly wide, moderately flat rib bones; slightly red but slightly dry and hard break joints; and a light red color of inside flank muscles. Such carcasses have a moderate amount of feathering between the ribs and a modest amount of fat streaking within and upon the inside flank muscles. Their lean flesh and external finish are firm, and their flanks are moderately full and firm.

(4) Regardless of the extent to which other grade factors may exceed the minimum requirements for Prime, to be eligible for Prime a carcass must have at least a very thin covering of external fat over the top of the shoulders and the outsides of the upper parts of the legs, and the back must have at least a thin covering of fat, that is, the muscles of the back may be no more then plainly visible through the fat. In addition, a carcass must have a composite development of quality-indicating factors equivalent to that specified as minimum for Prime to be eligible for that grade. However, a development of quality which is superior to that specified as minimum for the Prime grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified as minimum for Prime as indicated in the following example: A carcass which has evidence of quality equivalent to the midpoint of the Prime grade may have conformation equivalent to the midpoint of the Choice grade and remain eligible for Prime. However, in no instance may a carcass be graded Prime which has a development of conformation inferior to that specified as minimum for the Choice grade.

(b) *Choice.* (1) Lamb carcasses possessing minimum qualifications for the Choice grade tend to be slightly wide and thick in relation to their length and tend to have slightly plump and full legs; slightly wide and thick backs; and slightly thick and full shoulders.

(2) Requirements for quantities of interior fats and for firmness of lean and fat vary with changes in maturity. Carcasses from young lambs have moderately narrow, slightly flat rib bones; moderately red and moist and porous break joints; and a moderately dark pink color of inside flank muscles. Such carcasses have a slight amount of feathering between the ribs and traces of fat streaking within and upon the inside flank muscles. Their lean flesh and exterior finish tend to be moderately firm, and their flanks tend to be slightly full and firm.

(3) Carcasses from more mature lambs have slightly wide, moderately flat rib bones; slightly red but slightly dry and hard break joints; and a moderately light red color of inside flank muscles. Such carcasses have a small amount of feathering between the ribs and a slight amount of fat streaking within and upon the inside flank muscles. Their lean flesh and external finish are moderately firm, and their flanks are slightly full and firm.

(4) Regardless of the extent to which other grade factors may exceed the minimum requirements for Choice, to be eligible for Choice a carcass must have at least a very thin covering of external fat over the top of the shoulders and the outsides of the upper parts of the legs, and the back must have at least a thin covering of fat, that is, the muscles of of the back may be no more than plainly visible through the fat.

(5) A carcass which has conformation equivalent to at least the mid-point of the Choice grade may have evidence of quality equivalent to the minimum for the upper one-third of the Good grade and remain eligible for Choice. Also, a development of quality which is superior to that specified as minimum for the Choice grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified as minimum for Choice as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Choice grade may have conformation equivalent to the mid-point of the Good grade and remain eligible for Choice. However, in no instance may a carcass be graded Choice which has a development of conformation inferior to that specified as minimum for the Good grade.

(c) *Good.* (1) Lamb carcasses possessing minimum qualifications for the Good grade are moderately narrow in relation to their length and have slightly thin, tapering legs, and slightly narrow and thin backs and shoulders.

(2) Requirements for quantities of interior fats and for firmness of lean and fat vary with changes in maturity. Carcasses from young lambs have moderately narrow, slightly flat rib bones; moderately red and moist and porous break joints; and a dark pink color of inside flank muscles. Such carcasses have traces of feathering between the ribs but practically no fat streaking within and upon the inside flank muscles. Their lean flesh and exterior finish are slightly firm, and their flanks are slightly thin and soft.

(3) Carcasses from more mature lambs have slightly wide, moderately flat rib bones; slightly red but slightly dry and hard break joints; and a slightly dark red color of inside flank muscles. Such carcasses have a slight amount of feathering between the ribs and traces of fat streaking within and upon the inside flank muscles. Their lean flesh and external finish tend to be moderately firm, and their flanks tend to be slightly full and firm.

(4) A carcass which has conformation equivalent to at least the mid-point of the Good grade may have evidence of quality equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. Also, a development of quality which is superior to that specified as minimum for the Good grade may compensate for a development of conformation which is inferior to that specified as minimum for Good on the basis of one-half grade of superior quality for one-third grade of deficient conformation as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Good grade may have conformation equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. However, in no instance may a carcass be graded Good which has a development of conformation inferior to that specified as minimum for the Utility grade.

(d) *Utility.* (1) Lamb carcasses possessing minimum qualifications for the Utility grade are very angular and very narrow in relation to their length and have thin, slightly concave legs; very narrow and sunken backs; and narrow, sharp shoulders. Hips and shoulder joints are plainly visible.

(2) Although evidences of quality vary slightly with changes in maturity the differences are so small as to make their separate descriptions impractical. There is practically no feathering between the ribs and no fat streaking in the inside flank muscles. The lean in the inside flank muscles and between the ribs is a dark red in color. Their lean flesh and external finish are soft, and the flanks are soft and slightly watery.

(3) A carcass which has conformation equivalent to at least the mid-point of the Utility grade may have evidence of quality equivalent to the minimum for the upper one-third of the Cull grade

and remain eligible for Utility. Also, a development of quality which is superior to that specified as minimum for the Utility grade may compensate for a development of conformation which is inferior to that specified as minimum for Utility on the basis of one-half grade of superior quality for one-third grade of deficient conformation as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Utility grade may have conformation equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility.

(e) *Cull.* Typical Cull grade lamb carcasses are extremely angular, extremely narrow in relation to their length, and extremely thin-fleshed throughout. Legs are extremely thin and concave, backs are extremely sunken and thin, and shoulders are very thin and sharp. Hips and shoulder joints, as well as ribs and bones of the spinal column, are clearly outlined, and the flesh is soft and watery and a very dark red in color.

§ 2853.125 Specifications for official U.S. standards for grades of yearling mutton carcasses (quality).

(a) *Prime.* (1) Yearling mutton carcasses possessing minimum qualifications for the Prime grade are moderately wide and thick in relation to their length and have moderately plump and full legs; moderately wide and thick backs; and moderately thick and full shoulders. They have slightly abundant feathering between the ribs, a moderate amount of fat streaking within and upon the inside flank muscles, and a slightly dark red color of inside flank muscles. Their lean flesh and external finish tend to be very firm, and their flanks tend to be full and firm.

(2) Regardless of the extent to which other grade factors may exceed the minimum requirements for Prime, to be eligible for Prime a carcass must have at least a very thin covering of external fat over the top of the shoulders and the outsides of the upper parts of the legs, and the back must have at least a thin covering of fat, that is, the muscles of the back may be no more than plainly visible through the fat. In addition, a carcass must have a composite development of quality-indicating factors equivalent to that specified as minimum for Prime to be eligible for that grade. However, a development of quality which is superior to that specified as minimum for the Prime grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified as minimum for Prime as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Prime grade may have conformation equivalent to the mid-point of the Choice grade and remain eligible for Prime. However, in no instance may a carcass be graded Prime which has a development of conformation inferior to that specified as minimum for the Choice grade.

(3) Yearling mutton carcasses which are otherwise eligible for the Prime grade but which have excessive quantities of combined external and kidney and pelvic fat are not eligible for Prime.

(b) *Choice.* (1) Yearling mutton carcasses possessing minimum qualifications for the Choice grade tend to be slightly wide and thick in relation to their length and tend to have slightly plump and full legs; slightly wide and thick backs; and slightly thick and full shoulders. They have a modest amount of feathering between the ribs, a small amount of fat streaking within and upon the inside flank muscles, and a color of inside flank muscles which tends to be moderately dark red. Their lean flesh and external finish tend to be firm, and their flanks tend to be moderately full and firm.

(2) Regardless of the extent to which other grade factors may exceed the minimum requirements for Choice, to be eligible for Choice a carcass must have at least a very thin covering of external fat over the top of the shoulders and the outsides of the upper parts of the legs, and the back must have at least a thin covering of fat, that is, the muscles of the back may be no more than plainly visible through the fat.

(3) A carcass which has conformation equivalent to at least the mid-point of the Choice grade may have evidence of quality equivalent to the minimum of the upper one-third of the Good grade and remain eligible for Choice. Also, a development of quality which is superior to that specified as minimum for the Choice grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified as minimum for Choice as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Choice grade may have conformation equivalent to the mid-point of the Good grade and remain eligible for Choice. However, in no instance may a carcass be graded Choice which has a development of conformation inferior to that specified as minimum for the Good grade.

(4) Yearling mutton carcasses which are otherwise eligible for the Prime grade but which have excessive quantities of combined external and kidney and pelvic fat are included in the Choice grade.

(c) *Good.* (1) Yearling mutton carcasses possessing minimum qualifications for the Good grade are moderately narrow in relation to their length and have slightly thin, tapering legs, and slightly narrow and thin backs and shoulders. They have a small amount of feathering between the ribs, a slight amount of fat streaking within and upon the inside flank muscles, and a moderately dark red color of inside flank muscles. Their lean flesh and external finish are moderately firm, and their flanks are slightly full and firm.

(2) A carcass which has conformation equivalent to at least the mid-point of the Good grade may have evidence of quality equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. Also, a development of quality which is superior to that specified as minimum for the Good grade may compensate for a development of conformation which is inferior to that specified as minimum for Good on the basis of one-half grade of superior quality for one-third grade of deficient conformation as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Good grade may have conformation equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. However, in no instance may a carcass be graded Good which has a development of conformation inferior to that specified as minimum for the Utility grade.

(d) *Utility.* (1) Yearling mutton carcasses possessing minimum qualifications for the Utility grade are very angular and very narrow in relation to their length and have thin, slightly concave legs, very narrow and sunken backs; and narrow, sharp shoulders. Hips and shoulder joints are plainly visible. They have practically no feathering between the ribs, no fat streaking in the inside flank muscles, and a dark red color of inside flank muscles. Their lean flesh and external finish are moderately soft, and the flanks are soft and slightly watery.

(2) A carcass which has conformation equivalent to at least the mid-point of the Utility grade may have evidence of quality equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility. Also, a development of quality which is superior to that specified as minimum for the Utility grade may compensate for a development of conformation which is inferior to that specified as minimum for Utility on the basis of one-half grade of superior quality for one-third grade of deficient conformation as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Utility grade may have conformation equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility.

(e) *Cull.* Typical Cull grade yearling mutton carcasses are extremely angular, extremely narrow in relation to their length, and extremely thin-fleshed throughout. Legs are extremely thin and concave, backs are extremely sunken and thin, and shoulders are very thin and sharp. Hips and shoulder joints, as well as ribs and bones of the spinal column, are clearly outlined, and the flesh is soft and watery and a very dark red in color.

§ 2853.126 Specifications for official U.S. standards for grades of mutton carcasses (quality).

(a) *Choice.* (1) Mutton carcasses possessing minimum qualifications for the Choice grade tend to be slightly wide and thick in relation to their length and tend to have slightly plump and full legs; slightly wide and thick backs; and slightly thick and full shoulders. They have a moderate amount of feathering between the ribs, a modest amount of

fat streaking within and upon the inside flank muscles, and a dark red color of inside flank muscles. Their lean flesh and external finish tend to be firm, and their flanks tend to be moderately full and firm.

(2) Regardless of the extent to which other grade factors may exceed the minimum requirements for Choice, to be eligible for Choice a carcass must have at least a very thin covering of external fat over the top of the shoulders and the outside of the upper parts of the legs, and the back must have at least a thin covering of fat, that is, the muscles of the back may be no more than plainly visible through the fat.

(3) A carcass which has conformation equivalent to at least the mid-point of the Choice grade may have evidence of quality equivalent to the minimum of the upper one-third of the Good grade and remain eligible for Choice. Also, a development of quality which is superior to that specified as minimum for the Choice grade may compensate, on an equal basis, for a development of conformation which is inferior to that specified as minimum for Choice as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Choice grade may have conformation equivalent to the mid-point of the Good grade and remain eligible for Choice. However, in no instance may a carcass be graded Choice which has a development of conformation inferior to that specified as minimum for the Good grade.

(4) Mutton carcasses which are otherwise eligible for the Choice grade but which have excessive quantities of combined external and kidney and pelvic fat are not eligible for Choice.

(b) *Good.* (1) Mutton carcasses possessing minimum qualifications for the Good grade are moderately narrow in relation to their length and have slightly thin, tapering legs, and slightly narrow and thin backs and shoulders. They have a modest amount of feathering between the ribs, a slight amount of fat streaking within and upon the inside flank muscles, and a dark red color of inside flank muscles. Their lean flesh and external finish are moderately firm, and their flanks are slightly full and firm.

(2) A carcass which has conformation equivalent to at least the mid-point of the Good grade may have evidence of quality equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. Also, a development of quality which is superior to that specified as minimum for the Good grade may compensate for a development of conformation which is inferior to that specified as minimum for Good on the basis of one-half grade of superior quality for one-third grade of deficient conformation as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Good grade may have conformation equivalent to the minimum for the upper one-third of the Utility grade and remain eligible for Good. However, in no instance may a carcass be graded Good which has a development of conformation inferior to that specified as minimum for the Utility grade.

(3) Mutton carcasses which are otherwise eligible for the Choice grade but which have excessive quantities of combined external and kidney and pelvic fat are included in the Good grade.

(c) *Utility.* (1) Mutton carcasses possessing minimum qualifications for the Utility grade are very angular and very narrow in relation to their length and have thin, slightly concave legs; very narrow and sunken backs; and narrow, sharp shoulders. Hips and shoulder joints are plainly visible. They have traces of feathering between the ribs but practically no fat streaking in the inside flank muscles, and a very dark red color of inside flank muscles. Their lean flesh and external finish are slightly soft, and the flanks are soft and slightly watery.

(2) A carcass which has conformation equivalent to at least the mid-point of the Utility grade may have evidence of quality equivalent to the minimum for the upper one-third of the Cull grade and remain elibile for Utility. Also, a development of quality which is superior to that specified as minimum for the Utility grade may compensate for a development of conformation which is inferior to that specified as minimum for Utility on the basis of one-half grade of superior quality for one-third grade of deficient conformation as indicated in the following example: A carcass which has evidence of quality equivalent to the mid-point of the Utility grade may have conformation equivalent to the minimum for the upper one-third of the Cull grade and remain eligible for Utility.

(d) *Cull.* Typical Cull grade mutton carcasses are extremely angular, extremely narrow in relation to their length, and extremely thin-fleshed throughout. Legs are extremely thin and concave, backs are extremely sunken and thin, and shoulders are very thin and sharp. Hips and shoulder joints, as well as ribs and bones of the spinal column, are clearly outlined, and the flesh is soft and watery and very dark red in color.

§ 2853.127 Specifications for official U.S. standards for grades of carcass lamb, yearling mutton, and mutton (yield).

(a) The yield grade of an ovine carcass or side is determined on the basis of the following equation: Yield Grade $=1.66-(0.05\times$leg conformation grade code$)+(0.25\times$percent kidney and pelvic fat$)+(6.66\times$adjusted fat thickness over the ribeye inches).

(b) (1) The yield grade of a hindsaddle, hindquarter, foresaddle, forequarter, or a cut eligible for grading also is determined on the basis of the above equation except that if the portion being graded does not include the leg, the conformation grade of the portion being graded shall be substituted for leg conformation grade. In addition, if the portion being graded does not include kidney and pelvic fat or if the portion is a trimmed cut (cut from which most of the kidney and pelvic fat has been removed), the following standard percentages of kidney and pelvic fat, as applicable to the quality grade of the portion also shall be used in the equation:

Grade	*Kidney and pelvic fat, percent*
Prime	4.5
Choice	3.5
Good	3.0
Utility	2.0
Cull	1.5

(2) For untrimmed hindsaddles and for untrimmed hindsaddle cuts, the quantity of kidney and pelvic fat is estimated as a percent of the carcass weight.

(3) For untrimmed hindquarters and for untrimmed hindquarter cuts, the quantity of kidney and pelvic fat is estimated as a percent of the side weight.

(c) The following descriptions provide a guide to the characteristics of carcasses in each yield grade to aid in determining yield grades subjectively.

(1) *Yield Grade 1.* (i) A carcass in Yield Grade 1 usually has only a thin layer of external fat over the back and loin and slight deposits of fat in the flanks and cod or udder. There is usually a very thin layer of fat over the top of the shoulders and the outside of the legs. Muscles are usually plainly visible on most areas of the carcass.

(ii) A carcass of this yield grade which is near the borderline of Yield Grade 1 and Yield Grade 2 might have 0.1 inch of fat over the ribeye, 1.5 percent of its weight in kidney and pelvic fat, and an average Prime leg conformation grade. Such a carcass with normal fat distribution would also have a body wall thickness of 0.5 inch.

(2) *Yield Grade 2.* (i) A carcass in Yield Grade 2 usually has a slightly thin layer of fat over the back and loin and the muscles of the back are not visible. The top of the shoulders and the outside of the legs have a thin covering of fat and the muscles are slightly visible. There are usually small deposits of fat in the flanks and cod or udder.

(ii) A carcass of this yield grade which is near the borderline of Yield Grade 2 and Yield Grade 3 might have 0.2 inch of fat over the ribeye, 2.5 percent of its weight in kidney and pelvic fat, and a low Prime leg conformation grade. Such a carcass with normal fat distribution would also have a body wall thickness of 0.7 inch.

(3) *Yield Grade 3.* (i) A carcass in Yield Grade 3 usually has a slightly thick covering of fat over the back. The top of the shoulders are completely covered with fat, although the muscles are still barely visible. The legs are nearly completely covered, although the muscles on the outside of the lower legs are visible. There usually are slightly large deposits of fat in the flanks and cod or udder.

(ii) A carcass of this yield grade which is near the borderline of Yield Grade 3 and Yield Grade 4 might have 0.3 inch of fat over the ribeye, 3.5 percent of its

weight in kidney and pelvic fat, and a high Choice leg conformation grade. Such a carcass with normal fat distribution would also have a body wall thickness of 0.9 inch.

(4) *Yield Grade 4.* (i) A carcass in Yield Grade 4 usually is completely covered with fat. There usually is a moderately thick covering of fat over the back and a slightly thick covering over the shoulder and legs. There usually are large deposits of fat in the flanks and cod or udder.

(ii) A carcass in this yield grade which is near the borderline of Yield Grade 4 and Yield Grade 5 might have 0.4 inch of fat over the ribeye, 4.5 percent of its weight in kidney and pelvic fat, and an average Choice leg conformation grade. Such a carcass with normal fat distribution would also have a body wall thickness of 1.1 inches.

(5) *Yield Grade 5.* A carcass in Yield Grade 5 usually has more external and kidney and pelvic fat and a lower conformation grade of leg than a carcass in Yield Grade 4.

PORK CARCASSES

§ 2853.132 Bases for pork carcass standards.

The standards for pork carcasses developed by the United States Department of Agriculture, provide for segregation according to (a) class, as determined by the apparent sex condition of the animal at the time of slaughter, and (b) grade, which reflects quality of pork and the relative proportion of lean cuts to fat cuts in the carcass.

§ 2853.133 Pork carcass classes.

The five classes of pork carcasses, comparable to the same five classes of slaughter hogs, are barrow, gilt, sow, stag, and boar carcasses.

§ 2853.134 Application of standards for grades of barrow and gilt carcasses.

(a) Grades for barrow and gilt carcasses are based on two general considerations: (1) Quality-indicating characteristics of the lean, and (2) expected combined yields of the four lean cuts (ham, loin, picnic shoulder, and Boston butt).

(b) With respect to quality, two general levels are considered: One for carcasses with characteristics which indicate that the lean in the four lean cuts will have an acceptable quality and one for carcasses with characteristics which indicate that the lean will have an unacceptable quality. The quality of the lean is best evaluated by a direct observation of its characteristics in a cut surface and when a cut surface of major muscles is available, this shall be used as the basis for the quality determination. The standards describe the characteristics of the loin eye muscle at the 10th rib. However, when this surface is not available, other exposed major muscle surfaces can be used for the quality determination based on the normal development of the characteristics in relation to those described for the loin eye muscle at the 10th rib. When a major muscle cut surface is not available, the quality of the lean shall be evaluated indirectly based on quality-indicating characteristics that are evident in carcasses. These include firmness of the fat and lean, amount of feathering between the ribs, and color of the lean. The standards describe a development of each of these factors that is normally associated with the lower limit of acceptable lean quality. The degree of external fatness, as such, is not considered in evaluating the quality of the lean.

(c) Carcasses which have characteristics indicating that the lean in the four lean cuts will not have an acceptable quality or bellies too thin to be suitable for bacon production are graded U.S. Utility. Also graded U.S. Utility—regardless of their development of other quality-indicating characteristics—are carcasses which are soft and oily. Belly thickness is determined by an overall evaluation of its thickness with primary consideration being given to the thickness along the navel edge and thickness of the belly pocket.

(d) Four grades—U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4—are provided for carcasses which have indications of an acceptable lean quality and acceptable belly thickness. These grades are based entirely on the expected carcass yields of the four lean cuts and no consideration is given to a development of quality superior to that described as minimum for these grades. The expected yields of the four lean cuts for each of these four grades are shown in Table I:

TABLE I

Expected Yields of the Four Lean Cuts Based on Chilled Carcass Weight, by Grade [1]

Grade	*Yield*
U.S. No. 1	53 percent and over.
U.S. No. 2	50 to 52.9 percent.
U.S. No. 3	47 to 49.9 percent.
U.S. No. 4	Less than 47 percent.

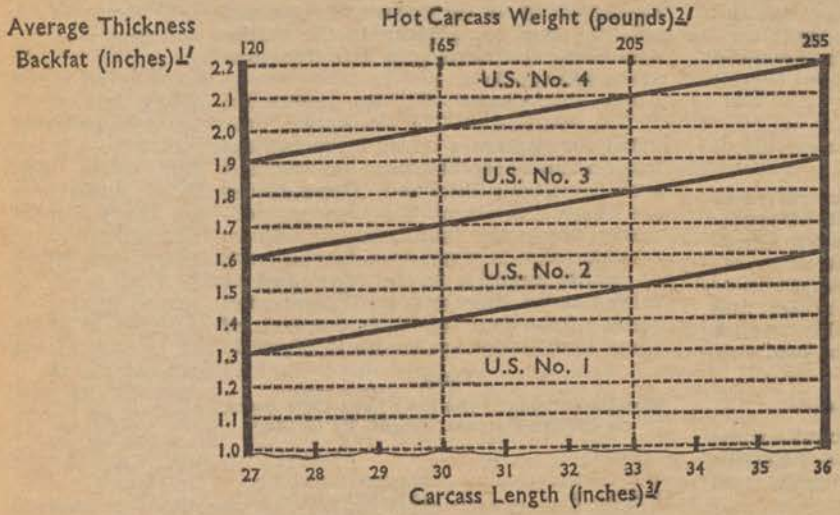
[1] These yields will be approximately 1 percent lower if based on hot carcass weight.

The yields shown in Table I are based on cutting and trimming methods used by the U.S. Department of Agriculture in developing the standards. (These cutting and trimming methods may be obtained from the Meat Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.) Other cutting and trimming methods may result in different yields. For example, if more fat is left on the four lean cuts than prescribed in the USDA cutting and trimming methods, the yield for each grade will be higher than indicated. However, such a method of trimming, if applied uniformly, should result in similar differences in yields between grades

(e) Carcasses vary in their yields of the four lean cuts because of variations in their degree of fatness and in their degree of muscling (thickness of muscling in relation to skeletal size). Since many carcasses have a normal distribution of fat and a normal development of muscling for their degree of fatness, in determining their grade the actual average thickness of backfat and

the carcass length or weight are the only factors considered. These relationships are illustrated in Figure I for carcasses either 27 to 36 inches long or weighing 120 to 255 pounds. For carcasses of other lengths or weights, average backfat thickness requirements for the various grades can be determined by an extension of the lines in this figure (NOTE: In cases where length and backfat thickness indicate a different grade than weight and backfat, the grade shall be determined by using length.) In these standards the actual average thickness of backfat is an average of three measurements including the skin made opposite the first and last ribs and the last lumbar vertebra; carcass length is measured from the anterior point of the aitch bone to the anterior edge of the first rib next to the first vertebra; and hot carcass weight (or chilled carcass weight × 102 percent) is based on an entire carcass dressed packer style—split into two sides down the back, jowls attached, and head, ham facings, and leaf fat removed. When carcasses are not dressed according to packer style or when, through condemnations or for other reasons portions of the carcass have been removed, appropriate adjustments shall be made in carcass weight.

RELATIONSHIP BETWEEN AVERAGE THICKNESS OF BACKFAT, CARCASS LENGTH OR WEIGHT, AND GRADE FOR CARCASSES WITH MUSCLING TYPICAL OF THEIR DEGREE OF FATNESS.



1/ An average of three measurements including the skin made opposite the first and last ribs and the last lumbar vertebra. It also reflects adjustment, as appropriate, to compensate for variations - from - normal fat distribution.
2/ Carcass weight is based on a hot packer style carcass.
3/ Carcass length is measured from the anterior point of the aitch bone to the anterior edge of the first rib.

Figure I

(f) In some carcasses the actual average thickness of backfat is not representative of their degree of fatness. In such cases, an appropriate adjustment is made in the average thickness of backfat and the grade is then determined as illustrated in Figure I. In evaluating the degree of fatnesss to determine whether it is representative of the actual average thickness of backfat, particular attention is given to the backfat thickness at points other than those used in determining the average and to the amount of fat in such areas as over the outside of the ham, at the juncture of the belly with the shoulder, directly anterior to the hipbone, and over the edge of the loin. For a carcass having a fat distribution indicative of a greater degree of overall fatness than that normally associated with its actual average thickness of backfat, the average thickness of backfat is adjusted upward. Likewise, for a carcass having a fat distribution indicative of a lesser degree of overall fatness than that normally associated with its actual average thickness of backfat, the average thickness of backfat is adjusted downward. In many carcasses, no adjustment is necessary. Although an adjustment in the average thickness of backfat of one-tenth of an inch is not uncommon, seldom should it exceed two-tenths of an inch.

(g) The degree of muscling specified for each of the four grades decreases progressively from the U.S. No. 1 grade through the U.S. No. 4 grade. This reflects the fact that among carcasses of the same weight, fatter carcasses normally have a lesser degree of muscling. For purposes of these standards, six degrees of muscling are recognized: Very thick, thick, moderately thick, slightly thin, thin, and very thin. These are intended to cover the entire range of muscling present among pork carcasses currently being produced. The degrees which are typical for carcasses at the minimum of the U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades are, respectively: Thick, moderately thick, slightly thin, and thin. For carcasses having a development of muscling which is different from that normally associated with their degree of fatness, the average backfat thickness-carcass length on carcass weight relationships for the various grades are different than shown in Figure I. Consideration is given such unusual developments of muscling as follows: In each grade, a superior development of muscling is permitted to compensate for a greater average backfat thickness at the rate of one-tenth inch greater backfat thickness for a full degree of superior muscling. Except for the U.S. No. 1 grade, the reverse type of compensation is also permitted at the same rate. In the U.S. No. 1 grade, this type of compensation is limited to one full degree of inferior muscling; carcasses which have less than moderately thick muscling but which would otherwise qualify for the U.S. No. 1 grade are graded U.S. No. 2.

(h) In no case, however, may the combined effect of variations-from-normal fat distribution and muscling alter the final grade more than one full grade from that indicated by the actual average backfat thickness and carcass length or weight.

(i) Since carcasses qualifying for the U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades may vary with respect to their average thickness of backfat, their length or weight, their development of muscling, and their distribution of fat, there will be carcasses which qualify for each of these grades in which the development of one or more of these factors is more nearly typical of another grade. Because it is impractical to describe the nearly limitless numbers of such recognizable combinations of these factors, the standards for each grade describe only carcasses whose expected yield of the four lean cuts is at the lower limit of each grade and which have a development of muscling and distribution of fat which is normal for such carcasses.

(j) The standards describe the development of the various grade factors as they appear in thoroughly chilled carcasses. However, carcasses with a lesser degree of chilling may be graded if there is reasonable assurance that after thorough chilling they will have indications of either acceptable or unacceptable quality of lean.

§ 2853.135 Specifications for official United States standards for grades of barrow and gilt carcasses.

(a) *U.S. No. 1.* Carcasses in this grade have an acceptable quality of lean, a high yield of lean cuts, and a low yield of fat cuts. For carcasses with minimum acceptable lean quality, the cut surface of the loin eye muscle at the 10th rib will be slightly firm, have a slight amount of marbling and be grayish pink to moderately dark red in color. However, for intact carcasses, minimum acceptable quality of lean is indicated by a slight amount of feathering, fat that is slightly firm, and lean that is slightly firm and grayish pink to mod-

erately dark red in color. The belly is at least slightly thick. Carcasses near the borderline between the U.S. No. 1 and U.S. No. 2 grades are thickly muscled in the hams, loins, and shoulders. The lower portion of the ham toward the hock is covered with a thin layer of fat, the back is well-rounded, the area at the juncture of the lower part of the shoulder and the belly is depressed in relation to the shoulder and the belly, and the area directly anterior to the hipbone is depressed in relation to the loin and ham. The maximum actual average thickness of backfat for carcasses in this grade will vary depending upon the distribution of fat, the development of muscling, and the carcass length or weight. For carcasses with a distribution of fat and development of muscling as described herein, the maximum average thickness of backfat increases from 1.3 to 1.6 inches with increases in either carcass length from 27 to 36 inches or carcass weight from 120 to 255 pounds (see Figure I). A development of muscling superior to that specified as minimum for the U.S. No. 1 grade may compensate for a development of fatness which is greater than that indicated in Figure I as maximum for the U.S. No. 1 grade at the rate of one full degree of muscling for one-tenth of an inch increase in thickness of backfat. For example, a carcass which is 30 inches long and which has very thick muscling may have an average thickness of backfat of 1.5 inches and remain eligible for the U.S. No. 1 grade. The reverse type of compensation is also permitted—at the same rate—except that in no case may a carcass be graded U.S. No. 1 with less than moderately thick muscling. Also, in no case may the combined effect of variations in muscling and fat distribution from those described herein alter the final grade more than one full grade from that indicated by the actual average backfat thickness and either carcass length or weight.

(b) *U.S. No. 2* Carcasses in this grade have an acceptable quality of lean, a slightly high yield of lean cuts, and a slightly low yield of fat cuts. For carcasses with minimum acceptable lean quality the cut surface of the loin eye muscle at the 10th rib will be slightly firm, have a slight amount of marbling and be grayish pink to moderately dark red in color. However, for intact carcasses, minimum acceptable quality of lean is indicated by a slight amount of feathering, fat that is slightly firm, and lean that is slightly firm and grayish pink to moderately dark red in color. The belly is at least slightly thick. Carcasses near the borderline between the U.S. No. 2 and U.S. No. 3 grades are moderately thickly muscled in the hams, loins, and shoulders. The lower portion of the ham toward the hock is covered with a slightly thin layer of fat and the back is slightly well-rounded. The area at the juncture of the lower part of the shoulder and belly is slightly depressed in relation to the shoulder and the belly and the area directly anterior to the hipbone is slightly depressed in relation to the loin and ham. The maximum actual average thickness of backfat for carcasses in this grade will vary depending upon the distribution of fat, the development of muscling, and the carcass length or weight. For carcasses with a distribution of fat and development of muscling as described herein, the maximum average thickness of backfat increases from 1.6 to 1.9 inches with increases in either carcass length from 27 to 36 inches or carcass weight from 120 to 255 pounds (see Figure I). A development of muscling superior to that specified as minimum for the U.S. No. 2 grade may compensate for a development of fatness which is greater than that specified as maximum for the U.S. No. 2 grade at the rate of one full degree of muscling for one-tenth of an inch increase in thickness of backfat. For example, a carcass which is 30 inches long and which has thick muscling may have an average thickness of backfat of 1.8 inches and remain eligible for the U.S. No. 2 grade. The reverse type of compensation is also permitted at the same rate. For example, a carcass which is 30 inches long and which has an average thickness of backfat of 1.6 inches may have slightly thin muscling and remain eligible for the U.S. No. 2 grade. In no case may the combined effect of variations in muscling and fat distribution from those described herein alter the final grade more than one full grade from that indicated by the actual average backfat thickness and either carcass length or weight.

(c) *U.S. No. 3.* Carcasses in this grade have an acceptable quality of lean, a slightly low yield of lean cuts, and a slightly high yield of fat cuts. For carcasses with minimum acceptable lean quality, the cut surface of the loin eye muscle at the 10th rib will be at least slightly firm, have a slight amount of marbling, and be grayish pink to moderately dark red in color. However, for intact carcasses, minimum acceptable quality of lean is indicated by a slight amount of feathering, fat that is slightly firm, and lean that is slightly firm and grayish pink to moderately dark red in color. The belly is at least slightly thick. Carcasses near the borderline between the U.S. No. 3 and U.S. No. 4 grades are slightly thinly muscled in the hams, loins, and shoulders. The lower portion of the ham toward the hock is covered with a slightly thick layer of fat. The back is slightly flat and the edge of the loin is slightly full resulting in a slight break from the back into the side. In the area at the juncture of the lower part of the shoulder and the belly there is only a very slight depression in relation to the shoulder and the belly. In the area directly anterior to the hipbone there is only a very slight depression in relation to the loin and the ham. The maximum actual average thickness of backfat for carcasses in this grade will vary dependent upon the distribution of fat, the development of muscling, and the carcass length or weight. For carcasses with a distribution of fat and development of muscling as described herein, the maximum average thickness of backfat increases from 1.9 to 2.2 inches with increases in either carcass length from 27 to 36 inches or carcass weight from 120 to 255 pounds (see Figure I). A development of muscling superior to that specified as minimum for the U.S. No. 3 grade may compensate for a development of fatness which is greater than that specified as maximum for the U.S. No. 3 grade at the rate of one full degree of muscling for one-tenth of an inch increase in thickness of backfat. For example, a carcass which is 30 inches long and which has moderately thick muscling may have an average thickness of backfat of 2.1 inches and remain eligible for the U.S. No. 3 grade. The reverse type of compensation is also permitted at the same rate. For example, a carcass which is 30 inches long and which has an average thickness of backfat of 1.9 inches may have thin muscling and remain eligible for the U.S. No. 3 grade. In no case may the combined effect of variations in muscling and fat distribution from those described herein alter the final grade more than one full grade from that indicated by the actual average backfat thickness and either carcass length or weight.

(d) *U.S. No. 4.* Carcasses in this grade have an acceptable quality of lean but a lower expected yield of lean cuts than carcasses in the U.S. No. 3 grade.

(e) *U.S. Utility.* Included in this grade are all carcasses which have characteristics that indicate they will have a lesser development of lean quality than described as minimum for the U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 grades. Also included are all carcasses which do not have acceptable belly thickness and all carcasses—regardless of their development of other quality-indicating characteristics—which are soft and oily.

§ 2853.136 Application of standards for grades of sow carcasses.

(a) The standards for grades of sow carcasses are based on (1) differences in yields of lean cuts and of fat cuts and (2) differences in quality of cuts. There are rather uniform differences in these characteristics from one grade to another. The U.S. No. 1 grade has about the minimum degree of finish required to produce cuts of acceptable palatability. The four major trimmed lean cuts—hams, loins, picnics, and butts—normally make up more than 48 percent of carcass weight. The U. S. No. 2 and U. S. No. 3 grades have successively higher degrees of finish resulting in lower yields of lean cuts and higher yields of fat cuts than U. S. No. 1 grade. Yields of lean cuts average 45 to 48 percent and under 45 percent of carcass weight, respectively, for U. S. No. 2 and U. S. No. 3 grades. In addition, the cuts from these grades have more fat remaining after trimming of external fat than do the cuts from U. S. No. 1 grade carcasses. Medium grade carcasses are underfinished and exhibit the lack of firmness and indications of little or no marbling (fat interspersed within the lean) associated with low palatability. Cull grade carcasses are decidedly under-

finished and the pork is soft with very little evidence of marbling and is of low palatability.

(b) The standards for grades of sow carcasses apply only to carcasses with the firmness appropriate to their degree of finish. However, carcasses which are typically soft or oily as a result of feeds producing soft or oily fat may be graded in accordance with the standards provided they are identified as soft or oily along with the grade.

(c) There are differences in the bellies of sow carcasses which are peculiar to the class. Increasing numbers of litters farrowed and raised by a sow result in greater development of mammary tissue and increasing roughness of the belly along the teat line with accompanying seediness. In addition, when pigs were weaned only a short time before the sow was slaughtered the mammary tissue still contains milk and the bellies are commonly termed "wet". However, the smoothness or dryness of bellies has little appreciable effect on the basic grade determining factors and the standards contain no provision for altering the grade of a sow carcass due to these belly characteristics. Rather than forming a part of the basis for grade, it is the intent of the standards that smoothness and dryness of bellies should be a separate consideration used in conjunction with grade, weight, and other factors in evaluating sow carcasses.

(d) Average back fat thickness measurements provide a reliable indication of the yields of cuts and the quality of cuts which determine the grade of sow carcasses. Therefore, indication of a specific range in back fat thickness for each grade forms a part of the standards for grade. Analysis of measurement and cutting data for sow carcasses reveals that yields of cuts are approximately equal in carcasses which are equal in fat thickness but widely different in weight. Thus, to maintain comparable yields in a grade at all weights, back fat thickness requirements for a grade are the same at all weights. This is in contrast to the standards for barrows and gilts, in which the fat thickness for a grade increases for heavier or longer carcasses in order to maintain yields of cuts. With practice in the grading operation, visual estimates of fat thickness may often replace actual measurements with satisfactory accuracy. The following table of measurements provides an objective guide in determining the grade of sow carcasses.

Grade:	*Average back fat thickness* [1]
U. S. No. 1	1.5 to 1.9 inches.
U. S. No. 2	1.9 to 2.3 inches.
U. S. No. 3	2.3 or more inches.
Medium	1.1 to 1.5 inches.
Cull	Less than 1.1 inches.

[1] Average of three measurements, skin included, made opposite first and last ribs and the last lumbar vertebra.

(e) In addition to the measurement guides to grade, the standards also include descriptive specifications outlining the characteristics of sow carcasses typical of the minimum degree of finish for each grade. Average back fat thickness is a major factor in grading, but more accurate appraisal of yields of cuts and quality of cuts is achieved in borderline cases by consideration of thickness of muscling, conformation of the major cuts, uniformity of fleshing and finish, firmness, and indications of marbling. However, in no case may the final grade of a carcass be more than one-half the width of a grade different from that indicated by average back fat thickness.

(f) The standards describe rather typical carcasses of each grade, and no attempt is made to describe the numerous combinations of characteristics that may qualify a carcass for a particular grade.

§ 2853.137 Specifications for official United States standards for grades of sow carcasses.

(a) *U.S. No. 1 grade.* U.S. No. 1 grade sow carcasses have about the minimum degree of finish required to produce pork cuts of acceptable palatability. Meatiness and yield of lean cuts from carcass weight are slightly high. Yield of fat cuts is slightly low. The ratio of total lean and fat to bone is slightly high. Carcasses with the minimum finish required for U.S. No. 1 grade are moderately long and slightly wide in relation to weight. The back and loins are moderately full and thick with a well-rounded appearance. Hams are usually moderately thick and plump and are slightly full in the lower part toward the hock. Bellies are moderately long, slightly thick, and moderately uniform in thickness with a slightly thick belly pocket. Shoulders are slightly thick and full. Carcasses are usually moderately well-balanced and moderately uniform in fleshing and finish. There are moderate quantities of interior fat in the pelvic area, a slightly thin but moderately extensive layer of fat lining the inside surface of the ribs, and a slightly small quantity of feathering, or fat intermingled with the lean between the ribs. The lean is firm. Both exterior and interior fats are firm, white, and of excellent quality. Carcasses with back fat thickness qualifying them for the fatter one-half of the U. S. No. 1 grade but with thin muscling in the major cuts, uneven fleshing and finish, or thick and uneven bellies shall be graded U. S. No. 2. Carcasses with back fat thickness qualifying them for the thinner one-half of the U. S. No. 1 grade but with only a moderately thin and incomplete rib lining, a moderately small quantity of feathering, slightly thin bellies with moderately thin belly pockets, and moderately soft lean and fat shall be graded Medium.

(b) *U. S. No. 2 grade.* U. S. No. 2 grade sow carcasses have a higher degree of finish than the minimum required to produce pork cuts of acceptable palatability. Meatiness and yield of lean cuts from carcass weight are slightly low. Yield of fat cuts is slightly high. The ratio of total lean and fat to bone is moderately high. Carcasses with the minimum finish required for U. S. No. 2 grade are slightly short and moderately wide in relation to weight. The back and loins are full and thick and are especially full near the edges. Hams are usually thick and plump and are moderately full in the lower part toward the hock. Bellies are slightly short, moderately thick, and rather uniform in thickness with a moderately thick belly pocket. Shoulders are moderately thick and full. Carcasses are usually well-balanced and uniform in fleshing and finish. There are slightly large quantities of interior fat in the pelvic area, a slightly thick and rather extensive layer of fat lining the inside surface of the ribs, and moderate feathering. The lean is firm. Both exterior and interior fats are firm, white, and of excellent quality. Carcasses with back fat thickness qualifying them for the fatter one-half of the U. S. No. 2 grade but with thin muscling in the major cuts, uneven fleshing and finish, or very thick and uneven bellies shall be graded U. S. No. 3. Carcasses with back fat thickness qualifying them for the thinner one-half of the U. S. No. 2 grade but with thick muscling in the major cuts, well-balanced fleshing and uniform finish, and slightly thick bellies shall be graded U. S. No. 1.

(c) *U. S. No. 3 grade.* U. S. No. 3 grade sow carcasses have a decidedly higher degree of finish than the minimum required to produce pork cuts of acceptable palatability. Meatiness and yield of lean cuts from carcass weight are low. Yield of fat cuts is high. The ratio of total lean and fat to bone is high. Carcasses with the minimum finish required for U. S. No. 3 grade are short and wide in relation to weight. The back and loins are very full and thick and are decidedly full at the edges. Hams are usually very thick and plump and are full in the lower part toward the hock due to a thick fat covering. Bellies are short and thick and uniform in thickness with a thick belly pocket. Shoulders are thick and full. Carcasses are usually well-balanced and uniform in fleshing and finish. There are large quantities of interior fat in the pelvic area, a moderately thick and extensive layer of fat lining the inside surface of the ribs, and slightly abundant feathering. The lean is firm. Both exterior and interior fats are firm, white, and of excellent quality. Carcasses with back fat thickness indicative of nearly minimum finish for the U. S. No. 3 grade but with thick muscling in the major cuts, well-balanced fleshing and uniform finish, and moderately thick bellies shall be graded U. S. No. 2.

(d) *Medium grade.* Medium grade sow carcasses have a lower degree of finish than the minimum required to

produce pork cuts of acceptable palatability. Yield of lean cuts from carcass weight is moderately high. Yield of fat cuts is moderately low. The ratio of total lean and fat to bone is moderately low. Carcasses with the minimum finish required for Medium grade are long and rather narrow in relation to weight. The back and loins are rather thin, lack fullness, and slope away from the center. Hams are usually slightly thin, lack plumpness, and taper toward the hock. Bellies are long and moderately thin and are somewhat uneven in thickness with a thin belly pocket. Shoulders are moderately thin and flat. Carcasses tend to be uneven and lack uniformity of fleshing and finish. There are slightly small quantities of interior fat in the pelvic area, a thin and incomplete layer of fat lining the inside surface of the ribs, and only a small quantity of feathering. The lean is moderately soft with little evidence of marbling. Both exterior and interior fats are moderately soft, white to creamy white, and of moderately low quality. Carcasses with back fat thickness qualifying them for the fatter one-half of the Medium grade that are firm and have slightly thick bellies and belly pockets, a slightly thin but moderately extensive rib lining, and a slightly small quantity of feathering shall be graded U. S. No. 1. Carcasses with back fat thickness qualifying them for the thinner one-half of the Medium grade but with little or no rib lining and feathering, thin bellies and very thin belly pockets, and soft lean and fat shall be graded Cull.

(e) *Cull grade.* Cull grade sow carcasses have a decidedly lower degree of finish than the minimum required to produce pork cuts of acceptable palatability. Yield of lean cuts from carcass weight is high. Yield of fat cuts is low. The ratio of total lean and fat to bone is low. Carcasses with the degree of finish typical of the Cull grade are long and narrow in relation to weight. The back and loins are thin and decidedly lacking in fullness with a definite slope toward the sides. Hams are usually thin and flat and taper toward the hock. Bellies are very long and thin and are uneven in thickness with a very thin belly pocket. Shoulders are thin and flat. Carcasses tend to be uneven and lack uniformity of fleshing and finish. There are only small quantities of interior fat in the pelvic area, little or no fat lining the inside surface of the ribs, and scant feathering. The lean is soft and watery with very little evidence of marbling. Both exterior and interior fats are soft, creamy white to white, and of low quality. Carcasses with back fat thickness indicative of nearly maximum finish for the Cull grade that are only moderately soft and have moderately thin bellies and belly pockets, a thin and incomplete rib lining, and a small quantity of feathering shall be graded Medium.

[FR Doc.77-28797 Filed 10-3-77;8:45 am]

[3410-34]

Title 9—Animals and Animal Products

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

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 73—SCABIES IN CATTLE

Release of Areas Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release portions of Monterey and San Benito Counties in California from areas quarantined because of cattle scabies. Surveillance activity indicates that cattle scabies no longer exists in the areas quarantined. No areas in the State of California remain under quarantine.

EFFECTIVE DATE: September 30, 1977.

FOR FURTHER INFORMATION CONTACT:

Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goats, Equine, and Ectoparasites Staff, USDA, APHIS, VS, Room 737, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301-436-8322).

SUPPLEMENTARY INFORMATION: This amendment releases portions of Monterey and San Benito Counties in California from the areas quarantined because of cattle scabies. Therefore, the restrictions pertaining to the interstate movement of cattle from quarantined areas contained in 9 CFR Part 73, as amended, will not apply to the excluded areas, but the restrictions pertaining to the interstate movement of cattle from nonquarantined areas contained in said Part 73 will apply to the excluded areas.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended in the following respect:

§ 73.1a [Amended]

In § 73.1a, paragraph (d) relating to the State of California is deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, 134f; 37 FR 28464, 28477; 38 FR 19141.)

The amendment relieves restrictions no longer deemed necessary to prevent the spread of cattle scabies and should be made effective promptly in order to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, 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 30th 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.77-29278 Filed 10-3-77;8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg Z; FC-0110 through FC-0114]

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: October 4, 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, Washingotn, D.C. 20551.

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

FC-0110

§ 226.6(c) Principal amount of mortgage loan (encompassing both prepaid finance

charges and amount financed) may be disclosed consistent with §§ 226.6(c) and 8(d), but no specific terminology required. Use of this figure to identify the transaction is also permissible but should be done carefully. (See FC–0040)

SEPTEMBER 6, 1977.

This is in response to your letter of * * *, in which you requested an official staff interpretation of Regulation Z with respect to disclosure of the principal amount of the loan in a residential mortgage transaction.

You indicate that your client makes mortgage loans in which certain prepaid finance charges are imposed. Your client desires to disclose the aggregate amount of the loan, consisting of the sum of the amount financed and the prepaid finance charges, in order to give customers a more complete picture of the loan transaction. Your letter indicates you would refer to the principal amount of the loan in two places: first, as part of the disclosure which identifies the transaction, and second, as a disclosure item following the disclosures of the "amount financed" and the "prepaid finance charge."

The staff believes the second of the disclosures you suggest is consistent with the provisions of § 226.8(d), and is permissible additional information under § 226.6(c) so long as it does not confuse or detract attention from required disclosures. While § 226.8 (d)(1) contemplates the existence of some total loan figure (which encompasses both prepaid finance charges and the amount financed), the regulation requires no specific terminology to be used for that figure, and we cannot prescribe any particular phrasing that your client must use.

With regard to the use of the aggregate amount of the loan as a part of the textual disclosure that identifies the transaction or relates the disclosure statement to the appropriate transaction document(s), the staff believes that this also is permissible additional information under § 226.6(c). We would call your attention, however, to Official Staff Interpretation FC–0040 and to a staff letter dated June 23, 1977, both of which suggest the need for care in the placement of such nonrequired disclosures lest they be found to "contradict, obscure or detract attention from" required disclosures. Copies of both letters are enclosed for your reference.

This is an official staff interpretation of Regulation Z, issued under § 226.1(d)(3) of the regulation and limited in its application to the facts outlined herein. We note that you represent a creditor subject to the laws of the State of Connecticut. Since Connecticut has been granted an exemption from the relevant portion of the Federal law, you may wish to contact the Bank Commissioner of the State of Connecticut for the views of that office. We trust this is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

FC–0111

§226.2(h) and § 226.2(s) Where bank and credit card issuer agree to permit bank's checking account customers who have open end credit accounts with card issuer to use credit line to cover overdrafts under separate agreement between bank and customer, and bank neither assists customers in applying for credit card nor receives any fee in connection with overdrafts that are covered, bank is not a creditor for purposes of Regulation Z.

SEPTEMBER 16, 1977.

This is in response to your letter of * * *, in which you request an official staff interpretation of Regulation Z.

Your inquiry relates to whether your client, a bank, would be a creditor for purposes of Regulation Z based on the following facts. The bank and a credit card issuer enter into an agreement that will permit checking account customers of the bank who have an open end credit account with the card issuer to use the credit line to cover checking account overdrafts. Under a separate agreement with its customers, the bank will agree to request advances from the card issuer in $50 increments to cover any overdrafts. When an overdraft occurs, the bank will contact the card issuer to determine whether credit is available to the customer and to request an advance. If credit is available, the bank will honor the overdraft and collect a cash advance from the card issuer. If the bank receives a negative response from the card issuer, the bank will return the customer's check because of insufficient funds.

Under this plan, the bank will neither assist the customer in completing an application for a credit card nor participate in any way in the card issuer's initial decision to issue a credit card to a bank customer. The bank will receive no fee from either the customer or the card issuer for requesting an advance to cover an overdraft. Customers will pay no additional charge to the card issuer with regard to cash advances requested by the bank, other than the finance charge normally imposed by the card issuer pursuant to its open end credit agreement with the customer. The bank will impose its normal charge for checks that are returned because of insufficient funds, but will not impose any charge in connection with an overdraft check that is honored under the overdraft plan. The monthly checking account service charge will be the same whether or not a customer has the overdraft feature on the checking account, and whether or not any overdraft has been covered in any given month.

You ask whether the bank is an "arranger of credit" for purposes of § 226.2(h) of Regulation Z and, thus, subject to the disclosure requirements of the regulation.

It is staff's opinion that the bank is neither extending credit nor arranging for an extension of credit as defined in § 226.2 (h). Consequently, the bank is not subject to any disclosure requirements imposed by the regulation.

I understand that one of our staff members discussed the other issues raised in your letter with you by telephone, and that an answer in this letter is no longer necessary.

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 stated herein. I trust it is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

FC–0112

§ 226.15(b) Lessee's right to submit a bid for purchase of vehicle at termination of lease is not an "option to purchase" where lessor need not accept it and lessee's bid is treated like all other bids.

Lessors may require that lessee obtain the § 226.15(b)(14) professional appraisal within a reasonable time after termination of lease, but staff cannot state what is a reasonable time in all circumstances.

§ 226.15(c) Assumption of consumer lease is not a renegotiation; although no new disclosures are required, lessor may provide assuming party with restatement and update of original disclosures.

SEPTEMBER 13, 1977.

This is in reply to your letter of * * *, requesting an official staff interpretation concerning several provisions of Regulation Z which implement the Consumer Leasing Act.

Your first question concerns the meaning of the term "option to purchase" as it is used in § 226.15(b)(11). Your client's vehicle lease agreement provides that upon termination of the lease, the realized value of the lease property shall be ascertained by a professional appraisal or by a bid procedure whereby the lessor procures several cash bids for the purchase of the vehicle, with the highest bid being deemed the realized value. The lease agreement provides that the lessee has a right to submit a cash bid for the purchase of the vehicle and that such bid shall receive the same consideration as any other bid. This right to bid is also provided by statute in your State. You note that the lessee's right to bid does not place the lessee in a position in any way superior to that of other bidders, that none of the bids submitted by persons other than the lessee are subordinate to the lessee's bid, and that the lessee has no right to and does not receive any information from the lessor regarding the amounts of other bids submitted. You ask whether the lessee's right to bid as described is an "option to purchase" within the meaning of § 226.15(b)(11).

It is staff's opinion that the lessee's right to submit a bid as described above does not constitute an "option to purchase" within the meaning of § 226.15(b)(11). This opinion is based on the fact that the lessor is not required to accept the lessee's bid and the lessee is in no better position than the other bidders.

Your second question concerns the lessee's right to a professional appraisal, which is provided in § 226.15(b)(14). You ask whether a lessor can require a lessee who chooses to exercise this right to complete the appraisal within a reasonable time after termination or expiration of the lease. In other words, you ask whether a "reasonable time" standard can be read into the provisions of § 226.15(b)(14). You ask further whether ten days would constitute a reasonable time.

Section 226.15(b)(14) requires a statement that the lessee may obtain a professional appraisal "at the end of the lease term or at early termination." Neither the Act nor the regulation specifies any time period in which such appraisal must be completed. In staff's opinion, a creditor may require that a customer obtain the appraisal within a reasonable time after the termination of the lease. Since the issue of what constitutes a reasonable time will vary depending on the facts of each situation, however, staff does not believe it can state whether any particular time period is reasonable in all circumstances.

Your final question concerns a situation in which, subsequent to the execution of a consumer lease, the lessee's obligations are assumed by a third party consumer pursuant to a written agreement between the lessor and the assuming party. You ask whether the lessor has any disclosure obligations to the assuming party. As you have noted, the only provision of Regulation Z which specifically deals with assumptions is found in § 226.8 (k), which applies solely to other than open end credit. You ask whether the described lease assumption would constitute a renegotiation within the meaning of § 226.15(c), and thus be considered "a new lease subject to the disclosure requirements of this Part." You point out that treating the transaction as a new lease would be awkward, since reestimating the residual value may effect a change in all the terms of the lease and thus produce a transaction which neither the lessee, the lessor, nor the assuming party anticipated or desired. You suggest that the lessor's disclosure obligations in this case could be fulfilled by providing a restatement of the disclosures made to the original lessee and a statement of the amounts credited to the original lessee's fixed obligations as of the date of the assumption.

Neither the Act nor the regulation provides for new disclosures to be made upon the assumption of a consumer lease when there are no changes in the original terms, and it is staff's opinion that no disclosures are required in these circumstances. Staff believes that if your client wishes to provide the assuming party with a restatement of the original disclosures as well as any updating information, this would certainly help the new party understand the obligation being assumed, and it would not violate the regulation.

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 addressed herein. I trust that it proves helpful to you.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

FC–0113

§ 226.8(b) When an obligation is to be repaid in payments of varying amounts, § 226.8(b)(3) requirement that number and amount of payments be disclosed is satisfied if number of payments of each varying amount is disclosed. Total number of payments of all amounts need not be stated.

SEPTEMBER 13, 1977.

This is in response to your letter of * * *, requesting clarification of the requirements of § 226.8(b)(3) of Regulation Z.

Specifically, you ask whether certain language, which you indicate appears on loan and instalment sale forms used and/or purchased by your clients, complies with the requirement of § 226.8(b)(3) of Regulation Z an the identical requirements of §§ 128(a)(8) and 129(a)(6) of the Truth in Lending Act that a creditor disclose "[t]he number, amount, and due dates or period of payments scheduled to repay the indebtedness." It is staff's policy not to review particular creditor's disclosures to determine whether they comply with Truth in Lending requirements, and, in fact, § 226.1(d)(3) specifically provides that staff is without authority to approve particular creditors' forms in any manner. However, staff does feel that your letter raises a technical question of general applicability and significance which should be addressed.

In essence, you ask whether a creditor must, pursuant to the Act and Regulation Z, disclose in a single figure or amount the total number of payments scheduled to repay an obligaiton. For example, if a loan is scheduled to be repaid in 35 equal monthly instalments plus one final instalment of a differing amount, must the creditor state that there are 36 payments scheduled to repay the loan? Staff is of the opinion that if the creditor in our example discloses that the loan is to be repaid in 35 instalments of a stated amount and one final instalment of a differing stated amount, the creditor has complied with the requirement that the number of payments scheduled to repay the indebtedness be disclosed. When an obligation is to be repaid in payments of varying amounts, staff believes that the requirement of § 226.8(b)(3) that the number and amount of payments be disclosed is satisfied if the number of payments of each varying amount is disclosed. Staff does not feel that a creditor must also disclose the total number of payments of all amounts in such a situation, although the creditor may do so if it wishes.

In your letter you note that a conclusion opposite to that reached by staff was expressed by the Court in *Powers* v. *Sims and Levin Realtors*, 396 F. Supp. 12, 20 (E.D. Va. 1975), affirmed in part, reversed in part, and remanded on other grounds, 542 F. 2d 1216 (4th Cir. 1976). There the Court held that a creditor must disclose the total number of all payments scheduled to repay an obligation, rather than provide the type of disclosure approved by staff in this letter, in order to comply with § 226.8(b)(3). *And see Lowery* v. *Finance America Corporation*, 32 N.C. App. 174, 231 S.E. 2d 904, 911 (1977), relying in part on *Powers*. Nonetheless, staff believes that its interpretation, as contained in this letter, properly construes the requirements of § 226.8(b)(3) with regard to the type of payment schedule discussed in our example. However, staff feels that it would not be appropriate to suggest what course of action should be followed by creditors in jurisdictions where courts have taken a position contrary to ours.

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 herein.

I trust that this interpretation is responsive to your inquiry.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

FC–0114

§ 226.8(d) Component parts of loan proceeds need not be itemized.

SEPTEMBER 13, 1977.

This is in response to your letter of * * *, requesting an official staff interpretation of Regulation Z with respect to the requirements of §§ 129(a) of the Truth in Lending Act and 226.8(d)(1) of the regulation.

You refer to the recent decision of *McGowan* v. *Credit Center of North Jackson, Inc.*, 546 F. 2d 73 (5th Cir. 1977), which addressed the issue of whether the Act and regulation require individual disclosure of each separate disbursement to be made from the net amount generated by the loan for the borrower's use or ment to be made from the net amount generated by the loan for the borrower's use or benefit. In *McGowan*, the Court held that the lender was not required to itemize the amount of prior loans to be repaid from the loan proceeds. On the basis of the *McGowan* decision, creditors within the Fifth Circuit's jurisdiction may disclose in the manner sanctioned by the Court with some degree of certainty that they are in compliance with the Act and regulation. You request an official staff interpretation, on which creditors in other States could rely, to the effect that components of the loan proceeds need not be itemized.

It is staff's opinion that § 129(a) of the Act and § 226.8(d)(1) of the regulation do not require a creditor to itemize component parts of the amount remaining after excluding all charges that are not part of the finance charge from the amount financed. It should be noted that this interpretation is limited to the question of the need to itemize components of the loan proceeds and expresses no opinion with regard to the separate disclosure of the loan proceeds.

This letter 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 outlined herein. I trust it is responsive to your request.

Sincerely,

JERAULD C. KLUCKMAN,
Associate Director.

Board of Governors of the Federal Reserve System, September 29, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-29213 Filed 10-3-77;8:45 am]

[6210–01]

[Docket No. R–0116]

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate the performance of certain of its functions, the Board of Governors has delegated to the Secretary of the Board authority to permit member banks to waive the penalty for early withdrawal of a time deposit in § 217.4(d) of Regulation Q for depositors suffering disaster-related losses in areas declared a major disaster area by the President.

EFFECTIVE DATE: September 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3257).

SUPPLEMENTARY INFORMATION: Section 217.4(d) of Regulation Q (12 CFR § 217.4(d)) provides that where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that currently prescribed for a savings deposit and that the depositor shall forfeit three months of interest payable at such rate. The Board of Governors has amended its Rules Regarding Delegation of Authority to authorize the Secretary of the Board to permit member banks to waive the early withdrawal penalty in those situations in which the President of the United States, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order No. 11795 of July 11, 1974, has designated an area a major disaster area. The Board regards a Presidential declaration of a major disaster area as recognition by the Federal government that a disaster of major proportions has occurred and under such circumstances believes it appropriate to provide an additional measure of assistance to disaster victims by temporarily suspending the Regulation Q early withdrawal penalty. Pursuant to this delegation, a waiver of the early withdrawal penalty will be limited in effectiveness to depositors suffering disaster-related losses in a geographical area designated a major disaster area by a Presidential declaration.

The provisions of section 553 of Title 5, United States Code, relating to notice and public participation and deferred effective date are not followed in connection with this amendment because the change involved therein is procedural in nature and does not constitute a substantive rule subject to the requirements of such section.

Effective September 27, 1977, a new paragraph 265.2(a)(18) is added to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

(a) The Secretary of the Board (or, in the Secretary's absence, the Acting Secretary) is authorized:

* * * * *

(18) Under the provisions of section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) and §§ 217.4(a) and (d) of Regulation Q (12 CFR 277.4(a) and (d)) to permit member banks to waive the penalty for early withdrawal of a time deposit in § 217.4(d) if all of the following conditions are met:

(i) The President of the United States declares an area a major disaster area pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order No. 11795 of July 11, 1974.

(ii) A waiver is limited in effectiveness to depositors suffering disaster-related losses in the officially designated disaster area.

(iii) The appropriate Reserve Bank recommends approval.

(iv) All relevant divisions of the Board's staff recommend approval.

* * * * *

Board of Governors of the Federal Reserve System, September 27, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-29097 Filed 10-3-77;8:45 am]

[6355-01]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER A—GENERAL

PART 1009—GENERAL STATEMENTS OF POLICY OR INTERPRETATION

Amendment of Policy on Establishing Priorities for Commission Action

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In this notice the Commission amends its policy on establishing priorities for action under the five acts the Commission administers. This policy, has been effective since July 1, 1976. Some of the amendments to the priorities policy were suggested in written comments received from members of the public, and others were initiated within the Commission. The amendments include the addition of new criteria and the clarification and modification of existing criteria which the Commission considers in setting its priorities.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Edward J. Heiden, Director, Office of Strategic Planning, Consumer Product Safety Commission, Washington, D.C. 20207 (202-634-4350).

SUPPLEMENTARY INFORMATION: The Commission's priorities policy (16 CFR 1009.8), published in the FEDERAL REGISTER on July 8, 1976 (41 FR 27960), is a general statement of policy that is exempt from the notice and public procedure provisions of the Administrative Procedure Act (5 U.S.C. 553). Nevertheless, the Commission solicited public comment on the policy because of its importance, and stated that it may amend the policy as a result of the comments received. This notice summarizes the significant comments received, discusses the Commission's responses to them, and amends the policy wherever the Commission found changes to be appropriate and desirable.

The following individuals and groups submitted comments on the Commission's priorities policy: One consumer organization—Consumers Union; eight interested persons—James J. Franxman, Lawrence Feldman, Renee Mizell, Beverly J. Hardin, Amy R. Walker, Lynn Jordan, Theodora Sweeney, and Gayna L. Aude; three companies—AMF Incorporated, Monsanto Textiles Company (comment signed by John Lomartire, a member of the Commission's National Advisory Commission for the Flammable Fabrics Act), and Texize Chemicals Company; three trade associations—Toy Manufacturers of America, Inc., National Electrical Manufacturers Association, and the Soap and Detergent Association; one county official—Janice Redford, the Dane County (Wisconsin) Supervisor, District 37; two federal government entities—the Council on Wage and Price Stability and the Office of Consumer Affairs of the Department of Health, Education, and Welfare; one consulting firm—Walker Associates; one company president who is a former technical advisory committee member—Charles B. Sanders; one professor—Stewart Lee; and one employee of the Commission—Georg Maisel, Director of the Division of Poison Packaging of the Bureau of Biomedical Science.

Some of the comments suggested changes in the Commission's priorities policy, some expressed general support for the policy, and some raised relevant points and issues. The discussion below is organized according to issues rather than according to particular comments. All comments received by the Commission are on file at the Office of the Secretary, 1111 18th Street NW., 3rd floor, Washington, D.C. 20207 and are available for review by any interested member of the public.

The priorities policy, as published on July 8, 1976, included eight criteria that the Commission uses to establish priorities for action under the five acts it administers: the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA), the Poison Prevention Packaging Act of 1970 (PPPA), and the Refrigerator Safety Act (RSA). According to the policy, priorities are established by a majority vote of the Commission members, and "will be reflected by votes on all requests for appropriations, and annual operating plan, and any revisions thereof" (§ 1009.8(b)). The criteria are: (1) Frequency and severity of injuries, (2) causality of injuries, (3) chronic illness and future injuries, (4) cost and benefit of CPSC action, (5) unforeseen nature of the risk, (6) vulnerability of the population at risk, (7) probability of exposure to hazard, and (8) additional criteria.

The following discussion includes the significant issues raised by the comments:

I. COMMENTS ON EXISTING CRITERIA FOR ESTABISHING PRIORITIES

A. CHRONIC ILLNESS AND FUTURE INJURIES

Certain products will receive priority attention under criterion (3) if there is reason to believe that they will be associated with many injuries in the future, even if current injuries associated with such products are neither frequent nor severe.

The National Electrical Manufacturers Association has commented that this criterion is based upon an obscure rationale, and should be carefully reconsidered and possibly withdrawn in favor of a more precise instruction—for example, that published research or findings of the National Institutes of Health must be used for anticipatory judgments concerning illnesses.

The Commission will use the best available data, including any available from the National Institutes of Health, for making judgments on chronic illness and future injuries. However, the scope of this criterion should remain broad enough to include all potential sources of data, and the Commission has accordingly decided not to make any change in this criterion.

B. COST AND BENEFIT OF CPSC ACTION

Under criterion (4) the Commission gives consideration to the cost of its action to producers and consumers. These costs and effects of its action on the utility, convenience and supply of the product and the movement toward substitutes, etc. are to be weighed on a preliminary basis against resulting benefits to society from reduced injuries. Numerous comments, including an in-depth statement submitted by an economist at the Council on Wage and Price Stability, have addressed this criterion. Two commenters have urged that, in determining costs and benefits, the Commission consider the expected effectiveness of regulatory options—either as a separate criterion or as an explicit component of the cost/benefit criterion. Two commenters have stated that specific injury and death cost assumptions used in estimating the benefits of an action should be an explicit part of the cost/benefit analysis.

In addition, two commenters have questioned the implications of the statement in criterion (4) that as among "risks of relatively equal priority, * * * those that are capable of being reduced at small cost should be given priority over those that would require producers to incur large costs" and hence would result in large price increases. Both of these commenters are concerned that

benefits will not receive appropriate consideration; one of them avers that only net benefits (benefits minus costs) represent the proper guide to priority.

Finally, two commenters addressing criterion (4) have expressed concern that attention to product cost increases may result in overprotection of producers or insufficient aggressiveness in correcting hazards.

The Commission believes that the comments asking that the Commission consider expected effectiveness of regulatory options and specific injury cost assumptions as components of the cost/benefit criterion indicate the need to be more specific as to the fact that benefit calculations already contain these factors as a component. Similarly, the example originally provided in criterion (4), of cost comparisons between projects addressing relatively equal product risks, has apparently, and if so mistakenly, been interpreted as implying inadequate use of benefit estimates.

To correct these misapprehensions, the language of criterion (4) has been changed to provide a more explicit statement regarding the way the Commission considers benefits and costs.

The Commission must reject the argument that consideration of impact of product cost in the light of benefits results in undue protection of the manufacturer at the expense of the consumer. Under section 9(c) of the CPSA, the Commission is instructed to consider cost impacts.

C. VULNERABILITY OF THE POPULATION AT RISK

Criterion (6) focuses on consumer products that are especially or frequently used by children, the elderly, and the handicapped. If all other factors are equal, the Commission will usually place a higher priority on preventing product related injury to people in these categories, based on their relatively lesser ability to judge or escape certain dangers.

The Toy Manufacturers of America, Inc. (TMA) has objected to the assignment of extra weighting for children's injuries. In support of its position, TMA has cited a study performed under contract to the Commission by Mueller Associates, Inc. entitled "Risk and Priority Determination Approaches: A Panel Study for the CPSC." This study concerns the injury evaluation used for the CPSC Hazard Index (which relies on statistics collected by the Commission's National Electronic Injury Surveillance System (NEISS)) and concludes that "the present practice of essentially counting injuries to children twice [is] not proper and could lead to erroneous conclusions as to which products are most hazardous" (page 21 of study).

The Commission agrees with the Mueller Report that the practice of extra-weighting children's injuries reported in the NEISS system shifts upward on the Hazard Index those products which are used extensively by children. Thus the Hazard Index is not an absolute ranking of products on a totally objective scale of hazard. The Commission hopes that users of the Index will understand this. The practice of extra-weighting children's injuries merely reflects the Commission's long held belief that children are a particularly vulnerable population group. It is difficult to reach any other conclusion based on available injury statistics. The Commission recognizes, however, that children are not the only population group especially vulnerable to injuries and it believes that when such special vulnerability situations are recognized, the Commission should give them explicit, but not necessarily overriding, consideration.

Another commenter who expressed some doubts about the criterion concerning vulnerability of the population at risk, Renee Mizell, has cited the example of requirements for child-resistant packaging for drugs. She has stated that these requirements do protect children but at the same time hinder elderly people who live alone. Criterion (6) is intended to focus the Commission's attention, in appropriate cases, on the special hazards affecting certain subgroups in the general population. If and when the Commission regulates products to address such hazards, it will make every effort to avoid action that might endanger one subgroup while reducing risks for another subgroup. (It should be noted that, under the provisions of the PPPA, drugs not packaged in child-resistant containers are available to all consumers, including the elderly, upon request.)

D. PROBABILITY OF EXPOSURE TO HAZARD

County official Janice Redford has questioned, with regard to criterion (7), the reliability of future projections and the statistics of probability. The Commission recognizes that probability of exposure to hazards in the future must be based on projections from current statistics. No statistics are perfect, but the Commission nevertheless anticipates that it will be able to evaluate the probability of future consumer exposure to a particular hazard in some situations. This criterion is intended to express nothing more than such an evaluation.

Another commenter, Theodora Sweeney, has objected that criterion (7), "seems to tolerate some degree of probability of even fatal injury." The Commission disagrees with this objection because its responsibility is not to eliminate *all* risk of serious injury or death, and any attempt to do so would be unrealistic.

II. SUGGESTED ADDITIONAL CRITERIA FOR ESTABLISHING PRIORITIES

A. Consumers Union has suggested as an additional criterion the extent to which tort actions (private lawsuits for damages) might create adequate market incentives for safety. Consumers Union maintains that certain products may be associated with a large number of injuries, but it may be difficult for the injured consumer to prove negligence in the manufacture or distribution of these products. According to Consumers Union, "such products should be regulated before products whose negligent manufacture or distribution is relatively easy to prove," if other factors are equal. Although this may be an interesting factor to consider, the Commission does not believe it is significant enough to be included as one of the criteria in the policy statement.

B. The Commission has similarly denied a second suggestion made by Consumers Union for an additional criterion. That suggestion was that the Commission should be less inclined to regulate products for which safer versions are available on the market than products for which consumers cannot purchase a safer version. The Commission believes that such a criterion would be inappropriate whenever consumers are unaware of the safer versions or fail to recognize that greater risks may be associated with the less safe versions. Therefore, the policy has not been amended to include "availability of safer versions of products" as a new criterion.

C. A third suggested additional factor, also submitted for consideration by Consumers Union, is whether a safety requirement could be easily defeated or could be made undefeatable only at great cost. The Commission believes that this criterion could not be applied to its decision-making involving the setting of priorities. At the time that the Commission considers what products to regulate, there is no particular safety requirement at issue. Only after regulation is underway would the Commission have a particular safety device, design, or requirement to evaluate. Accordingly, this factor appears to be unworkable and the Commission has not adopted it as an additional criterion.

D. The last paragraph of the policy on priorities stated that the Commission may not require extensive documentation on each criterion before making a decision because such data may be difficult to locate or develop on a timely basis. Walker Associates has suggested that this paragraph be labeled "Exceptional Conditions" and be added as an additional criterion. The Commission, however, believes that this paragraph explains how the criteria will be used rather than adds a new factor, and has not adopted the suggestion.

E. Monsanto has suggested the addition of a criterion that "would request definition of a suitable means for establishing the effectiveness of the regulation in question." This would normally require "specifying a method for establishing the 'degree of injury' before and after implementation of a rule." If this suggestion involves an estimate of the decrease in the "degree of injury" that would stem from implementation of a rule, it seems to the Commission that this consideration is already included under the policy's fourth criterion on "cost and benefit of CPSC action" (although Monsanto states that its suggestion is not inherent in that criterion). If an actual analysis of "degree of injury" following implementation of a rule is involved, this is inconsistent with the timing of Commission priority determinations, for the same reasons explained in (C), above. (This comment by Monsanto is

also discussed under section I (B) of this preamble.)

III. General Issues Concerning Criteria for Establishing Priorities

A. Ranking/Weighing of Criteria

A number of commenters have expressed concern that the relative weights the Commission attaches to the various criteria, and/or the order in which the criteria are considered, could affect the outcome of the priority-related decisions and should therefore be made explicit in the policy. In particular, AMF Inc. has indicated that language in criterion (2) suggests that consideration of causality of injuries will follow consideration of criterion (1) regarding injury frequency and severity, and that this could result in misdirected decisions concerning priorities. In addition, the Soap and Detergent Association has recommended that criterion (7), "probability of exposure to hazard," be moved to the criterion (2) position to reflect more accurately its importance.

The Commission has never intended its priorities policy to require that causality or any of the other criteria will be considered only for products that first receive priority under criterion (1). More generally, the order of listing of the criteria is intended to indicate neither the order in which they are to be considered nor their relative importance. The Commission will consider all the criteria to the extent feasible in each case, and as interactively or jointly as possible. The Commission will not, however, rely on fixed procedures for applying or weighting the criteria, because that would represent an excessively mechanical approach to complex decisions that will unavoidably be based on evidence of variable quality and subject to varying interpretations. Although weighting criteria and numerical project ratings may be useful for planning and budgeting, the Commission will establish priorities by applying the criteria listed in the policy, relying on its collegial judgment rather than on any set formulas.

To clarify that the priorities policy does not involve any set ranking or weighting of the criteria, the Commission has added an explanatory paragraph at the end of the policy. In addition, the potentially misleading language in criterion (1) and criterion (2) has been omitted, as well as some potentially misleading language in criterion (5).

B. National Electronic Injury Surveillance System (NEISS) Injury Data

The first criterion, concerning the frequency and severity of injuries, references the "NEISS hazard index" and notes that the Commission will give consideration to the probable frequency and severity of injuries in areas known to be undercounted by NEISS. A number of comments have criticized the inadequacy of the Commission's NEISS injury data.

AMF Inc. has commented that NEISS, upon which the Commission is necessarily highly dependent, does not adequately evaluate the extent to which a product and consumer behavior are causally related to the injury pattern. The National Electrical Manufacturers Association has stated that the NEISS system should be improved and a properly designed sampling plan should be developed to avoid the presence of "personal judgment" in evaluation of "areas known to be undercounted by NEISS." The Soap and Detergent Association has noted that areas of the NEISS system are overcounted, and has favored a separate breakdown of statistics related to products causing injuries and those that are associated with injuries.

The Commission certainly recognizes the limitations of NEISS injury data and is particularly aware that information on causality of product-related injuries cannot be obtained through NEISS. Accordingly, the Commission referenced NEISS only under its first criterion which involves the frequency and severity of injuries. Information on the causality of injuries, the second criterion in the priorities policy, must come from other sources. A principal such source is the indepth investigations of individual injury reports. The Commission is pursuing improvements in NEISS and other data bases the Commission uses, as part of an overall evaluation of its total injury data system. However, NEISS is currently the best injury information collection system available and provides valuable information to the Commission regarding product related injuries. In addition, as indicated in criterion (1), the Commission supplements NEISS information with other data such as fire surveys and death certificate collection. The Commission evaluates all of its injury information with awareness of possible shortcomings.

In any case, the first two criteria in the priorities policy merely indicate that the frequency, severity, and casualty of product-related injuries will be evaluated to the extent that reliable information is available. None of the criticisms of NEISS received by the Commission undercuts this approach, and no change in either criterion (1) or (2) is necessary in this regard.

C. Opportunity for Public Comment on Priorities Issues

The Office of Consumer Affairs has recommended that the priorities policy state that the public will be advised of and participate in significant changes involving the criteria. Although the Commission is not required under the Administrative Procedure Act to solicit or consider public comment on this general statement of policy concerning priorities, it has done so because of the importance of the policy. For the same reason, the Commission currently intends that any major changes to the policy will receive the same public scrutiny that the original provisions received. However, the Commission does not believe that this intention need be included as part of the policy.

In addition, the Office of Consumer Affairs has suggested that the Commission provide lead time and advance notice for major priorities issues so that the public can be involved, absent crises or emergencies. This suggestion is based on the belief that the public is as well qualified as experts to make the social, political, and ethical judgments that are usually involved.

The Commission agrees with the concept of public participation in decision-making involving priorities, but believes that institutionalizing this concept within its priorities policy would present difficult problems of timing and inflexibility.

In some cases, such as when the Commission is considering rulemaking, public notice and comment at an early stage might be feasible and desirable. For example, the Commission could publish in the Federal Register an advance notice of proposed rulemaking to obtain public comment on the advisability of rulemaking in a particular area. Alternatively, the Commission could hold public meetings with interested persons before deciding to take actions that involve priorities issues. An example of such a meeting was the Commission meeting with consumer representatives on the question of Commission-funded financial assistance to participants in CPSC proceedings. At the time of the meeting, a petition under the Administrative Procedure Act on this issue was pending before the Commission.

The Commission will continue to involve the public in its decision-making concerning priorities whenever possible and in the manner most appropriate for particular matters. However, the policy on priorities cannot and should not reflect such efforts in any formal or institutionally rigid manner.

D. Use of Priorities Policy in Draft Operating Plans and Budget

The Office of Consumer Affairs has stressed the importance of insuring that the criteria be uniformly applied at all levels of the Commission so that operating plans and budgets will emphasize the same set of products as the overall action priorities. Based on its experience, the Commission agrees with the importance of this point. Accordingly, the Commission will install monitoring and control mechanisms to guarantee maximum consistency among all phases of Commission activities involving priorities. Development and implementation of these procedures is a major function of the Commission's new Office of Strategic Planning.

Since § 1009.8(b) already reflects the applicability of the policy to operating plans and budgets, no changes are necessary.

E. Other Points Raised in the Comments

1. Georg Maisel of the Commission staff has recommended that "poison control centers" be added to the policy as another example of the "supplementary data collection systems" mentioned under criterion (1). The Commission agrees and has amended the policy accordingly.

2. Walker Associates has suggested that the policy be used as a guide by "initiators of consumer product safety-action requests." The Commission believes that this phrase is intended to refer to petitioners. If so, the policy is available for use by petitioners, but a priorities policy is meaningful only if two or more potential Commission actions are to be compared. An individual petitioner suggesting one course of action cannot be expected to perform such comparison.

While the Commission has set certain requirements for petitions (see § 1110.7 (a) of the "Procedures for Petitioning for Rulemaking under Section 10 of the Consumer Product Safety Act" 16 CFR 1110.7(a); 41 FR 43128, September 29, 1976), these do not include a requirement that petitions address priority considerations. Section 10 of the CPSA (15 U.S.C. 2059) similarly does not impose such a requirement. Nevertheless, the Commission would evaluate any priority information that is submitted as part of a petition for rulemaking.

3. James J. Franxman has suggested that the Commission give priority to actions under the PPPA and FHSA. However, a major intent underlying the policy is that the Commission evaluate particular products and risks of injury within its jurisdiction without regard to the particular act that would eventually govern Commission action. Sometimes, in fact, the Commission cannot determine at the outset what particular act will be used.

4. Lawrence Feldman has recommended that the Commission establish a unit to do and/or support research on the safety of consumer products. Although this recommendation may have merit (in fact, the Commission's technical staff performs such research and the Commission contracts with private parties for additional such research), it concerns Commission action that is not covered by the priorities policy. The recommendation involves the question of how the Commission should find unsafe consumer products and hazards, while the policy involves the question of how to set priorities among them once they are known.

The Consumer Product Safety Commission amends its priorities policy, effective October 4, 1977, in accordance with the above discussion and under the provisions of the Consumer Product Safety Act (15 U.S.C. 2051), the Federal Hazardous Substances Act (15 U.S.C. 1261), the Flammable Fabrics Act (15 U.S.C. 1191), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471), and the Refrigerator Safety Act (15 U.S.C. 1211). The Commission amends Title 16 of the Code of Federal Regulations by revising § 1009.8 of Chapter II, Part 1009 to read as follows:

§ 1009.8 Policy on establishing priorities for Commission action.

(a) This document states the Consumer Product Safety Commission's policy on establishing priorities for action under the five acts the Commission administers. The policy is issued pursuant to sections 4(f)(2) and 4(f)(3) of the Consumer Product Safety Act, as amended, and in further implementation of the Commission's statement or policy dated September 21, 1973.

(b) It is the general policy of the Commission that priorities for Commission action will be established by a majority of its members. The policy will be reflected by votes on all requests for appropriations, an annual operating plan, and any revisions thereof. Recognizing that these documents are the result of a lengthy planning process during which many decisions are made that substantially determine the content of the final documents, the Chairman shall continually keep the Commission apprised of, and seek its guidance concerning, significant problems, policy questions and alternative solutions throughout the planning cycle leading to the development of budget requests and operating plans.

(1) *Requests for appropriations.* Requests for appropriations are submitted concurrently to the President or the Office of Management and Budget and to the Congress pursuant to section 27(k)(1) of the Consumer Product Safety Act.

(2) *Annual operating plan.* The operating plan shall be as specific as possible with regard to products, groups of products, or generic hazards to be addressed. It shall be submitted to the Commission for approval at least 30 days prior to the beginning of the fiscal year.

(c) In establishing and revising its priorities, the Commission will endeavor to fulfill each of its purposes as set forth in section 2(b) of the Consumer Product Safety Act. In so doing, it will apply the following general criteria:

(1) *Frequency and severity of injuries.* Two criteria in determining priorities are the frequency and severity of injuries associated with consumer products. All available data including the NEISS hazard index and supplementary data collection systems, such as fire surveys, death certificate collection, and poison control centers shall be used to attempt to identify the frequency and severity of injuries. Consideration shall also be given to areas known to be undercounted by NEISS and a judgment reached as to the probable frequency and severity of injuries in such areas. The judgment as to severity shall include an evaluation of the seriousness of the injury.

(2) *Causality of injuries.* Consideration shall be given to the amenability of a product hazard to injury reduction through standard setting, information and education, or other Commission action. This step involves an analysis of the extent to which the product and other factors such as consumer behavior are causally related to the injury pattern. Priority shall be assigned to products according to the extent of product causality involvement and the extent of injuries that can reasonably be expected to be reduced or eliminated through Commission action.

(3) *Chronic illness and future injuries.* Certain products, although not presently associated with large numbers of frequent or severe injuries, deserve priority attention if there is reason to believe that the products will in the future be associated with many such injuries. Although not as susceptible to measurements as other product related injuries and illnesses, these risks shall be evaluated on the basis of the best information available and given priority on the basis of predicted future illnesses and injuries and the effectiveness of Commission action in reducing or eliminating them.

(4) *Cost and benefit of CPSC action.* Consideration shall be given on a preliminary basis to the prospective cost of Commission action to consumers and producers, and to the benefits expected to accrue to society from the resulting reduction of injuries. Consideration of product cost increases will be supplemented to the extent feasible and necessary by assessments of effects on utility or convenience of the product; product sales and shifts to substitutes; and industry supply factors, competitive structure, or employment. While all these facets of potential social "cost" cannot be subsumed in a single, quantitative cost measure, they will be weighed, to the extent they are available, against injury reduction benefits. The benefit estimates will be based on (i) explicitly stated expectations as to the effectiveness of regulatory options (derived from criterion (2), "causality of injuries"); (ii) costs of injuries and deaths based on the latest injury cost data and analyses available to the Commission; (iii) explicit estimates or assumptions as to average product lives; and (iv) such other factors as may be relevant in particular cases. The Commission recognizes that in analyzing benefits as well as costs there will frequently be modifying factors—e.g., criteria (5) and (6)—or analytical uncertainties that complicate matters and militate against reliance on single numerical expressions. Hence the Commission cannot commit itself to priorities based solely on the preliminary cost/benefit comparisons that will be available at the stage of priority setting, nor to any one form of comparison such as net benefits or cost-benefit ratios. Commission costs will also be considered. The Commission has a responsibility to insure that its resources are utilized efficiently. Assuming other factors to be equal, a higher priority will be assigned to those products which can be addressed using fewer Commission resources.

(5) *Unforeseen nature of the risk.* Consideration should be given to the degree of consumer awareness both of the hazard and of its consequences. Priority could then be given to unforeseen and unforeseeable risks arising from the ordinary use of a product.

(6) *Vulnerability of the population at risk.* Children, the elderly, and the handicapped are often less able to judge or escape certain dangers in a consumer product or in the home environment. Because these consumers are, therefore, more vulnerable to danger in products designed for their special use of frequently used by them, the Commission will usually place a higher priority, assuming other factors are equal, on pre-

venting product related injury to children, the handicapped, and senior citizens.

(7) *Probability of exposure to hazard.* The Commission may also consider several other things which can help to determine the likelihood that a consumer would be injured by a product thought to be hazardous. These are the number of units of the product that are being used by consumers, the frequency with which such use occurs, and the likelihood that in the course of typical use the consumer would be exposed to the identified risk of injury.

(8) *Additional criteria.* Additional criteria may arise that the staff believes warrant the Commission's attention. The Commission encourages the inclusion of such criteria for its consideration in establishing priorities. The Commission recognizes that incontrovertible data related to the criteria identified in this policy statement may be difficult to locate or develop on a timely basis. Therefore, the Commission may not require extensive documentation on each and every criterion before making a decision. In addition, the Commission emphasizes that the order of listing of the criteria in this policy is not intended to indicate either the order in which they are to be considered or their relative importance. The Commission will consider all the criteria to the extent feasible in each case, and as interactively or jointly as possible.

(Sec. 4, (15 U.S.C. 2053), 86 Stat. 1210; as amended by sec. 4, Pub. L. 94-284)

Effective date: October 4, 1977.

Dated: September 28, 1977.

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

[FR Doc.77-29108 Filed 10-3-77;8:45 am]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER C—DRUGS: GENERAL

[Docket No. 76N-0311]

PART 201—LABELING

Revocation of Requirements for Aminopyrine and Dipyrone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule revokes the regulation describing the conditions that must be met for the continued marketing of aminopyrine and dipyrone. This is being done because there are no approved new drug applications (NDA's) for either of these drug products.

DATES: Effective November 3, 1977. Comments by November 3, 1977.

ADDRESS: 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:

Nathan M. Kight, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857. (301-443-3640).

SUPPLEMENTARY INFORMATION: In a statement of policy published in the FEDERAL REGISTER of November 17, 1964 (29 FR 15364) under 21 CFR 3.44 (now 21 CFR 201.311), and amended in the FEDERAL REGISTER of October 11, 1967 (32 FR 14101), the Commissioner of Food and Drugs declared aminopyrine and dipyrone to be new drugs approvable for use only for their antipyretic effect in serious or life-threatening situations where either salicylates or similar drugs are known to be ineffective, or where the benefit-to-risk considerations for dipyrone are acceptable. Applications were approved for dipyrone, but none were received for aminopyrine, which is not known to be marketed in the United States.

Dipyrone is an analgesic antipyretic drug produced in both oral and parenteral forms. It is a sodium sufonate derivative of aminopyrine and has similar properties.

The Director of the Bureau of Drugs issued a notice of opportunity for hearing in the FEDERAL REGISTER of September 3, 1976 (41 FR 37386) proposing to withdraw approval of NDA's for drug products containing dipyrone on grounds of lack of evidence of safety. In response to the notice, two firms submitted requests for hearing and requests for extension of time to file supporting data. The Food and Drug Administration denied both requests for an extension of time. One of the firms later withdrew its request for hearing. The other elected not to submit the supporting data and analysis that are required by 21 CFR 314.200 and, therefore, its request for hearing was denied. A third firm, though not electing to request a hearing for its products, did request an extension of time to file a hearing request and submitted a published study to demonstrate the safety of dipyrone. The study was reviewed and found not to be relevant to the safety issue on the basis of which the drug products containing dipyrone were being withdrawn. The request for an extension of time was denied. A notice was published in the FEDERAL REGISTER of June 17, 1977 (42 FR 30893) withdrawing approval effective June 27, 1977, of all NDA's for drug products containing dipyrone. Inasmuch as there are no approved NDA's for drugs to which § 201.311 applies, the Commissioner concludes that this regulation should be revoked.

In consideration of the foregoing, the Commissioner finds for good cause that notice and public procedure are impracticable, unnecessary, and contrary to the public interest. Interested persons may, on or before November 3, 1977, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, four copies of written comments, identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office of the Hearing Clerk between the hours of 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

§ 201.311 [Reserved]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502 (f) and (i) and 701(a), 52 Stat. 1051 as amended, 1055 (21 U.S.C. 352 (f) and (i) and 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 201 is amended by revoking

§ *201.311 Aminopyrine or dipyrone drug preparations for human use; directions and warnings.*

Effective date. This revocation shall be effective on November 3, 1977.

(Secs. 502 (f), (i), 701(a), 52 Stat. 1051 as amended, 1055 (21 U.S.C. 352(f), (i), 371 (a)),)

Dated: September 28, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-29076 Filed 10-3-77;8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

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

Iron Hydrogenated Dextran Injection

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application filed by Medico Industries, Inc., providing for use of iron hydrogenated dextran injection for the prevention and treatment of iron deficiency anemia in baby pigs.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857 (301-443-5247).

SUPPLEMENTARY INFORMATION: In accordance with section 512(i) of the Federal Food, Drug, and Cosmetic Act, Part 522 (21 CFR 522) is amended to reflect approval of a new animal drug application (NADA 106-772V) filed by Medico Industries, Inc., Elwood, Kans. 66024. In addition, the section is editorially revised.

In compliance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations

(21 CFR 514.11(e)(2)(ii)), a summary of the safety and efficacy data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC–20), Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 3606(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 522.-1183 is revised to read as follows:

§ 522.1183 Iron hydrogenated dextran injection.

(a) *Specifications.* Each milliliter contains 100 milligrams of elemental iron stabilized with a low molecular weight hydrogenated dextran and 0.5 percent phenol as a preservative.

(b)(1) *Sponsor.* See No. 000986 in § 510.600(c) of this chapter.

(2) *Conditions of use.* It is used in baby pigs as follows:

(i) For the prevention of anemia due to iron deficiency, administer an initial intramuscular injection of 100 milligrams of elemental iron to each animal at 2 to 5 days of age. Dosage may be repeated at 2 weeks of age.

(ii) For the treatment of anemia due to iron deficiency, administer an intramuscular injection of 100 milligrams of elemental iron to each animal when indicated between 5 and 28 days of age.

(c)(1) *Sponsor.* See No. 000003 in § 510.600(c) of this chapter.

(2) *Conditions of use.* It is used in baby pigs as follows:

(i) For the prevention of anemia due to iron deficiency, administer by intramuscular or subcutaneous injection of 100 milligrams of elemental iron to each animal at 2 to 4 days of age.

(ii) For the treatment of anemia due to iron deficiency, administer by intramuscular or subcutaneous injection of 100 milligrams of elemental iron in baby pigs up to 4 weeks of age.

(d)(1) *Sponsor.* See No. 015562 in § 510.600(c) of this chapter.

(2) *Conditions of use.* It is used in baby pigs as follows:

(i) For the prevention of iron deficiency anemia, administer intramuscularly 100 milligrams at 2 to 4 days of age.

(ii) For the treatment of iron deficiency anemia, administer intramuscularly 100 miligrams. Treatment may be repeated in 10 days.

Effective date: October 4, 1977.

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

Dated: September 27, 1977.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.77-29077 Filed 10-3-77;8:45 am]

[4110–03]

[FRL 801–2; FAP 6H5135/T29]

PART 561—TOLERANCES FOR PESTICIDE IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Linuron

AGENCY: Office of Pesticide Programs, Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation permitting the use of the herbicide linuron in an experimental program. The regulation was requested by E. I. du Pont de Nemours & Co. This rule will permit the marketing of dried sugar beet pulp while further data is collected on the subject pesticide.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. James G. Touhey, Registration Division (WH–567), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460 (202–755–4851).

SUPPLEMENTARY INFORMATION: On July 1, 1976, the EPA announced (41 FR 27112) that E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898, had filed a food additive petition (FAP 6H5135). This petition proposed that 21 CFR Part 561 be amended by establishing a feed additive regulation permitting the use of the herbicide linuron (3-(3,4-dichlorophenyl) - 1 - methoxy - 1 - methylurea) in a proposed experimental program involving application of the herbicide to growing sugar beets with a tolerance for residues of the herbicide in dried sugar beet pulp at 1 part per million (ppm). This petition was submitted in accordance with an experimental use permit that is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.). No comments were received by the Agency in response to this notice of filing. (A related document establishing temporary tolerances for residues of linuron on sugar beet roots and tops appears elsewhere in today's FEDERAL REGISTER.)

The toxicological data submitted in support of the 1 ppm tolerance were two-year rat and dog feeding studies, a three-generation rat reproduction study, a poultry-feeding study, and two cattle-feeding studies. An adequate analytical method (gas chromatography using electron capture detection) is available for enforcement purposes. The data or actions required before any permanent linuron tolerance will be established are (1) all the additional data required by FIFRA in Section 3, including a second oncogenicity study, a teratology study, and a mammalian mutagenicity study; (2) complete copies of all analytical methods; (3) residue data for sugar beet molasses and sugar showing the presence or absence of linuron residues; (4) additional residue data for sugar beet roots, tops, and dried pulp; (5) proposal of an appropriate milk tolerance; and (6) resolution of crop rotation restrictions.

Tolerances have previously been established (40 CFR 180.184) for linuron residues on a variety of raw agricultural commodities at levels ranging from 1 ppm to 0.25 ppm. There is no reasonable expectation of residues in eggs or poultry as delineated in 40 CFR 180.6(a)(3). Existing tolerances for residues in meat and milk are adequate to cover any residues as delineated 40 CFR 180.6(a)(2).

Therefore, it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which is being issued concurrently under FIFRA. It has further been determined that since residues of the pesticide may result in dried sugar beet pulp from the agricultural use provided for in the experimental use permit, the feed additive regulation should be established and should include a tolerance limitation. Accordingly, a feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before November 3, 1977, file written objections with the Hearing Clerk, EPA, Rm. 1019, East Tower, 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on October 4, 1977, 21 CFR Part 561 is amended as set forth below.

Dated: September 28, 1977.

EDWIN L. THOMPSON,
Deputy Assistant Administrator, for Pesticide Programs.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)).)

21 CFR Part 561 is amended by adding a new § 561.265 to read as follows:

§ 561.265 Linuron.

(a) A tolerance of a 1 part per million is established for residues of the herbicide linuron (3-(3,4-dichlorophenyl) -1-methoxy-1-methylurea) in dried sugar beet pulp resulting from application of the herbicide in accordance with the provisions of an experimental use permit that expires September 28, 1978.

(b) Residues in dried sugar beet pulp not in excess of 1 part per million resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the pesticide is legally applied

during the term of and in accordance with the provisions of the experimental use permit and feed additive tolerance.

(c) E. I. du Pont de Nemours & Co., Inc., shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc.77-29079 Filed 10-3-77;8:45 am]

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7510]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Qualified Joint and Survivor Annuities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document amends a special effective date rule contained in regulations relating to qualified joint and survivor annuities. This amendment has been prepared in response to requests by the public. This amendment affects some qualified plans which provide benefits by distributing individual annuity contracts to participants and postpones from July 1, 1977, to January 1, 1978, the date by which some participants must be given an opportunity to have amendments made to their contracts.

DATE: The regulations are generally effective for plan years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT:

William D. Gibbs of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3293) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On January 7, 1977, the FEDERAL REGISTER published final regulations under section 401(a)(11) of the Internal Revenue Code of 1954 as Treasury Decision 7458, 42 FR 1463. These regulations were adopted in order to conform the Income Tax Regulations to section 1021(a) of the Employee Retirement Income Security Act of 1974.

Since the publication of these regulations, it has become apparent that some plans which provide benefits by the distribution of individual annuity contracts will not be able to meet the special effective date provision adopted in the regulations for such plans. Accordingly, that effective date rule is extended an additional six months.

DRAFTING INFORMATION

The principal author of this regulation was William D. Gibbs of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 1 is amended as follows:

§ 1.401(a)-11 [Amended]

Paragraph (f) of § 1.401(a)-11 is amended (1) by striking out "July 1, 1977," each place it appears and inserting in lieu thereof "January 1, 1978," and (2) by striking out "June 30, 1977" from the last sentence and inserting in lieu thereof "December 31, 1977".

This Treasury decision merely postpones the effective date of a rule, and there is a need for immediate guidance with respect to the postponement. For these reasons, it is found unnecessary and impracticable to issue this Treasury decision with notice and public procedure thereon under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805, Internal Revenue Code of 1954, (68A Stat. 917 (26 U.S.C. 7805)).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: September 26, 1977.

LAURENCE N. WOODWORTH,
Assistant Secretary of the Treasury.

[FR Doc.77-29015 Filed 10-3-77;8:45 am]

[4310-31]

Title 30—Mineral Resources

CHAPTER II—GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

PART 250—OUTER CONTINENTAL SHELF OIL AND GAS OPERATIONS

Emergency Suspension Procedures

AGENCY: Geological Survey, U.S. Department of the Interior.

ACTION: Final rule.

SUMMARY: This rule supplements the existing OCS oil and gas operations emergency suspension provision in three particulars: (1) It specifies the manner in which threats of significant irreparable damages will be studied; (2) it expressly treats the procedure for establishing necessary mitigating measures; and (3) it redefines the property rights granted with the lease to provide that, if adequate mitigating measures cannot be designed, the Secretary may, as a last resort and under stated limitations, terminate an emergency suspension and allow the lease term to run without renewal of operations of the lease.

EFFECTIVE DATE: This rules applies to all OCS oil and gas leases issued subsequent to this publication.

SUPPLEMENTARY INFORMATION: The proposal (42 FR 36273, July 14, 1977) received twenty-eight comments from industry, state and local government bodies, and interested groups.

We respond to the chief comments in the order in which the material appeared in the proposal.

1. *Leases to which amendment applies.* Several commenters wondered if Sale No. 47 leases were subject to the amendment, as the sale followed publication of this proposal. The answer is no. This rule applies only to leases issued subsequent to the date of this final rulemaking. The July 14 publication did not "promulgate" this rule; it was only a proposal.

2. *"Termination of suspension."* The preamble to the proposal and the proposal did not clearly distinguish between suspension of operations and suspension of the running of the lease term. The rule has been revised with elimination of this confusion in mind. In this regard, subsection (c)(2)(iii)(D) has been deleted. The accompanying lease term amendments to Title 43 CFR Part 3300 are the appropriate place for such a provision, not the Geological Survey operations regulations. The Part 3300 amendments accomplish what (iii)(D) stated about the manner in which the running of the lease term is affected by this rule. Termination of a suspension under (c)(2)(iii) does not imply approval of operations on the lease.

3. *Inflationary Impact Statement.* Several commenters questioned our negative declaration under E.O. 11,821. The Executive Order and the OMB Circular implementing it do not require the preparation of statements where the situations in which the rule might be applied, and therefore the impact of the rule on OCS production, and inflation, are presently unknown and purely speculative. That is the case here. We do not predict effects greater than the prescribed threshold.

4. *250.12(c)(1).* This provision, substantially the existing provision, is designed to have a lower threshold for invocation, namely, those cases in which full study and formal imposition of mitigating measures are unnecessary. Sections (c)(1) and (c)(2) are not redundant. For this reason, we retain the "significant irreparable damage" threshold in (c)(2). The absence of formal procedures under (c)(1) does not, of course, deprive the Supervisor in such cases of his authority to issue orders and otherwise regulate operations. See 30 CFR 250.12(a).

5. *Transportation.* Several commenters requested that transportation

operations be explicitly covered in subsection (c)(2)(i). Part 250 of Title 30, however, applies only to lease operations, not to operations under a right-of-way granted under section 5(c) of the OCS Lands Act.

6. *Cost and conduct of study.* A few commenters asked that lessees not be allowed to conduct the studies. We believe the Supervisor's duty to approve study plans protects the federal interest here. Several companies felt the Department should bear the cost of these studies. We have considered this point and concluded that the lessee should bear the costs.

7. *Consultation.* The Department of Commerce was added to the list to allow the National Marine Fisheries Service and the National Oceanic and Atmospheric Administration to participate.

8. *Balancing.* The Department was criticized by some commenters for balancing the lost resource against the environmental benefits in the last lines of subsection (c)(2)(ii) and in (c)(2)(iii)(B). While recognizing the inherent problems with such balancing, we believe sound public policy requires consideration of the foreclosed resource in these decisions.

9. *Unconstitutional "taking" under subsection (c)(2)(iii).* The Department does not "take" property rights in the constitutional sense if it exercises rights it reserves at the time the lease is issued.

10. *In excess of statutory authority.* None of the many comments directed to this question have convinced us we lack authority to enact this rule. We reiterate our view that this rule is consistent with "Union Oil Co. of California v. Morton," 512 F.2d 743, 748–49 (9th Cir. 1975), and its view of the OCS Lands Act construed in light of the National Environmental Policy Act. See 42 FR 36274 (July 14, 1977).

11. *Compensation.* The Department lacks the authority to exercise the power of eminent domain and pay compensation therefor on the Outer Continental Shelf. The Bureau of Land Management was granted eminent domain authority in the Federal Land Policy and Management Act, 90 Stat. 2755, but that Act explicity does not apply to the OCS, 90 Stat. 2746. This limitation has governed the prospective-only nature of this rule. Rights previously granted are not subject to taking without legislation. Thus we are conditioning the rights granted under future leases in advance of lease issuance.

12. *Need for (c)(2)(iii).* Many commenters felt the subsection was simply unnecessary. The Department believes OCS operations currently meet a high standard of environmental protection, and it hopes the provision need never be applied. The provision is designed as a failsafe, a need we feel must be met. We are aware that the pending OCS Lands Act Amendments contain provisions that would supersede this rule. If the new statutory provisions do not apply to existing leases, however, we will apply this rule to leases which may be issued between the date of promulgation and enactment of the statutory amendments. We are also aware of the potential disincentive to full participation in OCS sales the regulation poses. It has been specially drafted, however, to limit its application to extreme cases to minimize this possibility. In this regard, we point out that the termination of suspension authority in (c)(2)(iii) is discretionary, not mandatory, and the Secretary may keep the suspension in effect pending any technological development that might mitigate the hazard, or for any other persuasive reason.

13. *Time for compliance.* Subsection (c)(2)(iii)(A) has had the limitation for compliance within "the remaining portion of the lease term," eliminated to avoid what might in some cases be an unreasonably short period, and so that the provision will apply to leases in their extended period.

PRINCIPAL AUTHOR

Lawrence G. McBride, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240 (202–343–4803).

NOTE.—The Geological Survey has determined that this rule does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11.821 and OMB Circular A–107.

NOTE.—The Department has determined that publication of this rule is not a major federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required.

Dated: September 28, 1977.

CECIL D. ANDRUS,
Secretary.

Accordingly, the following amendments to 30 CFR Part 250 are hereby made:

1. In § 250.12, paragraph (c) is amended as follows:

§ 250.12 Regulation of operations.

* * * * *

(c) *Emergency suspensions.* (1) The Supervisor is authorized either in writing or orally with written confirmation, to suspend any operation, including production, which in his judgment threatens immediate, serious, or significant damage to life, including acquatic life, to property, to the leased deposits, to other valuable mineral deposits, or to the environment. Such an emergency suspension shall continue until, in ris judgment, threat or danger has terminated, unless the provisions of subparagraph (2) of this paragraph apply.

(2)(i) When the Supervisor orders, with respect to any lease issued after October 1, 1977, a suspension of operations, including production, because of the threat of significant irreparable damage to life, including aquatic life, to property, to the leased deposits, to other valuable mineral deposits, or to the environment, from a hazard not known to the Secretary or not fully anticipated by him as to nature and degree when the lease was issued, or not known to the Supervisor when an operating plan was approved, the Supervisor may direct the lessee to conduct site specific studies, including lease- or unit-wide studies as necessary, approved or prescribed by the Supervisor, on the cause of the hazard generating the suspension, the potential damage from that hazard, and the mitigating measures for the hazard. Prior to approval of a study program, notwithstanding the provisions of paragraph (a) of this section, the Supervisor shall consult with interested Departments and agencies including, but not limited to, the Fish and Wildlife Service, Bureau of Land Management, Coast Guard, Department of Defense, Department of Commerce, and Environmental Protection Agency, and with affected state and local governments. All results of such studies will be furnished to the Supervisor by the lessee at no cost to lessor. The Supervisor shall make such results available to interested Departments and agencies and to the public.

(ii) On the basis of the results of the lessee's study and other information available to him, the Supervisor will submit a report with recommendations to the Secretary on the extent of the damage or threat thereof, and on the mitigating measures, if any, that may successfully ameliorate such damage or threat thereof. On the basis of the Supervisor's report and recommendations, and such other advice and information as he deems relevant, the Secretary will require the lessee to take all appropriate measures to mitigate the damage or potential damage of continued operations as a condition for the resumption of exploration, development, or production activity on the lease. The lessee will submit, where deemed appropriate by the Secretary, new or amended exploration, development, or production plans, in accordance with § 250.34, which incorporate the mitigating measures required by the Secretary. In establishing appropriate mitigating measures which must be taken prior to the resumption of operations, the Secretary will balance the costs of mitigation and the reduction in damage to aquatic life, to property, to the leased deposits, to other valuable mineral deposits and to the environment.

(iii) If the lessee indicates that he cannot or will not comply with the conditions established by the Secretary for ending the suspension of operations on the lease, or if the Secretary determines that appropriate mitigating measures will not provide adequate protection from significant irreparable damage to aquatic life, property, the leased deposits, other valuable mineral deposits, or to the environment, the Secretary may leave the suspension in effect, in expectation of technological developments or for other reasons. In the alternative, the Secretary may terminate the suspension of the running of the lease term: *Provided,* That:

(A) The suspension shall not be terminated until the lessee has had a rea-

sonable length of time, which shall be not less than six months, to comply with the conditions established by the Secretary for the approval of resumption of operations on the lease, to be determined by the Secretary;

(B) In determining "adequate protection" the Secretary will weigh the value of the loss of the deposit to the Nation's economy against the probable damage from the hazard after appropriate mitigating measures have been imposed;

(C) Termination of a suspension of the running of the lease term will not be made effective until after the affected lessee has been given notice and an opportunity for a hearing, including the opportunity for the lessee to submit his own proposed mitigation measures; and

(D) Such a termination shall constitute a revocation of the previous approval of any exploration, development, or production plan, but shall not preclude consideration by the Supervisor of a new or amended exploration, development, or production plan, and the issuance of another suspension while that plan is reviewed.

2. Section 250.30 is revised to read as follows:

§ 250.30 Lease terms, regulations, waste, damage, and safety.

(a) The lessee shall comply with the terms of applicable laws and regulations, the lease terms, OCS Orders and other written orders and rules of the Supervisor, and oral orders of the Supervisor. All such oral orders shall be effective when issued and are to be confirmed in writing as provided in § 250.11.

(b) The lessee shall conduct operations on the lease in a manner which does not, in the opinion of the Supervisor, threaten significant irreparable harm or damage to life, including aquatic life, to property, to the leased deposits, to other valuable mineral deposits, or to the environment.

[FR Doc.77-29111 Filed 10-3-77;8:45 am]

[3910-01]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER C—PUBLIC RELATIONS

PART 819b—LICENSING GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE AIR FORCE

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is adding a new Part 819b to 32 CFR. These rules were written as the Air Force implementation of DOD Directive 5535.3 and are consistent with GSA Licensing of Government-Owned Inventions, 41 CFR 101-4.1. They are intended to inform the public of the policies, procedures, terms and conditions for licensing of rights in Government-owned domestic patents and patent applications vested in the United States of America as represented by the Secretary of the Department of the Air Force.

EFFECTIVE DATE, July 22, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Peterson, Judge Advocate Civil Division, Patent Office, Forrestal Building, Washington, D.C. 20314. Phone: (202-693-5715).

SUPPLEMENTARY INFORMATION: This rule is issued under the authority of 10 U.S.C. 8012. On November 23, 1976, the Department of the Air Force, DOD, published a proposed rule (41 FR 51615) to amend Title 32 of the Code of Federal Regulations by adding a new Part 819b to Subchapter C. No suggestions or objections were received. Accordingly, 32 CFR is amended by adding the new part to read as follows:

Subpart A—General

Sec.
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819b.14 Contents of a nonexclusive license application.
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819b.16 Published notices.
819b.17 Modification or revocation.
819b.18 License requests received by Air Force field activities.
819b.19 Appeals.

Subpart D—Litigation

819b.20 Government policy.

Subpart E—Transfer of Custody of Government Inventions

819b.21 Procedures.

AUTHORITY: 10 U.S.C. 8012.

Subpart A—General

§ 819b.1 Purpose.

This part describes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in Government-owned domestic patents and patent applications vested in the United States of America as represented by the Secretary of the Department of the Air Force. It implements DOD Directive 5535.3, November 2, 1973 and is consistent with GSA Licensing of Government-Owned Inventions, 41 CFR 101-4.1.

§ 819b.2 Air Force policy.

(a) A major premise of the Presidential Statement of Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that Government-owned inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive licenses generally is preferable since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it will be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration will be given also to assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a U.S. citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant will be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this part.

(d) No license will be granted or implied in any invention under the custody of the Department of the Air Force other than as provided for in this part except under:

(1) Any existing or future treaty or agreement between the United States and any foreign government or intergovernmental organization, or

(2) Licenses under or other rights to inventions made or conceived in the course of or under Department of the Air Force research and development contracts where such licenses or other rights to such inventions are granted to or provided for in the contract and retained by the party contracting with the Department of the Air Force.

(e) No grant of a license under this part will be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part will not be immunized from the operation of State or Federal law by reason of the source of the grant.

§ 819b.3 Execution of licenses.

Nonexclusive and exclusive licenses will be executed on behalf of the Department of the Air Force by the Secretary.

§ 819b.4 Delegation of authority.

The administration of this part is delegated to the Judge Advocate General and, while he is so acting, to any individual who is Acting The Judge Advocate General. The Judge Advocate General may redelegate, without the power of redelegation, to the Chief, Patents Division, Office of the Judge Advocate General, the administration of this part.

§ 819b.5 Definitions.

(a) "Government invention" means an invention covered by a domestic patent application that is vested in the United States and in the custody of the Department of the Air Force, and is designated by the Air Force as appropriate for the grant of an express nonexclusive or exclusive license.

(b) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

Subpart B—Types of Licenses and Conditions for Licensing

§ 819b.6 Inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§ 819b.7 and 819b.8, subject to the applicable procedures of Subpart C of this part.

§ 819b.7 Nonexclusive license.

(a) *Availability of licenses.* Each Government invention normally will be made available for the granting of nonexclusive revocable licenses, subject to the provisions of any other licenses, including those under § 819b.9.

(b) *Terms of grant.* (1) The duration of the license will be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license will require the licensee to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the Air Force may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but will be nonassignable without approval of the Air Force, except to the successor of that part of the licensee's business to which the invention pertains.

(6) The Government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent. Moreover, the Government assumes no liability whatsoever resulting from the exercise of the license.

§ 819b.8 Limited exclusive license.

(a) *Availability of licenses.* Each Government invention may be made available for the granting of a limited exclusive license provided that:

(1) The invention has been published as available for licensing pursuant to § 819b.12 for a period of at least 6 months;

(2) It has been determined that (i) the invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing, (ii) the desired practical application has not been achieved under any nonexclusive license granted on the invention, and (iii) the desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further Government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to § 819b.6 for at least 60 days; and

(4) After termination of the period set forth in § 819b.8 (a)(3), the Air Force has determined that no applicant for a nonexclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee will be selected on bases consistent with the policy set forth in § 819b.2 and in accordance with the procedures set forth in Subpart C of this part.

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the Government invention and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in § 819b.8 (c)(6) and (c)(7), the licensee will be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license will be negotiated but will be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a nonexclusive license; and such period of exclusively will not exceed 5 years unless it has been determined on the basis of a written submission supported by a factual showing that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license will require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Air Force, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license will require the licensee to expend a specified minimum amount of money and/or to take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license will be subject to the irrevocable royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the Government of the United States and on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United States.

(7) The license will reserve to the Air Force the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances (i) To the extent that the invention is required for public use by Government regulations, or (ii) as may be necessary to fulfill health or safety needs, or (iii) for other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but will be nonassignable without approval of the Air Force, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Air Force. Each sublicense granted by an exclusive licensee will make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense will be furnished to the Air Force.

(10) The license may be subject to such other terms as may be in the public interest.

(11) The Government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent. Moreover, the Government assumes no liability whatsoever resulting from the exercise of the license.

§ 819b.9 Additional licenses.

Subject to any outstanding licenses, nothing in this part will preclude the Air

Force from granting additional nonexclusive or limited exclusive licenses for Government-owned inventions when the Air Force determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for or as part of the consideration for a license under adversely held patents.

§ 819b.10 Royalties.

(a) Normally, royalties will not be charged under nonexclusive licenses granted to U.S. citizens and U.S. corporations on Government inventions; however, the Air Force may require other considerations.

(b) A limited exclusive license on a Government invention will contain a royalty provision and/or other consideration flowing to the Government.

§ 819b.11 Reports.

A license will require the licensee to submit periodic reports to the Air Force on his efforts to achieve practical application of the invention. The reports will contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention and other information which the Air Force may determine is pertinent to its licensing activities and is specified in the license.

Subpart C—Procedures

§ 819b.12 Publication requirements.

The Department of the Air Force will cause to be published in the FEDERAL REGISTER, the Official Gazette of the U.S. Patent and Trademark Office, and at least one other publication that the Air Force deems would best serve the public interest, a list of the Government inventions in custody of the Department of the Air Force available for licensing under the conditions specified in Subpart B of this part. The list will be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available for licensing may be made and may include abstracts of the inventions, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

§ 819b.13 Requests for a nonexclusive or a limited exclusive license.

Requests for licenses under a Government invention in the custody of the Department of the Air Force should be addressed to the Chief, Patents Division, HQ USAF/JACP, Washington, D.C. 20314.

§ 819b.14 Contents of a nonexclusive license application.

An application for a nonexclusive license will include:

(a) Identification of the invention for which a license is desired, including the patent application serial number or patent number, title and date, if known, and any other identification of the invention;

(b) Name and address of the person, company, or organization applying for license and whether the applicant is a U.S. citizen or a U.S. corporation;

(c) Name and address of representative of applicant to whom correspondence should be sent;

(d) Nature and type of applicant's business;

(e) Source of information concerning the availability of a license on this invention;

(f) Purpose for which license is desired and a brief description of applicant's plan to achieve that purpose;

(g) A statement of the fields of use for which applicant intends to practice the invention; and

(h) A statement as to the geographic areas in which the applicant would practice the invention.

§ 819b.15 Contents of a limited exclusive license application.

In addition to the information indicated in § 819b.14, an application for a limited exclusive license will include:

(a) Applicant's status, if any, in any one or more of the following categories:

(1) Small business firm,

(2) Minority business enterprise,

(3) Location in a surplus labor area,

(4) Location in a low-income area, and

(5) Location in an economically depressed area;

(b) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(c) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest the facilities and funds to perform such acts if the license is granted;

(d) A statement that contains the applicant's best knowledge of the extent to which the Government invention is being practiced by private industry and the Government; and

(e) Any other facts which the applicant believes are evidence that it is in the public interest for the Air Force to grant a limited exclusive license rather than a nonexclusive license and that such limited exclusive license should be granted to the applicant.

§ 819b.16 Published notices.

(a) A notice that a prospective limited exclusive licensee has been selected will be published by the Air Force in the FEDERAL REGISTER, and a copy of the notice will be sent to the Attorney General. The notice will include:

(1) Identification of the invention;

(2) Identification of the selected licensee;

(3) Duration and scope of the contemplated license;

(4) A statement to the effect that the license will be granted unless;

(i) An application for a nonexclusive license, submitted by a responsible applicant pursuant to § 819b.4, is received by the Air Force within 60 days from the publication of the notice in the FEDERAL REGISTER; and the Air Force determines in accordance with its prescribed procedures, under which procedures the Air Force will record and make available for public inspection all decisions made pursuant thereto and the basis therefor, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or

(ii) The Air Force determines that a third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(b) If a limited exclusive license has been granted pursuant to this part, notice thereof will be published in the FEDERAL REGISTER. Such notice will include:

(1) Identification of the invention;

(2) Identification of the licensee; and

(3) Duration and scope of the license.

(c) If a limited exclusive license has been modified or revoked pursuant to § 819b.17, notice thereof will be published in the FEDERAL REGISTER. Such notice will include:

(1) Identification of the invention;

(2) Identification of the licensee; and

(3) Effective date of modification or revocation.

§ 819b.17 Modification or revocation.

(a) Any license granted pursuant to this part may be modified or revoked by the Air Force if the licensee at any time defaults in making any report required by the license or commits any breach of any covenant or agreement therein contained.

(b) A license may also be revoked by the Air Force if the licensee willfully makes a false statement of a material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(c) Before modifying or revoking any license granted pursuant to this regulation for any cause, the Air Force will furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license; and the licensee and any sublicensee will be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in § 819b.7(a) or to show cause why the license should not be modified or revoked.

§ 819b.18 License requests received by Air Force field activities.

All communications received in any Air Force activity requesting information regarding the licensing of a Government invention will be acknowledged and forwarded without further action directly to HQ USAF/JACP, Washington, D.C. 20314.

§ 819b.19 Appeals.

An applicant for a license, a licensee, or such other third party who has participated under § 819b.6 (a)(4)(ii) shall have the right to appeal to the Judge Advocate General, or in his absence, to the Acting Judge Advocate General, any decision concerning the granting, denial, interpretation, or modification, or revocation of a license. Such appeal must be made in writing and within 60 days from the date the decision was mailed.

Subpart D—Litigation

§ 819b.20 Government policy.

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement will be retained with respect to all licenses so issued by the Government.

Subpart E—Transfer of Custody of Government Inventions

§ 819b.21 Procedure.

Under certain circumstances it may be in the best interest of the Air Force to enter into an agreement to transfer its custody of an invention to another Government agency for purposes of administration including the granting of licenses pursuant to this part. Such transfers will be made on a case-by-case basis.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77-29109 Filed 10-3-77;8:45 am]

[1410-03]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket RM 77-8]

PART 201—GENERAL PROVISIONS

Filing of Copies of Certain Contracts by Cable Systems

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting a new regulation to implement section 111(e)(2) of the Act for General Revision of the Copyright Law. That section requires the filing, in particular cases, of certain contracts entered into by cable television systems located outside of the forty-eight contiguous states. The new regulation establishes formal requirements governing the nature of the document to be filed for recordation.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Section 111 of the first section of Pub. L. 94-553 (90 Stat. 2541) establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. As a general rule, secondary transmissions must occur simultaneously with the primary transmission in order to be eligible for the compulsory license. However, section 111 provides for an exception to this general requirement for simultaneous retransmission. Because of the limited availability of over-the-air signals in certain areas outside of the forty-eight contiguous States, cable systems located in these areas are eligible for the compulsory license even if their secondary transmissions are "non-simultaneous"—that is, even if they use videotapes or the like to record a broadcast program off-air and later retransmit the program from the recording.

Section 111(e)(2) of the Act deals with exchanges of videotapes and similar recordings of programs between cable systems located in these areas. It provides that recordings embodying a program nonsimultaneously transmitted by a system may, under certain circumstances, be transferred to another system, but only "pursuant to a written nonprofit contract providing for the equitable sharing of the costs of such videotape and its transfer." Among other conditions it also requires that "a copy of such contract [be] filed, within thirty days after such contract is entered into, with the Copyright Office (which Office shall make such contract available for public inspection) * * *."

On August 17, 1977, we published in the FEDERAL REGISTER (42 FR 41438; corrected 42 FR 42362) a proposal that the filing and recordation of these documents be covered by the addition of a new § 201.12 to the regulations of the Copyright Office. Interested parties were given until September 16, 1977, to submit comments.

No comments have been received. The proposed regulation is adopted without change and is set forth below.

(17 U.S.C. 207, and under the following sections of Title 17 of the U.S.C. as amended by Pub. L. 94-553; §§ 111; 702; 708(11).)

Dated: September 23, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:
DANIEL J. BOORSTIN,
Librarian of Congress.

Part 201 of 37 CFR chapter II is amended by adding a new § 201.12 to read as follows:

§ 201.12 Recordation of certain contracts by cable systems located outside of the forty-eight contiguous states.

(a) Written, nonprofit contracts providing for the equitable sharing of costs of videotapes and their transfer, as identified in section 111(e)(2) of Title 17 of the United States Code as amended by Pub. L. 94-553, will be filed in the Copyright Office by recordation upon payment of the fee prescribed by this section. The document submitted for recordation shall meet the following requirements:

(1) It shall be an original instrument of contract; or it shall be a legible photocopy or other full-size facsimile reproduction of an original, accompanied by a certification signed by at least one of the parties to the contract, or an authorized representative of that party, that the reproduction is a true copy;

(2) It shall bear the signatures of all persons identified as parties to the contract, or of their authorized agents or representatives;

(3) It shall be complete on its face, and shall include any schedules, appendixes, or other attachments referred to in the instrument as being part of it; and

(4) It shall be clearly identified, in its body or a covering transmittal letter, as being submitted for recordation under 17 U.S.C. 111(e).

(b) For a document consisting of six pages or less the recordation fee is $10; an additional charge of 50 cents is made for each page over six. If titles of works are specified in the contract, an additional charge of 50 cents is made for each title over one.

(c) The date of recordation is the date when all of the elements required for recordation, including the prescribed fee, have been received in the Copyright Office. A document is filed in the Copyright Office and a filing in the Copyright Office takes place on the date of recordation. After recordation the document is returned to the sender with a certificate of record.

[FR Doc.77-29162 Filed 10-3-77;8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 783-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revisions: San Joaquin County Air Pollution Control District (APCD)

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the San Joaquin County portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: November 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 100 California Street, San Francisco, Calif. 94111. Attn: David R. Souten, (415-556-7288).

SUPPLEMENTARY INFORMATION: On May 26, 1977, in 42 FR 26999, EPA published a Notice of Proposed Rulemaking for revisions to the San Joaquin County Air Pollution Control District's Rules and Regulations submitted on November 10, 1976 by the California Air Resources Board for inclusion in the California SIP.

Rules concerning new source review and gasoline vapor recovery have been submitted; however, no action is being taken at this time, and these rules will be acted upon in separate FEDERAL REGISTER notices.

The changes contained in this submittal and being acted on by this notice, include the following: changes are made to a number of rules to reflect the recodification numbering changes that have been made to the State of California Health and Safety Code; wording changes are made to certain definitions; requests for a "trade secret" designation are required to be made in writing; a time period is specified for making public records available to requesting parties; wording changes are made to the agricultural operations exemptions to visible emissions limitations; and certain burning operations are added to the list of agricultural burning operations. A list of the rule numbers and titles initially considered for this notice, was published as part of the notice of proposed rulemaking and can be found in 42 FR 26999 (May 26, 1977). The proposed rulemaking provided 30 days for public comments. No comments were received.

It is the purpose of this notice to approve all of the changes contained in the November 10, 1976, submittal for San Joaquin County and to incorporate them into the California SIP, with the exception of those rules not being acted upon and the rule discussed below.

Paragraph e. of Rule 402 *Exceptions*, is disapproved because it exempts "other equipment in agricultural operations" from the visible emission prohibitions imposed by Rule 401. "Other equipment" is not defined, and it is therefore not clear what operations this exemption is intended to cover. Since this provision might permit sources otherwise regulated to violate applicable emission limitations, it should be disapproved. In addition, this exemption is not justified by a control strategy analysis which demonstrates that it will not violate section 110 of the Clean Air Act by interfering with the attainment or maintenance of National Ambient Air Quality Standards.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

Pursuant to section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the rules and regulations as State Implementation Plan revisions.

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

Dated: September 27, 1977.

DOUGLAS M. COSTLE,
Administrator.

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

Subpart F—California

1. Section 52.220, paragraph (c)(35)(v)(A) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(35) * * *

(v) San Joaquin County APCD.

(A) Rules 102, 103, 103.1, 104, 105, 111, 112, 301, 305, 402, 416.1, 501, 504, 511.

* * * * *

2. Section 52.273 paragraph (a)(3)(i)(A) is added as follows:

§ 52.273 Open burning.

(a) * * *

(3) San Joaquin Valley Intrastate Region:

(i) San Joaquin County APCD.

(A) Paragraph e. of Rule 402.

* * * * *

[FR Doc.77-29122 Filed 10-3-77;8:45 am]

[6560-01]

[FRL 784-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Sacramento County Air Pollution Control District (APCD)

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Sacramento County portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: November 3, 1977.

FOR FURTHER INFORMATION CONTACT:

Frank M. Covington, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 100 California Street, San Francisco, CA 94111, Attn: David R. Souten, 415-556-7288.

SUPPLEMENTARY INFORMATION: On May 26, 1977, in 42 FR 27001, EPA published a Notice of Proposed Rulemaking for revisions to the Sacramento County Air Pollution Control District's Rules and Regulations submitted on November 10, 1976 by the California Air Resources Board for inclusion in the California SIP.

Rules concerning new source review and gasoline vapor recovery have been submitted; however, no action is being taken at this time, and these rules will be acted upon in separate FEDERAL REGISTER notices.

The changes contained in the above mentioned submittal and being acted on by this notice, include the following: procedural changes, which update California Health and Safety Code citations contained in the rules, and which delete obsolete effective dates from various rules; procedural changes are made with several definitions; the deletion of a "Gasoline Storage" rule (the requirements of this rule are added to another rule which will be acted on at a future date); permit fees are raised and clarifying language is added to the "Permit Fees" rule; miscellaneous changes are made to rules affecting agricultural burning; and a definitions list is added to the end of Regulation VII. A list of the Rules initially considered for this notice was published as part of the notice of proposed rulemaking and can be found in 42 FR 27001 (May 26, 1977). The proposed rulemaking provided 30 days for public comments. No comments were received.

It is the purpose of this final rulemaking to approve all of the changes contained in the November 10, 1976 submittal for Sacramento County and incorporate them into the California SIP, with the exception of those rules not being acted upon and the rule discussed below.

EPA is disapproving paragraph a. of Rule 96, *Emergency Permits*, which authorizes the Air Pollution Control Officer to permit agricultural burning otherwise prohibited, if the denial of such authorization would threaten imminent and substantial loss. This allowance is disapproved because Section 110 of the Clean Air Act does not allow exceptions on the basis of economic factors absent a showing that other requirements of this section have been met. In addition, no analysis has been presented to show that such exemptions will not interfere with the attainment or maintenance of National Ambient Air Quality Standards or will not violate other Section 110 requirements.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

Pursuant to Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as State Implementation Plan revisions.

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

Dated: September 27, 1977.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c) (35) (i) (A) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(35) Revised regulations for the following APCDs submitted on November 10, 1976 by the Governor's designee.

(i) Sacramento County APCD.

(A) Rules 1, 2, 11, 12, 21, 22a, 22b, 24, 25, 27, 28, 29, 33, 39, 44, 70, 71, 90, 92, 93, 94, 95, 96, 97, 98, and definitions list addition to Regulation VII.

* * * * *

2. Section 52.273, paragraph (a) (1) (i) (A) is added as follows:

§ 52.273 Open burning.

(a) The following rules or portions of rules are disapproved because they contain exemptions to open burning (including open agricultural burning) prohibitions, that do not satisfy the requirements of Section 110 of the Clean Air Act:

(1) Sacramento Valley Intrastate Region:

(i) Sacramento County APCD.

(A) Paragraph a. of Rule 96.

* * * * *

[FR Doc.77-29083 Filed 10-3-77;8:45 am]

[6560-01]

[FRL 784-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Approval of New Mexico Regulations 100, 705, and 706

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action approves revisions to Regulations 100 and 705 and a new Regulation 706 of the State Implementation Plan for New Mexico. Revised Regulation 100 includes additional definitions for new and existing petroleum processing facilities, petroleum refineries, natural gas processing plants, and gasification plants. Revised Regulation 705 requires that compliance schedules be submitted on a regulation's effective date rather than the adoption date. New Regulation 706 identifies applicable Air Quality Maintenance Areas in New Mexico. These regulations are considered necessary for the State to exercise its responsibility for attainment and maintenance of National Ambient Air Quality Standards.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Oscar Cabra, Jr., Air Program Branch, Environmental Protection Agency, Region VI, Dallas, Tex. 75270 (214-749-3837).

SUPPLEMENTARY INFORMATION: On November 6, 1975, the Governor of New Mexico, after adequate notice and public hearing, submitted revisions to Regulations 100 and 705, and a new Regulation 706. After EPA's review of these submittals, a proposed approval was published in the FEDERAL REGISTER on June 20, 1977 (42 FR 31175).

PUBLIC COMMENTS

In the proposed approval of Regulations 100, 705, and 706, interested persons were given 30 days to submit comments for consideration by EPA in making a final approval/disapproval decision. No comments on the proposed approval were received. Therefore, there is no information which conflicts with a final approval decision.

CURRENT ACTION

In this action, approval of the revisions to Regulations 100 and 705 and the new Regulation 706 is being promulgated as proposed.

A revision to Regulation 201 and new Regulations 623, 626, 628, 673, 674, 675, and 677 were also included with the Governor's submittal. All of these regulations pertain to non-criteria pollutants such as ammonia, hydrogen sulfide, and hydrogen chloride. EPA does not have authority to require or approve regulations designed to control pollutants other than those identified under Section 109 of the Clean Air Act. Therefore, no action is being taken on these regulations.

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

Dated: September 28, 1977.

DOUGLAS M. COSTLE,
Administrator.

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

Subpart GG—New Mexico

1. In § 52.1620, paragraph (c) is amended by adding paragraph (9) as follows:

§ 52.1620 Identification of Plan.

* * * * *

(c) * * *

(9) Revisions to Regulation 100 Definitions, Regulation 705, Schedules of Compliance, and a new Regulation 706, Air Quality Maintenance Areas, were submitted by the Governor on November 6, 1975.

§ 52.1633 [Revoked]

2. Section 52.1633 is revoked.

[FR Doc.77-29081 Filed 10-3-77;8:45 am]

[4310-84]

Title 43—Public Lands: Interior

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

PART 3300—OUTER CONTINENTAL SHELF OIL AND GAS LEASES

Suspensions and the Five-Year Lease Term

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Final rule.

SUMMARY: By a rule published today in conjunction with this rule, Geological Survey's OCS operations regulations are amended to provide the procedures to be followed in the case of certain emergency suspensions of operations. This rule amends the lease term and lease extension regulations to incorporate the manner in which the lease term is affected by the 30 CFR 250.12(c) (2) emergency suspension provision.

EFFECTIVE DATE: This rule applies, as amended, to all OCS oil and gas leases issued subsequent to this publication.

SUPPLEMENTARY INFORMATION: The proposal received fifteen comments. Most of these were chiefly directed at the Geological Survey portion of the regulation, 30 CFR 250.12(c), published today. These comments recommended that if the proposed § 250.12(c) was amended to delete subsection (2) (iii), then these provisions could be left essentially as they were. As can be seen from the discussion of the comments in the Geological Survey rule published today, we are proceeding with those amendments. These amendments follow.

Other comments were directed to the question whether these provisions dovetailed with the proposed 30 CFR 250.12 (c). We have revised § 3305a.4 to make clear the operation of 30 CFR 250.12(c) (2) (iii) on the running of the lease term.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Order 11821 and OMB Circular A-107.

It is hereby determined that publication of this rule is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2) (c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2) (c)) is required.

Dated: September 28, 1977.

CECIL D. ANDRUS,
Secretary.

Under the authority of the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.), Subparts 3302 and 3305a of Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations are hereby amended as set forth below.

Subpart 3302—Issuances of Leases

1. Subpart 3302 is amended to read as follows:

§ 3302.2 Term.

(a) All oil and gas leases shall be issued for a term of 5 years and so long thereafter as oil or gas may be produced from the leasehold in paying quantities, or drilling or well reworking operations, as approved by the Secretary under § 3305a.1 are conducted thereon. The term of an oil and gas lease is subject to extension as provided in 43 CFR 3305a.4.

* * * * *

Subpart 3305a—Extension of Leases

2. Subpart 3305a is amended to read as follows:

§ 3305a.4 Effect of suspensions on lease term.

In the event that under the provisions of 30 CFR 250.12(c) or (d)(1), the regional oil and gas supervisor of the Geological Survey directs the suspension of either operations or production, or both, with respect to any lease in its primary term, the primary term of the lease will be extended by a period equivalent to the period of the suspension. In the event that under the provisions of 30 CFR 250.12(c) or (d)(1) the supervisor orders or approves the suspension of either operations or production, or both, with respect to any lease extended beyond its primary term, the term of the lease will not be deemed to expire so long as the suspension remains in effect.

[FR Doc.77-29110 Filed 10-3-77;8:45 am]

[4910-22]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

[Amendment No. 76-5]

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY PROCEEDINGS

PART 391—QUALIFICATIONS OF DRIVERS

Motor Carrier Safety Settlement and Hearing Procedures

AGENCY: The Federal Highway Administration, DOT.

ACTION: Amendment to final rule.

SUMMARY: The changes being made in this document relate to replies, requests for admissions, service, and driver qualification applications. Each of the changes made should result in easier processing and fewer motions being filed.

EFFECTIVE DATE: This amendment takes place on October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Person in legal office to contact; Gerald M. Tierney, Motor Carrier and Highway Safety Law Division, Office of the Chief Counsel (202-426-0346), Federal Highway Administration, Washington, D.C. 20590. Principal Program Contact: Gerald J. Davis, Chief, Driver Requirements Branch, Regulations Division, Bureau of Motor Carrier Safety (202-426-9767), Federal Highway Administration, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On April 5, 1977, the Federal Highway Administration (FHWA) published revised rules of practice for its motor carrier settlement and hearing procedures. 49 FR 18076. At that time, the FHWA requested the public to submit comments on the rules. The intention was to determine whether the rules presented any problems in operation and, if they did, to change them.

The rules have now been in effect for over 5 months. Although the rules have worked well, experience has shown that a few additions or clarifications are justified. This document makes those changes.

In answer to FHWA solicitation of comments concerning the new rules of practice, one response was received. That response, submitted by the Private Truck Council of America, Inc., commented favorably on the rules in general, but took exception to certain particulars.

RESPONSE OF THE PRIVATE TRUCK COUNCIL OF AMERICA, INC.

The Council claimed that the failure to grant a hearing as a right in all cases should be changed. It contends that it is improper to allow the Associate Administrator to deny a hearing when there are no material factual issues in dispute.

The FHWA cannot agree that such a procedure is improper. The general rule of law regarding the necessity of granting a hearing is that one need be granted only if there are material factual issues in dispute. To grant a hearing whenever one is requested would result in an unnecessary expenditure of money, both the taxpayers' and the parties', for hearings that would not serve any purpose. The rule has already proved effective in several cases in which disqualified drivers requested hearings at the same time they admitted they had physical conditions that were disqualifying. Although they asked for hearings, they were really asking that the rule in question be changed.

Another purpose accomplished by the rule is a narrowing of issues. The requirement for a listing of factual issues in dispute requires the party requesting the hearing to thoroughly evaluate his position before he submits his request. This eliminates frivolous requests.

The rule is not unfair. Parties who show serious factual issues are guaranteed a hearing. The Associate Administrator has and will continue to evaluate each case on its own merit and to grant hearings in all questionable cases.

The Private Truck Council requested that §§ 386.15, 386.35 and 386.40 be changed to allow intervention, discovery and amendment of pleadings in cases not called for oral hearing. The request, as it relates to discovery and amendments to pleadings, is reasonable and may help to increase the information available to the decisionmaker. Those two sections are, therefore, being amended to accomplish the requested changes. Allowing intervention prior to the hearing would, however, only serve to delay and complicate cases where there are no issues in dispute. If there is no dispute between the parties, there is no need to receive evidence of an intervenor. If there is a dispute, the matter will be called for a hearing and intervention will be permitted. Because of these reasons, the present rule on intervention will not be changed.

The Private Truck Council claims that paragraphs (a) and (c) of § 386.43 are inconsistent and ambiguous. Paragraph (c) merely provides the parties a less formal procedure for requesting the attendance of Government witnesses or Government documents. It is neither ambiguous nor confusing and has, therefore, not been changed.

It is claimed that § 386.56 is extreme and harsh in not allowing a motion for rehearing for 1 year. The other procedural safeguards in the rules, including the allowance of petitions for reconsideration, remove any harshness this rule may have. A rule of this type is necessary to give a certain finality to decisions and to prevent petitions from being filed in rapid succession.

Another of the comments of the Private Truck Council questions the letter of disqualification. These are letters to drivers issued by the Director, Bureau of Motor Carrier Safety, or the FHWA Regional offices. They inform the driver that he has been found not qualified and allow him the opportunity to appeal the determination. These letters are issued only in cases of obvious disqualification when the public safety is at stake. They are issued under the authority granted in 49 U.S.C. 304.

The Private Truck Council questions the authority of 49 CFR 391.47(f) which states that a driver is not qualified once an application is submitted. The authority for this section is 49 U.S.C. 304 which gives the FHWA the power to issue regulations concerning the qualification of drivers. Under § 391.47 there has to be a conflict of medical opinion before an application is submitted. When a conflict exists there is no valid certification. A driver who is not certified cannot drive under the regulations. Therefore, until a determinationr of the validity of the certification is made, the driver cannot be considered qualified.

The section provides that the Director can issue an order finding the driver qualified pending the issuance of the determination. This procedure was added to the rule to allow the Director to prevent any hardship to the driver if the issuance of the determination is delayed.

It is not expected that this section will present a hardship to the driver because, in most cases, the determination will be quickly issued. When it is not, the Director can issue an order finding the driver qualified until the determination is made.

Based on the above explanation, paragraph 391.47(f) will not be changed. Other parts of the section are, however, changed to allow all parties the opportunity to submit records prior to the Director's determination and to require the applicant to establish jurisdiction. These changes will result in more information being available on which to base a decision and will screen out improper cases.

Additional Changes: Practice under the rules during the past several months has shown that additional changes can be made to streamline procedures and clarify issues. The following changes are designed to accomplish that purpose:

Section 386.13(b) is revised to clarify the requirements for a reply and to fur-

ther explain the procedures for requesting a hearing and submitting evidence if no hearing is requested. The time period for requesting a hearing is shortened to provide time for submission of evidence if no hearing is requested.

Section 386.13(d) is changed to require a motion before the Associate Administrator issues of a final determination.

Section 386.14(b) is amended to elaborate on the Associate Administrator's actions in deciding on a request for a hearing.

It has been determined that these amendments are not major actions requiring the preparation of either an economic impact statement or environmental impact statement. Because these rules concern practice and procedure, have been issued after public comment and are necessary for immediate enforcement, notice and comment are unnecessary and the changes will go into effect upon publication.

Therefore, the Motor Carrier Safety Settlement and Hearing Procedures are amended as follows:

1. 49 CFR 386.13(b) is revised to read as follows:

§ 386.13 Petitions to review, replies.

* * * * *

(b) *Civil forfeiture proceedings.* (1) The respondent must reply within 20 days after the claim letter is served or within such additional time as the claim letter may specify. The reply must contain the following:

(i) An admission or denial of each allegation of the claim and a concise statement of facts constituting each defense;

(ii) A statement of whether the respondent wishes to discuss the amount claimed; and

(iii) Certification that the reply has been served in accordance with § 386.38.

(2) Additional procedures for proceedings under the Hazardous Materials Transportation Act.

(i) *Request for hearing or for submission of evidence without hearing.* At any time within 40 days after the date the reply was filed or within such other time as the claimant may specify in writing, the respondent must either request an oral hearing or give notice that he intends to submit his evidence without oral hearing. A request for oral hearing must contain a listing of all factual issues believed to be in dispute. Failure to request a hearing as required by this section shall constitute a waiver of any right to a hearing.

(ii) *Submission of evidence.* If a notice of intent to submit evidence without oral hearing is filed or if no hearing is requested under paragraph (b)(2)(i) of this section, all evidence must be served in written form no later than the 20th day following the date the respondent's request for a hearing or notice of intent to submit evidence without oral hearing was due under paragraph (b)(2)(i) of this section. Evidence must be submitted in the form specified in § 386.37.

(iii) *Complainant's requests for a hearing.* If the respondent files a notice of intent to submit evidence without oral hearing, the complainant may, within 10 days after that request is filed, submit a request for oral hearing. The request must include a listing of all factual issues believed to be in dispute.

* * * * *

2. 49 CFR 386.13(d) is revised to read as follows:

§ 386.13 Petition to review, replies.

* * * * *

(d) *Failure to reply or petition, decision.* Failure to submit a petition as specified in paragraph (a) of this section shall constitute a waiver of the right to petition for review of the determination or letter of disqualification. In these cases the determination or disqualification issued automatically becomes the final decision of the Associate Administrator, 30 days after the time to submit the reply or petition to review has expired unless the Associate Administrator orders otherwise. When no reply is received to the claim letter or notice of investigation under paragraphs (b) and (c) of this section, the Associate Administrator may, on motion of any party, find the facts as alleged and issue a final order in the case.

3. 49 CFR 386.14(b) is revised to read as follows:

§ 396.14 Action on petitions or replies.

* * * * *

(b) *Request for Oral Hearing.* If a request for an oral hearing has been filed, the Associate Administrator shall determine whether there are any factual issues in dispute. If there are, he shall call the matter for a hearing. If there are none, he shall issue an order to that effect and set a time for submission of argument by the parties. Upon the submission of argument he shall decide the case.

* * * * *

4a. 49 CFR 386.35 is revised to read as follows:

§ 386.35 Deposition and interrogatories.

At any time after a reply or petition is submitted under § 386.13, any party may file a motion with the Associate Administrator or the hearing officer, if one has been appointed, requesting permission to take a deposition of any person, including a party, or to file written interrogatories on any party to a proceeding. All requests for depositions or interrogatories must include a description of the general subject matter about which the depositions and interrogatories are requested and the time and place for such matters to take place. Service of the motion shall be made on all other parties. Other parties may submit responses within 7 days after the motion is served. The hearing officer, if one has been appointed, or the Associate Administrator may then rule on the motion. His ruling may deny the motion or permit it in whole or in part.

4b. 49 CFR 386.40(a) is revised to read as follows:

§ 386.40 Amendment and withdrawal of pleadings.

* * * * *

(a) *Amendment or withdrawal of pleadings.* Except in instances covered by other rules, anytime more than 15 days prior to the hearing, a party may amend his pleadings by serving the amended pleading on the Associate Administrator or the hearing officer, if one has been appointed, and on all parties. After 15 days prior to the hearing, an amendment shall be allowed only at the discretion of the hearing officer. When an amended pleading is filed, other parties may file a response and objection within 10 days.

* * * * *

5. 49 CFR 386.36 is revised to read as follows:

§ 386.36 Medical records and physicians' reports.

In cases involving the physical qualifications of a driver, copies of all physicians' reports, test results, and other medical records that a party intends to rely upon shall be served on all other parties at least 30 days prior to the date set for hearing. Except as waived by the Director, Bureau of Motor Carrier Safety, reports, test results and medical records not served under this rule shall be excluded from evidence at any hearing.

6. 49 CFR 386.38 is revised to read as follows:

§ 386.38 Service.

In accordance with the delegations of authority in § 301.60 the following identifies those persons who must be served with papers filed under these rules.

(a) *Docket file.* The original and two copies of all papers filed under these rules of practice shall be served on the docket. A docket number will be assigned to each case and will appear on all papers filed by or served on the Government. Address docket copies to FHWA Docket No. ——, Office of the Chief Counsel (HCC–20), Federal Highway Administration, Department of Transportation, Washington, D.C. 20590.

(b) *Associate Administrator for Safety.* A copy of all papers filed under these rules of practice shall be filed with the Associate Administrator for Safety, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590.

(c) *Hearing Officer.* After a hearing officer is appointed by the Associate Administrator, a copy of all papers filed under these rules shall be served on such hearing officer.

(d) *Parties.* A copy of all papers filed under these rules shall be served on all parties to the proceeding.

(e) *Notification.* The first pleading of the Government in a proceeding initiated under this section shall have attached to it a list of persons to be served. Such list shall be updated as necessary.

(f) *Service.* All service required by these rules shall be by registered or certified mail, first class, postage prepaid.

(g) *Responsibilities in these proceedings.* The following is a brief summary of the present delegations of authority. A more detailed breakdown is included in § 301.60.

(1) *Director, Bureau of Motor Carrier Safety.* The Director issues driver qualification determinations, letters of qualification, claim letters and notices of investigation under §§ 386.11 and 391.47 of this Chapter. He is also authorized to sign consent orders and compromise claims.

(2) *Regional Administrator.* The Regional Administartor, or his delegate, may issue letters of qualification, may settle claims and sign consent orders.

(3) *The Associate Administrator for Safety.* The Associate Administrator makes the final administrative decisions on all disputed issues in proceedings under Part 386. He makes the final decision, determines whether a matter should be called for a hearing, decides appeals under § 386.53, and decides all motions prior to the appointment of a hearing officer.

(4) *Hearing Officer.* The Hearing Officer issues a decision under § 386.51 and decides all motions submitted from the time he is appointed until he issues a decision under § 386.51.

7. A new section is added to 49 CFR Part 386 as follows:

§ 386.49 Request for Admissions.

(a) Request for Admission. (1) Any party may serve upon any other party a request for admission of any relevant matter or the authenticity of any relevant document. Copies of any document about which an admission is requested must accompany the request.

(2) Each matter of which an admission is requested shall be separately set forth and numbered. The matter is admitted unless within 15 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer signed by the party or his attorney.

(3) Each answer must specify whether the party admits or denies the matter. If the matter cannot be admitted or denied, the party shall set out in detail the reasons.

(4) A party may not issue a denial or fail to answer on the ground that he lacks knowledge unless he has made reasonable inquiry to ascertain information sufficient to allow him to admit or deny.

(5) A party may file an objection to a request for admission within 10 days after service. Such motion shall be filed with the hearing officer if one has been appointed, otherwise it shall be filed with the Associate Administrator. An objection must explain in detail the reasons the party should not answer. A reply to the objection may be served by the party requesting the admission within 10 days after service of the objection. It is not sufficient ground for objection to claim that the matter about which an admission is requested presents an issue of fact for hearing.

(b) Effect of Admission. Any matter admitted is conclusively established unless the Associate Administrator or hearing officer permits withdrawal or amendment. Any admission under this rule is for the purpose of the pending action only and may not be used in any other proceeding.

(c) If a party refuses to admit a matter or the authenticity of a document which is later proved, the party requesting the admission may move for an award of expenses incurred in making the proof. Such a motion shall be granted unless there was a good reason for failure to admit.

8. 49 CFR 391.47(b) (9) and (10) are added and (d) is revised as follows:

§ 391.47 Resolution of conflicts of medical evaluation.

* * * * *

(b) * * *

(9) The application must be accompanied by a statement of the driver that he intends to drive in interstate commerce not subject to the commercial zone exemption or a statement of the carrier that he has used or intends to use the driver for such work.

(10) The applicant must submit three copies of the application and all records.

* * * * *

(d) (1) *Action.* Upon receiving a satisfactory application the Director shall notify the parties (the driver, motor carrier, or any other interested party) that the application has been accepted and that a determination will be made. A copy of all evidence received shall be attached to the notice.

(2) *Reply.* Any party may submit a reply to the notification within 15 days after service. Such reply must be accompanied by all evidence the party wants the Director to consider in making his determination. Evidence submitted should include all medical records and test results upon which the party relies.

(3) *Parties.* A party for the purposes of this section includes the motor carrier and the driver, or anyone else submitting an application.

* * * * *

(49 U.S.C. 304, P.L. 93-633, 88 Stat. 2156 (49 U.S.C. 1801 et seq.); 49 CFR 1.48, 301.60.)

Issued this 26th day of September, 1977, in Washington, D.C.

KENNETH L. PIERSON,
Acting Director,
Bureau of Motor Carrier Safety.

[FR Doc.77-29190 Filed 10-3-77;8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

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

PART 33—SPORT FISHING

Opening of Sand Lake National Wildlife Refuge, S. Dak., to Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulation.

SUMMARY: The Director has determined that the opening to sport fishing of Sand Lake 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: January 1 through December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Refuge Manager, Sand Lake NWR, Columbia, S. Dak. 57433 (605-885-6320).

SUPPLEMENTARY INFORMATION:

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

Sport fishing is permitted on the Sand Lake National Wildlife Refuge, S. Dak., only on the areas designated by signs as being open to fishing. These areas comprising 150 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225. Sport fishing shall be in accordance with all applicable State regulations subject to the following conditions:

1. The use of boats is not permitted.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 33. 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 20, 1977.

SAM WALDSTEIN,
Refuge Manager.

[FR Doc.77-29112 Filed 10-3-77;8:45 am]

[3410-07]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

[FmHA Instruction 440.3]

PART 1888—SPECIAL ASSISTANCE TO DROUGHT STRICKEN AREAS

Obligation of Loan and Grant Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration issues amended regulations to provide that loan and grant funds must be obligated on or before October 31, 1977. This action is brought about by the

need to allow more time for obligation of funds.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles B. Hart, 202-447-5717.

SUPPLEMENTARY INFORMATION: Section 1888.17 of Part 1888 of Chapter XVIII, Title 7, Subchapter G, "Miscellaneous Regulations," in the Code of Federal Regulations (42 FR 19322; 42 FR 23158; 42 FR 37355; 42 FR 42843) is amended. The text of paragraph (a) of this section is amended to provide that loan and grant funds must be obligated on or before October 31, 1977. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemptions in 5 U.S.C. 553 with respect to such rules. This amendment, however, is not published for proposed rulemaking since delay in initiating this would reduce the number of communities that obtain funds for drought assistance. Since this assistance is currently needed any delay would be contrary to the public interest. Accordingly § 1888.17(a) is amended to read as follows:

§ 1888.17 Termination provisions.

(a) Any assistance provided under this regulation must be for an applicant with an application on file on or before September 30, 1977. For projects eligible for assistance under paragraph (b) of § 1888.13, the obligating documents must have been received in the Finance Office as of close of business on September 30, 1977, and funds must be obligated on or before October 31, 1977.

* * * * *

(7 U.S.C. 1989; 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.)

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: October 3, 1977.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc.77-29340 Filed 10-3-77;11:53 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.

[3410-34]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Parts 1, 3]

HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF MARINE MAMMALS; PROPOSED REGULATIONS AND STANDARDS

Informal Public Hearing on Proposed Rules

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

ACTION: Notice of informal public hearing.

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. On September 13, 1977, a notice concerning public hearings to be held in Los Angeles, Calif., and Miami Springs, Fla., on September 26 and 29, 1977, respectively, was published in the FEDERAL REGISTER to further allow interested persons an opportunity to participate in this rulemaking proceeding. This document announces another informal public hearing to be held in College Park, Md., to give interested persons a further opportunity to participate in this rulemaking proceeding through the submission of written comments with an opportunity for oral presentation.

DATE: The hearing will be held on Tuesday, October 18, 1977, at College Park, Md., between the hours of 10 a.m. and 4 p.m.

ADDRESS: The informal public hearing will be held at the Terrapin Room, Quality Inn Motel, 7200 Baltimore Avenue, College Park, Md. 20740, telephone number (301-864-5820).

FOR FURTHER INFORMATION CONTACT:

Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, telephone number 301-436-8271.

SUPPLEMENTARY INFORMATION: The allegation has been made that the marine mammal hearings to be held in Los Angeles, Calif., and Miami Springs, Fla., by the Department will allow for presentations by the regulated industry, but will not allow for presentations of opposing views by other interested parties based in and around the Washington, D.C., area. In order to provide for such public participation, an informal public hearing is scheduled to be held in the Washington, D.C., area so that interested parties in such area may present their views concerning the proposed regulations and standards covering marine mammals.

A Veterinary Services representative will serve as chairman at the informal public hearing. 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 at the discretion of the chairman in order to give all persons at the hearing an opportunity to be heard. Transcripts of the oral hearing will be made, and copies of the transcripts and any written comments submitted at the hearing, 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.

Done at Washington, D.C. this 28th 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.

NORVAN L. MEYER,
Acting Deputy Administrator, Veterinary Services.

[FR Doc.77-29032 Filed 10-3-77;8:45 am]

[3410-34]

[9 CFR Part 114]

VIRUSES, SERUMS, TOXINS, AND ANALOGOUS PRODUCTS

Miscellaneous Amendments; Proposed Rulemaking

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

ACTION: Proposed rule.

SUMMARY: This proposed amendment clarifies and simplifies the requirements for extending the expiration date for a biological product. A "U.S. Standard of Potency" for each fraction of a product is presently required before an extension of expiration date is granted, although the meaning of that term is unclear. The present regulations also require that the extended expiration date must be computed from the harvest date. This proposed amendment would delete the necessity of establishing a "U.S. Standard of Potency", would provide for different potency evaluation tests, and would delete the "from harvest" requirement.

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

ADDRESS: Interested persons are invited to submit written data, views, or arguments regarding the proposed regulations to: Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 828-A, Federal Building, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. R. J. Price, 301-436-8245.

SUPPLEMENTARY INFORMATION: The present regulations prescribe conditions for permitting an extension of dating for a biological product. One of the conditions is that "U.S. Standard of Potency" be available for all fractions of the product (see § 114.14(a) of the regutions), and another condition is that the new date be determined "from harvest (see § 114.14(b) of the regulations).

"U.S. Standard of Potency" is an undefined and unclear term. Some potency tests are part of the Standard Requirements. Others are written into the filed Outline of Production and are accepted by Veterinary Services. Misunderstandings as to meaning of the term "U.S. Standard of Potency" have resulted. This proposed amendment of the regulations removes the necessity of having a "U.S. Standard of Potency" for all fractions of a product before an extension of expiration date may be granted for such product, and requires instead, that in order to be granted such extension, a product must be evaluated for potency by tests approved by the Deputy Administrator which are filed in an Outline of Production for such product.

The harvest date is used as the point in time from which expiration dates are computed for certain biological products. As a result, the harvest date was made the point in time from which an extension would be granted for all biological products. Adjustments have been made

in this proposed amendment to provide for changes in manufacturing practices relating to products which do not have their expiration date determined from the date of harvest.

This proposed amendment would delete the "U.S. Standards of Potency" requirement, would provide for different potency evaluation tests, and would delete the "from harvest" requirement.

In § 114.14, paragraphs (a)(1) and (b)(1) would be revised to read as follows:

§ 114.14 Extension of the expiration date for a serial or subserial.

(a) * * *

(1) If all fractions of the product are not evaluated for potency by tests designated in the filed Outline of Production for such product in accordance with § 113.4(b) of this subchapter; or

* * * * *

(b) * * *

(1) The new expiration date shall not exceed 6 months beyond the maximum time permitted in the filed Outline of Production; and

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the address listed in this document during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 12.7(b)).

Done at Washington, D.C., this 28th 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.

NORVAN L. MEYER,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc.77-28996 Filed 10-3-77;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 226]

[6210-01]

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

PART 226—TRUTH IN LENDING

Proposed Amendment to Regulation Z Concerning Descriptive Billing Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the provision of Regulation Z that now requires that the date that a cash advance check transaction takes place be disclosed on the creditor's descriptive periodic billing statement. In lieu of disclosing the transaction date, the proposal would permit creditors to disclose the date of debiting (the date on which a creditor honors a cash advance check) provided that the creditor treats any subsequent related inquiry from a customer as a billing error and an erroneous billing under the Fair Credit Billing Act. The purpose of the proposed rule is to facilitate compliance by certain creditors who have experienced operational difficulties in capturing transaction dates. Creditors with the capability of disclosing transaction dates would be permitted to do so.

DATE: Comments must be received on or before November 1, 1977.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All materials submitted should include the docket numbers R-0087, R-0093.

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: The Board of Governors of the Federal Reserve System is publishing for comment a proposed amendment to Regulation Z designed to facilitate compliance with the disclosure requirements relating to cash advance check transactions that are descriptively billed on periodic billing statements. The proposed amendment is in response to serious operational difficulties experienced by a number of creditors in capturing transaction dates on such checks. The regulation currently requires that transaction dates be disclosed in all cases. The proposed amendment would permit debiting dates to be disclosed in substitution for transaction dates provided that the creditor treats any subsequent customer inquiries seeking clarification of cash advance check transactions as billing errors and erroneous billings under the regulation. This would mean that no finance charge on such transactions would be allowed to accrue during the time that the creditor took to provide the customer with documentary or other evidence supporting the transactions. The current requirements were to become fully effective on October 28, 1977. In light of the creditor compliance problems with these requirements, the Board on August 31, 1977, suspended this effective date with regard to cash advance transactions until March 28, 1978.

The Board believes that the substitution of the date of debiting may be permitted without harm to the consumer's understanding of transaction activity in his or her open end credit account. Cash advance transactions appear to be relatively infrequent as compared with purchase transactions in such accounts. Moreover, cash advance transactions appear to be substantially larger in amount. Evidence submitted in support of these assumptions indicated that one bank's open end credit plan averaged six cash advance transactions per account during 1976 and that the average amount was $176. Comparable figures on purchase transactions under the same plan were 24 transactions per account during the year for an average amount of $29. This evidence suggests that consumers may have less difficulty in recalling cash advance transactions in light of their relative infrequency and high dollar amounts.

The Board is interested in having the views of interested persons on whether these assumptions on dollar volume and frequency are typical of other open end credit plans. It is also interested in receiving relevant cost data on supplying transaction dates and debiting dates.

Pursuant to the authority granted in 15 U.S.C. 1604 (1970), the Board proposes to amend paragraph 226.7(k)(3)(ii) of Regulation Z, 12 CFR Part 226 as follows:

§ 226.7 Open end credit accounts—specific disclosures.

* * * * *

(k) * * *

(3) * * *

(ii) A description of the transaction, which characterizes it as a cash advance, loan, overdraft loan, or other designation as appropriate, and which includes the amount of the transaction and the date of the transaction[*] or the date which appears on the document or instrument evidencing the transaction (if the customer signed the document or instrument), or the date of debiting the amount to the account, provided that if only the debiting date is disclosed and the customer submits a proper written notification of a billing error related to the transaction, the creditor shall treat such inquiry as a billing error under §§ 226.2(j) and 226.14, and as an erroneous billing under § 226.14(b), and shall supply documentary evidence of the transaction whether or not the customer requests it, within the time period allowed under § 226.14 for resolution of a billing error without charge to the customer. If the date of debiting is disclosed, it must be reasonably identified as such on the periodic statement.

* * * * *

To aid in the consideration of this proposal by the Board, interested persons are invited to submit relevant data, views, comments, or arguments. All such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 1, 1977. All material submitted should include the docket numbers R-0087, R-0093. Such information will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

This notice is published pursuant to § 553(b) of Title 5 United States Code

[*] In cases in which an amount is debited to a customer's open end credit account under an overdraft checking plan, the date of debiting the open end credit account shall be considered the date of the transaction for purposes of this paragraph.

and § 262.2(a) of the Rules of Procedure of the Board of Governors of the Federal Reserve System (12 CFR 262.2(a)).

By order of the Board of Governors, September 28, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-29214 Filed 10-3-77;8:45 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Parts 1304, 1305]

RESPIRABLE FREE-FORM ASBESTOS

Proposal To Ban Certain Patching Compounds and Artificial Emberizing Materials (Embers and Ash); Extension of Time

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time.

SUMMARY: This notice extends from September 27, 1977, to November 28, 1977, the period in which the Commission must either publish in the FEDERAL REGISTER a consumer product safety rule to declare that two consumer products containing respirable free-form asbestos are banned hazardous products under section 9 of the CPSA (15 U.S.C. 2058), or withdraw the rule proposed on July 29, 1977.

FOR FURTHER INFORMATION CONTACT:

John Liskey, Consumer Product Safety Commission, Washington, D.C. 20207 (301-492-6557).

SUPPLEMENTARY INFORMATION: On July 29, 1977, the Commission published in the FEDERAL REGISTER (42 FR 38783) a proposal to ban consumer patching compounds and artificial emberizing materials (embers and ash) containing respirable free-form asbestos. Based on information discussed in the proposal, the Commission stated its preliminary determination that inhalation of asbestos fibers released during the use of these products, present an unreasonable risk of injury to the public of certain types of cancer, including lung cancer and mesothelioma. The Commission also preliminarily determined that no feasible standard under the CPSA could adequately protect the public from the unreasonable risk of injury associated with these products.

The FEDERAL REGISTER notice of July 29, 1977, invited interested persons to submit written comments on the proposal by August 29, 1977. In addition, the notice invited interested persons to make oral presentations of data, views, or arguments on the proposal at a public meeting on August 15, 1977. During the August 15 meeting, the Commission solicited other written comments on the oral presentations.

To date, the Commission has received approximately 25 written comments concerning the proposed ban; several of these were received by the staff after the closing date for comments, August 29, 1977. Many of the comments and oral presentations concern complex, technical issues that must be reviewed by the Commission staff prior to evaluation by the Commission. Since the comment period expired recently, the Commission staff will require additional time to analyze these comments and brief the Commission.

Accordingly, pursuant to section 9(a)(1) of the CPSA, the period of time in which the Commission must either publish a consumer product safety rule declaring that consumer patching compounds and artificial emberizing materials containing respirable free-form asbestos are banned hazardous products, or withdraw the rule proposed on July 29, 1977, is extended to November 28, 1977. This period may be further extended for good cause by notice published in the FEDERAL REGISTER.

Dated: September 28, 1977.

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

[FR Doc.77-29106 Filed 10-3-77;8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 133]

[Docket No. 77P-0070]

PASTEURIZED PROCESS CHEESE AND CHEESE PRODUCTS

Proposed Revision of Definitions and Standards of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would revise the definitions and standards of identity for pasteurized process cheese and other pasteurized process cheese products. It is based on petitions for establishing such standards which have been received from the industry as well as on recommended international standards. The proposed rule would make a wider variety of high quality, lower fat products available.

DATE: Comments by January 3, 1978. Proposed compliance for products initially introduced into interstate commerce: July 1, 1979.

ADDRESS: 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:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-245-1155).

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs, on his own initiative and in consideration of two separate petitions and the Codex Alimentarius Recommended International Standards (A-8 (a), (b), and (c) for process cheese and cheese products), proposes to revise the standards of identity for pasteurized process cheese and other pasteurized process cheese products.

PETITIONS FOR PROMULGATION OF STANDARD OF IDENTITY

A petition was filed by Borden, Inc., 50 West Broad St., P.O. Box 2478, Columbus, Ohio 43216, proposing that a standard of identity be established for a pasteurized process cheese product that contains less fat than is currently provided for in the standards of identity for pasteurized process cheese, pasteurized process cheese food, and pasteurized process cheese spread (21 CFR 133.169, 133.173, and 133.179, respectively), and is prepared from skim milk cheese for manufacturing (21 CFR 133.685) as a mandatory cheese ingredient with or without other optional cheese varieties.

A notice was published in the FEDERAL REGISTER of October 22, 1971 (36 FR 20451), granting a marketing permit to Borden, Inc., for limited interstate marketing tests of a pasteurized process cheese product that deviated from the identity standards prescribed in §§ 133.169 and 133.173, in that it contained skim milk cheese for manufacturing and American type cheeses as the cheese ingredient, enzyme-modified cheese, and less fat (8.0 percent fat). A notice extending this permit to July 13, 1973 was published in the FEDERAL REGISTER of September 30, 1972 (37 FR 20582).

Based on the technological and marketing information obtained during the permit period, Borden has set forth the following grounds in support of the proposal to establish a standard of identity for a pasteurized process cheese product:

(1) One of the most prevalent nutritional problems in the United States is excessive calorie intake. Expanding the availability of a wide assortment of carolie-reduced foods is in the best interest of consumers since this will better enable them to plan a reduction in their total intake of calories.

(2) There is a great interest on the part of consumers in modified food products having reduced fat and/or calorie content.

(3) It is technically and economically feasible to make a pasteurized process cheese product that is substantially lower in fat and calories than presently available in standardized process cheese, process cheese food, and process cheese spread.

(4) Market testing has shown that a substantial number of consumers will purchase and repurchase a pasteurized process cheese product with a lower fat content than presently available.

(5) The pasteurized process cheese product described in item (3) has a flavor, taste, and texture that is highly

acceptable to a substantial number of consumers, as indicated by actual consumer testing.

(6) Market testing in diverse areas has established that the acceptance of a pasteurized process cheese product is not limited geographically.

(7) Over 14 months of experience distributing this pasteurized process cheese product has shown that it can be distributed in the same manner as regular pasteurized process cheese and has a comparable shelf life.

A petition similar to that filed by Borden, Inc., was filed by Kraft Foods Division, Division of Kraftco Corp., 500 Peshtigo Court, Chicago, Ill. 60690. The Kraft petition proposed the promulgation of a standard of identity for a pasteurized process cheese product and proposed the amendment of the standards of identity for pasteurized process cheese, cheese food, and cheese spread, as well as the related standards in 21 CFR 133.170, 133.171, 133.174, 133.176, and 133.180. To facilitate these amendments, proposals were also made to amend the standard of identity for skim milk cheese for manufacturing.

Copies of the Borden and Kraft petitions are on file at the Hearing Clerk's office, Food and Drug Administration.

Codex Alimentarius Recommended International Standards

The Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, an auxiliary body of the Codex Alimentarius Commission, has submitted to the United States for consideration of acceptance recommended international standards for process cheese, process cheese and spreadable process cheese and process cheese preparations, process cheese food, and process cheese spread.

The United States, as a member nation of the Food and Agriculture Organization of the United Nations and the World Health Organization, is obliged to consider all recommended international standards. The rules of procedure of the Codex Alimentarius Commission state that a standard may be accepted by a participating country in one of three ways: (1) Full acceptance, (2) target acceptance, or (3) acceptance with specified deviations. A participating country that concludes that it cannot accept the standard in full is requested to indicate the ways in which its requirements differ from the recommended international standard. Member nations of FAO/WHO Commission are requested to notify the Technical Secretary, Committee on the Code of Principles Concerning Milk and Milk Products, Animal Production and Health Division, FAO, Rome, Italy, of their decision. Should a sufficient number of governments accept these standards, the Secretariat of the Committee will notify the Codex Alimentarius Commission and request the publication of these standards by the Codex Alimentarius Commission as worldwide standards in light of the acceptances received.

Commissioner's Proposed Courses of Action

Based on the extensive revisions contemplated in the proposals submitted by the two petitioners, as well as the treaty obligation of the United States to consider the recommended Codex Alimentarius standards for process cheese products in accordance with 21 CFR 130.6, the Commissioner concludes that it would be appropriate to make a combined proposal concerning the standards of identity for these products. He is also of the opinion that the establishment of a fourth category of pasteurized process cheese items is not in the best interest of consumers because there is already considerable confusion about the differences between the present three standards for pasteurized process cheese, cheese food, and cheese spread.

Therefore, the Commissioner proposes to establish only two categories: pasteurized process cheese and pasteurized process cheese product. The proposed pasteurized process cheese product standard will be broad in scope and will not limit fat content. Both the proposed pasteurized process cheese product standard and proposed pasteurized process cheese standard will require label declaration of the percent milkfat. This is necessary because of the variations of fat content of such foods. For example, the fat content of the solids of such foods made from a single variety of cheese may vary from as low as 43 percent for Swiss cheese to as high as approximately 50 percent for cheddar cheese. The resulting pasteurized process cheese would be labeled as containing 24 and 30 percent fat, respectively. With all of the potential variations of fat content for such foods, the Commissioner believes it is necessary to provide the consumer with this label information.

The reason for label declaration of the percent fat in the proposed pasteurized process cheese product standard is that the fat may range from a theoretical zero percent to 23 percent, or even higher, depending on the fat content of the cheese used to make up the 51 percent cheese requirement of pasteurized process cheese product. Label declaration of fat content for both pasteurized process cheese and pasteurized process cheese products will also aid consumers in differentiating between the two standards.

Furthermore, the label declaration of percent fat will automatically require that the foods be nutritionally labeled. Since there are many types of ingredients that the processors of pasteurized process cheese and pasteurized process cheese product may use in manufacturing these foods, the ingredients are considered to be optional and therefore are required to be declared in the ingredient statement in accordance with 21 CFR Part 101.

The Commissioner's proposed revision of the existing standard for pasteurized process cheese in 21 CFR 133.169:

(1) Requires label declaration of fat content.

(2) Adopts the use of class designation for safe and suitable optional ingredients and requires that all such ingredients be declared on the label by their common or usual name in accordance with 21 CFR Part 101 labeling requirements.

(3) Provides for the use of monterey cheese as one of the varieties of cheese approved for use under the term "American cheese" since this cheese was developed in the United States and is similar to the other cheeses now used for "Pasteurized Process American Cheese".

(4) Provides for the use of semisoft part-skim cheese.

(5) Provides for the use of safe and suitable enzymes for the development of flavor and body in ground or shredded cheese used as the cheese ingredient in pasteurized process cheese.

(6) Provides for the use of butterfat as well as milkfat for the purpose of standardizing the fat content of the pasteurized process cheese.

(7) Provides, within the framework of the standard, for the addition of fruits, vegetables, and meats, etc., previously provided for in 21 CFR 133.170 and 133.171, thus permitting these sections to be revoked.

(8) Provides for the optional use of the word "pasteurized" in the name of the food.

The Commissioner's proposed standard for pasteurized process cheese product:

(1) Sets no limitation on the fat content or the moisture content. However, the proposed standard requires that the fat content shall be declared on the label and the product must contain at least 51 percent by weight of natural cheese.

(2) Adopts the use of class designations for safe and suitable optional ingredients and requires all ingredients to be declared on the label by their common or usual name in accordance with 21 CFR Part 101 labeling requirements.

(3) Provides for the use of all natural cheese varieties as part of the cheese ingredient.

(4) Provides for the use of safe and suitable enzymes for the development of flavor and body in ground or shredded cheese used as the cheese ingredient in pasteurized process cheese product.

(5) Provides for the use of butterfat as well as milkfat for the purpose of standardizing the fat content of the product.

(6) Provides, within the framework of the standard, for the addition of fruits, vegetables, and meats, etc., previously provided for in 21 CFR 133.174 and 133.180, thus permitting these sections to be revoked.

(7) Provides for the optional use of the words "pasteurized process" in the name of the food.

Standard of Identity Versus Common or Usual Name

The Commissioner considered establishing a common or usual name for pasteurized process cheese and/or pasteurized process cheese product as an alter-

native to the proposed standards of identity. A common or usual name is a name that accurately identifies or describes the basic nature of a food or its characterizing ingredients (21 CFR 102.5). The basic difference between a common or usual name regulation and a standard of identity is that the latter generally prescribes with greater detail and particularity the ingredients to be used, often including the amounts of ingredients permitted in the food and specifying the manufacturing process to be used. A standard of identity thus ensures the quality and identity of the food by controlling its composition. A common or usual name, however, permits the use of a wide variety of ingredients and requires label declaration of the amount of the most valuable ingredients as well as the presence of all other ingredients in the ingredient statement so that consumers can determine the quality and identity of the food.

The proposed standards of identity for pasteurized process cheese and cheese product set minimum compositional requirements for these foods. The Commissioner is of the opinion that these compositional requirements are necessary to assure the uniformity and quality of these foods. In addition, the public has come to associate certain minimum levels of valuable ingredients with the names of the existing standards of identity for pasteurized process cheese, cheese food, and cheese spread. All three of these standards mandate a high cheese content and permit only dairy ingredients as nutritive ingredients in the food. Although consumers may not have understood the distinctions between these different foods, they have come to associate the various pasteurized process cheese type products as being characterized by a high cheese level and the use of only dairy ingredients. The two proposed standards replace the existing standards for pasteurized process cheese, cheese food, and cheese spread, and they mandate the same cheese and dairy content characteristics. The Commissioner concludes that it is appropriate to establish requirements for such characteristics by means of a standard of identity.

The Commissioner considered a requirement that would allow any use of cheese or dairy ingredients, subject to a requirement of percentage declaration, but concluded that it would not be sufficient to meet the consumer expectations for this type of food and it could be potentially confusing to consumers since the name would have to include the percentage of cheese and dairy products as well as fat. Accordingly, the Commissioner concludes that standards of identity for pasteurized process cheese and pasteurized process cheese products will promote honesty and fair dealing in the interest of consumers.

Differences Between Codex Standard and FDA Proposed Standards of Identity

The primary differences between the Codex Recommended General Standard for Process(ed) Cheese (A–8(a)) and the proposed revision of the FDA standard of identiy for pasteurized process cheese are as follows:

1. The Codex standard does not include a maximum phenol equivalent value to be used as an indicator of effective pasteurization.

2. The Codex standard does not provide for the use of enzyme-modified cheese.

3. Specific optional ingredients and limits of use vary; several are permitted for use by the Codex standard but are prohibited by the proposed revised standard, and vice versa.

4. The proposed revision requires label declaration of all ingredients, including color. However, some dissimilarities as to the manner of declaring those ingredients do exist.

To assist interested persons in making a detailed comparison of the Codex standard and the Commissioner's proposal, the Codex standard A–8(a) is provided below in its entirety.

Standard No. A—8(a) (1970)

Recommended General Standard for Process(ed) Cheese [1] or Process(ed) [1] Cheese "Fromage — fondu" [1] ou "Fromage fondu —" [1]

1. *Definition.*

1.1 Process(ed) — Cheese or — Process(ed) Cheese is made by grinding, mixing, melting and emulsifying with the aid of heat and emulsifying agents one or more varieties of cheese, with or without the addition of foodstuffs in accordance with paragraph 2.

1.2 "Sugars" means any carbohydrate sweetening matter.

2. *Optional ingredients.*

2.1 Cream, butter and butteroil may be added in quantities to ensure compliance with the minimum fat requirements.

2.2 Salt (sodium chloride).

2.3 Spices and other vegetable seasonings in sufficient quantity to characterize the product.

2.4 For the purposes of flavouring the product, foods other than sugars, properly cooked or otherwise prepared, may be added in sufficient quantity to characterize the product provided these additions, calculated on the basis of dry matter, do not exceed one sixth of the weight of the total solids of the final product.

3. *Food Additives.*

3.1 *Necessary Food Additives.*

3.1.1 Emulsifiers:

	Maximum level
3.1.1.1 Sodium, sodium-aluminum, potassium and calcium salts of 3.1.1.2 Sodium, potassium and calcium salts of citric acid. 3.1.1.2 Sodium, potassium and calcium salts of citric acid. 3.1.1.3 Citric acid and/or phosphoric acid with sodium hydrogen carbonate and/or calcium carbonate.	40 g/kg singly or in combination calculated as anhydrous sub-mono-, di- and polyphosphates not to exceed 30 g/kg.

3.2 *Optional Food Additives.*

3.2.1 Colours:	*Maximum level*
Annatto [2]	Not limited.
Beta-carotene	
Chlorophyll	
Riboflavin	
Oleoresin of paprika [2]	
Curcumin [2]	

3.2.2 Acidifiers:	*Maximum level*
Vinegar	Within the limits specified in 3.1.1.
Citrus acid	
Phosphoric acid	
Acetic acid	
dl-Lactic acid	

3.2.3 Preservatives:	
3.2.3.1:	
Either sorbic acid and its sodium and potassium salts, or	2,000 mg/kg.
Propionic acid and its sodium and calcium salts.	3,000 mg/kg.
3.2.3.2 Nisin	100 mg/kg.

3.2.4 Other Additives:	
Calcium chloride	Within the limits specified in 3.1.1.
Sodium hydrogen carbonate and/or	
Calcium carbonate	

4. *Heat Treatment.*

During their manufacture products conforming to the definition of the standard shall be heated to a temperature of 70° C for 30 seconds, or any other equivalent or greater time/temperature combination.

5. *Composition and Designation.*

Process(ed) cheese, the designation of which includes one or more variety names:

5.1 Shall contain only the varieties mentioned in the name, with the exception of Gruyère and Emmental which are interchangeable;

[1] Blank shall be filled in by (a) cheese variety name(s).

[2] Temporarily endorsed.

5.2 The fat and solid content of Process(ed) ——— Cheese or ——— Process(ed) Cheese shall be:

(a) In accordance with the national legislation of the consuming country for Process(ed) ——— Cheese or ——— Process(ed) Cheese, if any such legislation exists;

(b) In the absence of such national legislation the minimum fat content in the dry matter shall be not less than that prescribed in the international individual cheese standard for that variety and in the case of two or more varieties, not less than that of the arithmetical average of the fat contents in dry matter prescribed in the standards concerned. The minimum solid contents shall be as shown in the following table with the exception of Process(ed) Gruyère, Emmental or Appenzeller cheese where the solid content shall be at least 50% and in the case of Edam the solid content shall be at least 51% and that of Gouda be at least 53%.

Milkfat in dry matter (FBD) percent:	*Dry matter (percent)*
65	53
60	52
55	51
50	50
45	48
40	46
35	44
30	42
25	40
20	38
15	37
10	36
Less than 10	34

6. *Labelling.*

The following provisions in respect of the labelling of the products are subject to endorsement by the Codex Committee on Food Labelling. In addition to sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1–1969), the following specific provisions apply:

6.1 *The Name of the Food.*

6.1.1 The name of a product made from a single variety and designated by a variety name shall be "Process(ed) _____ Cheese or _____ Process(ed) Cheese", the blank being filled with the name of the variety of cheese used.

6.1.2 The name of a product made from two or more varieties of cheese shall be "Process(ed) _____ and _____ Cheese or _____ and _____ Process(ed) Cheese" in descending order of proportion.

6.1.3 In case the process(ed) cheese above includes spices used in accordance with paragraph 2.3 or natural foodstuffs in accordance with paragraph 2.4, the name of the product shall be the one applicable above followed by the term "with _____", the blank being filled with the common or usual name or names of the spices or natural foodstuffs used, in order of predominance by weight.

6.1.4 The milkfat content shall be declared on the label in multiples of 5% (the figure used to be that of the 5% multiple below the actual composition), except in those cases where process(ed) _____ cheese or _____ process(ed) cheese carries the name of a single variety of cheese covered by an international individual cheese standard.

6.2 *List of Ingredients.*[3] The presence of optional food additives used in accordance with paragraph 3.2 shall be declared on the label. Class titles listed in paragraph 3.2(c)(ii) of the General Standard for the Labelling of Prepackaged Foods may be used, as appropriate.

6.3 *Net Contents.* The net contents, except on individual portions not intended for separate sale, shall be declared by weight in either the metric ("Systeme International" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.4 *Name and Address.* The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared, except on individual portions not intended for separate sale, in which case the declaration may be replaced by a trademark or other indication of the manufacturer, or importer, or seller.

6.5 *Country of Origin (Manufacture).* The name of the producing country shall be declared (for export only).

7. *Methods of sampling and analysis.*

7.1 Sampling: according to FAO/WHO Standard B–1 "Sampling Methods for Milk and Milk Products", paragraphs 2 and 7.

7.2 Fat Content: according to FOA/WHO Standard B–3 "Determination of the Fat Content of Cheese and Processed Cheese Products".

7.3 Phosphorus Content: according to FAO/WHO Standard B–12 "Determination of the Phosphorus Content of Cheese and Processed Cheese Products".

7.4 Citric Acid Content: according to FAO/WHO Standard B–13 "Determination of the Citric Acid Content of Cheese and Processed Cheese Products".

The primary differences between the Codex recommended General Standard for Process(ed) Cheese Preparations (A–8(c)) and the proposed FDA standard of identity for pasteurized process cheese product are the same four points enumerated in the above comparison of the recommended Codex standard A–8(a) and the proposed revision of the FDA standard for pasteurized process cheese. An additional difference is that the Codex standard A–8(c) defines two distinct foods within the one standard. The Codex standard provides for either specific labeling (Process(ed) Cheese Food or Process(ed) Cheese Spread, depending on the ingredients used) or general labeling (Process(ed) Cheese Preparations) of the food.

To assist interested persons in making a detailed comparison of the Codex standard and the Commissioner's proposal, the Codex standard A–8(c) is provided below in its entirety.

STANDARD NO. A—8(c) (1970)

RECOMMENDED GENERAL STANDARD FOR PROCESS(ED) CHEESE PREPARATIONS

PREPARATIONS A BASE DE FROMAGE FONDU

(PROCESS(ED) CHEESE FOOD AND PROCESS(ED) CHEESE SPREAD

(PROCESS(ED) CHEESE FOOD ET PROCESSED CHEESE SPREAD)

1. *Definition.*

1.1 Process(ed) cheese preparations are made by grinding, mixing, melting and emulsifying with the aid of heat and emulsifying agents one or more varieties of cheese, which contain, moreover in any case, the products mentioned in paragraph 2.4 and/or those mentioned in paragraphs 2.6 and 3.2.4.2. Process(ed) cheese preparations designated as Process(ed) Cheese Food shall contain milk components to an amount of at least 5% expressed as lactose and may contain any of the ingredients in accordance with paragraph 2 except sugars, and food additives in accordance with paragraph 3 except vegetable gums. Process(ed) cheese preparations designated as Process(ed) Cheese Spreads may contain any or all of the ingredients in accordance with paragraph 2 and food additives in accordance with paragraph 3.

1.2 "Sugars" means any carbohydrate sweetening matter.

2. *Ingredients.*

2.1 Cream, butter and butteroil may be added.

2.2 Salt (sodium chloride).

2.3 Spices and other vegetable seasonings in sufficient quantity to characterize the product.

2.4 Milk components.

2.5 For the purposes of flavoring the product foods properly cooked or otherwise prepared, may be added in sufficient quantity to characterize the product provided these additions, calculated on the basis of dry matter, do not exceed one sixth of the weight of the total solids of the final product.

2.6 Sugars.

3. *Food Additives.*

[3] Subject to endorsement.

The original text of paragraph 6.2 (see Report of the 13th Session, Appendix IV–A) foresaw the mandatory labelling solely of the presence of preservatives according to paragraph 3.2.3, allowing the use of the class title "Preservative(s)".

The present text of paragraph 6.2 is the result of a proposal agreed to by the Committee at its 14th Session, requiring the mandatory declaration of the optional food additives. This proposal was the result of a compromise between suggestions for the mandatory labelling of a complete and a selective list of ingredients. The compromise proposal which was supported by 14 countries and objected to by 6 countries was rejected by the Codex Committee on Food Labelling. A decision on the matter will be taken by the Codex Alimentarius Commission (see Report of the 14th Session of the Committee, paragraphs 53 to 57 and the Report of the 15th Session of the Committee, paragraphs 57 to 61.

3.1 *Necessary Food Additives.*

	Maximum level
3.1.1 Emulsifiers:	
3.1.1.1 Sodium, sodium-aluminum, potassium and calcium salts of the mono-, di- and polyphosphoric acids.	40 g/kg, singly or in combination anhydrous substances, but mono-, di- and polyphosphates not to exceed 30 g/kg.
3.1.1.2 Sodium, potassium and calcium salts of citric acid.	
3.1.1.3 Citric acid and/or phosphoric acid with sodium hydrogen carbonate and/or calcium carbonate.	

3.2 *Optional Food Additives.*

	Maximum level
3.2.1 Colours:	
Annatto [1]	Not limited.
Beta-carotene	
Chlorophyll	
Riboflavin	
Oleoresin of paprika [1]	
Curcumin [1]	
3.2.2 Acidifiers:	
Vinegar	specified in 3.1.1. Within the limits
Citric acid	
Phosphoric acid	
Acetic acid	
dl-Lactic acid	
3.2.3 Preservatives:	
3.2.3.1 Either sorbic acid and its sodium and potassium salts, or	2,000 mg/kg.
Propionic acid and its sodium and calcium salts.	3,000 mg/kg.
3.2.3.2 Nisin	100 mg/kg.
3.2.4 Other Additives:	Maximum level
3.2.4.1:	
Calcium chloride	Within the limits specified in 3.1.1.
Sodium hydrogen carbonate and/or calcium carbonate	
3.2.4.2:	
Arabic gum	8,000 mg/kg. singly or in combination.
Locust (carob) bean gum [2]	
Karaya gum [2]	
Guar gum [1]	
Oat gum [2]	
Tragacanth gum [2]	
Agar-agar	
Carrageenan	
Sodium carboxymethylcellulose (cellulose gum)	
Sodium, potassium, calcium and ammonium salts of alginic acid	
Propylene glycol ester of alginic acid [1]	
Pectin	
Gelatine	

4. *Heat Treatment.*

During their manufacture products conforming to the definition of the standard shall be heated to a temperature of 70°C for 30 seconds, or any other equivalent or greater time/temperature combination.

5. *Composition and Designation.*

5.1 Products conforming to this standard may not be designated by a cheese variety name in connection with the name "Process(ed) Cheese Preparations" (Process(ed) Cheese Food and Process(ed) Cheese Spread) but mention may be made of the name of a cheese variety on the label in close proximity to the label declarations required under paragraph 6.2.

5.2 Process(ed) Cheese Preparations (Process(ed) Cheese Food and Process(ed) Cheese Spread) shall have a minimum dry matter content related to the declared minimum milkfat in dry matter, as follows:

Milkfat in dry matter (FDP) percent:	*Dry matter*
65	45
60	44
55	44
50	43
45	41
40	39
35	36
30	33
25	31
20	29
15	29
10	29
less than 10	29

At least 51% of the dry matter of the finished product shall be derived from cheese.

6. *Labelling.*

The following provisions in respect of the labelling of the products are subject to endorsement by the Codex Committee on Food Labelling. In addition to sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1–1969), the following specific provisions apply:

6.1 *The Name of the Food.*

6.1.1 Process(ed) cheese preparation or where national legislation distinguished between "process(ed) cheese food" and "process(ed) cheese spread" these names shall be used.

6.1.2 In case the products include spices used in accordance with paragraph 2.3 or natural foodstuffs used in accordance with paragraph 2.5 the name of the product shall be the one applicable above followed by the term "with ———", the blank being filled in with the common or usual name or names of the spices or foodstuffs used, in order of predominance by weight.

6.1.3 The minimum milkfat content shall be declared on the label in multiples of 5%, the figure used to be that of the 5% multiple below the actual composition.

6.2 *List of Ingredients.*[3] The presence of ingredients used in accordance with paragraph 2 and optional food additives used in accordance with paragraph 3.2 shall be declared on the label, in order of predominance by weight. Class titles listed in paragraph 3.2(c)(i) and (ii) of the General Standard for the Labelling of Prepackaged Foods may be used, as appropriate.

6.3 *Net Contents.* The net contents, except on individual portions not intended for separate sale, shall be declared by weight in either the metric ("Système International" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.4 *Name and Address.* The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared, except on individual portions not intended for separate sale, in which case the declaration may be replaced by a trademark or other indication of the manufacturer, or importer, or seller.

6.5 *Country of Origin (Manufacture).* The name of the producing country shall be declared (for export only).

7. *Methods of Sampling and Analysis.*

7.1 Sampling: according to FAO/WHO Standard B–1 "Sampling Methods for Milk and Milk Products", paragraphs 2 and 7.

7.2 Fat Content: according to FAO/WHO Standard B–3 "Determination of the Fat Content of Cheese and Processed Cheese Products".

[1] Temporarily endorsed.

[2] Pending endorsement by the Codex Committee on Food Additives.

[3] Subject to endorsement.

The original text of paragraph 6.2 (see Report of the 13th Session, Appendix IV–C) foresaw the mandatory labelling of all ingredients with the exception of the necessary food additives, the colours, acidifiers and "other additives", according to 3.1, 3.2.1, 3.2.2 and 3.2.4.1—i.e. out of the food additives listed solely the preservatives (3.2.3) and the gums, etc (3.2.4.2) had to be declared.

The present text is the result of a proposal agreed to by the Committee at its 14th Session (see also footnote on page 43).

7.3 Phosphorus Content: according to FAO/WHO Standard B–12 "Determination of the Phosphorus Content of Cheese and Processed Cheese Products".

7.4 Citric Acid Content: according to FAO/WHO Standard B–13 "Determination of the Citric Acid Content of Cheese and Processed Cheese Products".

The recommended Codex standard (A–8(b)) for Process(ed) Cheese and Spreadable Process(ed) Cheese bears such close resemblance to the Codex standard A–8(c) and to the existing FDA standards of identity for pasteurized process cheese food and cheese spread that it is apparent that foods which fall under A–8(b) would correspondingly fall under the applicable FDA standards of identity. Therefore, any comparison would be repetitive.

However, to assist interested persons in making a detailed comparison of this Codex standard, A–8(b), and the Commissioner's proposal for pasteurized process cheese product, the Codex standard A–8(b) is provided below in its entirety.

STANDARD No. A—8(b) (1970)

RECOMMENDED GENERAL STANDARD FOR "PROCESS(ED) CHEESE" AND "SPREADABLE PROCESS(ED) CHEESE"

"Fromage fondu" et "Fromage fondu pour tartine"

1. *Definition.*

1.1 "Process(ed) cheese" and "spreadable process(ed) cheese" are made by grinding, mixing, melting and emulsifying with the aid of heat and emulsifying agents one or more varieties of cheese, with or without the addition of milk components and/or other foodstuffs in accordance with paragraph 2.

1.2 "Sugars" means any carbohydrate sweetening matter.

2. *Optional Ingredients.*

2.1 Cream, butter and butteroil may be added.

2.2 Milk components may be added to a maximum total lactose content in the final product of 5%.

2.3 Salt (sodium chloride).

2.4 Spices and other vegetable seasonings in sufficient quantity to characterize the product.

2.5 For the purposes of flavouring the product, foods other than sugars, properly cooked or otherwise prepared, may be added in sufficient quantity to characterize the product provided these additions, calculated on he basis of dry matter, do not exceed one sixth of the weight of the total solids of the final product.

3. Food additives.

3.1 *Necessary Food Additives.*

3.1.1 Emulsifiers

	Maximum level
3.1.1.1 Sodium, sodium-aluminium, potassium and calcium salts of the mono-, di- and polyphosphoric acids. 3.1.1.2 Sodium, potassium and calcium salts of citric acid. 3.1.1.3 Citric acid and/or phosphoric acid with sodium hydrogen carbonate and/or calcium carbonate.	40 g/kg singly or in combination calculated as anhydrous substances, but mono-, di- and polyphosphates not to exceed 30 g/kg.

3.2 *Optional Food additives:*

3.2.1 Colours:	*Maximum level*
Annatto[1]	Not limited.
Beta-carotene	
Chlorophyll	
Riboflavin	
Oleoresin of paprika[1]	
Curcumin[1]	

3.2.2 Acidifiers:	*Maximum level*
Vinegar	Within the limits specified in 3.1.1.
Citric acid	
Phosphoric acid	
Acetic acid	
dl-Lactic acid	

3.2.3 Preservatives:	*Maximum level*
3.2.3.1:	2,000 mg/kg.
Either sorbic acid and its sodium and potassium salts, or	3,000 mg/kg.
Propionic acid and its sodium and calcium salts.	
3.2.3.2 Nisin	100 mg/kg.

3.2.4 Other additives:	
Calcium chloride	Within the limits specified in 3.1.1.
Sodium hydrogen carbonate and/or Calcium carbonate	

[1] Temporarily endorsed.

4. *Heat Treatment.*

During their manufacture products conforming to the definition of the standard shall be heated to a temperature of 70° C for 30 seconds, or any other equivalent or greater time/temperature combination.

5. *Composition and Designation.*

5.1 Products conforming to this standard may not be designated by a cheese variety name in connection with the names "Process(ed) Cheese" or "Spreadable Process(ed) Cheese" but mention may be made of the name of a cheese variety on the label in close proximity to the label declarations required under paragraph 6.2.

5.2 Process(ed) Cheese and Spreadable Process(ed) Cheese shall have a minimum dry matter content related to the declared minimum milk fat in dry matter content, as follows:

Milk fat in dry matter (FDB) percent	Dry matter percent process(ed) cheese	Dry matter percent spreadable process(ed) cheese
65	53	45
60	52	44
55	51	44
50	50	43
45	48	41
40	46	39
35	44	36
30	42	33
25	40	31
20	38	29
15	37	29
10	36	29
Less than 10	34	29

6. *Labelling.*

The following provisions in respect of the labelling of the products are subject to endorsement by the Codex Committee on Food Labelling. In addition to sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1–1969), the following specific provisions apply:

6.1 *The Name of the Food.*

6.1.1 The name of the product shall be "Process(ed) Cheese" or "Spreadable Process(ed) Cheese" as applicable.

6.1.2 In case the "Process(ed) Cheese" or "Spreadable Process(ed) Cheese" above includes spices used in accordance with paragraph 2.4 or natural foodstuffs used in accordance with paragraph 2.5, the name of the product shall be the one applicable above followed by the term "with _____", the blank being filled with the common or usual name or names of the spices or natural foodstuffs used in order of predominance by weight.

6.1.3 The milk fat content shall be declared on the label in multiples of 5%, the figure used to be that of the 5% multiple below the actual composition.

6.2 *List of Ingredients.*[2] The presence of optional food additives used in

[2] Subject to endorsement.

The original text of paragraph 6.2 (see Report of the 13th Session, Appendix IV–B) foresaw the mandatory labelling solely of the presence of preservatives according to paragraph 3.2.3, allowing the use of the class title "Preservative(s)".

The present text is the result of a proposal agreed to by the Committee at its 14th Session (see also footnote on page 43).

accordance with paragraph 3.2 shall be declared on the label. Class Titles listed in paragraph 3.2(c)(ii) of the General Standard for the Labeling of Prepackaged Foods may be used, as appropriate.

6.3 *Net Contents.* The net contents, except on individual portions not intended for seperate sale, shall be declared by weight in either the metric ("Système International" units) or avoirdupois or both systems of measurement as required by the country in which the food is sold.

6.4 *Name and Address.* The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared, except on individual portions not intended for separate sale, in which case the declaration may be replaced by a trademark or other indication of the manufacturer, or importer, or seller.

6.5 *Country of Origin (Manufacture).* The name of the producing country shall be declared (for export only).

7. *Methods of Sampling and Analysis.*

7.1 Sampling: according to FAO/WHO Standard B–1 "Sampling Methods for Milk and Milk Products", paragraphs 2 and 7.

7.2 Fat Content: according to FAO/WHO Standard B–3 "Determination of the Fat Content of Cheese and Processed Cheese Products".

7.3 Phosphorus Content: according to FAO/WHO Standard B–12 "Determination of the Phosphorus Content of Cheese and Processed Cheese Products".

7.4 Citric Acid Content: according to FAO/WHO Stanadrd B–13 "Determination of the Citric Acid Content of Cheese and Processed Cheese Products".

The Commissioner concludes that adequate consideration of the recommended Codex standards A–8 (a), (b), and (c) has been taken in preparing the proposed revised standards of identity for pasteurized process cheese and pasteurized process cheese product.

The Codex standards include certain basic labeling requirements that are not considered a part of food standards under section 401 of the Federal Food, Drug, and Cosmetic Act, which is the legal basis for promulgation of food standards. Among these labeling requirements are declaration of net quantity of contents, name of the manufacture, and country of origin. Such requirements are provided for by other sections of the act, the Fair Packaging and Labeling Act, and regulations promulgated thereunder in 21 CFR Part 101 and are applicable to all products entered into interstate commerce in the United States.

The Codex standards also reference specific methods of sampling as, for example, FAO/WHO Standard B–1 "Sampling Methods for Milk and Milk Products," paragraphs 2 and 4 (CAC/M1–1973).[1] Such sampling methods are not specifically designated in the U.S. standards of identity for milk and cream products. However, these FAO/WHO sampling methods have been published in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975, the source of the referenced methods of analysis for milk and cream products contained in the U.S. standards of identity.

[1] "Code of Principles Concerning Milk and Milk Products, International Standards and Standard Methods of Sampling and Analysis for Milk Products," 7th Ed.

OTHER MATTERS

Both the standards for pasteurized cheese spread (§ 133.175) and pasteurized cheese spread with fruits, vegetables, or meats (§ 133.176) are cross-referenced to the standard for paseteurized process cheese spread (§ 133.179). The only difference is that §§ 133.175 and 133.176 do not provide for the use of emulsifiers in the food. Since this proposal to revise and combine the standards for pasteurized process cheese food (§ 133.173) and pasteurized process cheese spread (§ 133.179) would cause an inconsistency in §§ 133.175 and 133.176 which would require those two sections to be amended (by changing the name of the food) or possibly revoked, the Commissioner requests interested parties to comment on the need for these standards.

In a similar manner, both the standards for pasteurized blended cheese (§ 133.167) and pasteurized blended cheese with fruits, vegetables, or meats (§ 133.168) are cross-referenced to the standard for pasteurized process cheese (§ 133.169). Th differences are that in §§ 133.167 and 133.168 emulsifiers are not used, and when mixtures of two or more cheeses are used in a blend, cream cheese may also be used and the word "blended" is substituted for the word "process" in the name of the food. It is possible that these two sections should be amended (by changing the name of the food) or possibly revoked. The Commissioner requests interested parties to comment on the need for these standards.

The Commissioner proposes that all products initially introduced into interstate commerce on or after July 1, 1979 shall comply with the regulation, except as to any provisions that may be stayed by the filing of proper objections.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in 21 CFR 25.1(d)(4) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this amendment.

Accordingly, this document proposes to: (1) consider the need to amend or revoke §§ 133.167, 133.168, 133.175, and 133.176; (2) revoke §§ 133.170 and 133.171 and combine them into a revised § 133.169 and (3) revoke §§ 133.174, 133.179, and 133.180 and combine them into a revised § 133.173.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701 (e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Part 133 be amended as follows:

1. By revising § 133.169 to read as follows:

§ 133.169 Pasteurized process cheese.

(a)(1) Pasteurized process cheese is the food prepared by comminuting and mixing, with the aid of heat, one or more cheeses of the same or two or more varieties, except cream cheese, neufchatel cheese, cottage cheese, lowfat cottage cheese, cottage cheese dry curd, cook cheese, hard grating cheese, part-skim spiced cheese, and skim milk cheese with an emulsifying agent prescribed by paragraph (b) of this section into a homogeneous plastic mass. One or more of the optional ingredients designated in paragraph (b)(1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section may be used.

(2) During its preparation, pasteurized process cheese is heated for not less than 30 seconds at a temperature of not less than 150° F. When tested for phosphatase by the method prescribed in § 133.113(f), the phenol equivalent of 0.25 gram of pasteurized process cheese is not more than 3 micrograms.

(3)(i) The moisture content of a pasteurized process cheese made from a single variety of cheese is not more than 1 percent greater than the maximum moisture content prescribed by the definition and standard of identity, if any there be, for the variety of cheese used; but in no case is more than 43 percent, except that the moisture content of pasteurized process washed curd cheese or pasteurized process colby cheese is not more than 40 percent; the moisture content of pasteurized process swiss cheese or pasteurized process gruyere cheese is not more than 44 percent; and the moisture content of pasteurized process limburger cheese is not more than 51 percent.

(ii) The fat content of the solids of a pasteurized process cheese made from a single variety of cheese is not less than the minimum prescribed by the definition and standard of identity, if any there be, for the variety of cheese used, but in no case is less than 47 percent; except that the fat content of the solids of pasteurized process swiss cheese is not less than 43 percent, and the fat content of the solids of pasteurized process gruyere cheese is not less than 45 percent.

(4)(i) The moisture content of a pasteurized process cheese made from two or more varieties of cheese is not more than 1 percent greater than the arithmetical average of the maximum moisture contents prescribed by the definitions and standards of identity, if any there be, for the varieties of cheese used; but in no case is the moisture content more than 43 percent, except that the moisture content of a pasteurized process cheese made from two or more of the varieties cheddar cheese, washed curd cheese, colby cheese, and granular cheese is not more than 40 percent, and the moisture content of a mixture of swiss cheese and gruyere cheese is not more than 44 percent.

(ii) The fat content of the solids of a pasteurized process cheese made from two or more varieties of cheese is not less than the arithmetical average of the minimum fat contents prescribed by the definitions and standards of identity, if any there be, for the varieties of cheese used, but in no case is less than 47 percent, except that the fat content of the solids of a pasteurized process gruyere cheese made from a mixture of swiss cheese and gruyere cheese is not less than 45 percent.

(5) Moisture and fat are determined by the methods prescribed in § 133.113 (c).

(6) The weight of each variety of cheese in a pasteurized process cheese made from two varieties of cheese is not less than 25 percent of the total weight of both, except that the weight of blue cheese, nuworld cheese, roquefort cheese, or gorgonzola chees is not less than 10 percent of the total weight of both, and the weight of limburger cheese is not less than 5 percent of the total weight of both. The weight of each variety of cheese in a pasteurized process cheese made from three or more varieties of cheese is not less than 15 percent of the total weight of all, except that the weight of blue cheese, nuworld cheese, roquefort cheese, or gorgonzola cheese is not less than 5 percent of the total weight of all, and the weight of limburger cheese is not less than 3 percent of the total weight of all. These limits do not apply to the quantity of cheddar cheese, washed curd cheese, colby cheese and granular cheese in mixtures which are designated as "American cheese" as prescribed in paragraph (d)(2) of this section. Such mixtures are considered as one variety of cheese for the purposes of this paragraph (a)(6).

(7) For the purposes of this section, cheddar cheese for manufacturing, washed curd cheese for manufacturing, colby cheese for manufacturing, granular cheese for manufacturing, brick cheese for manufacturing, muenster cheese for manufacturing, and swiss cheese for manufacturing are considered as cheddar cheese, washed curd cheese, colby cheese, granular cheese, brick cheese, muenster cheese, and swiss cheese, respectively.

(8) The flavor and body of any optional cheese ingredient used may be modified by the addition of safe and suitable enzymes. For the purpose of this section, the common name of each enzyme-modified cheese ingredient shall be "enzyme-modified _____ cheese," the blank being filled in with the varietal name of the cheese so modified.

(b) The optional ingredients referred to in paragraph (a) of this section are any of the following safe and suitable ingredients:

(1) Emulsifying agents (such as phosphates, citrates, and tartrates) in such quantity that the weight of the solids of such emulsifying agents is not more than 3 percent of the weight of the pasteurized process cheese.

(2) Organic acidifying agents in such quantity that the pH of the pasteurized process cheese is not below 5.3.

(3) Cream, anhydrous milkfat, dehydrated cream, butter, butteroil and anhydrous butteroil, or any combination of two or more of these in such quantity that the weight of the fat derived therefrom is less than 5 percent of the weight of the pasteurized process cheese.

(4) Water.

(5) Salt.

(6) Artificial coloring.

(7) Spices and/or flavorings, none of which singly or in combination with other ingredients simulate the flavor of a cheese of any age or variety.

(8) Antimycotics on cuts or slices of pasteurized process cheese in consumer-sized packages.

(9) Lecithin on cuts or slices of pasteurized process cheese in consumer-sized packages as an anti-sticking agent in an amount not to exceed 0.03 percent by weight of the finished food.

(10) Enzyme-modified cheese solids.

(11) Tissues derived from fruits, vegetables, meat, fish or poultry.

(c) Nomenclature: The name of a pasteurized process cheese for which a definition and standard of identity is prescribed by this section is as follows:

(1) In case it is made from a single variety of cheese, its name is "Pasteurized process _____ cheese", the blank being filled in with the name of the variety of cheese used.

(2) In case it is made from two or more varieties of cheese, its name is "Pasteurized process _____ and _____ cheese", or "Pasteurized process _____ blended with _____ cheese", or "Pasteurized process blend of _____ and _____ cheese", the blanks being filled in with the names of the varieties of cheeses used, in order of predominance by weight; except that:

(i) In case it is made from gruyere cheese and swiss cheese, and the weight of gruyere cheese is not less than 25 percent of the weight of both, it may be designated "Pasteurized process gruyere cheese"; and

(ii) In case it is made of cheddar cheese, washed curd cheese, colby cheese, granular cheese, monterey cheese, or any mixture of two or more of these, it may be designated "Pasteurized process American cheese"; or when cheddar cheese, washed curd cheese, colby cheese, granular cheese, monterey cheese, or any mixture of two or more of these is combined with other varieties of cheese in the cheese ingredient, any of such cheeses or such mixture may be designated as "American cheese".

The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color.

(3) The name of the food shall be followed by the statement "_____ percent milkfat", the blank being filled in with the whole number nearest the actual fat content of the food. This statement of fat content shall appear in letters not less than one-half the height of the letters used for the name of the food, but in no case less than one-eighth of an inch in height.

(4) If the optional ingredients described in paragraph (b)(11) of this section are utilized, the name of the food is "Pasteurized process cheese with _____ _____, _____ percent milkfat", the first blank being filled in with the common or usual name or names of the ingredients used, in descending order of predominance by weight. When such substances contain fat, the method for determination of fat prescribed by § 133.113(c) is not applicable. The moisture content may be 1 percent more and the milkfat content may be 1 percent less than the prescribed limits for pasteurized process cheese when the ingredients listed in paragraph (b)(11) of this section are added to the food.

(5) The word "Pasteurized" in the name of the food is optional.

(d) Label declaration. Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter except that:

(1) Artificial coloring need not be declared.

(2) If the cheese ingredient contains cheddar cheese, washed curd cheese, colby cheese, granular cheese, monterey cheese, or any mixture of two or more of these and such ingredients are declared in accordance with § 101.4(b)(2)(i) of this chapter, such cheese or such mixture may be designated as "American cheese."

(3) Wherever any word or statement emphasizing the name of any ingredient appears on the label (other than in an ingredient statement) so conspicuously as to be easily seen under customary conditions of purchase, the full name of the food followed by a statement as to its fat content shall immediately and conspicuously precede or follow such word or statement in type of at least the same size as the type used in such word or statement.

§ 133.170 [Revoked]

2. By revoking § 133.170 *Pasteurized process cheese with fruits, vegetables, or meats.*

§ 133.171 [Revoked]

3. By revoking § 133.171 *Pasteurized process pimento cheese.*

4. By revising § 133.173 to read as follows:

§ 133.173 Pasteurized process cheese product.

(a)(1) Pasteurized process cheese product is the food prepared by comminuting and mixing, with the aid of heat, one or more of the optional cheese ingredients prescribed in paragraph (b) of this section, with or without one or more of the optional dairy ingredients prescribed in paragraph (c) of this section, with one or more of the optional ingredients prescribed by paragraph (d)

of this section, into a homogeneous plastic mass.

(2) During this preparation, a pasteurized process cheese product is heated for not less than 30 seconds at a temperature of not less than 150° F. When tested for phosphatase by the method prescribed in § 133.113(f), the phenol equivalent of 0.25 gram of pasteurized process cheese product is not more than 3 micrograms.

(3) There is no limitation on the fat content or the moisture content of pasteurized process cheese product. However, the fat content shall be properly declared and the product shall contain the specified amount of cheese.

(4) The weight of the cheese ingredient referred to in paragraph (a)(1) of this section shall constitute not less than 51 percent of the weight of the pasteurized process cheese product.

(5) The weight of each variety of cheese in a pasteurized process cheese product made with two varieties of cheese is not less than 25 percent of the total weight of both, except that the weight of blue cheese, nuworld cheese, roquefort cheese, gorgonzola cheese, or limburger cheese is not less than 10 percent of the total weight of both. The weight of each variety of cheese in a pasteurized process cheese product made with three or more varieties of cheese is not less than 15 percent of the total weight of all, except that the weight of blue cheese, nuworld cheese, roquefort cheese, gorgonzola cheese, or limburger cheese is not less than 5 percent of the total weight of all. These limits do not apply to the quantity of cheddar cheese, washed curd cheese, colby cheese, monterey cheese, or granular cheese in mixtures that are designated as "American cheese" as prescribed in paragraph (f) of this section. Such mixtures are to be considered as one variety of cheese for the purpose of this paragraph.

(6) Moisture and fat shall be determined by the methods prescribed in § 133.113(c), except that in determining moisture, the loss in weight that occurs in drying for 5 hours under the conditions prescribed in such method is taken as the weight of the moisture.

(7) The flavor and body of any optional cheese ingredient used may be modified by the addition of safe and suitable enzymes. For the purpose of this section, the common name of each enzyme-modified cheese ingredient shall be "enzyme-modified _____ cheese", the blank being filled in with the varietal name of the cheese so modified.

(b) The optional cheese ingredients referred to in paragraph (a) of this section include all natural cheese varieties for which there is a specific definition and standard of identity as well as those natural cheese varieties included in the class category definitions and standards of identity in this part.

(c) The optional dairy ingredients referred to in paragraph (a) of this section are milk or any safe and suitable milk-derived ingredient.

(d) The other optional ingredients referred to in paragraph (a) of this section are any of the following safe and suitable ingredients:

(1) Emulsifying agents (such as phosphates, citrates, and tartrates) in such quantity that the weight of the solids of such emulsifying agents is not more than 4 percent of the weight of the pasteurized process cheese product, except the total weight of phosphates shall not exceed 3 percent of the weight of the finished food calculated as the anhydrous substance.

(2)(i) Stabilizers consisting of one or any mixture of two or more vegetable gums or xanthan gum. The total weight of such substances is not more than 0.8 percent of the weight of the finished food.

(ii) When one or more of the optional ingredients listed in paragraph (d)(2)(i) of this section is used, dioctyl sodium sulfosuccinate complying with the requirements of § 172.810 of this chapter may be used in a quantity not in excess of 0.5 percent of the weight of such ingredients.

(3) Organic acidifying agents in such quantity that the pH of the pasteurized process cheese product is not below 5.0.

(4) Nutritive carbohydrate sweeteners.

(5) Water.

(6) Salt.

(7) Artificial coloring.

(8) Spices and/or flavorings, one of which singly or in combination with other ingredients simulate the flavor of a cheese of any age or variety.

(9) Antimycotics on cuts or slices of pasteurized process cheese product in consumer-sized packages.

(10) Lecithin on cuts or slices of pasteurized process cheese product in consumer-sized packages as an anti-sticking agent in an amount not to exceed 0.03 percent by weight of the finished food.

(11) Enzyme-modified cheese solids.

(12) Tissues derived from fruit, vegetable, meat, fish, or poultry for flavoring purposes.

(e) Nomenclature: The name of the food is "pasteurized process cheese product".

(1) The full name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color, followed by the statement "_____ percent milkfat", the blank being filled in with the whole number closest to the actual fat content of the food. This statement of fat content shall appear in letters not less than one-half the height of the letters used for the name of the food, but in no case less than one-eighth of an inch in height. At the option of the manufacturer (for a period not to exceed 24 months from the effective date of this standard), the name of the food may be accompanied by the following terms in type size no larger than one-half that used for the name of the food: "Pasteurized process cheese spread" when the milkfat content is greater than 20 percent but less than 23 percent, and the moisture content is more than 44 but less than 60 percent; and "Pasteurized process cheese food" when the milk fat content is greater than 23 percent and the moisture content no greater than 44 percent. All other label requirements as to the name of the food shall apply.

(2) If the optional ingredients described in paragraph (d)(12) of this section are utilized, the name of the food is "Pasteurized process cheese product with _____, _____ percent milkfat," the first blank being filled in with the common or usual name or names of the substances used, in order of predominance by weight. When such substances contain fat, the method for determination of fat prescribed by § 133.113(c) is not applicable.

(3) The words "pasteurized process" in the name of the food is optional.

(f) Label declaration: Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter except that:

(1) If the cheese ingredient contains cheddar cheese, washed curd cheese, colby cheese, granular cheese, monterey cheese, or any mixture of two or more of these, and such ingredients are declared in accordance with § 101.4(b)(2)(i), such cheese or such mixture may be designated as "American cheese."

(2) Whenever any word or statement emphasizing the name of any ingredient appears on the label (other than in an ingredient statement) so conspicuously as to be easily seen under customary conditions of purchase, the full name of the food followed by a statement as to its fat content shall immediately and conspicuously precede or follow such word or statement in a type of at least the same size as the type used in such word or statement.

§ 133.174 [Revoked]

5. By revoking § 133.174 *Pasteurized process cheese food with fruits, vegetables, or meats.*

§ 133.179 [Revoked]

6. By revoking § 133.179 *Pasteurized process cheese spread.*

§ 133.180 [Revoked]

7. By revoking § 133.180 *Pasteurized process cheese spread with fruits, vegetables, or meats.*

Interested persons may, on or before January 3, 1978, 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 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 economic impact statement under Executive Order 11821 (as amended by Executive Order 11949) and OMB Circular

A–107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: September 27, 1977.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.77-28998 Filed 9-29-77;8:45 am]

[4110–03]

[21 CFR Part 133]

SKIM MILK CHEESE FOR MANUFACTURING

Proposal to Amend Identity Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the identity standard for skim milk cheese for manufacturing, based on a petition filed by the Kraft Foods Division of Kraftco Corp. Such an amendment would provide for the use of skim milk cheese in producing lower fat cheese products.

DATES: Comments by December 5, 1977. Proposed compliance for products initially introduced into interstate commerce: July 1, 1979.

ADDRESS: Written comments to Hearing Clerk (HFC–20), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF–415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D. C. 20204 (202–245–1155).

SUPPLEMENTARY INFORMATION: Kraft Foods Division, 135 South LaSalle St., Rm. 2360, Chicago, IL 60603, filed a petition proposing to amend the identity standard for skim milk cheese for manufacturing in § 133.189 (21 CFR 133.189) to: (1) Change the name of the food to "skim milk cheese"; (2) increase the maximum permissible moisture from 50 percent to 60 percent; (3) eliminate the necessity of applying to the surface of the cheese a blue paraffin coating; (4) permit the use of modern cheddar type cheese curd handling techniques; and (5) consistent with other more recent standards, recognize skim milk products as acceptable foods and ingredients in other foods.

Grounds given in support of the proposal are: (1) The proposed changes will update the standard and make the food more useful as a cheese ingredient since "skim milk cheese for manufacturing" is currently seldom used for this purpose; and (2) the use of skim milk cheese as a cheese ingredient in lower fat pasteurized process cheese products would be necessary for the production of high quality, but lower fat, cheese products desired by consumers.

The petitioner has proposed, elsewhere in this issue of the FEDERAL REGISTER, to amend the definitions and standards of identity for pasteurized process cheese food and pasteurized process cheese spread to permit the use of skim milk cheese for manufacturing as an optional cheese ingredient when used in combination with other higher fat cheese varieties, rather than as an optional dairy ingredient. The petitioner states that the use of skim milk cheese is becoming increasingly important as a potential means of standardizing the physical and organoleptic qualities of process cheese foods and spreads without reduction of product quality, wholesomeness, safety, or value.

The Commissioner of Food and Drugs wishes to point out, based on information available to him, the following facts:

1. There is currently an interest among consumers in foods containing a lower fat content.

2. Skim milk cheese is no longer considered to be fit only for use in animal feeds.

3. Acceptable skim milk cheese products, both palatable and nutritious, are being made and sold as nonstandardized foods.

4. Skim milk type cheeses are being imported and sold to consumers in the United States.

Skim milk cheese for manufacturing as provided for in the current standard is considered only as an optional dairy ingredient and, as such, is not readily acceptable as a cheese for direct consumption by consumers. The Kraft petition would amend the standard for skim milk cheese for manufacturing to provide for manufacture of a skim milk cheese that could be sold directly to consumers and could also be used satisfactorily as a cheese ingredient in pasteurized process cheese products.

The Commissioner is therefore proposing that the identity standard for skim milk cheese for manufacturing be amended to provide for the new use of the product.

The Commissioner proposes that all products initially introduced into interstate commerce on or after July 1, 1979 shall comply with the regulation, except as to any provisions that may be stayed by the filing of proper objections.

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in 21 CFR 25.1(d)(4) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701 (e), 52 Stat. 1046, 70 Stat. 919, as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 133 be amended by revising § 133.189 to read as follows:

§ 133.189 Skim milk cheese.

(a) Skim milk cheese is the food prepared by the procedure set forth in paragraph (b) of this section, or by another procedure that produces a finished cheese having the same physical and chemical properties as the cheese produced when the procedure set forth in paragraph (b) of this section is used. It contains not more than 60 percent moisture, as determined by the method prescribed in § 133.113. (c).

(b) Skim milk, which shall be pasteurized, and which may be warmed, is subjected to the action of harmless lactic-acid-producing bacteria present in such skim milk or added thereto. Artificial coloring may be added. Sufficient rennet, other safe and suitable milk-clotting enzyme that produces equivalent curd formation, or both, with or without purified calcium chloride in a quantity not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the skim milk, is added to set the skim milk to a semisolid mass. The curd is formed, handled, and drained as in the preparation of any American cheese (i.e., either cheddar, washed curd, colby, or granular cheese). Proteins from whey may be incorporated. A harmless preparation of enzymes of animal or plant origin capable of aiding in the curing or development of flavor of skim milk cheese may be added during the procedure, in such quantity that the weight of the solids of such preparation is not more than 0.1 percent of the weight of the skim milk used.

(c) For the purposes of this section: (1) "Skim milk" means cow's milk from which the milkfat has been separated to form skim milk having a milkfat content of less than 0.5 percent, concentrated skim milk, nonfat dry milk, or a mixture of any two or more of these with water in a quantity not in excess of that sufficient to reconstitute any concentrated skim milk or nonfat dry milk used.

(2) Milk shall be deemed to have been pasteurized if it has been held at a temperature of not less than 143° F for a period of not less than 30 minutes, or for a time and at a temperature equivalent thereto in phosphatase destruction.

(d) Label declaration of ingredients: Each of the ingredients used in the food shall be declared on the label as required by applicable sections of Part 101 of this chapter.

Interested persons may, on or before December 5, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, Md. 20857, written comments (in quadruplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

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 (as amended by Executive Order 11949) and OMB Circular A-107.

Dated: September 27, 1977.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.77-28997 Filed 9-29-77;8:45 am]

[4110-03]

[21 CFR Part 343]

[Docket No. 77N-0094]

OVER-THE-COUNTER DRUGS

Establishment of a Monograph for OTC Internal Analgesic, Antipyretic and Antirheumatic Products; Extension of Time

AGENCY: Food and Drug Administration.

ACTION: Extension of time for comments and reply comments.

SUMMARY: The Food and Drug Administration is extending by 60 days the times for filing comments and reply comments on a proposal to establish conditions under which over-the-counter (OTC) internal analgesic, antipyretic and antirheumatic drugs are generally recognized as safe and effective and not misbranded. The extension is in response to requests for such extensions.

DATES: Comments by December 5, 1977 and reply comments by January 6, 1978.

ADDRESS: 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:

William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857 (301-443-4960).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 8, 1977 (42 FR 35345), the Commissioner of Food and Drugs issued a proposed regulation containing the monograph recommended by the Advisory Review Panel on OTC Internal Analgesic and Antirheumatic Products establishing: (1) conditions under which OTC internal analgesic, antipyretic and antirheumatic drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph on the basis of a determination by the Panel that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph on the basis of a determination by the Panel that the available data are insufficient to classify such conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel to the Commissioner. Interested persons were given until October 6, 1977 to submit comments on the proposal and until November 7, 1977 to reply to any comments so filed.

The agency has received requests from the Proprietary Association, the National Association of Pharmaceutical Manufacturers, the American Home Products Corp., and the Bristol-Myers Co. to extend the time for comments, arguing that 90 days as granted in the proposal is insufficient time to respond properly to the Commissioner's expressed hope that publication of the Panel's findings would "stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations" and to obtain his goal of receiving "full public comment before any decision is made on the recommendations of the Panel." The requests noted that the findings cover nearly 450 columns of small FEDERAL REGISTER print and also information contained in more than 150 volumes of submitted data and additional references. They also pointed out that extensive redrafting of the findings was completed by the Panel and that this information was not in previous drafts supplied to the public. The requests for extension are on file in the office of the Hearing Clerk, Food and Drug Administration.

The Commissioner is persuaded that granting additional time for comment is appropriate. Accordingly, interested persons are invited to submit written comments (preferably four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding the proposal on or before December 5, 1977. Such comments should be addressed to the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be accompanied by a memorandum or brief in support thereof. Additional comments replying to any comments so filed may also be submitted on or before January 6, 1978. Received comments may be seen in the above-named office between 9 a.m. and 4 p.m., Monday through Friday.

This action is taken under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 701(a), 52 Stat. 1050-1053 as amended, 1055 (21 U.S.C. 352, 355, 371 (a))) and under authority delegated to the Commissioner (21 CFR 5.1).

Dated: September 29, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-29204 Filed 10-3-77; 8:45 am]

[1410-03]

LIBRARY OF CONGRESS

Copyright Office

[37 CFR Part 201]

[Docket RM 77-10]

NONDRAMATIC LITERARY WORKS

Voluntary License To Permit Reproduction Solely for Use of the Blind and Physically Handicapped

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking is issued to inform the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation designed to implement section 710 of the Act for General Revision of the Copyright Law. This section directs the Register of Copyrights to establish procedures by which the owner of copyright in nondramatic literary works may, at the time of copyright registration, grant the Library of Congress a license to reproduce and distribute the work for the use of the blind and physically handicapped. The effect of the proposed regulation is to establish the terms and conditions of these licenses.

DATES: Initial comments should be received on or before October 21, 1977. Reply comments on or before November 4, 1977.

ADDRESSES: Interested persons should submit five copies of their written comments, if by mail, to: Office of the General Counsel, Copyright Office, Library of Congress, Caller No. 2999, Arlington, Va. 22202, or, if by hand, to: Office of the General Counsel, Copyright Office, Library of Congress, Room 519, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: One of the major programs of the Library of Congress is to provide Braille editions and special sound recordings of readings of works for the exclusive use of the blind and physically handicapped. In an effort to simplify and speed up the copyright procedures that are a necessary part of this program, section 710 of the first section of Pub. L. 94-553 (90 Stat. 2541) provides for the establishment of a voluntary licensing system to be tied in with copyright registration. Section 710 directs the Register of Copyrights, after consultation with the Division for the Blind and Physically Handicapped of the Library of Congress, to establish forms and procedures by which the copyright owner of a nondramatic literary work may, at the time of copyright registration, grant a license to the Library of Congress. This license would permit the Library "to reproduce the work by means of Braille or similar tactile symbols, or by fixation of a reading of the work in a phonorecord, or both, and to distribute the resulting copies and phonorecords solely for use of the blind and physically handicapped." We propose to give copyright owners the opportunity to grant licenses under section 710 by including, on the application form for registration of nondramatic literary works (Form TX), a statement with "check off" boxes. The statement would make clear that, by checking off

one of the boxes and signing the application, the copyright owner would be granting a nonexclusive license to the Library of Congress without the need for further paperwork. We also propose that the terms and conditions of the license be set forth in a new § 201.15 of the regulations of the Copyright Office.

The proposed regulation adopts a definition of "blind and physically handicapped" from 2 U.S.C. 135(a), as amended, and Library of Congress regulations issued under that provision. That definition identifies persons eligible for special Library loan services as "blind and other physically handicapped readers certified by competent authority as unable to read normal printed material as a result of physical limitations, under regulations prescribed by the Librarian of Congress for this service." The pertinent regulations of the Library of Congress (36 CFR 701.11) are as follows:

(b) *Eligibility criteria.* (1) The following persons are eligible for such service:

(i) Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter if visual field subtends an angular distance no greater than 20 degrees.

(ii) Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.

(iii) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(iv) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(2) In connection with eligibility for loan services "competent authority" is defined as follows:

(i) In cases of blindness, visual disability, or physical limitations "competent authority" is defined to include doctors of medicine, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, casewokers, counselors, home teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library of Congress.

(ii) In the case of reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines.

Proposed regulation. We propose to amend Part 201 of 37 CFR, Chapter II by adding a new § 201.15 to read as follows:

§ 201.15 Voluntary license to permit reproduction of nondramatic literary works solely for use of the blind and physically handicapped.

(a) *General.* (1) The "blind and physically handicapped" are persons eligible for special loan services of the Library of Congress, as designated by section 135a of title 2 of the United States Code as amended by Pub. L. 89-552 and regulations of the Library of Congress issued under that section.

(2) This section, and any license granted or exercised under this section, applies only to nondramatic literary works which have previously been published with the consent of the copyright owner.

(b) *Form.* The Copyright Office provides the following form as part of applications for registration of claim to copyright in nondramatic literary works (Form TX):

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED PERSONS

Signature of this form at space 10 and a check in one of the boxes here in space 8, constitutes a nonexclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

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(c) *Terms and conditions.* A copyright owner who consents to the use of a copyrighted work by the Library of Congress for the use of the blind and physically handicapped may accomplish this purpose by checking the appropriate box on the application form, by signing the application form as a whole, and by submitting the application for copyright registration to the Copyright Office. The copyright owner thereby grants a nonexclusive license to the Library of Congress with respect to the work identified in the application, under the terms and conditions set forth in this section.

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(3) Such copies and phonorecords of the work may be distributed by the Library of Congress solely for the use of the blind and physically handicapped under conditions and guidelines provided by the Division for the Blind and Physically Handicapped of the Library of Congress.

(4) In the case of any conflict with any other right or license given by the copyright owner to the Library of Congress pertaining to the work, the terms and conditions most favorable to the Library of Congress for the benefit of the blind and physically handicapped shall govern.

(5) Copies and phonorecords reproduced and distributed under this license will contain identification of the author and publisher of the work, and copyright notice, as they appear on the copies or phonorecords deposited with the application.

(6) This license is nonexclusive, and the copyright owner is in no way precluded from granting other nonexclusive licenses with respect to reproduction for the use of the blind and physically handicapped or other exclusive or nonexclusive licenses or transfers with respect to reproduction or distribution for other purposes.

(7) All responsibility for the clearing and exercise of the rights granted is that of the Library of Congress.

(d) *Duration of license.* (1) The license is effective upon the effective date of registration for the work and, subject to the conditions and procedures stated in paragraph (d)(2) of this section, continues for the full term of copyright in the work provided in section 302 of title 17 of the United States Code as amended by Pub. L. 94-553.

(2) Termination of the license may be accomplished by the copyright owner at any time by submitting a written statement of intent to terminate, signed by the copyright owner or by the duly authorized agent of the copyright owner, to the Division for the Blind and Physically Handicapped of the Library of Congress. Termination will become effective 90 days after receipt of the written statement, or at a later time set forth in the statement. Upon the effective date of termination the Library of Congress will be prohibited from reproducing additional copies of phonorecords of the work, or both, without the consent of the copyright owner, but copies or phonorecords, or both, reproduced under authority of the license before the effective date of termination may continue to be utilized and distributed under the terms of the license after its termination.

(17 U.S.C. 207, and under the following sections of Title 17 of the United States Code as amended by Pub. L. 94-533: § 702; § 710.)

Dated: September 27, 1977.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
Librarian of Congress.

[FR Doc.77-29163 Filed 10-3-77;8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 800-8]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Tennessee: Proposed Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On October 6, 1975, the Environmental Protection Agency (EPA) promulgated regulations which require the States to revise their air implementation plans to provide for the installation, calibration, maintenance, and operation of equipment for continuously monitoring and recording emissions. These regulations must require the owner or operator of specific sources subject to continu-

ous emission monitoring and recording requirements to maintain a file of all pertinent information. The Metropolitan Nashville-Davidson County Health Department responded by adopting, after public notice and public hearing, continuous monitoring regulations and by submitting them for approval as a proposed implementation plan revision. The purpose of this notice is to announce these regulations as proposed rulemaking and to solicit public comment on them.

DATES: Comments must be received on or before November 3, 1977, to be considered.

ADDRESSES: Written comments on the proposed revisions should be addressed to Mr. Tom Helms of EPA's Air Programs Branch in Atlanta (see address below). Copies of materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, EPA (PM-213), 401 M Street SW., Washington, D.C. 20406.

EPA Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308.

Metropolitan Health Department, 311 23rd Avenue North, Nashville, Tenn. 37203.

FOR FURTHER INFORMATION CONTACT:

Mr. Tom Helms, Chief, Air Programs Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308.

SUPPLEMENTARY INFORMATION: Proposed Regulation No. 6, "Emission Monitoring of Stationary Sources," adopted by the Metropolitan Nashville-Davidson County Health Department, essentially incorporates the minimum Federal requirements for continuous monitoring. The sources subject to Regulation No. 6 are fossil-fuel fired steam generators and incinerators. Nitric acid plants and sulfuric acid plants are not included because there are none in Davidson County.

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

Dated: August 17, 1977.

JOHN A. LITTLE,
Acting Regional Administrator.

[FR Doc.77-29082 Filed 10-3-77;8:45 am]

[4510-]

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

[41 CFR Part 60-4]

CONSTRUCTION CONTRACTORS

Affirmative Action Requirements; Extension of Comment Period

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Extension of time for comments.

SUMMARY: This notice extends the time for filing comments on proposed affirmative action standards for women in construction and the consolidation and standardization of requirements for construction contractors and subcontractors from September 30, 1977 to October 15, 1977.

DATES: Comments by October 15, 1977.

ADDRESSES: Send comments to the Director, Office of Federal Contract Compliance Programs, Room C3324, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. 20210. Comments received will be available for inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT:

William Raymond, Associate Director, Construction Division, Office of Federal Contract Compliance Programs, Room N3402, Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-9447.

SUPPLEMENTARY INFORMATION: On August 16, 1977, a document was published in the FEDERAL REGISTER (42 FR 41378) proposing to establish rules relating to affirmative action requirements for construction contractors under Executive Order 11246, as amended. That proposal allowed a comment period of 45 days or until September 30, 1977.

Since the publication of that document, various requests for the extension of the period provided for the receipt of comments have been received. The importance of the issues addressed in that proposal requires that the Department proceed to final rulemaking as expeditiously as possible. However, the Department also wishes to provide sufficient time for all interested parties to prepare and submit comments. Therefore, an additional 15-day period is provided and comments will be received on this proposal until October 15, 1977.

Dated: September 29, 1977.

RAY MARSHALL,
Secretary of Labor.

DONALD ELISBURG,
Assistant Secretary, Employment Standards Administration.

WELDON J. ROUGEAU,
Director, Office of Federal Contract Compliance Programs.

[FR Doc.77-29201 Filed 10-3-77;8:45 am]

[1505-01]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 175]

COLLEGE WORK-STUDY PROGRAM

Notice of Proposed Rulemaking

Correction

In FR Doc. 77-27408, appearing at page 49904, in the issue for Wednesday, September 28, 1977, in the first column under the heading "DATES:", the hearing date for San Francisco reading "October 9, 1977" should read "October 19, 1977".

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 1003, 1130, 1134]

[Ex Parte No. MC-100 (Sub-No. 2)[1]]

MOTOR CARRIER CERTIFICATES AND PERMITS; CONTROL OR CONSOLIDATION; LIST OF FORMS

Revision of Procedures Requiring Service of Applications on State Officials

Proposed rules revising application procedures for the purpose of saving time, money, and effort expended by motor carrier applicants and State officials in the service and receipt of copies of applications for permanent operating authority or various types of financial control.

AGENCY: Interstate Commerce Commission.

ACTION: Proposed regulations.

SUMMARY: The Interstate Commerce Commission (Commission) is proposing to revise the procedures for serving on State officials copies of applications for permanent motor carrier certificates and permits, applications to consolidate, merge, purchase, lease or control operating rights or properties of motor carriers, and applications for temporary authority to operate motor-carrier properties sought to be acquired under separately filed application under section 5 of the Interstate Commerce Act. Applicants would be required to submit a copy of their application form only to the State of domicile. Other States in or through which applicants operate or propose to operate would be sent only a notice of the application. This new procedure would expedite the application process for applicants (with attendant savings of expense) and eliminate the maintenance of needless records by State functionaries. Those States which need more detailed information in a given proceeding would still be able to obtain from the applicant, upon request, a copy of the application as filed with the Commission.

DATES: Written comments should be filed with the Commission on or before November 3, 1970.

ADDRESSES: Send comments to: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, Assistant Deputy Director, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, Phone: 202-275-7292.

[1] Through inadvertance, this proceeding initially was docketed incorrectly as No. 36657.

SUPPLEMENTARY INFORMATION: On June 2, 1977, a Staff Task Force was established for the purpose of investigating the Commission's administration of the Interstate Commerce Act, particularly as it relates to motor carriers, and recommending improvements in motor carrier regulation. In Recommendation No. 29 of its report (issued July 6, 1977) the Task Force suggested that the requirement of serving on State Boards copies of applications for permanent operating rights be abolished if there appeared no substantial State support for the continuation of such practice. To facilitate the determination of the States' positions in this matter, it was further suggested that the States be polled. Therefore, a copy of this Notice will be served on all State Public Utility Commissioners so that they might individually comment on the rule changes proposed.

By petition filed August 16, 1977, the National Association of Regulatory Utilities Commissioners (NARUC) seeks the revision of Commission rules regarding the service of applications on State officials in both operating rights and finance proceedings. Both the Staff Task Force and NARUC recommendations were taken into consideration in formulating the regulations proposed here.

CURRENT REGULATIONS AND THEIR EFFECT

Pursuant to 49 CFR 1130.1(b), an applicant for permanent motor carrier operating authority must deliver a copy of its application to the "Board, Commission, or official (or Governor if there is no Board, Commission or official) having authority to regulate the business of transportation by motor vehicles, of each State in or through which applicant operates or proposes to operate." Virtually identical requirements are found in 49 CFR 1134.1(b), 1134.6(b), and 1134.50 (b), regarding applications for various types of merger and permanent or temporary financial control of motor carrier operating rights or properties.

The staff task force suggested that these rules appear to have no beneficial effect on either the States or motor carrier applicants before the Commission. NARUC (an association whose members are State officials charged, among others, with the duty of regulating motor carriers within their respective States) believes that the vast majority of the applications covered by these regulations are of only minimal interest to the States and that only under certain circumstances do the States have use for the entire applications. The filing and concomitant administrative costs can be a burden on those States which retain these applications and some States (Rhode Island is cited in the Task Force report) discard them upon receipt. Many applications are quite lengthy and the cost and effort of copying and service (including mailing) may be unjustified by any corresponding benefit derived therefrom.

DISCUSSION OF PROPOSED REVISIONS

The Interstate Commerce Act requires only that reasonable notice of the proceedings to which these applications pertain be afforded to the States, 49 U.S.C. 305(e). Thus, there exists no statutory requirement that the entire application be served and the proposed revisions lie wholly within the Commission's rulemaking power.

A substantial portion of the expense and effort inherent in the above-outlined service procedure could be eliminated by substituting a simple short-form notice requirement with regard to all pertinent States except the applicant's State of domicile. This would allow States having a particular interest in any given proceeding to request a complete copy of the application from the carrier(s). Under the proposed revisions, complete applications would be served upon the carrier's domiciliary State. Public comment is sought as to whether it is necessary to serve the carrier's domiciliary State with a complete application.

The Commission's present regulations require that copies of applications be delivered in person or sent by "registered or receipted mail" to the appropriate State officials. Public comment is sought as to whether this requirement should be modified to permit service by first-class mail.

The adoption of the proposed regulations will make necessary slight revisions of the application forms pertaining to each of the revised regulations (OP–OR–9, OP–F–44, OP–F–40, and OP–F–45, 49 CFR 1003.1).

Accordingly, the Commission proposes to amend 49 CFR 1130.1(b), 1134.1(b), 1134.6(b), 1134.50(b), and 1003 to read as follows:

§ 1130.1 Applications.

* * * * *

(b) *Filing and service.* The verified original of each such application shall be filed with this Commission, one true copy thereof shall be furnished the Regional Operations Director of the Bureau of Operations located in the region wherein applicant is domiciled and one true copy shall be delivered in person or by registered or receipted mail, to the Board, Commission, or official (or Governor if there is no Board, Commission or official) having authority to regulate the business of transportation by motor vehicle, in the State of applicant's domicile. Notice of the application in the form and containing the information called for in the form of notice designated as Form B.M.C. 15 (§ 1003.1 of this chapter), shall be provided in the same manner to the appropriate Board or official designated above of each State in or through which applicant operates or proposes to operate. Applicant is not required to give notice to competitors since notice of such filing will be by publication in the FEDERAL REGISTER.

§ 1134.1 Applications for authority to merge properties or franchises.

* * * * *

(b) The original of each such application and five copies thereof shall be filed with this Commission, one copy thereof shall be furnished to each of the Regional Operations Directors of the Bureau of Operations in which are located the headquarters of the carriers involved in the application, and one copy shall be delivered, in person or by registered or receipted mail, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission, or Official) having authority to regulate the business of transportation by motor vehicle in the State of carriers' domicile. Notice of the application in the form and containing the information called for in the form of notice designated as Form B.M.C. 15–A (Revised) (§ 1003.1 of this chapter), shall be provided in the same manner to the appropriate Board or official designated above of each State in which said carriers operate. Applicants are not required to give notice to competitors since notice of such filing will be by publication in the FEDERAL REGISTER, as provided in Rule 240 of the Special Rules of Practice (§ 1100.240 of this chapter).

§ 1134.6 Applications for approval of temporary operation.

* * * * *

(b) The original of each such application and five copies thereof, shall be filed with this Commission, one copy thereof shall be furnished to each of the Regional Operations Directors of the Bureau of Opreations in which the headquarters of applicants are located, and one copy shall be delivered, in person or by registered or receipted mail, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission, or Official) having authority to regulate the business of transportation by motor vehicle in the State of applicant's domicile. Notice of the application in the form and containing the information called for in the form of notice designated as Form B.M.C. 15–A (Revised) (§ 1003.1 of this chapter), shall be provided in the same manner to the appropriate Board or Official designated above of each State in which applicants operate. Applicants are not required to give notice to competitors since notice of such filing will be by publication in the FEDERAL REGISTER, as provided in Rule 240 of the Special Rules of Practice (§ 1140.240 of this chapter).

§ 1134.50 Application for authority to acquire control.

* * * * *

(b) The original of each such application and five copies thereof shall be filed with this Commission, one copy thereof shall be furnished to each of the Regional Operations Directors of the Bureau of Operations in which are located

the headquarters of the carriers involved in the application, and one copy shall be delivered in person or by registered or receipted mail, to the Board, Commission, or Official (or to the Governor where there is no Board, Commission, or Official) having authority to regulate the business of transportation by motor vehicle in the State of applicant's domicile. Notice of the application in the form and containing the information called for in the form of notice designated as Form B.M.C. 15–A (Revised) (§ 1003.1 of this chapter), shall be provided in the same manner to the appropriate Board or official designated above of each State in which said carriers operate. Applicant is not required to give notice to competitors since notice of such filing will be by publication in the FEDERAL REGISTER, as provided in Rule 240 of the Special Rules of Practice (§ 1100.240 of this chapter).

§ 1003.1 [Amended]

Adoption of the above proposed regulations would require modification of Form B.M.C. 15–A.

This notice of proposed rulemaking is promulgated under the authority contained in 49 U.S.C. 304 and 305; and 5 U.S.C. 553, and was adopted formally at a General Session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 28th day of September, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-29205 Filed 10-3-77;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.

[1505–01]

PRIVACY ACT ISSUANCES, ANNUAL PUBLICATION

Federal Home Loan Bank Board

PRIVACY ACT OF 1974

System of Records

Correction

In FR Doc. 77–27836, appearing at page 48117, in the issue for Thursday, September 22, 1977 (as part of the annual Privacy Act compilation), delete the contents of page 48125 in their entirety.

[3410–03]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

USDA PATENT INDEX MANUAL – Availability

AGENCY: Agricultural Research Service, USDA.

ACTION: Public notice of availability of USDA Patent Index Manual.

SUMMARY: This document gives notice to the public that a USDA Patent Index Manual is available. Copies of the manual and information concerning patent licensing procedures are available from the address below.

The provisions of 41 CFR 101–4.104–1 direct each Government agency to publish a list of the Government inventions in its custody available for licensing in the FEDERAL REGISTER, the Official Gazette of the U.S. Patent Office, and at least one other publication which will best serve the public's interest.

ARS is charged with the responsibility for managing the patent licensing program for all agencies within USDA. This responsibility includes the publication of patents available for public licensing.

FOR FURTHER INFORMATION CONTACT:

Chief, Research Agreements and Patents Management Branch, USDA, ARS, General Services Division, Federal Bldg., 6505 Belcrest Road, Hyattsville, Md. 20782, Telephone: 301–436–8402.

Dated: September 26, 1977.

T. W. EDMINSTER,
Administrator.

[FR Doc.77–29114 Filed 10–3–77;8:45 am]

[3410–11]

Forest Service

VERNON UNIT PLAN

Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Vernon Unit Plan, Kisatchie National Forest, La., USDA–FS–R8–FES (Adm.) 76–21.

This unit contains 84,874 acres of National Forest land located in Vernon Parish, La. Major actions are harvesting timber products, development and maintenance of wildlife improvements, development of recreation facilities for dispersed recreation and construction and reconstruction of roads.

This final environmental statement was transmitted to CEQ September 26, 1977. Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Rm. 3230, 12th St. and Independence Ave. SW., Washington, D.C. 20230.
USDA, Forest Service, 1720 Peachtree Road NW., Rm. 804, Atlanta, Ga. 30309.
USDA, Forest Service, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, La. 71360.

A limited number of single copies are available upon request to Forest Supervisor, Kisatchie National Forest, 2500 Shreveport Highway, Pineville, La. 71360.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Dated: September 26, 1977.

GEORGE H. COOK,
Acting Regional Environmental Coordinator.

[FR Doc.77–29208 Filed 10–3–77;8:45 am]

[6320–01]

CIVIL AERONAUTICS BOARD

[Order 77–9–107; Docket 29123; Agreement C.A.B. 26886]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order; Western Hemisphere Long-Haul Passenger Fares

Issued under delegated authority September 26, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement, adopted by mail vote, has been assigned the above C.A.B. agreement number.

In general, the agreement would increase passenger fares in various U.S.-South American long-haul markets by two percent of the normal economy fare between Miami on the one hand and Brazil, Argentina, and Uruguay on the other, to compensate for rising fuel prices.

The purpose of this order is to establish procedural dates for the submission of carrier justification in support of the agreement and comments from interested persons. The carriers' justifications should set out, in the tabular format suggested in Order 75–7–88 (July 17, 1975), historical data for the year ended June 30, 1977, to establish the present economic status of scheduled passenger service in the market area covered by the agreement. For this purpose, the historical data reported to the Board in Form 41 reports by functional account for total Latin American passenger services should be adjusted to exclude market areas not covered by the agreement and to exclude all scheduled cargo and charter operations. The carriers should specifically document the cost per gallon and the amount of fuel purchased in Brazil, Argentina, and Uruguay during the year ended June 30, 1977. In addition, the carriers should provide comparable forecasts for the year ending September 30, 1978, assuming both present and proposed fare levels, annualizing the expected cost and revenue increases, indicating the amount of fuel to be purchased, and adequately documenting changes in fuel costs and revenue impact. Costs should be allocated between the passenger and cargo compartments of scheduled passenger aircraft by the "space method" stipulated by the Board in the *Nonpriority Mail Rates* decision (Orders 70–4–9 and 70–4–10), with complete explanatory notes and supporting detail, including statistical data, to describe the methods used in making the allocation.

Accordingly, it is ordered, that: 1. All United States air carrier members of the International Air Transport Association providing service within the affected

area shall file, within 15 calendar days after the date of service of this order, full documentation and economic justification for the fares embodied in the subject agreement;

2. Comments and objections from interested persons and parties shall be submitted within 15 calendar days after the date of service of this order;

3. Replies to submissions received in response to ordering paragraphs 1 and 2 above shall be submitted within 25 calendar days after the date of service of this order; and

4. Insofar as air transportation as defined by the Act is concerned, tariffs implementing the subject agreement shall not be filed in advance of Board action on the subject agreement.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-29161 Filed 10-3-77;8:45 am]

[6320-01]

[Order 77-9-103; Docket 27573; Agreement C.A.B. 26906, R-1 and R-2]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order; Specific Commodity Rates

Issued under delegated authority September 26, 1977.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the Joint Traffic Conferences of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 dealing with specific commodity rates.

The agreement names two specific commodity rates under existing commodity descriptions as set forth below, reflecting reductions from general cargo rates; and was adopted pursuant to unprotested notice to the carriers and promulgated in an IATA letter dated September 15, 1977.

Agreement CAB	Specific Commodity Item No.	Description and Rate [1]
26906:		
R-1	4109	Aircraft engines and parts of aircraft-excluding fuselages, wings, aircraft tail assemblies, stabilizers and/or stabilators; 315 ¢/kg,[2] minimum weight 100 kg. 275 ¢/kg,[2] minimum weight 200 kg. 220 ¢/kg,[2] minimum weight 500 kg. From Addis Ababa to New York.
R-2	6227	Pyrethrum extract; 150¢/kg,[3] minimum weight 1,000 kg. From Dar-Es-Salaam to New York.

[1] Subject to applicable currency conversion factors as shown in tariffs.
[2] Expires Jan. 31, 1978.
[3] Expires Dec. 31, 1977.

Pursuant to authority duly delegated by the Board in the Board's Regulations, 14 CFR 385.14, it is not found that the agreement is adverse to the public interest or in violation of the Act, provided that approval is subject to the conditions ordered.

Accordingly, it is ordered, That: Agreement C.A.B. 26906, R-1 and R-2, is approved, provided that (a) approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publications; (b) tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing; and (c) where a specific commodity rate is published for a specified minimum weight at a level lower than the general commodity rate applicable for such weight, and where a general commodity rate is published for a greater minimum weight at a level lower than such specific commodity rate, the specific commodity rate shall be extended to all such greater minimum weights at the applicable general commodity rate level.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-29169 Filed 10-3-77;8:45 am]

[6325-01]

COMMISSION ON CIVIL RIGHTS

WEST VIRGINIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the West Virginia Advisory Committee (SAC) of the Commission will convene at 12 noon and will end at 2 p.m. on October 18, 1977, in the Ramada Inn, Morgantown, W. Va. 26505.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Washington, D.C. 20037.

The purpose of this meeting is the termination of State Advisory Committee.

This meeting will be conducted pursuand to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 3, 1977.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc.77-29301 Filed 10-3-77;10:08 am]

CIVIL SERVICE COMMISSION

AGRICULTURE DEPARTMENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Deputy Administrator, Foreign Agricultural Service.

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

[FR Doc.77-29045 Filed 10-3-77;8:45 am]

AGRICULTURE DEPARTMENT

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Agriculture to fill by noncareer executive assignment in the excepted service the position of Assistant Administrator, Foreign Market Development, Foreign Agricultural Service.

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

[FR Doc.77-29046 Filed 10-3-77;8:45 am]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Neighborhood and Consumer Affairs, Office of Neighborhoods and Consumer Affairs, Office of the Assistant Secretary for Neighborhoods, Consumer Affairs and Voluntary Associations.

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

[FR Doc.77-29047 Filed 10-3-77;8:45 am]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary for Consumer Affairs, Office of the Deputy Assistant Secretary for Consumer Affairs, Office of the Assistant Secretary for Consumer Affairs and Regulatory Functions, Office of the Secretary.

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

[FR Doc.77-29048 Filed 10-3-77;8:45 am]

TREASURY DEPARTMENT

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Treasury to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary (Administration), Office of the Assistant Secretary (Administration), Office of the Secretary.

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

[FR Doc.77-29049 Filed 10-3-77;8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

TELECOMMUNICATIONS EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Telecommunications Equipment Technical Advisory Committee will be held on Tuesday, October 25, 1977, at 10 a.m. in Room 5230, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C.

The Telecommunications Equipment Technical Advisory Committee was initially established on April 5, 1973. On March 12, 1975 and March 16, 1977, the Acting Assistant Secretary for Administration approved the recharter and extension of the Committee for two additional years, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of exports controls applicable to telecommunications equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has five parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Finalization of Findings—Volume I of the annual report to meet November 1, 1977, due date.
(4) Discussion of microprocessors used in telecommunications equipment.

EXECUTIVE SESSION

(5) Discussion of matters properly classified under Executive Order 11652, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (5), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 22, 1977, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under the Executive Order. All Committee members have appropriately security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Telecommunications Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on May 25, 1977 (42 FR 26682).

Dated: September 29, 1977.

RAUER H. MEYER,
Director, Office of Export Administration Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.77-29165 Filed 10-3-77;8:45 am]

[3510-24]

Economic Development Administration

SMITHFIELD SUGAR COOPERATIVE, INC.

Determination of Eligibility To Apply for Trade Adjustment Assistance

A petition by Smithfield Sugar Cooperative, Inc., Route 1, Box 157, Port Allen, La. 70767, a processor of cane sugar, was accepted for filing on September 26, 1977, pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315). Consequently, the U.S. Department of Commerce has initiated an investigation to determine whether increased imports into the United States of articles like or directly competitive with those produced by the firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of the petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business, October 14, 1977.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc.77-29065 Filed 10-3-77;8:45 am]

[3510-12]

National Oceanic and Atmospheric Administration

STEPHEN BARLOW

Receipt of Application for Certificate of Exemption

Notice is hereby given that the following applicant has applied in due and timely form for a Certificate of Exemption under Pub. L. 94-359, and the regu-

lations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

Applicant: Stephen Barlow, 283 Brook Street, Providence, R.I. 02906.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States; (ii) The prohibition, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part; (iii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Two finished scrimshaw carvings from sperm whale bone and finished scrimshaw products to be made from a supply of 89 sperm whale teeth, sperm whale teeth cross-cuts and 17 pounds of whale bone.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before November 3, 1977.

Dated: September 28, 1977.

MORRIS M. PALLIZZI,
Acting Associate Director for Fisheries Management.

[FR Doc.77-29059 Filed 10-3-77;8:45 am]

[3510-12]

BARRY T. O'NEIL

Receipt of Application for Certificate of Exemption

Notice is hereby given that the following applicant has applied in due and timely form for a Certificate of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

APPLICANT

Barry T. O'Neil, d.b.a. The Scrimshaw Shoppe, 98 Lawson Road, Scituate, Mass. 02066.

Period of exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States; (ii) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity any such species part; (iii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products to be made from approximately 92 whale teeth.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before November 3, 1977.

Dated: September 28, 1977.

MORRIS M. PALIZZI,
Acting Associate Director for Fisheries Management.

[FR Doc.77-29060 Filed 10-3-77;8:45 am]

[3510-12]

GERALD J. SHORROCK

Receipt of Application for Certificate of Exemption

Notice is hereby given that the following applicants have applied in due form for Certificates of Exemption under Pub. L. 94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

APPLICANTS

1. Gerald J. Shorrock, 2222 Sepulveda Boulevard, Los Angeles, Calif. 90064.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States;

(ii) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part;

(iii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products consisting of approximately 47 etched whale teeth, 10 carved whale teeth, 7 carved or etched whale teeth pieces, 93 carved whale bone pieces, 2 items made from carved baleen and one carved section of sperm whale jaw bone containing 6 teeth.

2. G & W Laboratories, Inc., 20 Markley Street, Port Reading, N.J. 07064.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part;

(ii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Approximately 170.5 pounds of spermaceti.

3. Cape Cod Scrimshaw, Inc., 198 Longview Drive, Centerville, Mass. 02632.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: (i) The prohibition, as set forth in section 9(a)(1)(A) of the Act, to export any such species part from the United States;

(ii) The prohibitions, as set forth in section 9(a)(1)(E) of the Act, to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity any such species part;

(iii) The prohibitions, as set forth in section 9(a)(1)(F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Finished scrimshaw products consisting of approximately 237 jewelry items, 6 etched whale teeth and 4 items carved from whale teeth. Finished scrimshaw products to be made from approximately 33 whale teeth, 138 pieces cut from whale teeth, an additional 302.25 pounds of whale teeth, 111 pounds of whale tooth scrap and one sperm whale jaw bone. Written comments on these applications may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before November 3, 1977.

Dated: September 26, 1977.

MORRIS M. PALIZZI,
Acting Associate Director for Resource Management.

[FR Doc.77-29061 Filed 10-3-77;8:45 am]

[3910-01]

DEPARTMENT OF DEFENSE

Department of the Air Force

AIR FORCE INSTITUTE OF TECHNOLOGY SUBCOMMITTEE OF AIR UNIVERSITY BOARD OF VISITORS

Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting at 11 a.m. on November 22, 1977, in room 2004 (ten seats available),

building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the subcommittee the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the institute's educational programs. The findings of the subcommittee will also be reported to the Commander, Air University, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Lieutenant Colonel Jonathan H. Snead, Chief, Degree Programs Division, Directorate of Educational Plans and Operations, Air Force Institute of Technology, 513–255–4219 or 5402.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77–29209 Filed 10–3–77;8:45 am]

[3910–01]

COMMUNITY COLLEGE OF THE AIR FORCE (CCAF) ADVISORY COMMITTEE

Meeting

SEPTEMBER 26, 1977.

The Community College of the Air Force Advisory Committee is scheduled to meet at 8:00 a.m., November 8, 1977, in Room 41 of the Community College of the Air Force, Building 146, located at Lackland Training Annex, San Antonio, Tex.

The meeting is open to the public.

Agenda items include: Internal Information Program, Transition to the Commission on Colleges, Master Plan, Manpower, External Relations Program, Improving the Quality of Existing Programs.

For further information, contact Lt. Col. Wade R. Kilbride, at 512–671–3635.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison, Directorate of Administration.

[FR Doc.77–29210 Filed 10–3–77;8:45 am]

[3910–01]

MILITARY AIRLIFT COMMITTEE

Meeting

SEPTEMBER 22, 1977.

The Military Airlift Committee of the National Defense Transportation Association (NDTA) will hold a meeting on November 9, 1977 from 1:00 p.m. to 4:30 p.m. and on November 10, 1977 from 8:25 a.m. to 11:30 a.m. in the Port of Long Beach Administration Building, Long Beach, Calif.

The purpose of this meeting is for the NDTA Military Airlift Committee, serving as an advisory committee, to advise the Commander in Chief, Military Airlift Command (MAC) on broad management problems pertaining to his command responsibilities. Presentations and discussions, in consonance with the theme "Government Activities and Decisions Related to Airlift," will be featured.

The meeting is open for general public attendance, but this does not include participation in the proceedings or questioning the briefers and Committee members. If an individual wishes to make a formal, oral statement germane to the meeting, he may submit a formal application, including the substance of the statement, in advance to the Commander in Chief, Military Airlift Command, Attention: Executive Agent, Military Airlift Committee, Scott Air Force Base, Ill. 62225. Formal, written statements may be submitted to the Commander in Chief at any time before or after the meeting.

For additional information concerning this meeting, contact Colonel Floyd D. Castleman (Executive Agent), at 618–256–3025.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77–29211 Filed 10–3–77;8:45 am]

[3910–01]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

SEPTEMBER 30, 1977.

The USAF Scientific Advisory Board ad hoc Committee on Wide Area Munitions will hold a meeting on October 20, 1977, from 1 p.m. to 5 p.m. at the Pentagon, Washington, D.C.

The committee will receive classified briefings and hold classified discussions on the Air Force munitions research and procurement programs. The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1).

For further information contact the Scientific Advisory Board Secretariat at 202–697–8404.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.77–29189 Filed 10–3–77;8:45 am]

[6170–01]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA–1545–D]

ROCKY FLATS PLANT SITE; JEFFERSON COUNTY, GOLDEN, COLO.

Availability of Draft Environmental Impact Statement

Notice is hereby given that the Energy Research and Development Administration (ERDA) has issued the Draft Environmental Impact Statement, ERDA–1545–D, Rocky Flats Plant Site, Jefferson County, Golden, Colo., pursuant to ERDA's implementation of the National Environmental Policy Act of 1969. The statement was prepared to support ERDA's continued operation of the Rocky Flats Plant and other activities at the Site. The statement assesses the potential cumulative environmental impacts associated with the current site activities and the operation of the plant and with the alternatives to current plant operations.

Copies of the draft environmental impact statement have been distributed for review and comment to appropriate Federal, Colorado State and local agencies, and other organizations and individuals who are known to have an interest in the activities at the Site. Copies have also been sent to those who provided comments and suggestions in response to the FEDERAL REGISTER notice (40 FR 24234) which announced that ERDA had commenced preparation of this statement, and solicited comments and suggestions. Copies of the statement are available for public inspection at the ERDA public document rooms located at:

ERDA Headquarters, 20 Massachusetts Avenue NW., Washington, D.C.
Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, N. Mex.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Ill.
Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Ill.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nev.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tenn.
Richland Operations Office, Federal Building, Richland, Wash.
San Francisco Operations Office, 1333 Broadway, Oakland, Calif.
Savannah River Operations Office, Savannah River Plant, Aiken S.C.

In addition a copy will be placed in the:

Regional Energy/Environmental Information Center, Denver Public Library, 1357 Broadway, Denver, Colo.

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

In accordance with the guidelines of the Council on Environmental Quality, those submitting comments on the draft environmental impact statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of farm in the impact statement. However, it would assist in the review of the comments if the comments were organized in a manner consistent with the structure of the draft environmental impact statement. Emphasis should be placed specifically on the assessment of the environmental impacts of continued

Plant operations, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives to the proposed action. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Copies of comments received on the draft environmental impact statement will be placed in the above referenced locations for inspection and will be considered in the preparation of the final environmental impact statement, if received within 90 days of this notice.

Dated at Germantown, Md., this 23rd day of September 1977.

For the Energy Research and Development Administration.

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

[FR Doc.77-29064 Filed 10-3-77;8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 801-1; OPP-00060]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9 a.m. to 4:30 p.m. daily on Tuesday, October 25, and Wednesday, October 26, 1977. The meeting will be held in Room 2117, Waterside Mall, 401 M Street SW., Washington, D.C. 20460, and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs, Rm. 803 (WH-566-CM No. 2), Crystal Mall, Building 2, 1921 Jefferson Davis Highway, Arlington, Va., telephone 703-557-7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) prior to implementation. The purpose of this meeting is to discuss the following topics:

1. Continue preliminary review of Subpart F of the Guidelines for Registering Pesticides in the United States, entitled, "Hazard Evaluation: Humans and Domestic Animals."

2. Briefing on minor revisions of Section 19 Regulations on Pesticide Disposal and Storage.

3. In addition, the Agency may present a status report on the pesticide endrin.

Any member of the public wishing to attend or submit a paper should contact Dr. N. Wade Fowler, Jr., at the address or phone listed above. Interested persons are permitted to file written statements before or after the meeting, and may upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit four copies of a summary not later than October 21, 1977.

Individuals who wish to file written statements are advised to submit ten copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Panel.

Dated: September 28, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-29066 Filed 10-3-77;8:45 am]

[1505-01]

[FRL 789-4; OPP-60002]

FLORIDA PLAN

Application of Mirex in Coastal Counties; Solicitation of Public Views

Correction

In FR Doc. 26547, appearing on page 45944 in the issue of Tuesday, September 13, 1977, in the first line of the second paragraph of the document, the word "not" should read "now".

[6560-01]

[FRL 801-3; PP 6G1791/T130]

PESTICIDE PROGRAMS

Linuron; Establishment of Temporary Tolerances

E. I. du Pont de Nemours and Co., Inc., Wilmington, Del. 19898, has submitted a pesticide petition (PP 6G1791) to the Environmental Protection Agency (EPA). This petition requests that temporary tolerances be established for residues of the herbicide linuron (3-(3, 4-dichlorophenyl)-1-methoxy-1-methylurea) in or on the raw agricultural commodities sugar beet roots at 0.2 part per million (ppm) and sugar beet tops at 1.0 ppm. (A related document establishing a feed additive regulation for residues of linuron on dried sugar beet pulp appears elsewhere in today's FEDERAL REGISTER.

Establishment of these temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit that is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973, 89 Stat. 751; 7 U.S.C. 136(a) et seq.).

An evaluation of the scientific data reported and other relevant material has shown that the requested tolerances are adequate to cover residues resulting from the proposed experimental use, and it has been determined that the temporary tolerances will protect the public health. The temporary tolerances are established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. E. I. du Pont de Nemours and Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire September 28, 1978. Residues not in excess of 0.2 ppm in sugar beet roots and 1 ppm in sugar beet tops after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to the Special Registrations Section, Registration Division (WH-567), Office of Pesticide Programs, Room 315, East Tower, 401 M St. SW., Washington D.C. 20460 (202-755-4851).

Dated: September 28, 1977.

"(Section 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j).)

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc.77-29080 Filed 10-3-77;8:45 am]

[6560-01]

[FRL 801-4]

SCIENCE ADVISORY BOARD, ENVIRONMENTAL MEASUREMENTS ADVISORY COMMITTEE

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Environmental Measurements Advisory Committee will be held beginning at 9 a.m. on October 24, 1977, in the Lobby Conference Room of the Holiday Inn, 1489 S. Jefferson Davis Highway, Arlington, Va.

This is the eighth meeting of the Committee. The Agenda includes current activities of the Science Advisory Board; report by the Chairman of the EPA Air and Water Monitoring Strategies Task Group; discussion of suitable topics for anticipatory research in environmental

measurements and monitoring; review of plans and schedules for future meetings of the committee; and member items of interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain additional information should contact Dr. A. F. Forziati, Acting Executive Secretary, Environmental Measurements Advisory Committee, 202–245–3027, by close of business on October 17, 1977, as visitor space is limited.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

SEPTEMBER 28, 1977.

[FR Doc.77–29174 Filed 10–3–77;8:45 am]

[3821–01]

FEDERAL ENERGY ADMINISTRATION

ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

September 15 Through September 16, 1977

Notice is hereby given that during the period from September 15 through September 16, 1977, the Proposed Decisions and Orders which are summarized below were issued by the Federal Energy Administration's Office of Exceptions and Appeals with regard to Applications for Exception which had been filed with that Office.

Amendments to the FEA's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (41 FR 47210; September 20, 1977), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the finalization of a Proposed Decision and Order issued with regard to an application for exception may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, a Proposed Decision and Order will become a final order. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street NW., Washington, D.C. 20461. Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays.

SEPTEMBER 27, 1977.

ERIC J. FYGI,
Acting General Counsel.

PROPOSED DECISIONS AND ORDERS

Charter Oil Co.; Jacksonville, Fla.; FXE–FXE–4448; Crude Oil

On July 22, 1977, the Charter Oil Co. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Entitlements Program). The request, if granted, would relieve Charter of its obligation to purchase entitlements beginning with the month of September 1977. On September 16, 1977, the FEA issued a Proposed Decision and Order in which it determined that the request be granted.

George A. Hoffman; Henderson, Ky.; FEE–4041; Crude Oil

On April 15, 1977, George A. Hoffman filed an Application from the provisions of 6 CFR, Part 150, Subpart L and 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Hoffman to retain the revenues which he realized during the period November 1, 1973 through December 31, 1975 from charging prices for crude oil produced from the Edward Bohnhoff Lease which exceeded the applicable ceiling prices. On September 16, 1977, the FEA issued a Proposed Decision and Order which determined that the exception request be granted in part.

Special Jet Services, Inc.; West Mifflin, Pa.; FEE–3922; Aviation Fuels

Special Jet Services, Inc. filed an Application for Exception from the provisions of 10 CFR 212.93. The exception request, if granted, would permit Special Jet to increase its selling prices for aviation fuel above the maximum permissible levels specified in 10 CFR 212.93. On September 15, 1977, the FEA issued a Proposed Decision and Order which determined that the exception request be denied.

4-Way Grocery; Molalla, Oreg.; FEE–4284; Motor Gasoline

The 4-Way Grocery filed an Application for Exception from the provisions of 10 CFR 211.9. The exception request, if granted, would result in the issuance of a Decision and Order terminating 4-Way's supplies/purchaser relationship with its base period supplier of motor gasoline, then Stein Oil Co., and substituting the Union Oil Co. of California as its current supplier. On September 16, 1977, the FEA issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc.77–28986 Filed 10–3–77;8:45 am]

[3128–01]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF EXCEPTIONS AND APPEALS

September 19 Through September 21, 1977

Notice is hereby given that during the period from September 19 through September 21, 1977, the Proposed Decisions and Orders which are summarized below were issued by the Federal Energy Administration's Office of Exceptions and Appeals with regard to Applications for Exception which had been filed with that Office.

Amendments to the FEA's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (41 FR 47210; September 20, 1977), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the finalization of a Proposed Decision and Order issued with regard to an application for exception may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, a Proposed Decision and Order will become a final order. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Private Grievances and Redress, Room B–120, 2000 M Street NW., Washington, D.C. 20461. Monday through Friday, between the hours of 1 p.m. and 5 p.m., e.d.t., except Federal holidays.

ERIC J. FYGI,
Acting General Counsel.

SEPTEMBER 27, 1977.

PROPOSED DECISIONS AND ORDERS

Little America Refining Co.; Evansville, Wyo.; FXE–4462; Crude Oil

On August 1, 1977, the Little America Refining Co. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Old Oil Enitlements Program). The exception request, if granted, would relieve the firm of its entitlements purchase obligations commencing with the month of September 1977. On September 19, 1977, the FEA issued a Proposed Decision and Order which determined that the exception request be granted in part.

Skelton Operating Co., Inc.; Jackson, Miss.; FEE–4407; Crude Oil

On July 26, 1977, Skelton Operating Co., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Skelton to sell at upper tier ceiling prices the crude oil that is produced on behalf of the working interest owners of the Lee Beard No. 2 well, located on the Diamond Field, in Wayne County, Miss. On September 19, 1977 the FEA issued a Proposed Decision and Order which determined that the exception request be denied.

REQUESTS FOR EXCEPTION RECEIVED FROM NATURAL GAS PROCESSORS

The Office of Exceptions and Appeals of the Federal Energy Administration has issued Proposed Decisions and Orders granting exception relief from the provisions of 10 CFR 212.165 to the natural gas processors listed below. The proposed exception relief would permit the firms involved to increase the prices of the production of the gas plants listed below to reflect certain non-product cost increases:

Company and case number	Plant	Amount of price increase (per gallon)
Beacon Gasoline Co: FXE-4503.	Minden	$0.1561
Continental Oil:		
FEE-4584	Edmond	.0092
FEE-4585	Fruita	.0052
FEE-4586	Gillis	.0129
FEE-4587	Grand Chenier	(1)
FEE-4588	Hennessey	(1)
FEE-4589	Nueces River	(1)
FEE-4590	Okeene	.005
Enkay Corp.: FXE-4521	East Texas	.0232
Getty Oil Co.:		
FEE-4419	Bay Springs	.0546
FEE-4420	Cameron	.0495
FEE-4421	Eunice	.0175
FEE-4422	Fuller	.0054
FEE-4423	Hollywood	.0131
FEE-4424	Marlow	.1009
FEE-4425	Medicine Lodge	(1)
FEE-4426	Red Fish Bay	(1)
FEE-4427	Schafer	.0346
FEE-4428	Spearman	.0142
FEE-4429	Velma	.0223
FEE-4430	Venice	.0055
Hunt Petroleum Corp.: FEE-4473.	Kinder	.0340
Marathon Oil Co.:		
FXE-4648	Rocher River	.0964
FXE-4649	Welder	.1243
FXE-4650	West Forelands	.0687
FXE-4651	West Sidney	.0417
Monsanto Co.:		
FEE-4322	Adena	.0451
FEE-4323	Como	.0372
FEE-4324	Diamond "M"	.0096
FEE-4325	Dollarhide	.0162
FEE-4326	Gillette	.0346
FEE-4328	Pledger	.0246
FEE-4329	Spivey	.0119
Mustang Fuel Corp.: FXE-4511.	Calumet	.06113
Northern Natural Gas Co.: FXE-4605.	No. 1 and No. 2 plants in Martin County, Tex.	.02157
Phillips Petroleum:		
FXE-4532	Andrews	.0375
FXE-4533	Benedum	.0201
FXE-4534	Bradley	.0427
FXE-4535	Canadian	.0377
FXE-4536	Crane	.0260
FXE-4537	Douglas	.0116
FXE-4538	Dumas	.0174
FXE-4539	Gray	.0263
FXE-4540	Henderson	.0275
FXE-4541	Hobbs	.0169
FXE-4542	Lee	.0072
FXE-4543	Lovington	.0278
FXE-4544	North	.0172
FXE-4545	Oklahoma	.0304
FXE-4546	Spraberry	.0145
FXE-4547	Tunstill	.0480
FXE-4548	Vermilion	.0175
Vallery Corp.: FXE-4611.	Vallery	.0279

[FR Doc.77-28987 Filed 10-3-77;8:45 am]

[8128-01]

PROPOSED INDIANA GAS CO. SYNTHETIC NATURAL GAS PLANT

Availability of Final Environmental Impact Statement

AGENCY: Federal Energy Administration.

ACTION: Notice of availability.

SUMMARY: The Federal Energy Administration (FEA) hereby gives notice of the availability of the final environmental impact statement (EIS) on the proposed Indiana Gas Co. synthetic natural gas (SNG) plant. The Indiana Gas Co.'s proposed SNG plant will be located in Pike Township; a rural suburb of Indianapolis. This plant will have the capacity to produce 60,000 mcf (thousand cubic feet) of SNG per day or 20,820,000 mcf annually based on 347 days of operation. The feedstock will be naphtha supplied by the LaGloria Oil and Gas Co.

DATE: Comments by November 3, 1977.

ADDRESS: Written comments to: Executive Communications, Box PV, Room 3317, Federal Energy Administration (Department of Energy), Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen (Regulatory Programs), Room 6318, 2000 M Street NW., Washington, D.C. 20461 (202-254-9730).

Robert J. Stern (Office of Environmental Impact), Room 7119, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461 (202-566-9760).

Janine Landow-Esser (Office of General Counsel), Room 5113, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461 (202-566-9380).

SUPPLEMENTARY INFORMATION: On December 23, 1976, the FEA made available to the Council on Environmental Quality and the public a draft EIS concerning the allocation of SNG feedstocks to the proposed Indiana Gas Co. plant (41 FR 56842). A public hearing was held on January 25, 1977, to receive comments from interested parties. The written comment period closed on April 8, 1977. On August 5, 1977, FEA made available to the Council on Environmental Quality and the public a supplement to the draft EIS (42 FR 40019). The written comment period on this supplement closed on September 19, 1977.

COMMENT PROCEDURE: Single copies of the Indiana Gas Co. final EIS (FES 77-1) are available upon request from the National Energy Information Center, Room 1404, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. Copies of the EIS will also be available for public review in the FEA Freedom of Information Reading Room, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Interested parties are invited to submit written comments with respect to the final EIS to Executive Communications, Box PV, Room 3317, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to FEA with the designation "Indiana Gas Company Final EIS (FES 77-1)." Ten copies should be submitted. All comments should be received by FEA no later than November 3, 1977, in order to ensure consideration.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in one copy only, in accordance with the procedures set forth at 10 CFR 205.9 (f). Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. FEA reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

Issued in Washington, D.C., September 29, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

[FR Doc.77-29194 Filed 10-3-77;8:45 am]

[6720-01]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

Meeting

SEPTEMBER 28, 1977.

Pursuant to Section 10(a) of Pub. L. 92-463, entitled the Federal Advisory Committee Act, notice is hereby given of the meeting of the Federal Savings and Loan Advisory Council on Monday, Tuesday, and Wednesday, November 7, 8, and 9, 1977. The meeting will commence at 9 a.m. on November 7 and 8, and 7:30 a.m. on November 9. The locations of the meetings are listed below:

MONDAY, NOVEMBER 7

9:30 a.m., Conference Level, Hyatt Regency Washington

Hiring and promotion policies.
Memorandum R-41—Guidelines Regarding Procedures and Management.
Loans to one borrower.
Liquidity and reserves on collateralized savings deposits of a public unit.
Appraiser instructions regarding real estate owned.
Need for land acquisition and development loans to sustain housing.
Status of RSU program.
Discussion of Memorandum R42—Guidelines for determining the reasonableness of compensation and fees paid to officers, directors, and attorneys.

2 p.m., Federal Home Loan Bank Board Building

Savings and loan involvement in urban lending.
Mobile home lending.
Service corporation rule change 77-337 dated 6-1-77.
Review of asset limitations on real estate loan investments.
Review of net worth regulations.
IRA, Keogh, and pension funds insurance.
Modification of appraisal requirements.
Savings and Loan Association to act as trustees for pensions and profit sharing plans.

TUESDAY, NOVEMBER 8

9 a.m., Federal Home Loan Bank Board Building

Continued discussion of Monday afternoon topics.

2 p.m., Conference Level, Hyatt Regency Washington

General discussion.

WEDNESDAY, NOVEMBER 9

7:30 a.m., Conference Level, Hyatt Regency Washington

General discussion.

The meeting of the Federal Savings and Loan Advisory Council is open to the public.

ROBERT H. MCKINNEY,
Chairman.

[FR Doc.77-29131 Filed 10-3-77;8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

PACIFIC-STRAITS CONFERENCE AND PACIFIC INDONESIAN CONFERENCE

Agreement Filed

Notice is hereby given that the following agreement has been filed with the oCmmission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif. and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before October 24, 1977. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegations of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreements filed by:

H. R. Rollins, Secretary, Pacific-Straits Conference, Pacific Indonesian Conference, 635 Sacramento Street, San Francisco, Calif. 94111.

Agreements Nos. 5680-26 and 6060-22 are substantially similar modifications of, respectively, the Pacific-Straits Conference's and the Pacific Indonesian Conference's basic agreements which have been entered into by the member lines of each of the two conferences for the primary purpose of modifying the conferences' self-policing provisions. In particular, it is proposed to replace the present conference arbitration procedure of self-policing with a neutral body system of self-policing.

In addition, Agreeent No. 6060-22 deletes in its entirety the present Appendix thereto, and replaces it with a revised Appendix restricted to only those matters considered by the Conference members to be of legitimate Section 15 concern. Conference matters which the members consider to be of a purely internal nature and, therefore, not subject to Section 15 approval, have been transferred to a new Administrative Regulations section. In consequence of the above changes, Agreement No. 6060-22 modifies the approved basic agreement by making necessary conforming changes to the basic agreement.

By Order of the Federal Maritime Commission.

Dated: September 28, 1977.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-29138 Filed 10-3-77;8:45 am]

[6730-01]

[Docket No. 77-48]

SEA-LAND SERVICE, INC.

General Increase in Rates in the U.S. West Coast/Puerto Rico Trade; Order of Investigation and Suspension

Effective September 29, 1977, Sea-Land Service, Inc. (Sea-Land) proposes to increase all of its ocean freight rates between U.S. West Coast ports and ports in Puerto Rico by 24 percent. The increase was filed with the Commission on August 30, 1977, and was accompanied by supporting financial data pursuant to Amendment 1 to General Order 11 (46 CFR 512.3(d)(1)).

Protests and inquiries have been received concerning the reasonableness of Sea-Land's proposed general increase from Omark Industries, Inc.; Puerto Rico Manufacturers Association; Starkist Foods, Inc.; C. E. Grosjean Rice Milling Co. and Hunt-Wesson Foods, Inc. Generally, the protestants contend that the increase will have serious detrimental effects upon both their ability to do business in Puerto Rico and the Puerto Rican economy as a whole, or they request that the Commission carefully examine Sea-Land's increase to make certain that it is the minimum amount necessary to insure adequate transportation service.

Both the actual and projected data Sea-Land submitted for its proposed increase employed allocations using container statistics. General Order 11 requires the use of revenue ton statistics. Sea-Land contends that the two methods of allocation produce the same results. We do not agree.

Sea-Land submitted a Report of Rate Base and Income Account which used container-mile allocations in support of its April 1, 1977 general rate increase. By coincidence this data involved the same time period as Sea-Land's annual report for 1976. The annual report was calculated using revenue ton-mile allocations. A comparison of these reports reveals that the use of container-mile allocations resulted in a significantly lower rate of return than would have resulted if revenue ton-mile allocations had been made. A similar difference could occur relative to the subject increase. Since both the actual and projected data submitted for the current increase employed container statistics, we feel that the rates of return for each report could be significantly understated.

Due to this area of concern relative to financial data submitted by Sea-Land, the Commission is of the opinion that the proposed general rate increase should be made the subject of an investigation to determine whether it is unjust, unreasonable or otherwise unlawful under Section 18(a) of the Shipping Act, 1916, and/or Section 4 of the Intercoastal Shipping Act, 1933. The Commission is of the further opinion that the involved tariff matter should be suspended pursuant to the authority granted the Commission by Section 3 of the Intercoastal Shipping Act, 1933.

It is the Commission's intention to expeditiously resolve the issues in this proceeding. Particular attention is invited to our Order dated March 23, 1977 in which this Commission announced its policy of avoidance of trial-type oral hearings. Commensurate with this policy, the Commission's Rules of Practice and Procedure (46 CFR 502.67(c)) were amended to provide for an expedited procedure in general revenue proceedings. An expedited procedure is herein ordered to enable the Commission to discharge the mandate imposed by Section 3 of the Intercoastal Shipping Act, 1933 to give preference to proceedings in which this Section is invoked "and decide the same as speedily as possible." In the fulfillment of its obligation to speedily decide the issues in this proceeding the Commission directs the respondent, intervenors and Hearing Counsel to exchange among themselves, information in support of their respective positions and wherever possible to enter into stipulations.

Now, therefore, *it is ordered*, That pursuant to Sections 18(a) and 22 of the Shipping Act, 1916, and Sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is herbey instituted to determine the lawfulness of Supplement No. 1 to Sea-Land Service, Inc. Tariff FMC-F No. 29, for the purpose of making such findings as the facts and circumstances warrant;

It is further ordered, That Sea-Land Service, Inc. be named Respondent in this proceeding;

It is further ordered, That Respondent furnish the Commission with financial data for the actual year ending June 30, 1977 and the projected year ending September 30, 1978 as required by Amendment 1 to General Order 11 (46 CFR 2(d)(1)) using revenue ton allocations as required by General Order 11. (46 CFR 514);

It is further ordered, That the parties submit to the Secretary, not later than October 28, 1977 individual or joint recommendations to the Commission identifying all unresolved issues and specifying the type of procedure best suited to resolve them. After consideration of these recommendations, the Commission will issue an appropriate order limiting the issues and establishing the procedure for their resolution or, alternatively, refer the matter to the Office of Administrative Law Judges for the establishment of such a procedure:

It is further ordered, That pursuant to Section 3 of the Intercoastal Shipping Act, 1933, Supplement No. 1 to Sea-Land Service, Inc. Tariff No. 29 is hereby suspended and the use thereof deferred to and including, January 29, 1978 unless otherwise ordered by the Commission;

It is furthered ordered, That Sea-Land Service, Inc. file immediately a supplement to the aforementioned tariff matter, which supplement shall bear no effective date, shall reproduce this Order in its entirety, and shall state that the aforesaid matter is suspended and may not be used until January 29, 1978 and that the suspended matter may not be changed until this proceeding has been disposed of or until the period of suspension has expired; and that the rates, fares, charges, classifications, rules, regulations or practices in effect prior to the date of this Order and which were to be changed by the suspended tariff matter, or part or parts thereof, shall remain in effect during the period of suspension, unless otherwise ordered by the Commission;

It is further ordered, That this investigation determine whether the gross revenue to be derived from the proposed rate changes is just and reasonable. Evidence as to the effect of the proposed changes on the movement of any particular commodity or commodities will be considered relevant to this basic issue and may be used to determine what overall revenue will, in fact, be derived. However, the question of reasonableness of any particular rate will be affected by an order that may result from this proceeding only insofar as a finding is made regarding the reasonableness of the overall rate level of which the particular rate is a part;

It is further ordered, That shippers or other persons complaining about the level of any particular commodity rate may file a complaint pursuant to Section 22 of the Shipping Act, 1916 (46 USC 821) and litigate the issue of reasonableness of such rate with respect to cost of service, value of service and any other applicable ratemaking factors. They may also petition for leave to intervene in this proceeding provided that they will not broaden the issue described above and that they meet the other tests prescribed by Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That any changes or amendments to the tariff of Sea-Land Service, Inc. as may be filed during the pendency of this investigation will be included in this investigation subject to the foregoing unless, as a result of such changes or amendments, more than 50 percent of Sea-Land's tariff items are increased or decreased by 3 percent or more, or the gross revenue of Sea-Land Service, Inc. will increase or decrease by 3 percent or more;

It is further ordered, That during the pendency of this investigation Sea-Land Service, Inc. will serve the Secretary of the Commission and all parties of record with notice of any tariff changes affecting any of the ten leading commodities as reported pursuant to 46 CFR 512.25 at the same time such changes are filed with the Commission;

It is further ordered, That copies of this Order shall be filed with the appropriate tariff schedules in the Bureau of Compliance of the Federal Maritime Commission;

It is further ordered, That (1) a copy of this Order be served upon Respondent, and upon this Commission's Bureau of Hearing Counsel, and published in the FEDERAL REGISTER.

All persons (including individuals, corporations, associations, firms, partnerships and public bodies) having an interest in this proceeding and desiring to intervene therein should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72) with a copy to all parties to this proceeding.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-29139 Filed 10-3-77;8:45 am]

[6730-01]

[Docket No. 77-49]

UNITED STATES LINES, INC.

General Increase in Rates in the U.S. Mainland/Guam Trade; Order of Investigation and Suspension

Effective September 29, 1977, United States Lines, Inc. (USL) proposes to increase its ocean freight rates and charges between U.S. East Coast, U.S. West Coast, Hawaiian Ports and Guam Ports by 5 percent. The increases were filed with the Commission on August 26 and 29, 1977 and were accompanied by supporting financial and operating data pursuant to Commission General Order No. 11, 46 CFR 512.

A protest and petition for suspension and investigation was received relative to the reasonableness of USL's proposed increase from the Government of Guam (Guam). Generally, Guam contends that the proposed increase is not cost justified and that its implementation would inflict severe economic consequences upon Guam and its citizens and requests that the Commission suspend the proposed increase and initiate an appropriate investigation.

Examination of USL's financial and operating data disclosed that the carrier is earning, and will continue to earn what may be inordinately high profits in its Guam service. It appears that this condition would prevail whether the carrier effects its proposed increases or not Due to the level of these profits, the Commission is of the opinion that USL's proposed general increase should be made the subject of an investigation to determine whether they are unjust, unreasonable or otherwise unlawful under Section 18(a) of the Shipping Act, 1916, and/or Section 4 of the Intercoastal Shipping Act, 1933. Further, the Commission is of the opinion that the involved tariff matter should be suspended pursuant to Section 3 of the Intercoastal Shipping Act, 1933.

Now, therefore, *it is ordered*, That pursuant to the authority of Sections 18(a) and 22 of the Shipping Act, 1916, as amended, and Section 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into the lawfulness of the tariff matter listed in Supplement No. 6 to USL Tariff FMC-F No. 52 and in Supplement No. 2 to USL Tariff FMC-F No. 58 for the purpose of making such findings as the facts and circumstances warrant;

It is further ordered, That pursuant to Section 3 of the Intercoastal Shipping Act, 1933, the tariff matter set forth in Supplement No. 6 to USL Tariff FMC-F No. 52 and in Supplement No. 2 to USL Tariff FMC-F No. 58 is herby suspended and the use thereof deferred to and including January 28, 1978, unless otherwise ordered by the Commission;

It is further ordered, That there shall be filed immediately by USL consecutively numbered supplements to the aforementioned tariffs which supplements shall bear no effective date, shall reproduce this Order in its entirety and shall state that the aforesaid matter is suspended and may not be used until January 29, 1978, and that the suspended matter may not be changed until this proceeding has been disposed of or until the period of suspension has expired and that the rates, fares, charges, classifications, rules, regulations or practices in effect prior to the date of this Order and which were to be changed by the suspended tariff matter, or part or parts thereof, shall remain in effect during the period of suspension, unless otherwise ordered by the Commission;

It is further ordered, That this investigation determine whether the gross revenue to be derived from the proposed rate changes is just and reasonable. Evidence as to the effect of the proposed changes on the movement of any particular commodity or commodities will be considered relevant to this basic issue and may be used to determine what overall revenue will, in fact, be derived. However the question of reasonableness of any particular commodity rate is not an issue for determination in this proceeding. A particular rate will be affected by an order that may result from this proceeding only insofar as a finding is

made regarding the reasonableness of the overall rate level of which the particular rate is a part;

It is further ordered, That shippers or other persons complaining about the level of any particular commodity rate may file a complaint pursuant to Section 22 of the Shipping Act, 1916 (46 U.S.C. 821) and litigate the issue of reasonableness of such rate with respect to cost of service, value of service and any other applicable ratemaking factors. They may also petition for leave to intervene in this proceeding provided that they will not broaden the issue described above and that they meet the other tests prescribed by Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.27;

It is further ordered, That during the pendency of this investigation, USL will serve the presiding officer and all parties of record with notice of any tariff changes affecting any of the ten leading commodities as reported pursuant to 46 CFR 512.25 at the same time such changes are filed with the Commission.

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge, but in any event, the hearing date shall be set no later than January 13, 1978.

The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That (1) a copy of this Order be forthwith served upon the respondent and upon the Commission's Bureau of Hearing Counsel and published in the FEDERAL REGISTER, and (2) the respondent and Hearing Counsel be duly served with notice of time and place of hearing.

All persons (including individuals, corporations, associations, firms, partnerships and public bodies) having an interest in this proceeding and desiring to intervene herein should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72) with a copy to all parties to the proceeding.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77-29137 Filed 10-3-77;8:45 am]

[6740-02]

FEDERAL POWER COMMISSION

[Docket No. ER76-92]

CENTRAL TELEPHONE & UTILITIES CORP.

Compliance Filing

SEPTEMBER 28, 1977.

Take notice that Central Telephone & Utilities Corp. on August 25, 1977, tendered for filing revised Schedules 77-CWh-2 and 77-MWh-5, pursuant to ordering paragraph (C) of the Commission's Order issued July 26, 1977, in Docket No. ER76-92.

A copy of this filing has been mailed to all parties in the subject proceeding.

Any person desiring to protest said application should file a protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with § 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.10). All protests should be filed on or before October 5, 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. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-29053 Filed 10-3-77;8:45 am]

[6740-02]

[Docket No. RI77-129]

COASTAL STATES GAS PRODUCING CO.

Petition for Special Relief

SEPTEMBER 28, 1977.

Take notice that on September 7, 1977, Coastal States Gas Producing Co. (Petitioner), 5 Greenway Plaza East, Houston, Tex. 77046, filed in Docket No. RI77-129 a petition for special relief pursuant to §§ 2.56a(g) and 2.76 of the Commission's Statements of General Policy and Interpretation (18 CFR 2.56a(g), 2.76).

Petitioner seeks to collect a rate of $2.69 for the sale of natural gas to Transcontinental Gas Pipe Line Corporation from its 43.75 percent working interest in wells located in Blocks 255 and 241, Offshore Texas. Petitioner proposes no additional investment.

It appears reasonable and consistent with the public interest to prescribe a period shorter than ten days for filing protests and petitions to intervene. Accordingly, any person desiring to be heard or to make any protest with reference to said petition should on or before October 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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 party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-29054 Filed 10-3-77;8:45 am]

[6740-02]

[Docket No. CP77-623]

COLUMBIA GULF TRANSMISSION CO. AND COLUMBIA GAS TRANSMISSION CORP.

Application

SEPTEMBER 28, 1977.

Take notice that on September 19, 1977, Columbia Gas Transmission Corp. (Columbia Transmission), 1700 MacCorkle Avenue SE., Charleston, W. Va. 25314, and Columbia Gulf Transmission Co. (Columbia Gulf), 3805 West Alabama Avenue, Houston, Tex. 77027 (Applicants), filed in Docket No. CP77-623 a joint application pursuant to Section 7 of the Natural Gas Act and § 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79) for a certificate of public convenience and necessity authorizing the transportation of up to 160 Mcf of natural gas per day for two years for E. R. Carpenter Company, Inc. (Carpenter), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request authorization to transport up to 160 Mcf of natural gas per day for Carpenter which volumes Columbia Gulf would receive from Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), at mutually agreeable existing points of exchange in the State of Louisiana, and redeliver such volumes to Columbia Transmission for Carpenter's account. It is stated that Columbia Transmission would receive the subject gas delivered to it by Columbia Gulf for Carpenter's account in Boyd County, Ky. at an existing point of delivery and would transport and redeliver such gas to CNG Transmission Company (CNG) at an existing point of delivery in Greene County, Va. CNG, in turn, would deliver the transported volumes to the City of Richmond (City) for ultimate delivery to Carpenter for use in its Richmond, Va. plant, it is said.

Applicants indicate that Carpenter has contracted with its wholly-owned subsidiary Carpenter Oil and Gas Co. (Carpenter Oil) to purchase the subject gas proposed herein to be transported. It is stated that Carpenter Oil would sell Carpenter its total interest in Well No. 3,

Lac Blanc Field, Vermilion Parish, La., which interest is approximately 700 Mcf per day of natural gas production, at a cost of $1.75 per Mcf for the entire 2-year term. Carpenter Oil affirms that the gas to be transported hereunder has not been dedicated to the interstate market and it would not be willing to sell the gas on a jurisdictional basis, it is said.

It is stated that Columbia Gulf would make a charge, which is currently 29.34 cents per Mcf for the proposed transportation service and would retain for company-use and unaccounted-for gas a percentage of the total volume of gas delivered into its system by Tennessee for Carpenter's account, which percentage is currently 2.5 percent. It is further stated that Columbia Transmission would make a transportation charge, which is currently 22.21 cents per Mcf and would retain for company-use and unaccounted-for gas a percentage of the total volume of gas delivered into its system by Columbia Gulf for Carpenter's account, which percentage is currently 3.1 percent.

Applicants indicate that the gas to be transported hereunder is for Priority 2 uses for which alternative fuels are not feasible since the products produced at Carpenter's Richmond plant would be contaminated by the by-products of combustion of alternate fuels. Applicants assert that Carpenter's Richmond plant is a customer of City on a firm basis and has been advised that severe curtailment can be expected for the next two years. Carpenter's Richmond facility manufactures cushioning products used in furniture, bedding, automative seating, carpet cushioning and related uses, it is indicated.

Applicants state that they would not be required to construct any additional facilities to perform the transportation service requested herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 12, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-29055 Filed 10-3-77;8:45 am]

[6740-02]

[Docket No. RI77-127]

MAURICE L. BROWN CO.

Petition for Special Relief

SEPTEMBER 28, 1977.

Take notice that on September 6, 1977, The Maurice L. Brown Co. (Petitioner), filed in Docket No. RI77-127 a petition for special relief pursuant to § 2.76 of the Commission's Statements of General Policy and Interpretations (18 CFR 2.76). Petitioner seeks to collect a rate of $1.5986 per Mcf for the sale of natural gas to United Gas Pipeline Co. from the Blocker-Fultz Gas Unit No. 1, Harrison County, Tex. Petitioner states that the well is currently shut in due to a casing leak, and that the proposed rate increase is necessary to put the well back into production.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene.

Therefore, any person desiring to be heard or to make any protest with reference to said petition should on or before October 7, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). 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 party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-29056 Filed 10-3-77;8:45 am]

[6740-02]

[Docket No. ER76-830]

MISSISSIPPI POWER & LIGHT CO.

Compliance Filing

SEPTEMBER 28, 1977.

Take notice that on September 13, 1977, Mississippi Power & Light Co. (MP&L) tendered for filing, pursuant to ordering paragraph (B) of the Commission's Order Approving Settlement Agreement issued August 3, 1977 in this proceeding, its Rate Schedule MW-15, which is applicable to resale service to municipalities, and its Rate Schedule REA-15, which is applicable to resale service to electric power associations.

MP&L states that Rate Schedules MW-15 and REA-15 are in substitution for Rate Schedules MW-14 (Revised) and REA-14 (Revised) as of December 1, 1976, and that they incorporate the recommendations made by the Federal Power Commission's Office of Chief Accountant, Audits Division Report released May 17, 1977.

Any person desiring to be heard or to protest said filing should file a 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 and 1.10). All such protests should be filed on or before October 5, 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-29057 Filed 10-3-77;8:45 am]

[6740-02]

[Docket No. ER77-594]

ROCHESTER GAS & ELECTRIC CORP.

Cancellation

SEPTEMBER 28, 1977.

Take notice that Rochester Gas & Electric Corp. (Rochester) on September 19, 1977, tendered for filing notice of cancellation of FPC Rate Schedule No. 22. Rochester proposes an effective date of October 29, 1977.

Rochester states that copies of this filing have been sent to Consolidated Edison Co. of New York, Inc.

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 and 1.10). All such petitions or protests should be filed on or before October 5, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-29058 Filed 10-3-77;8:45 am]

[6740–02]

[Docket No. RP77–129–2]

UNITED GAS PIPE LINE CO.; (GEORGIA-PACIFIC CORP.

Petition for Extraordinary Relief

SEPTEMBER 27, 1977.

Public notice is hereby given that on August 19, 1977, Georgia-Pacific Corp. (G–P) filed a petition pursuant to § 2.78 (b) of the Commission's Rules and Regulations for extraordinary relief from the curtailment plan of its supplier, United Gas Pipe Line Co. (United). By its petition, G–P seeks an order directing United to deliver to G–P's paper mill at Port Hudson, La., sufficient gas to meet its daily average requirements of 255 Mcf at that facility.

G–P's petition refers to a letter dated July 15, 1977 addressed by United to all of its direct industrial and city gate customers, which letter states United's intention, effective November 1, 1977, to completely curtail plant protection volumes and to curtail industrial requirements of less than 50 Mcf per day by up to 40 percent. G–P states that it presently receives all of its natural gas supplies from United, and that it has no existing alternate fuel capability for the boiler and furnace requirements in question. G–P has, however, retained a consulting firm to do design engineering for a LP gas system to meet the energy requirements for which it now seeks relief. Furthermore, G–P states that natural gas is available from an alternate source and that it is presently negotiating to establish transportation arrangements for the direct purchase of that gas pursuant to the provisions of the Commission's Order No. 533. However, G–P apprehends that it will be impossible to install the alternate fuel capability equipment or to finalize the Order 533 purchases prior to November 1. Absent the relief sought, G–P states that it will be necessary to shut down its plant in Port Hudson, La., thereby risking extensive, but indeterminate damage to equipment from freezing.

Any person desiring to be heard or to protest Georgia-Pacific Corp.'s filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20246, in accordance with § § 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions should be filed on or before October 12, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–29052 Filed 10–3–77;8:45 am]

[6740–02]

[Docket No. RP77–129–1]

UNITED GAS PIPE LINE CO.; (SOUTHLAND OIL CO.)

Petition for Extraordinary Relief

SEPTEMBER 27, 1977.

Public notice is hereby given that on October 29, 1976, Southland Oil Co. (Southland) filed a petition pursuant to § 2.78(b) of the Commission's Rules and Regulations for extraordinary relief pendente lite and on a permanent basis from the curtailment plan of its supplier, United Gas Pipe Line Co. (United). By its petition, Southland seeks an order directing United to deliver to Southland's refinery at Lumberton, Miss. the following minimum volumes of natural gas: 375 Mcf per day during the 1977–78 winter season, 176 Mcf per day during the 1978–79 and all subsequent winter seasons, and 370 Mcf per day during each summer season commencing in 1978. Southland requests that such deliveries not be conditioned on any payback obligation.

Southland's petition cites evidence from *United Gas Pipe Line Company*, Docket No. RP77–92, to demonstrate that gas deliveries to its Lumberton Refinery would be completely curtailed during the coming winter. Southland states that it is currently taking steps to convert most of its natural gas requirements at the Lumberton Refinery to fuel oil, but that if the requested relief is not granted, it may be necessary to shut down that facility.

Southland's petition states that Southland is a small independent refiner of crude oil and that it has a purchase contract with United for 1,000 Mcf/d on an annual basis. Southland asserts that the requested relief volumes would be utilized for high priority purposes in the processing of crude oil. Southland argues that the public interest requires the granting of its request for extraordinary relief since its refinery operation results in a net production of energy. Furthermore, Southland argues that its petition is consistant with the established national policy of protecting the viability of small, independent refiners.

Any person desiring to be heard or to protest Southland's 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 should be filed on or before October 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. PLUMB,
Secretary.

[FR Doc.77–29051 Filed 10–3–77;8:45 am]

[6210–01]

FEDERAL RESERVE SYSTEM

BARNETT BANKS OF FLORIDA, INC.

Order Approving Acquisition of Bank

Barnett Banks of Florida, Inc., Jacksonville, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under Section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Amelia Island Bank, Fernandina Beach, Fla. ("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 application and all comments received have been considered in light of the factors set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the second largest banking organization in Florida, controls 50 banks with aggregate deposits of $2.2 billion representing approximately 8.2 percent of total commercial bank deposits in Florida.[1] Acquisition of Bank ($5.3 million in deposits) would increase applicant's share of commercial bank deposits be less than one-tenth of one percent, would not change Applicant's rank among banking organizations in the State, and would have no appreciable effect upon the concentration of banking resources in the State.

Applicant is seeking to make its initial entry into the Fernandina Beach market by acquiring Bank, the smaller of the two banks located in the market, with 21.5 percent of commercial bank deposits in the market.[2] Applicant's closest subsidiary bank is in Jacksonville, 25 miles south of Bank. Based upon the facts of record, it appears that no significant competition exists between Applicant's banking subsidiaries and Bank, and it is not likely that significant future competition would develop between them because of the distances involved and Florida's restrictive branching laws. De Novo entry into the market is unlikely due to the unattractiveness of the market in light of its low population and deposits per banking office ratios. Accordingly, on the basis of the record, it is concluded that consummation of the proposed transaction would not have any significant adverse effects on existing or potential competition in any relevant area.

The financial and managerial resources and future prospects of Applicant and its subsidiaries are regarded as satisfactory and consistent with approval. The financial and managerial re-

[1] All banking data are as of December 31, 1976 and reflect bank holding company formations and acquisitions approved through July 31, 1977.

[2] The relevant market is approximated by the eastern portion of Nassau County extending westward from the Atlantic Ocean to a boundary roughly defined by Interstate 95.

sources and future prospects of Bank would be improved through affiliation with Applicant. Affiliation with Applicant will enable Bank to provide improved and additional services to the community. Considerations relating to the convenience and needs of the community. Considerations relating to the convenience and needs of the community to be served lend weight toward approval of the application. It has been determined that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reason summarized above. The transaction shall not be consummated (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 Atlanta pursuant to delegated authority.

By order of the Secretary of the Board, acting pursuant to delegated authority from the Board of Governors, effective September 28, 1977.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.77-29085 Filed 10-3-77;8:45 am]

[6210-01]

CITICORP

Request for Determination and Notice Providing 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 Citicorp, New York, N.Y., with respect to its sale of all of the shares of Cresap, McCormick and Paget, Inc. ("CMP"), for a determination that Citicorp is not, nor will it be, in fact capable of controlling the transferees of such shares, despite the indebtedness of each such transferee to Citicorp as a result of their purchase of such shares. The transferees of the shares of CMP are: Arnold B. Becker, Rodney F. Beckwith, Robert L. Bush, James W. Buttimer, Rodman L. Drake, Bill G. Evans, Chris R. Geckeler, Milton F. Heller, Jr., John H. Hoffman, Fred H. Meyer, Georges Petipas, Allan J. Prager, Nicholas J. Radell, George I. Roen, James J. Sullivan, Peter Van Pelt and George M. Whitmore, Jr.

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 October 24, 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, the person's 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 24, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29086 Filed 10-3-77;8:45 am]

[6210-01]

CLEVETRUST CORP.

Order Approving Acquisition of Lake Life Insurance Co.

CleveTrust Corp., Cleveland, Ohio, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the 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)), to acquire shares of Lake Life Insurance Co., Wilmington, Del. ("Company"), a company that will engage de novo in the activity of underwriting, as reinsurer, credit life and credit accident and health insurance directly related to extensions of credit by the bank holding company system. Such activity has been determined by the Board to be closely related to banking (12 CFR 225.4(a)(10)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (42 FR 38939 (1977)). The time for filing comments and views has expired, and the Board has considered the application and all comments received in the light of the public interest factors set forth in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant, the largest bank holding company in Ohio, controls ten subsidiary banks with aggregate deposits of $3.4 billion,[1] representing 11.1 percent of the total deposits in commercial banks in the State. Applicant currently owns no nonbanking subsidiaries.

Company is chartered under the laws of Delaware and will engage in the activity of underwriting, as reinsurer, credit life and credit accident and health insurance sold in connection with extensions of credit by Applicant's lending subsidiaries.[2] Inasmuch as the subject proposal involves engaging in this activity de novo, consummation of this transaction would not have any adverse effect upon existing or potential competition in any relevant market.

Credit life and credit accident and health insurance is generally made available by banks and other lenders and is designed to assure repayment of a loan in the event of death or disability of the borrower. In connection with its addition of the underwriting of such insurance to the list of permissible activities for bank holding companies, the Board stated:

> To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service. (12 CFR 225.4(a)(10), n. 7)

Applicant proposes to offer, through Company, various credit life and credit accident and health insurance coverages to its customers at rates ranging from 4.9 to 5.1 percent below the approved and prima facie rates established in Ohio.[3] In addition, Applicant proposes to expand generally the insurance coverage that it currently makes available so that uniform coverage is offered to all borrowers from its banking subsidiaries. Based upon these factors, the Board concludes that Applicant's proposed continued reductions in premiums and expanded coverage are precompetitive and in the public interest.

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[1] All banking data are as of December 31,

[2] Company is not qualified to act as a direct underwriter of insurance in Ohio, and, consequently, it has entered into an agreement with Credit Life Insurance Co., Springfield, Ohio ("Credit"), whereby Credit will directly underwrite the credit insurance generated by Applicant's banking subsidiaries. Credit is prohibited by Ohio law from reinsuring its policies with any insurance company that is not authorized to do business in Ohio. Therefore, Credit will cede the risk of the insurance related to extensions of credit by Applicant's banking subsidiaries to such a company, which in turn will cede to Company the liability on any credit life and credit accident and health insurance related to extensions of credit by Applicant's banking subsidiaries.

[3] Prima facie rates are the maximum rates allowed by the State for particular types of insurance coverage. Where no prima facie rate exists for a type of coverage, the insurance company may apply to the State insurance department for approval of a proposed rate.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the condition that Applicant maintain on a continuing basis the public benefits which the Board has found to be reasonably expected to result from this proposal and upon which the approval of this proposal is based, and to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not 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 Cleveland, pursuant to authority hereby delegated.

By order of the Board of Governors,[4] effective September 26, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29087 Filed 10-3-77;8:45 am]

[6210-01]

COMMERCE BANCSHARES, INC.

Acquisition of Bank

Commerce Bancshares, Inc., Kansas City, Mo., has applied for the Board's approval under section 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with Manchester Financial Corp., St. Louis, Mo. 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 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 not later than October 24, 1977.

Board of Governors of the Federal Reserve System, September 26, 1977.

GRIFFIN L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29088 Filed 10-3-77;8:45 am]

[4] Voting for this action: Governors Coldwell, Jackson, Partee and Lilly. Absent and not voting: Chairman Burns and Governors Gardner and Wallich.

[6210-01]

DEXTER BANKING CO.

Formation of Bank Holding Company

Dexter Banking Co., Dexter, Kans., 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 Farmers & Merchants State Bank, Dexter, Kans. 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 October 26, 1977.

Board of Governors of the Federal Reserve System, September 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29089 Filed 10-3-77;8:45 am]

[6210-01]

FIRST STATE BANCORP., INC.

Formation of Bank Holding Company

First State Bancorp., Inc., Dimmitt, Tex., 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 First State Bank of Dimmitt, Texas, Dimmitt, Tex. 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 Dallas. 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 October 25, 1977.

Board of Governors of the Federal Reserve System, September 27, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29090 Filed 10-3-77;8:45 am]

[6210-01]

HOLT COUNTY INVESTMENT CO.

Order Approving Formation of Bank Holding Company

Holt County Investment Co., St. Joseph, Mo., 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)) of formation of a bank holding company by acquiring 94 percent of the voting shares of Zook and Roecker State Bank, Oregon, Mo. ("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 in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a nonoperating corporation organized for the purpose of becoming a bank holding company through the acquisition of Bank. Bank (deposits of $2.9 million) ranks fourth out of the six banks operating in the Holt County banking market (which is approximated by Holt County) and controls 11.9 percent of the total deposits in commercial banks in the market.[1] Upon acquisition of the Bank, Applicant would control .02 percent of total deposits in commercial banks in Missouri.

The principals of Applicant are also officers and directors of First Midwest Bancorp, St. Joseph, Mo., and four of its six subsidiary banks. However, none of these banks operates in Bank's market. Inasmuch as the proposed transaction represents a reorganization of the present control of Bank from individuals to a corporation owned by the same individuals, the acquisition of Bank by Applicant would not have any significant adverse effect upon either existing or potential competition within the relevant banking market. Accordingly, on the basis of the record, the Board concludes that competitive considerations are consistent with approval of the application.

The finanancial and mangerial resources and future prospects of both Applicant and Bank are regarded as satisfactory. While Applicant will incur acquisition debt as a result of this approval, Applicant plans to meet its debt servicing requirements primarily through the earnings of Bank. In the Board's view, Bank's earnings prospects appear to be adequate in order to allow Applicant to service that debt without impairing the financial condition of the Bank. Accordingly, the Board concludes that considerations relating to the banking factors are consistent with approval of the application. Although consummation of the transaction would effect no immediate changes in the services that are being offered by Bank, the Board regards considerations relating to convenience and needs of the community to be served as being consistent with ap-

[1] All banking data are as of December 31, 1976.

proval. It is the Board's judgment that consummation of the holding company formation would be in the public interest and that the application to acquire Bank should be approved.

On the basis of the record, 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 Kansas City pursuant to delegated authority.

By order of the Board of Governors,[2]

Effective September 27, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29091 Filed 10-3-77;8:45 am]

[6210-01]

[Docket No. R-0115; Reg. Q]

INTEREST OF DEPOSITS

Order Granting Temporary Suspension of Early Withdrawal Penalty

The Board of Governors has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks (12 CFR 217.4(d)) for depositors affected by the severe storms and flooding beginning about September 12, 1977, in the State of Kansas. On September 20, 1977, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 11795 of July 11, 1974, the President designated the following counties of the State of Kansas a major disaster area: Atchison, Brown, Doniphan, Jackson, Jefferson, Johnson, Leavenworth, Nemaha, Shawnee, and Wyandotte. The Board regards the President's action as recognition by the Federal government that a disaster of major proportions has occurred. The President's designation enables victims of the disaster to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty.[1] The Board's action permits a member bank wherever located to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has, in fact, suffered property or other financial loss in the disaster area as a result of the severe storms and flooding. A member bank should obtain from a depositor seeking to withdraw a time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to September 20, 1977, and will remain in effect until 12 midnight March 31, 1978.

Section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) provides that no member bank shall pay any time deposit before maturity except upon such conditions and in accordance with such rules and regulations as may be prescribed by the Board. The Board has determined it to be in the overriding public interest to suspend the penalty provision in § 217.4(d) of Regulation Q for the benefit of depositors suffering disaster-related losses within those geographical areas of the State of Kansas officially designated a major disaster area by the President. The Board, in granting this temporary suspension, encourages member banks to permit penalty-free withdrawal before maturity of time deposits for depositors who have suffered disaster-related losses within the designated disaster area.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons directly affected by the severe damage and destruction occasioned by the flooding in the designated counties of Kansas, the Board finds that good cause exists for dispensing with notice and public participation referred to in section 553(b) of Title 5 of the United States Code with respect to this action and that public procedure with regard to this action would be contrary to the public interest. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, the Board finds that there is good cause to make the action effective immediately.

By order of the Board of Governors, effective September 27, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29096 Filed 10-3-77;8:45 am]

[6210-01]

LANDMARK BANKING CORP. OF FLORIDA

Order Approving Application to Engage in the Activity of Providing Management Consulting Advice

Landmark Banking Corporation of Florida, Fort Lauderdale, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under Section 4(c)(8) of the 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)), to engage de novo in the activity of providing management consulting advice to nonaffiliated commercial banks. Such activity has been determined by the Board to be closely related to banking (12 CFR 225.4(a)(12)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (42 FR 34554 (1977)). The time for filing comments and views has expired, and the Board has considered the application and all comments received, including those submitted by the United States Department of Justice, in the light of the public interest factors set forth in Section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant, the eighth largest commercial banking organization in Florida, controls seventeen banks with aggregate deposits of approximately $869 million, representing 3.2 per cent of the total deposits in commercial banks in the State.[1] Applicant is also engaged, through nonbank subsidiaries, in the permissible nonbank activities of providing investment advisory and mortgage banking services.

Applicant proposes to engage *de novo* in providing management consulting advice to nonaffiliated commercial banks on an explicit fee basis only. Such consulting services would include advice concerning bank operations, systems and procedures, computer operations and mechanization, cost analysis, and site planning. Since Applicant proposes to engage in these activities de novo, it does not appear that any meaningful competition would be eliminated or potential competition foreclosed as a result of approval of the application. Rather, it appears that Applicant's de novo entry into this industry should have a procompetitive effect by increasing the number of firms offering this specialized consulting advice. Furthermore, by making this service available on an explicit fee basis rather than as a correspondent banking service, clients will be able to analyze more accurately the cost of such services and may be able to allocate their funds more efficiently.

There is no evidence in the record to indicate that Applicant's engaging in the activity of providing management consulting advice would result in any undue concentration of resources, unfair competition, conflicts of interests or unsound banking practices.[2]

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[2] Voting for this action: Governors Coldwell, Jackson, Partee and Lilly. Absent and not voting: Chairman Burns and Governors Garner and Wallich.

[1] Section 217.4(d) of Regulation Q provides that where a time deposit, or any portion thereof, is paid before maturity, a member bank may pay interest on the amount withdrawn at a rate not to exceed that currently prescribed for a savings deposit and that the depositor shall forfeit three months of interest payable at such rate.

[1] Unless otherwise noted, all banking data are as of December 31, 1976.

[2] In connection with the subject application, the United States Department of Justice submitted a letter expressing concern that possible conflicts of interests could result from approval of this proposal. However, at the time the Board adopted the activity of providing management consulting advice to nonaffiliated banks pursuant to section 4(c)(8) of the Act, the Board considered the potential for conflicts of interests resulting from a bank holding company's engaging in this activity. In recognition of this potential, the Board incorporated in Regulation Y a number of restrictions upon a bank holding company's performance of this activity, including the stipulation that any bank holding company providing management consulting advice must disclose to each potential client bank the names of all banks that are affiliates of the consulting company and the names of all existing client banks located in the same market area(s) as the potential client. The Board is of the opinion that these restrictions provide ample protection against possible conflicts of interests.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

The transaction shall be made not 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 Atlanta, pursuant to authority hereby delegated.

By order of the Board of Governors,[3] effective September 26, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29092 Filed 10-3-77;8:45 am]

[6210-01]

PHILLIPSCO, INC.

Order Approving Formation of Bank Holding Company

Phillipsco, Inc., Denver, Colo. ("Applicant"), has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act ("the Act") (12 U.S.C. 1842(a)(1)) of formation of a bank holding company by acquiring 97.5 percent of the voting shares of The First National Bank of Holyoke, Holyoke, Colo. ("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 application and all comments received have been considered in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant is a recently chartered, nonoperating corporation, organized for the purpose of becoming a bank holding company by acquiring Bank, which holds deposits of $12.8 million.[1] Upon acquisition of Bank, Applicant would control the 139th largest commercial bank in the State of Colorado. Applicant would control approximately 0.15 percent of total deposits in commercial banks in the State.

Bank, located in Holyoke, Colo., is the largest of three commercial banks in the relevant banking market and holds approximately 55.9 percent of the total commercial bank deposits in the market.[2] It was recently purchased by Applicant's principals. One of the principals of Applicant is also a director of a large Colorado multibank holding company and an officer and director of one of its subsidiary banks. However, that company currently has no subsidiaries in the relevant market, and, therefore, there is no significant competition between that company and Bank at this time. In addition, it appears unlikely that consummation of this proposal would have any adverse effect upon potential competition or increase the concentration of banking resources in any relevant area. Thus, the Board concludes that the competitive effects of the proposal are consistent with approval of the application.

On February 15, 1977, Applicant agreed to acquire, subject to Board approval, shares of Bank that Applicant's principals had purchased two months earlier. In originally purchasing the shares that are the subject of this application, those principals incurred debt which, if this application is approved and the proposed transaction consummated, will be assumed by Applicant.

Upon consideration of the size and terms of this debt, service of which will be dependent upon Bank's earnings, the historic growth of the relevant banking market in particular and Colorado banks in general, Bank's historical earnings and the operating results of other banks located in the same geographic area, the Board believes that Applicant's acquisition debt, the debt temporarily assumed by its principals in anticipation of Applicant's formation, can be serviced without adversely affecting the financial resources of Bank, which are considered generally satisfactory. In reaching this conclusion, the Board is influenced by several facts. First, Applicant will be able to service its debt if Bank achieves earnings equal to the average of banks in its area, and current Bank earnings are well ahead of Applicant's projections. Second, while Applicant is somewhat leveraged, the individual investors incurred no personal debt in making a substantial capital contribution to Applicant. Third, the principals of Applicant have many years of banking experience. Finally, Applicant does not plan any immediate expansion of its operations and intends to limit its activities in the near future solely to the ownership and management of Bank, thereby permitting its entire resources to be devoted to Bank. The Board therefore concludes that the financial resources and future prospects of Bank and Applicant lend weight toward approval of the Application.

The Board also concludes that considerations relating to the managerial resources of Bank and Applicant lend weight toward approval of this application. Applicant's managerial resources are considered satisfactory and Applicant's principals in the brief period they have controlled Bank pending disposition of this application have actively strengthened Bank's managerial resources. Before Applicant's principals acquired Bank, Bank had no middle management and no plans for succession, and the two senior officers were near or above retirement age. Applicant's principals have substantial banking experience and have provided Bank with experienced management which will ensure management succession which was lacking before.

Regarding convenience and needs factors, Applicant states that there are no plans for significant changes in the kinds of services provided by Bank. Under new ownership, however, Applicant's principals have initiated a more aggressive loan policy, with the result that Bank has become more responsive to the borrowing needs of the area. In this connection, Bank has been able to increase its loan to deposit ratio without injury to the quality of its loan portfolio. The Board regards the expansion of Bank's lending services as a positive factor and, therefore, concludes that convenience and needs considerations lend weight toward approval of the application.

For the reasons discussed above, the Board concludes that approval of the application to become a bank holding company would be in the public interest and that the application should be approved.

On the basis of the facts of record and for the reasons summarized above, the application is approved. 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 Kansas City pursuant to delegated authority.

By order of the Board of Governors,[3] effective September 27, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29093 Filed 10-3-77;8:45 am]

[6210-01]

SECURITY STATE BANK HOLDING CO.

Order Approving Formation of Bank Holding Company

Security State Bank Holding Company, Hannaford, N. Dak., 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)) of formation of a bank holding company through ac-

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[3] Voting for this action: Governors Wallich, Coldwell, Jackson, and Partee. Absent and not voting: Chairman Burns and Governors Gardner and Lilly.

[1] All banking data are as of December 31, 1976.

[2] The relevant banking market is approximated by Phillips County. Holyoke is the County seat. Phillips County is in northeastern Colorado. Population of this agricultural county declined 7 percent between 1960 and 1970 to 4,131. However, the population of Holyoke increased 5.5 percent in this same period to 1,646.

[3] Voting for this action: Governors Coldwell, Jackson, Partee, and Lilly. Absent and not voting: Chairman Burns and Governors Gardner and Wallich.

quisition of 96 per cent of the voting shares of Security State Bank of Hannaford, Hannaford, N. Dak. ("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 in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, a nonoperating corporation with no subsidiaries, was organized for the purpose of becoming a bank holding company through the acquisition of Bank. Bank, with deposits of $8.5 million,[1] is the fourth largest of six banking organizations and controls approximately 15.8 per cent of the total commercial bank deposits in the relevant banking market.[2] Upon acquisition of Bank, Applicant would control the 81st largest banking organization in North Dakota, holding 0.3 per cent of the total deposits in commercial banks in the State. Inasmuch as the proposed transaction is essentially a reorganization whereby the shareholders who presently control Bank directly will control Bank indirectly through Applicant, and since Applicant presently has no subsidiaries and engages in no activities, consummation of the proposal would not eliminate existing or potential competition, or increase the concentration of banking resources in the relevant market. Therefore, competitive considerations are consistent with approval of the application.

The financial and managerial resources of Applicant, which are dependent upon those of Bank, are considered to be satisfactory, and their future prospects appear favorable. Although Applicant would incur some debt as a result of this proposal, it appears that dividends from Bank would enable Applicant to meet its debt service requirements without adversely affecting the financial condition of Bank. Accordingly, considerations relating to banking factors are consistent with approval of the application.

While no major changes are contemplated in Bank's services, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. Accordingly, it is the Board's judgment that consummation of the proposed transaction would be consistent with the public interest and that the application should be approved.

On the basis of the record, 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 Minneapolis pursuant to delegated authority.

By order of the Board of Governors,[3] effective September 26, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29094 Filed 10-3-77;8:45 am]

[1] All banking data are as of December 31, 1976.

[2] The relevant banking market is approximated by Griggs and Steele Counties.

[3] Voting for this action: Governors Coldwell, Jackson, Partee, and Lilly. Absent and not voting: Chairman Burns and Governors Gardner and Wallich.

[6210-01]

WYOMING NATIONAL CORP.

Acquisition of Bank

The Wyoming National Corp., Casper, Wyo., has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 81 percent or more of the voting shares of Wyoming Bank of Rawlins, Rawlins, Wyo., a proposed new bank. 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 October 28, 1977.

Board of Governors of the Federal Reserve System, September 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29095 Filed 10-3-77;8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

FIRST NATIONAL HOLDING CORP.

Order Approving Acquisition of Banks

First National Holding Corp., Atlanta, Ga., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of First Bank of Savannah ("Savannah"), Savannah, Ga., and approximately 78 percent of the voting shares of The First National Bank of Dalton ("Dalton") Dalton, Ga. In acquiring Dalton, Applicant would formally acquire indirect ownership of 64.4 percent of the voting shares of The Bank of Dalton, Dalton, Ga. These shares are held by National Loan Company, Dalton, Ga., a wholly owned subsidiary of Dalton.

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3 of the Act (41 FR 46059; 42 FR 12236). The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors specified in section 3(c) of the Act.

The applications are consolidated because of a set of facts common to them. In both instances Applicant seeks the Board's permission to acquire bank shares held by, or subject to a contractual right to acquire bank shares held by, former directors of Applicant's subsidiary bank, The First National Bank of Atlanta ("Atlanta Bank"), Atlanta, Ga., pursuant to arrangements made in 1969 and 1970. Under those arrangements Atlanta Bank financed the ultimate acquisition of contolling interest in Savannah and Dalton by persons affiliated with Atlanta Bank at preferential terms and without risk of loss to the borrowes. The Board has previously determined that similar arrangements may evidence indirect control of bank shares by a company and, if undertaken without prior Board approval, may constitute violations of the Bank Holding Company Act.[1] In connection with these proposals, the Board has scrutinized the underlying facts surrounding the acquisitions of shares of Dalton and Savannah and the acquisition of rights to acquire shares of Dalton by Applicant's subsidiary bank acting through persons related to it, and has concluded that Atlanta Bank, by virtue of these arrangements, acquired indirect ownership and control of more than 25 percent of the shares of both banks without the Board's prior approval in violation of section 3 of the Act.[2] In

[1] See, e.g., The Jacobus Co. and Inland Financial Corp. 60 Federal Reserve Bulletin 130 (1974); MidAmerica Bancorporation, 60 Federal Reserve Bulletin 131 (1974); First United Bancorporation, Inc., 61 Federal Reserve Bulletin 889 (1975).

[2] The material facts, summarized here, are undisputed. In the case of Savannah, Atlanta Bank in March 1969 lent, without interest, $2.7 million to an unrelated individual to acquire all but the directors' qualifying shares of that bank. In April 1970, the bank shares and loan were transferred to the former chairman of Atlanta Bank's executive committee. This loan was structured so that the borrower assumed no personal liability on his debt to Atlanta Bank beyond the shares of Savannah pledged as collateral for that loan, and so that interest would equal dividends paid by Savannah. In September 1971, Atlanta Bank lent this individual on the same basis an additional $500,000 to acquire additional shares of Savannah. Since 1971 Applicant has invested an adidtional $4.4 million directly in Savannah's preferred shares and capital notes. Since 1972, Savannah's executive committee has voted the shares of Savannah held by Atlanta Bank's former director pursuant to proxies executed by him.

In the case of Dalton, several individual shareholders of Dalton, unrelated to Atlanta Bank, placed shares of Dalton in a trust in January 1969, with a view to preventing another Georgia bank from gaining control of Dalton. Under the terms of the trust four directors and former directors of Atlanta Bank agreed to buy from the trust shares of any shareholder-beneficiary who died or who decided to sell, at a formula price, if the remaining shareholder-beneficiaries declined to do so. At the same time Atlanta Bank agreed to lend to its designated directors the funds necessary to buy shares from the trust, without personal liability and at interest equal to dividends. Over time additional shares were placed in trust. These arrangements involved about 78 percent of Dalton's voting shares, 39 percent that are still held in trust and another 39 percent that passed through the trust to Atlanta Bank's former directors between 1969 and 1976.

accordance with its policy regarding violations of the Act, and, upon its examination of all the facts of record, the Board is of the view that the specific facts involved in the original indirect acquisitions, even viewed in isolation and absent other adverse considerations, might require denial of the applications but for Applicant's thorough and definite undertakings to guard against violations in the future.[3]

Applicant, the second largest banking organization in Georgia, controls one bank other than Dalton and Savannah, holding total deposits of $1.2 billion, or approximately 10 percent of the total deposits in commercial banks in the State.[4] Savannah is the fourth largest of nine commercial banks located in the Savannah banking market,[5] and holds deposits of $33.4 million, or 6 percent of the deposits in commercial banks in that market. Dalton is the largest of six banks in the Dalton banking market,[6] and holds deposits of $74 million, or approximately 46 percent of the deposits in commercial banks in that market. The Bank of Dalton, which also is located in the Dalton banking market, holds deposits of $20.8 million (11 percent of market deposits), and is the third largest commercial bank in that market. Taken together, Dalton and The Bank of Dalton control approximately 57 percent of the market's commercial bank deposits.

Applicant's direct subsidiary bank is located in the Atlanta banking market,[7] which is approximately 250 miles from Savannah and over 50 miles from Dalton, and Applicant's nonbank subsidiaries are not significant competitors in either the Savannah or Dalton banking markets. Viewing the competitive situation as it existed in 1969 and 1970 when Atlanta Bank arranged to obtain control of Dalton and Savannah, it appears that, in light of the fact that Dalton, Savannah, and Atlanta Bank serve separate banking markets, the acquisitions eliminated and, viewed as present acquisitions would eliminate, no existing banking competition in the relevant markets. Furthermore, consummation of the Dalton proposal may have a procompetitive effect, inasmuch as Applicant has committed, if its application is approved, to sever the affiliation between Dalton and The Bank of Dalton that has existed since 1918.[8] This would establish The Bank of Dalton as an independent new competitor in a relatively concentrated market. Moreover, continued affiliation between Applicant and Savannah may preserve Savannah's ability to compete with the larger organizations in the market.[9] The Board accordingly concludes that competitive considerations are consistent with approval of both applications and lend weight to approval of the application to acquire Dalton.

Considerations relating to the convenience and needs of the communities to be served are also consistent with approval of both applications. Applicant states that it will provide a number of new services to both banks, and Applicant has provided assistance to both banks under its present relationship with them.

The financial and managerial resources and future prospects of Dalton and Savannah are viewed as generally satisfactory. Applicant's managerial resources and future prospects are also considered generally satisfactory. Its financial resources, which suffered during the downturn in the real estate industry in the Southeast, are improving. There is no indication in the record that Applicant's recovery is progressing at an unsatisfactory rate, but the Board believes that applicant should continue to strengthen those financial resources before it attempts to expand through proposals involving a diversion of its existing resources.

These proposed transactions, however, represent essentially the reorganization of existing indirect investments, one that would have only a minimal or conceivably a positive effect on the financial resources of Applicant. Applicant made most of its proposed investments in Dalton and Savannah beginning in 1969. In the case of Savannah, converting Applicant's indirect investment to a direct investment requires an additional outlay of only $10,000. Acquisition of 39 percent of the shares of Dalton can likewise be accomplished at negligible cost, and the Board is satisfied that Applicant's commitments regarding the circumstances under which it will acquire additional shares of Dalton sufficiently insure that the acquisition will not have any materially adverse effect on Applicant or Atlanta Bank. Moreover, Applicant's ability to consolidate the earnings of Savannah after consumation of that proposed transaction should enhance its financial resources. On the other hand, divestiture of the shares and rights held by Atlanta's former directors could involve adverse financial consequences to Applicant. Having considered all aspects of the proposed transactions, including Applicant's most recent financial information; the Board concludes that on balance considerations relating to Applicant's financial resources are consistent with approval of these applications.[10]

Accordingly, based on the record [11] and for the reasons summarized herein, these applications are approved. Approval of the application to acquire Dalton is subject to the condition that Applicant cause complete divestiture of The Bank of Dalton in accordance with its commitment, subject to continuing review and the imposition of such further terms as the Board or its General Counsel may direct. Applicant is directed to submit to the Board's General Counsel within 30 days after the effective date of this Order reasons why the divestiture of The Bank of Dalton should not be ordered earlier than Applicant proposes, and authority is hereby delegated to the Board's General Counsel to order such earlier divestiture, and to impose conditions that will insure that the divestiture is complete and effective, if the reasons submitted in his judgment warrant such action. The transactions hereby approved shall not be made before the thirtieth calendar day following the effective date of this Order, or 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 Atlanta pursuant to delegated authority.

By Order of the Board of Governors,[12] effective September 28, 1977.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.77-29196 Filed 10-3-77;8:45 am]

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[3] The record also reflects that before initiating these transactions Atlanta Bank had reason to believe them lawful, and that Applicant openly disclosed its transactions regarding Dalton and Savannah to its shareholders and to the Board as soon as those transactions were questioned and cooperated with efforts by the Board's staff to resolve the violations question. Applicant's cooperation, the nature of the violations, the fact that the transactions originated before the Board publicized its policy on such transactions and that management has changed since the transactions originated, coupled with Applicant's undertaking a definite program regarding its future conduct, together persuade the Board that the violations do not reflect so adversely on Applicant's management as to require denial of these applications, though no one of those considerations standing alone might be persuasive.

[4] Banking data are as of December 31, 1976.

[5] The Savannah banking market is approximated by Chatham and Effingham Counties and those portions of Liberty and Bryan Counties that lie east of Fort Stewart.

[6] The Dalton banking market is approximated by Whitfield and Murray Counties.

[7] The Atlanta banking market is approximated by Fulton, DeKalb, Cobb, Gwinnett, Clayton, Douglas, Henry, and Rockdale Counties.

[8] Applicant has filed a written commitment that upon consummation of the proposed acquisition of shares held by Atlanta's former directors it will cause director and officer interlocks between Dalton and The Bank of Dalton to be severed, and cause termination of Applicant's direct and indirect ownership and control of, and power to vote, voting shares of The Bank of Dalton at the earliest practicable time and in any event within two years.

[9] The two largest banking organizations in the Savannah banking market control approximately 70 percent of the market's deposits, and a majority of the market's deposits are controlled by the State's largest and third largest banking organizations.

[10] There is nothing in the record to show that Atlanta Bank's financial resources at the time it arranged to obtain control of Savannah and Dalton were incompatible with those investments at the time they were made. Instead it appears that the problems Applicant has experienced were chiefly those common to other banking organizations and arose several years later.

[11] Dissenting Statement of Governors Coldwell and Jackson 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 Atlanta.

[12] Voting for this action: Chairman Burns and Governors Gardner, Wallich, and Partee. Voting against this action: Governors Coldwell, Jackson, and Lilly.

[6750–01]

FEDERAL TRADE COMMISSION

WARRANTIES COMPLYING WITH MAGNUSON-MOSS WARRANTY ACT

Applicability of Certain Provisions of California State Law; Final Findings and Determination

AGENCY: Federal Trade Commission.

ACTION: Final findings and determination in the proceeding.

SUMMARY: Magnuson-Moss Warranty Act § 111 states the Federal scheme for the effect of Federal law on state warranty provisions. Paragraph (c)(1) provides that certain types of State provisions will be inapplicable to warranties complying with the Federal law. However paragraph (c)(2) preserves such provisions if the Commission finds they meet certain criteria stated in the Act. The State of California filed two applications under this paragraph. The Commission's determination on the applications is set forth below. The Commission's final determination includes an explanation of the scheme of § 111.

FOR FURTHER INFORMATION CONTACT:

Rachel Miller, Attorney, Division of Special Statutes, 202–724–1100, or Charles Taylor, Attorney, Division of Marketing Practices, 202–523–3660, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The California state provisions included in the application of July 1, 1975, are the following:

Civil Code Sections 1790–1795 (Song-Beverly Consumer Warranty Act)
Civil Code Section 1797
Commercial Code Section 2801
Health and Safety Code Sections 39156–39157
Vehicle Code Sections 9975, 34715

In addition, the State of California submitted a supplemental application, dated November 2, 1976, requesting consideration of the following provisions as amended by the 1976 Amendments to the Song-Beverly Act:

§§ 17904, 1791, 1793.3, 1793.6, 1794.1.

The Commission initially determined that the only provisions subject to § 111(c)(1) were the following four sections of the Civil Code:

§ 1793.1(b) (disclosure of warrantor's repair facilities)
§ 1797.3 (mobile home warranty title)
§ 1797.3(d) (disclosure of warrantor's telephone number in mobile home warranties)
§ 1797.5 (posting of mobile home warranties)

It therefore initiated this rulemaking proceeding to determine if any of these provisions meet the requirements of § 111(c)(2) for preservation.

The Commission also considered the supplementing application of November 2, 1976, and found that none of the provisions as amended are subject to § 111(c)(1) of the federal Act.

FINDINGS AND DETERMINATIONS

I. HISTORY OF THE PROCEEDING

This proceeding was initiated by the Commission July 9, 1976, in response to an application filed by the State of California pursuant to the provisions of Title I, Section 111(c)(2), 15 U.S.C. 2311(c)(2), of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, Pub. L. 93–637, 15 U.S.C. 2301, et seq., (1975) (hereinafter the "Warranty Act").

The initial notice of this proceeding, together with staff's analysis of the California state law provisions submitted with the application, was published in the FEDERAL REGISTER on July 9, 1976 (41 FR 28361). All interested persons were invited to file written data, views or arguments concerning this matter or to present such information orally at public hearings. A period of 60 days was allowed for submission of written comments. Public hearings, as announced in the notice, were held September 13–14, 1976, in Los Angeles, California, and September 20, 1976, in Washington, D.C., with Mr. John A. Gray, Attorney, Office of the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, presiding. Every person who had expressed a desire to present his views orally at these hearings was accorded the opportunity to do so. The public record remained open for the receipt of written data, views or arguments until October 20, 1976.

Section 111(c) of the Warranty Act (15 U.S.C. 2311(c)), provides:

(c)(1) Except as provided in subsection (b) and in paragraph (2) of this subsection, a State requirement—

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 102, 103, and 104 (and rules implementing such sections); and

(C) which is not identical to a requirement of section 102, 103, or 104 (or a rule thereunder),

shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 109) that any requirement of such State covering any transaction to which this title applies (A) affords protection to consumers greater than the requirements of this title and (B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

Section 111(b), 15 U.S.C. 2311(b), provides:

(b)(1) Nothing in this title shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this title (other than sections 108 and 104(a)(2) and (4)) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

In its initial notice the Commission indicated that four provisions of the California laws submitted for Commission analysis would be affected by operation of § 111(c) of the Warranty Act, i.e., Sections 1793.1, 1797.3 and 1797.5 of the California Civil Code. That notice stated:

(1) Section 1793.1(b) of the Song-Beverly Consumer Warranty Act, while similar to disclosures required by 16 CFR § 701.3(a)(5) of the regulations implementing § 102 of the Warranty Act, is not identical to that requirement;

(2) The "Mobile Home Warranty" designation requirement of California Civil Code § 1797.3 is not identical to the provisions of § 103 of the Warranty Act;

(3) That part of § 1797.3(d) of the California Civil Code which requires disclosure of telephone numbers is not identical to the disclosure provided by 16 CFR 701.3(a)(5); and

(4) The pre-sale availability requirements of § 1797.5 of the California Civil Code are not identical to the requirements of 16 CFR Part 702 which also implements Warranty Act § 102.[1]

The purpose of this proceeding is:

to determine, pursuant to the California petition and the provisions of section 111(c)(2) of the Warranty Act (15 U.S.C. 2311(c)(2)), whether the above described State requirements afford protection to consumers greater than the requirements of the Warranty Act and do not unduly burden interstate commerce. If it is determined that a provision of the State law affords protection to consumers greater than the requirements of the Warranty Act and that such provision does not unduly burden interstate commerce, then the provision will be applicable to written warranties in compliance with the federal requirements to the extent specified in such determination for as long as the State of California administers and enforces effectively such greater requirement.

II. THRESHOLD ISSUES

As a general rule Federal and state consumer protection laws are read harmoniously and viewed as supplementing each other rather than being in conflict.[2] The courts have determined that Federal laws will preempt state consumer protection laws only when the state legislation frustrates the full effectiveness of the Federal law, or when compliance with both is a physical impossibility.[3]

The Congress, in its consideration of the Warranty Act, plainly recognized

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[1] 41 FR 28362 (1976). It was noted that provisions (1), (3) and (4) would be affected only after the rules implementing section 102 of the Warranty Act are effective. *See* 40 Fed. Reg. 60168 (1975), 16 CFR Parts 701, 702. The Rules became effective as of Decem-

[2] See, e.g., *Double-Eagle Lubricants* v. *State of Texas*, 248 F. Supp. 515, 518 (1965); *Head* v. *New Mexico Board of Examiners*, 374 U.S. 424, 427, (1963).

[3] See generally *Perez* v. *Campbell*, 402 U.S. 632 (1971); *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).

these principles and expressed its intention in this area by including a section to deal with these matters—§ 111 entitled "Effect on Other Laws."

Section 111(c)[4] is the centerpiece for the preemption scheme established by Congress. It provides that state labeling and disclosure requirements which are within the scope of requirements of the Warranty Act provisions (§ 101, 103, or 104), or rules thereunder, governing warranty disclosures, designations and minimum standards, and which are not identical to those requirements, are inapplicable to warranties which meet the federal requirements.

Section 111(c)(2) provides a procedure whereby states may petition the Commission for permission to enforce state laws regarding written warranty labeling or disclosures which are not identical to the requirements of the Warranty Act and which would otherwise be rendered inapplicable to written warranties complying with Federal standards.

Section 111(b)[5] preserves all rights and remedies of consumers under state or other federal laws and state requirements directed at liability for personal injury or consequential damages.

During this proceeding numerous alternative interpretations for various sections were advanced. The Commission believes it is important to formulate a consistent interpretation of the section as a whole before proceeding to examine the specific issues raised by the California Application. The Commission has carefully considered the various interpretations and the history of the section. This discussion should give states, consumer groups and industry representatives a guide to the Commission's approach in interpreting this provision.[6]

The first issue concerns the scope of the exception provided for in paragraph (b). Specifically, does the phrase "right or remedy of any consumer" include rights under a state labeling or disclosure requirement?[7] In California for example, under the provisions of the Song-Beverly Act a consumer can maintain an action at law if he is injured by a failure to comply with that Act's requirements. If that Act contained a warranty disclosure provision—for example, that every written warranty contain the manufacturer-warrantor's telephone number—which was otherwise within the scope of § 111(c), would it be excluded from preemption because it is a consumer right?

Since one of the purposes of this legislation is to provide standards for disclosures in written warranties, Congress could not have intended for disclosure or labeling provisions to be automatically construed as consumer rights and preserved. Rather, the Commission believes that Congress established the procedure described in subparagraph (2) of § 111(c) as the proper means by which to determine future applicability of such disclosure and labeling provisions.[8]

Were it otherwise, the federal disclosure scheme would be completely frustrated. If, for example, a state disclosure or labeling requirement, preserved by operation of (b), were directly contradictory to the Federal rules, under the terms of (b) the normal preemption rules would not prevail, and the Federal provision, not the state provision, would fall.

The proviso in § 111(c) "except as provided in (b)" makes it absolutely clear that consumer rights and remedies under state law would never be affected by the Warranty Act. The proviso may have been intended to distinguish between a consumer right to information and a requirement to provide information in a particular form or manner (e.g., in the warranty document). It is even possible that the presence of the proviso in the final Act is due to a drafter's error. The scope of § 111 was limited by the Conference Committee to labeling and disclosure provisions. The House and Senate versions of the legislation would have included performance requirements in the preemption scheme. The proviso preserving consumer rights and remedies was contained in the House version. The Conference Committee took out references to performance requirements but it left in—perhaps to make it entirely clear—the provision that the Act would not affect consumer rights or remedies.

The phrase "right or remedy of any consumer" in § 111(b), therefore, does not include any right to a specific manner of disclosure or labeling of information.

The next issue concerns the scope of the preemption scheme itself. Section 111(c)(1) lists three elements which a state requirement must meet to be within the scope of this section. These requirements are in the conjunctive; all must be found for a requirement to be within the scope of the section.[9]

Penney's would place a nonexistent "or" between the clauses, which the Commission believes would be contrary to the legislative intent.

First, the state requirement must relate to "labeling or disclosure with respect to written warranties or performance thereunder. It is the Commission's view that the phrase "with respect to written warranties or performance thereunder" in § 111(c)(1)(A) was intended to modify the phrase "which relates to labeling or disclosure." Thus we interpret the clause to mean that state requirements which relate strictly to warranty performance, and which do not involve warranty labeling or disclosure of terms, are outside the scope of § 111(c). In other words, we read this clause as dealing with state requirements which relate to labeling or disclosure with respect to written warranties, and with state requirements which relate to labeling or disclosure with respect to performance under written warranties.

This construction is supported by the legislative history of this section. While the scope of this provision, as proposed in both houses, extended to labeling disclosure and "other requirements"[10] or "other matters,"[11] this latter language was dropped in the Conference Committee. No explanation for this is provided in the Conference Report but it may be inferred that Congress intended that the scope of this section should extend only to labeling and disclosure provisions.

Second, the state requirement must be within the scope of § 102, 103, or 104 (or rules thereunder). Section 102 of the Warranty Act authorized Commission promulgation of FTC regulations governing disclosure of written warranty terms and conditions of consumer product warranties. A rule has been promulgated pursuant to the statutory mandate establishing requirements for warrantors for disclosing written warranty terms and conditions. Thus, a state requirement would be within the scope of the Federal requirement if it requires disclosure of terms in a written warranty in a manner different from the Federal rules or if it requires disclosure of additional terms in the warranty.[12] The Commission has also promulgated a rule establishing requirements for pre-sale availability of warranty terms. A state

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[4] See Part I, supra.

[5] See Part I, supra.

[6] Ordinarily, the views of the agency charged with implementing a statute are accorded great weight. See *Red Lion Broadcasting* v. *FCC*, 395 U.S. 367, 381 (1969); *Udall* v. *Tallman*, 380 U.S. 1, 16 (1964).

[7] During the course of this proceeding the State of California took the position that state requirements concerning written warranty disclosures and labeling can provide consumer rights within the meaning of paragraph (b). See Testimony of Herschel Elkins, Deputy Attorney General, State of California, Transcript pp. 46–50 (Tr. 46–50). See also Statement of Center for Auto Safety, Record pp. 118–124 (R. 118–124), and Testimony of Dennis Kavanagh, Counsel, Golden State Mobilehome Owners League, Inc., Tr. 15.

[8] It should be remembered too that this statute was passed prior to the recent Supreme Court decision recognizing a First Amendment "right" to commercial information. See *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 96 Sup. Ct. 1817 (1976).

[9] The legislative history of the Warranty Act indicates that the House version of § 111(c)(1) was adopted in the Act. From a reading of that section it appears clear that § 111(c)(1)(A), (B), and (C) were meant to be conjunctive, and the absence of an "and" between subparagraphs (A) and (B) is merely the result of a normal grammatical process. See also University of Chicago Press "A Manual of Style," § 5.64 (12 ed., 1969) and the comments of the Center for Auto Safety, R. 127–128, and National Consumer Law Center, R. 114–115.

But see Statement of J. C. Penney Co., R. 150. Penney's contended that:

[T]he staff analysis relies upon a conjunctive construction at the end of section 111(c)(1)(A), thus inferring the presence of a nonexistent "and" and substitutes the inferred "and" for the semicolon which actually appears. Penney disagrees with this interpretation and believes that the presence of the semicolon further established a Congressional intent to preserve uniformity of written warrany requirements.

[10] S. 356, 93d Cong., 1st Sess., § 113(b) (1973).

[11] H.R. 7917, 93d Cong., 2nd Sess., § 111(c)(A) (1973).

[12] 16 CFR Part 701.

requirement would be within the scope of this requirement if it establishes written warranty pre-sale availability requirements different from or in addition to those of the federal rule.[13] Sections 103 and 104 create a labeling scheme for warranties.[14] These sections divide the universe of warranties into two types—*i.e.*, those which meet the Federal minimum requirements for a warranty ("full" warranties) and those which do not ("limited" warranties). The Commission has stated that these designations must appear clearly and conspicuously as a caption or prominent title of the warranty.[15] A state requirement would be within the scope of these provisions if it imposed a warranty designation requirement different from the Federal scheme or if it attempted to alter the standards for qualifying for the Federal "full" warranty designation.

Finally, the state requirements must be different from the Federal requirement.

If all the conditions above are met, then the state requirement will be rendered inapplicable to written warranties complying with the provisions of the Warranty Act section or rules thereunder. Thus § 111(c) does not in fact preempt state provisions; it merely renders them inapplicable to warranties which meet the Federal requirements.

Further, subparagraph (2) of § 111(c) provides for a procedure whereby such state requirements can be made applicable even to warranties meeting Federal regulations. A State may apply to the Commission for this determination. In reaching this determination, the Commission must consider whether the state requirement in question affords protection to consumers greater than the requirements of the Warranty Act and does not unduly burden interstate commerce.

The questions of greater protection and undue burden are complex issues requiring careful analysis. They can only be answered on a case-by-case basis. The Commission believes the proponent of the state requirement has the burden of showing that the requirement provides more protection to consumers than the Federal requirement. Likewise, persons viewing the state requirement as unduly burdensome have an obligation to support, by more than mere conclusory statements and unsupported allegation, their contentions with respect to a requirement's burdensomeness.

It should be noted that U.S. Supreme Court decisions interpreting the Commerce Clause (U.S. Const., Art. I, § 8, cl. 3) have established that only undue and discriminatory burdens are forbidden by the Commerce Clause.[16] The Commission believes these decisions set forth the basic criteria for determining whether a State requirement constitutes an "undue burden on interstate commerce" for purposes of subparagraph (2) of § 111(c).

One final point should be added to this analysis. Warrantors and industry commentators throughout this proceeding argued that the purpose of the Warranty Act was to preserve uniformity of warranties—i.e., to ensure that nationwide manufacturer-warrantors would not have to comply with a multiplicity of State laws on the subject. They base their contentions on the Committee Reports[17] published before the Conference Committee changed § 111. The purpose of the Act, however, is to provide minimum disclosure and content standards for warranties.

The Commission believes that Congress rejected the idea of uniformity of warranties as the major purpose of § 111 (c) when it limited its scope to labeling and disclosure requirements. It also rejected the idea of uniformity of disclosure requirements as predominant when it rejected the Senate's absolute preemption scheme and substituted the House version which provides for a savings procedure for such State laws. While uniformity of warranty documents is a goal of § 111, therefore, it is by no means the predominant goal.

As noted herein, because of the comments received during this proceeding and re-examination of the legislative history of the Warranty Act, the Commission has made slight changes in its analysis of § 111 since publication of the initial notice. One additional point should be made in this regard. As discussed above, the Commission is now convinced that the legislative history of § 111 supports the conclusion that the section was meant to apply only to written warranty labeling and disclosure requirements and not to substantive warranty performance requirements. Therefore, the earlier analysis of several sections which were declared exempt from preemption, either because they contained performance requirements identical to those of § 104 or because they constituted consumer rights or remedies, would instead be considered outside the scope of this section because they do not involve written warranty labeling or disclosure. More specifically, see the discussion in staff's analysis, published with the initial notice, concerning California Civil Code §§ 1793.2 to 1793.5 and 1797 to 1797.4.

III. CONSIDERATION OF STATE REQUIREMENTS

A. *Disclosure of repair facilities.* Section 102 of the Warranty Act mandates that the Commission promulgate rules requiring full disclosure of written warranty terms and conditions. The Commission has carried out this directive by promulgating 16 CFR Parts 701, 702 which became effective December 31, 1976.

Section 701.3(a)(5)[18] of the Commission's regulations implementing §102 requires that a written warranty contain the mailing address of the warrantor or the person responsible for performance of warranty obligations.

Section 1793.1(b)[19] of the California Civil Code provides that a warrantor who maintains service and repair facilities in California must disclose the location of such facilities by one of three

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[13] 16 CFR Part 702. Note that other rules are authorized by § 102; as they are promulgated, additional state rules may fall within their scope.

[14] Section 104 appears to be a group of substantive provisions and in fact is entitled "Federal Minimum Standards For Warranty." However, the fact that no warrantor need meet these requirements, but must merely choose a "designation" or label depending on whether he meets them, makes those requirements merely part of the labeling scheme established in § 103.

[15] FTC Magnuson-Moss Warranty Act Implementation and Enforcement Policy, 40 Fed. Reg. 25721 (June 18, 1975); Interpretations of Magnuson-Moss Warranty Act 16 CFR Part 700, 42 Fed. Reg. 36112 (July 13, 1977).

[16] See, e.g., *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440, 443–444 (1960); *Breard* v. *City of Alexandria*, 341 U.S. 622, 640–641 (1951); *Dean Milk Co.* v. *City of Madison*, 340 U.S. 349, 354 (1951).

[17] S. Rep. No. 93–151, 93rd Cong., 1st Sess. (1973); H.R. Rep. No. 93–1107, 93rd Cong., 2nd Sess. (1973).

[18] CFR § 701.3(a) entitled "Written warranty terms" provides, in pertinent part:

"(a) Any warrantor warranting to a consumer by means of written warranty * * * shall clearly and conspicuously disclose in a single document in simple and readily understood language, the following items of information:

* * * * *

"(5) A step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations. This includes the name(s) of the warrantor(s), together with: the mailing address(es) of the warrantor(s), and/or the name or title and the address of any employee or department of the warrantor responsible for the performance of warranty obligations, and/or a telephone number which consumers may use without charge to obtain information on warranty performance * * *"

[19] "(b) Every manufacturer, distributor, or retailer making express warranties and who elects to maintain service and repair facilities within this state pursuant to the provisions of this chapter shall:

"(1) At the time of sale, provide the buyer with the name and address of each such service and repair facility within this state; or

"(2) At the time of sale, provide the buyer with the name and address and telephone number of the service and repair facility central directory within this State, or the toll-free telephone number of a service and repair facility central directory outside this state. It shall be the duty of the central directory to provide, upon inquiry, the name and address of the authorized service and repair facility nearest the buyer; or

"(3) Maintain at the premises of retail sellers of the warrantor's consumer goods a current listing of such warrantor's authorized service and repair facilities, or retail sellers to whom the consumer goods are to be returned for service and repair, whichever is applicable, within this state. It shall be the duty of every retail seller provided with such a listing to provide, on inquiry, the name, address, and telephone number of the nearest authorized service and repair facility, or the retail seller to whom the consumer goods are to be returned for service and repair, whichever is applicable."

methods. The warrantor may (1) give the buyer a list showing the name and address of each such repair facility; or, (2) give the name, address and telephone number of the repair facility central directory within the state or toll free number; or (3) maintain at the seller's premises a list of authorized service facilities. In the latter instance, it is the duty of the seller to provide the name, address and telephone number of the nearest repair facility upon request.

This section of the Federal regulations concerns disclosures of the location of the warrantor or the person responsible for warranty performance. The State of California, for the protection of consumers in that state, has established a similar requirement that the location of repair facilities be disclosed, but the disclosure required is more comprehensive than that prescribed by the Federal regulations.

At the hearing on this matter it was also brought out by the State of California that so long as the required information is presented (or is available) at the time of sale it need not be disclosed in the written warranty itself.[20] A reading of the statute confirms that nowhere does the provision require a disclosure in the written warranty itself, although inclusion in the warranty is one way to comply.

As discussed above, the scope of Warranty Act § 102 and the regulations promulgated thereunder extends only to information that is required in a written warranty. As the California State provision does not mandate written warranty terms or disclosures, it is not within the scope of Warranty Act § 102 or the regulations promulgated thereunder.

The Commission concludes therefore that § 1793.1(b) of California's Civil Code is not a warranty requirement within the scope of § 111 of the Warranty Act and thus is not subject to preemption.

B. *Mobile home warranty title requirement.* Section 103[21] of the Warranty Act requires that a warrantor clearly and conspicuously designate, or label, its warranty either "full (statement of duration) warranty" or "limited warranty." Section 1797.3[22] of the California Civil Code requires a written warranty to be given in connection with the sale of mobile homes, and requires this warranty to be entitled "Mobilehome Warranty."

The Commission in its Final Interpretations, 16 CFR 700.6(a), 42 FR 36112 (July 13, 1977), stated that the "full" and "limited" designations provided by the Act "are the exclusive designations permitted under the Act, unless a specific exception is created by rule." The Commission also stated that the appropriate designation "should appear clearly and conspicuously as a caption, or prominent title," to the warranty. The Commission intended to ensure that readers would focus in the first instance on the status of the warranty with respect to the Federal minimum standards for warranties. The California requirement, which would lead consumers to focus instead on the product being warranted, is inconsistent with this goal.

The state provision thus is a labeling provision within the scope of a requirement of § 103 of the Warranty Act, and not identical to it. It is therefore subject to the provisions of § 111(c) of the Act. The provision may be preserved, however, under paragraph (c)(2) of that section if it affords consumers greater protection than the Federal requirement and does not unduly burden interstate commerce. California Deputy Attorney General Herschel Elkins testified that many mobile homes are now sold with a number of separate warranties on different portions of the home, and that consumers are frequently confused as to the coverage of a particular warranty. He stated that preservation of the state provision would assist consumers in knowing just what the warranty covers.[23] However, a statement of what the warranty covers must in any event appear in the warranty. The Commission finds that this state provision does not afford the necessary greater protection to consumers. Therefore it shall not be applicable to warranties which comply with the Federal rule.

C. *Telephone number requirement.* Section 701.3(a)(5)[24] of the rules implementing Warranty Act § 102 requires disclosure of the mailing address where consumers may obtain information on warranty performance; however, disclosure of a telephone number which consumers may use to obtain such information is optional. Section 1797.3 of the California Civil Code requires that the mobile home warranty mandated therein contain the address and phone number of where to mail or deliver written notices of defects.[25]

This state provision is within the scope of a requirement of a rule promulgated under § 102 of the Warranty Act, since it requires certain information to appear in the warranty itself. Further, it is not identical to the Federal requirement, and is therefore subject to preemption under § 111(c) of that Act. The provision may be preserved, however, under paragraph (a)(2) of that section if it affords consumers greater protection than the Federal requirement and does not unduly burden interstate commerce.

The state requirement compels the use of a telephone system for receiving consumer grievances. Warrantors who do not presently have such a system would be required to install one. The National Retail Merchants Association[26] stated that the requirement would therefore be a burden. However, such a requirement affords significantly greater protection to consumers than the Warranty Act which has no such requirement.[27] The consumer has a fast and convenient method of communication with the warrantor. The consumer can make personal contact with the responsible party, and can receive an immediate response. Any burden imposed on the warrantor is outweighed by the benefit to the consumer of having this communication system available.

For those warrantors who presently have a way of handling consumer complaints by telephone, listing the telephone number in the warranty is merely a slight inconvenience. While the burden could be greater on nationwide warrantors if other states were to impose a similar requirement,[28] it is hardly an undue burden within the meaning of § 111(c)(2) of the Warranty Act.

It must be noted that industry representatives offered absolutely no data to establish the burdensomeness of this requirement.

The Commission therefore concludes that this requirement provides consumers greater protection than the Warranty Act requirement and will not unduly burden interstate commerce. Furthermore, the state has made an adequate showing that it has the capability to enforce this provision. According to the remarks of the Deputy Attorney General, California's Attorney General has authority under common law principles as well as under California Civil Code § 3369 to bring actions against companies engaging in unlawful and unfair business practices.[29] The state requirement will therefore continue to be applicable to warranties complying with the Magnuson-Moss Warranty Act and regulations thereunder.

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[20] Testimony of Herschel Elkins, Deputy Attorney General, State of California, Tr. pp. 57–58, 60–62. *See also* Statement of Center for Auto Safety R 116 n. 2 and R 117 n. 5.

[21] Warranty Act § 103, 15 U.S.C. § 2303, provides in pertinent part:

"(a) Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, * * *:

"(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 104 of this Act, then it shall be conspicuously designated a 'full (statement of duration) warranty.'

"(2) If the written warranty does not meet the Federal minimum standards * * *, then it shall be conspicuously designated a 'limited warranty.'

[22] "The mobilehome warranty from the manufacturer or dealer to the buyer shall be set forth in a separate written document entitled 'Mobilehome Warranty,' * * *"

[23] Testimony of Herschel Elkins, Deputy Attorney General, State of California, Tr. 66.

[24] *See* note 16, *supra*.

[25] Section 1797.3 provides that a written warranty be delivered to the buyer of a mobile home at the time the contract for sale is signed and that the warranty contain certain terms. Term (d) provides that "the address and telephone number of where to mail or deliver written notices of defects shall be set forth in the document."

[26] R 167.

[27] *See* Testimony of Dennis Kavanagh, General Counsel, Golden State Mobilehome Owners League, Inc., Tr. 11–12; Testimony of Herschel Elkins, Deputy Attorney General, State of California, Tr. 66–68.

[28] *See* Statements of Champion Home Builders Co., R 145; Fleetwood Enterprises, Inc., R 137; Skyline Corp., R 130.

[29] *See* Testimony of Herschel Elkins, Deputy Attorney General, State of California, Tr. 51–54; and *People* v. *Arthur Murray*, 238 (CA 2d) 333, 348–349; *People* v. *Superior Court*, 9 (CA 3d) 283, 287.

D. *Pre-sale availability requirement.* Section 102(b)(1)(A) of the Warranty Act authorizes the Commission to prescribe rules "requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him." A rule implementing this provision was promulgated by the Commission and became effective December 31, 1976.[20] The rule requires that warrantors' written warranties be made available to consumers prior to sale by one of four methods.[21] This requirement may be met by displaying the warranty in close conjunction with the product, by maintaining copies of warranties in a binder available to the consumer, by displaying the product's package if the warranty appears on it, or by posting a sign containing the warranty. Section 1797.5 [22] of the California Civil Code requires that mobile home dealers display in the area where sales contracts are signed, a notice stating the existence of a one-year warranty and a sample copy.

This State provision is a requirement within the scope of a rule promulgated under § 102 of the Warranty Act. Further, it is not identical to the Federal requirement and is therefore subject to preemption under § 111(c) of that Act. The provision may be preserved, however, under paragraph (c)(2) of that section if it affords consumers greater protection than the Federal requirement and does not unduly burden interstate commerce.

National Retail Merchants Association asserted that this State provision appears to offer less protection than the Federal regulations because it does not require that the warranty itself be displayed.[23] However, the representative of the State of California disagreed with this interpretation and stated that copies of warranties must be posted.[24]

The provision therefore differs from the Federal requirement in two ways. First, the State provision requires posting of the text of the warranty, whereas the Federal rule permits, as an alternative to posting the text, the use of a binder which is calculated to attract shoppers' attention or whose availability is announced by similarly conspicuous signs. Second, the State provision requires the display of the warranty in the area where sales contracts are signed, while the Federal options regarding posting of the warranty require it to appear where the warranted products are displayed. In the mobile home industry, the functions of product display and contract signing are likely to be performed in separate areas. Thus, compliance with the State provision will not be sufficient compliance with the Federal rule, and vice versa. Preservation of the state method of presale availability will therefore entail for sellers separate compliance with the State and Federal provisions. The Commission is not convinced that posting a copy of the warranty in the area for contract signing, where consumers may well never go until their purchase decision has already been made, provides greater protection than posting signs announcing the availability of warranties in the display area. The Commission feels the extra burden on sellers of providing two sets of pre-sale materials is not justified by such benefit to consumers as this state provision may give. The State provision will therefore not be applicable to warranties which comply with the Federal rule. It should be noted, however, that the Commission does not here make any determination of whether a state provision mandating one of the four Federal options would meet the requirements for preservation in § 111(c)(2).

IV. FINDINGS

In view of the above stated conclusions, the Commission makes the following findings pursuant to its authority under the Warranty Act and specifically under 15 U.S.C. 2311(c)(2):

(1) California Civil Code § 1793.1(b), which requires that warrantors maintaining service and repair facilities in California disclose the location of such facilities, is not a state requirement within the scope of § 111(c) of the Warranty Act and thus is not subject to preemption under that section.

(2) California Civil Code § 1797.3, which requires that the state-mandated mobile home written warranty be entitled "Mobilehome Warranty," does not afford protection to consumers greater than the requirements of the Warranty Act, 15 U.S.C. 2301, et seq., and regulations thereunder, and therefore shall not be applicable to warranties complying with that Act.

(3) California Civil Code § 1797.3(d), which provides that telephone numbers be disclosed in a state-mandated mobile home written warranty, affords protection to consumers greater than the requirements of the Warranty Act, 15 U.S.C. 2301, et seq., and regulations thereunder, and does not unduly burden interstate commerce; therefore, this State requirement shall be applicable to warranties complying with the Magnuson-Moss Warranty Act for so long as the state administers and enforces effectively such greater requirement.

(4) California Civil Code § 1797.5, which provides that mobile home dealers display a notice stating the existence of a one-year warranty and a sample copy of such warranty, does not afford protection to consumers greater than the requirements of the Warranty Act, 15 U.S.C. 2301, et seq., and regulations thereunder, and therefore shall not be applicable to warranties complying with that Act.

V. LETTER OF NOTIFICATION TO APPLICANT

For further information, the Commission's letter of notification to the Attorney General of California is set forth:

FEDERAL TRADE COMMISSION,
OFFICE OF THE SECRETARY,
Washington, D.C.

HON. EVELLE J. YOUNGER,
Attorney General, State of California Department of Justice, 3580 Wilshire Blvd., Los Angeles Calif.
(Attention: Herschel Elkins, Deputy Attorney General).

DEAR MR. YOUNGER: The Commission has concluded the proceeding entitled "Determination of Applicability of California State Law to Warrantors Complying with the Magnuson-Moss Warranty Act."

Attached is a copy of the Notice to be published in the FEDERAL REGISTER concerning the Commission's final determination in this matter. Briefly, the Commission made the following findings pursuant to its authority under the Warranty Act and specifically under § 111(c)(2), 15 U.S.C. § 2311(c)(2):

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[20] 16 CFR Part 702.

[21] 16 CFR § 702.3(a) entitled "Pre-sale availability of written warranty terms" provides in pertinent part that:

"[T]he seller of a consumer product with a written warranty shall:

"(1) Make available for the prospective buyer's review, prior to sale, the text of such written warranty by the use of one or more of the following means:

"(i) Clearly and conspicuously displaying the text of the written warranty in close conjunction to each warranted product; and/or

"(ii) maintaining a binder or series of binders which contain(s) copies of the warranties for the products sold in each department in which any consumer product with a written warranty is offered for sale. Such binder(s) shall be maintained in each department, or in a location which provides the prospective buyer with ready access to such binder(s), and shall be prominently entitled 'Warranties' or other similar title which clearly identifies the binder(s). Such binder(s) shall be indexed according to product or warrantor and shall be maintained up to date when new warranted products or models or new warranties for existing products are introduced into the store or department by substituting superseding warranties and by adding new warranties as appropriate.

"The seller shall either:

"(A) display such binder(s) in a manner reasonably calculated to elicit the prospective buyers attention; or

"(B) make the binders available to prospective buyers on request, and place signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of the binders, including instructions for obtaining access; and/or

"(iii) displaying the package of any consumer product on which the text of the written warranty is disclosed, in a manner such that the warranty is clearly visible to prospective buyers at the point of sale; and/or

"(iv) placing in close proximity to the warranted consumer product a notice which discloses the text of the written warranty, in a manner which clearly identifies to prospective buyers the products to which the notice applies."

Section 702.3(b) requires warrantors to make required materials available to sellers.

[22] "*Notice of warrant; display; posting.* Every dealer shall display a notice of reasonable size stating the existence of a one-year warranty and a sample copy of such warranty. The notice shall be posted in each area where purchase orders and conditional sales contracts are written."

[23] R. 168.

[24] Testimony of Herschel Elkins, Deputy Attorney General, State of California, Tr. 68.

(1) California Civil Code § 1793.1(b), which requires that warrantors maintaining service and repair facilities in California disclose the location of such facilities, is not a state requirement within the scope of § 111(c) of the Warranty Act and thus is not subject to preemption under that section.

(2) California Civil Code § 1797.3, which requires that the state-mandated mobile home written warranty be entitled "Mobile-home Warranty," does not afford protection to consumers greater than the requirements of the Warranty Act, 15 U.S.C. § 2301, et seq., and regulations thereunder, and therefore shall not be applicable to warranties complying with that Act.

(3) California Civil Code § 1797.3(d), which provides that telephone numbers be disclosed in a state-mandated mobile home written warranty, affords protection to consumers greater than the requirements of the Warranty Act, 15 U.S.C. § 2301, et seq., and regulations thereunder, and does not unduly burden interstate commerce; therefore, this State requirement shall be applicable to warranties complying with the Magnuson-Moss Warranty Act for so long as the state administers and enforces effectively such greater requirement.

(4) California Civil Code § 1797.5, which provides that mobile home dealers display a notice stating the existence of a one-year warranty and a sample copy of such warranty, does not afford protection to consumers greater than the requirements of the Warranty Act, 15 U.S.C. § 2301, et seq., and regulations thereunder, and therefore shall not be applicable to warranties complying with that Act.

Recently, you requested an additional hearing under the Warranty Act on recent amendments to the Song-Beverly Act. Specifically, you requested a Commission determination that 1790.4, 1791, 1793.3 and 1794.1 and the new Civil Code Section 1793.6, which went into effect January 1, 1977, afford protection to consumers greater than the requirements of the Warranty Act and do not unduly burden interstate commerce. However, since none of the amendments relate to labeling of or disclosures in written warranties, the Commission has determined that these provisions are outside the scope of § 111(c) of the Warranty Act and thus not subject to preemption under that section. The Commission believes, therefore, that a hearing on this matter is unnecessary.

In your most recent letter you also requested the Commission's opinion whether state enforcement of requirements determined to be excepted from the preemption section of the Warranty Act by § 111(b)(1) preserving consumer rights and remedies, is nevertheless barred by operation of the preemption provision. The Commission sees no reason why the state cannot enforce such requirements.

By direction of the Commission.

CAROL M. THOMAS,
Secretary.

Enclosure.

* * * * *

By direction of the Commission.

Issued: October 4, 1977.

CAROL M. THOMAS,
Secretary.

[FR Doc.77-29035 Filed 10-3-77;8:45 am]

[6820-14]

GENERAL SERVICES ADMINISTRATION

[FPMR Temporary Reg. 41]

AGENCY PROCUREMENT REQUESTS FOR AUTOMATED DATA PROCESSING EQUIPMENT, SOFTWARE, MAINTENANCE SERVICES, AND SUPPLIES

General Services Administration Action

1. *Purpose.* This regulation temporarily suspends the requirement in § 1-4.1105 (b) for GSA to take action on an agency procurement request (APR) within 20 workdays.

2. *Effective date.* This regulation is effective September 23, 1977.

3. *Expiration date.* This regulation will continue in effect until March 31, 1978.

4. *Background. a.* The number of APR's received from Federal agencies over the past few months has increased significantly. At the same time, congressional interest has been expressed in many ADP procurements. Due to the increased workload, it has become more and more difficult for GSA to meet the prescribed 20 workday response time. The result has been that agencies have proceeded without a substantive GSA review. A continuing absence of these reviews is inconsistent with GSA's responsibilities under Section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759) (Pub. L. 89-306, the Brooks Act). Accordingly, it is desirable to prescribe an alternate procedure for use on an interim basis.

b. In view of the foregoing circumstances it is appropriate and necessary to suspend temporarily the requirement in § 1-4.1105(b) for GSA to take action on an APR within 20 workdays. GSA will make every effort to expedite its action on each APR. In view of the potential impact on fulfillment of agency needs, GSA will continue to seek an early, more satisfactory solution to this problem.

5. *Effect on other issuances.* Section 1-4.1105 is amended to read as follows:

§ 1-4.1105 GSA action on procurement requests.

* * * * *

(b) Expeditious action will be taken by GSA after receipt of full information from an agency involving a request for procurement as provided in § 1-4.1104. Agencies shall not proceed with the procurement until a delegation of authority has, in fact, been granted.

SEPTEMBER 23, 1977.

JAY SOLOMON,
Administrator of General Services.

[FR Doc.77-29101 Filed 10-3-77;8:45 am]

[6820-14]

[FPMR Temporary Reg. 42]

CHANGES IN THE SMALL BUSINESS ACT BY PUB. L. 95-89

1. *Purpose.* This regulation provides an interim implementation of Pub. L. 95-89, which amended the Small Business Act.

2. *Effective date.* This regulation is effective ————.

3. *Expiration date.* This regulation will continue in effect until canceled.

4. *Background.* Pub. L. 95-89, August 4, 1977, amended the Small Business Act. Title V—Procurement Assistance, of the public law expanded the authority of the Small Business Administration (SBA) to certify the responsibility of small business concerns for both purchases and sales, to establish priorities regarding the award of contracts to small business and labor surplus area concerns, and to prescribe procedures applicable to awards to small business concerns involving the Walsh-Healey Act.

5. *Agency action.* Agencies shall comply with the provisions of the Small Business Act, as amended by Public Law 95-89, when the provisions of the FPR are inconsistent with the provisions of the Act.

6. *Effect on other issuances.* a. To the extent that the provisions and clauses in the FPR are inconsistent with Pub. L. 95-89, the provisions of the Act apply. A formal amendment of the FPR which implements the Act will be issued as soon as possible.

b. The following provisions (not necessarily all inclusive) of the FPR are affected and will require modification:

(1) *Certificate of Competency program, § 1-1.708.* The FPR provisions which restrict SBA's authority to "capacity and credit" only are modified by the Act to grant SBA statutory authority to certify the competency of any small business concern with respect to all elements of responsibility, including but not limited to capability, competency, capacity, credit, integrity, perseverance, and tenacity.

(2) *Walsh-Healey Public Contracts Act, Subpart 1-12.6.* The FPR requirement that the contracting officer provide findings of ineligibility and supporting documentation to the Wage and Hour Division of the Department of Labor is modified by the Act with respect to small business concerns. SBA is authorized under the Act to dismiss findings of ineligibility or, where SBA concurs in the contracting officer's findings, SBA is required to refer the matter to the Department of Labor for final decision.

(3) *Procurement set-asides for small business, § 1-1.706, and Labor surplus area policies, § 1-1.802.* (a) The FPR priorities in carrying out set-aside programs are modified by the Act. Section 502(e) of the Act includes the following requirement:

(e) In carrying out labor surplus areas and small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

(1) Concerns which are located in labor surplus areas, and which are also small business concerns, on the basis of a total set-aside.

(2) Concerns which are small business concerns on the basis of a total set-aside.

(3) Concerns which are small business concerns, on the basis of a partial set-aside.

(4) Concerns which are located in labor surplus areas on the basis of a total set-aside.

It is pertinent to note that the Act does not foreclose partial labor surplus area set-asides.

(b) Regarding total labor surplus area set-asides, it should be noted that, though not now authorized by the FPR, such set-asides are now permissible under this Act.

(c) Where solicitations involve partial set-asides for small business concerns (the third priority under the Act), the award procedures in the FPR continue to apply.

Dated: September 27, 1977.

ROBERT T. GRIFFIN,
Acting Administrator of General Services.

[FR Doc.77-29102 Filed 10-3-77;8:45 am]

[6820-14]

[FPMR Temporary Reg. F-444]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the interests of the executive agencies of the Federal Government in a telephone rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Kentucky Public Service Commission involving the application of the South Central Bell Telephone Company for an adjustment of its intrastate rates and charges for the Commonwealth of Kentucky.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

JAY SOLOMON,
Administrator of General Services.

SEPTEMBER 21, 1977.

[FR Doc.77-29100 Filed 10-3-77;8:45 am]

[6820-14]

[Formal Case No. 686; Intervention Notice No. 39]

WASHINGTON GAS LIGHT CO.

Proposed Intervention in Gas Rate Increase Proceeding Before District of Columbia Public Service Commission

The General Services Administration seeks to intervene in a proceeding before the District of Columbia Public Service Commission concerning an application by the Washington Gas Light Co. for an increase in its tariffed rates for intrastate gas service. The GSA represents the interests of the executive agencies of the United States Government, as users of utility services.

Persons desiring to make inquiries concerning this case to GSA should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets NW., Washington, D.C. 20405, telephone 202-566-0750, on or before November 3, 1977, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: September 20, 1977.

JOEL W. SOLOMON,
Administrator of General Services.

[FR Doc.77-29099 Filed 10-3-77;8:45 am]

[4110-03]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 76G-0378]

GENERAL MILLS, INC.

Withdrawal of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (GRASP 6G0079) proposing affirmation that plant sterols, phytosterols, and sitosterols used in foods as emulsifying agents are generally recognized as safe (GRAS).

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204 (202-472-4750).

SUPPLEMENTARY INFORMATION: Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 348(b))), the following notice is issued:

In accordance with § 171.7 Withdrawal of petition without prejudice of the procedural food additive regulations (21 CFR 171.7), General Mills, Inc., P.O. Box 1113, Minneapolis, MN 55440, has withdrawn its petition (GRASP 6G0079), notice of which was published in the FEDERAL REGISTER of September 29, 1976 (41 FR 42970), proposing that plant sterols, phytosterols, and sitosterols when used in foods as emulsifying agents are generally recognized as safe.

Dated: September 27, 1977.

HOWARD R. ROBERTS,
Acting Director, Bureau of Foods.

[FR Doc.77-29073 Filed 10-3-77;8:45 am]

[4110-03]

MUTAGENESIS SUBCOMMITTEE OF THE SCIENCE ADVISORY BOARD

Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Mutagenesis Subcommittee of the Science Advisory Board meeting scheduled for September 29, 1977 has been rescheduled for October 17, 1977.

FOR FURTHER INFORMATION CONTACT:

Ruth S. Magee, National Center for Toxicological Research, Jefferson, AR 72079 (501-541-4528).

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration (FDA) announced in a notice published in the FEDERAL REGISTER of August 12, 1977 (42 FR 40958), meetings of FDA public advisory committees and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act.

Notice is hereby given that the meeting of the Mutagenesis Subcommittee of the Science Advisory Board scheduled for September 29, 1977 has been changed to October 17, 1977. The open public hearing will begin at 9 a.m. at the National Center for Toxicological Research, Jefferson, Arkansas.

Dated: September 27, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-28948 Filed 10-3-77;8:45 am]

[4110-03]

[Docket No. 77P-0121]

SIEMENS CORP.

Approval of Variance for Diagnostic X-Ray Systems

AGENCY: Food and Drug Administration.

ACTION: Notice of approval of variance.

SUMMARY: The Director, Bureau of Radiological Health, Food and Drug Administration, has approved a variance from two provisions of the performance standard for diagnostic x-ray systems at the request of the Siemens Corp., 186 Wood Ave. South, Iselin, NJ 08830. The variance will apply to beam-limiting devices to be manufactured and used in fluoroscopic x-ray systems with spot-film devices that, in some cases, may operate in the radiographic mode. Under the terms of the variance, these systems will not be required to meet certain of the requirements for x-ray field limitation applicable to radiographic spot-film devices.

DATES: The variance shall be come effective on November 3, 1977, and shall terminate on November 3, 1978. Objections and supporting information must be submitted by November 3, 1977.

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

FOR FURTHER INFORMATION CONTACT:

Harvey Rudolph, Bureau of Radiological Health (HFX-460), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857 (301-443-3426).

SUPPLEMENTARY INFORMATION: Section 1020.31(e)(2)(i) (21 CFR 1020.31(e)(2)(i)) of the performance standard for diagnostic x-ray systems and their major components requires that stationary, general purpose radiographic x-ray systems be provided with means which prevent x-ray production until the x-ray field size is adjusted to the size of the image receptor as specified by § 1020.31(e)(2)(ii). Section 1020.31(g)(1) requires that x-ray systems equipped with spot-film devices be provided with means to automatically adjust the x-ray field to the portion of the film selected for exposure unless the size of the x-ray field is smaller than the selected portion of the film.

The Siemens Corp. manufactures general-purpose fluoroscopic X-ray systems equipped with spot-film devices that, in some cases, may be operated in the radiographic mode. Under the variance, the beam-limiting devices for these systems would not comply with the above requirements when used with certain sizes of X-ray film cassettes because of their design for use only with a limited number of cassette sizes. Siemens Corp. has requested a variance from these two requirements, pending completion of a new design for the collimation systems.

Systems subject to the variance would be designed to function with a limited number of cassette sizes, depending on the particular model selected, and would be so described by the manufacturer. However, the sensing system would not preclude the use of a cassette for which the system was not designed. Should a nondesignated cassette size be used, the systems, when operated in the radiographic mode, may not properly adjust the size of the X-ray field or prevent production of X-rays as required by § 1020.31(e)(2)(i). When used in the spot-film mode with a cassette for which the system was not designed, the system may not correctly adjust the X-ray field to a size equal to the selected portion of the film as required by § 1020.31(g)(1).

However, the applicant has stated these systems function in a manner compliant with the intent of the performance standard in that for a large fraction of the sizes of X-ray film cassettes in clinical use, the X-ray beam is adjusted correctly to the image receptor size. The applicant has further stated that purchasers select those systems which provide cassette programs or formats that match the clinical tasks to be performed by the system and the cassette sizes to be used by the facility. The applicant maintains that it is unlikely that a cassette of improper size would be used with any of these systems. Therefore, the applicant claims that the chance of unnecessary patient exposure due to the failure to comply with §§ 1020.31 (e)(2)(i) and (g)(1) is remote. On these grounds, and in order to market these X-ray systems to facilities desiring them and to avoid delays in furnishing such facilities with the capability to provided needed X-ray services, the applicant has requested the variance from the performance standard for diagnostic X-ray systems.

The Director, Bureau of Radiological Health, agrees that the diagnostic X-ray systems to be marketed under the variance will comply with the X-ray standard for the large majority of X-ray examinations anticipated and that appropriate warning labels will minimize the likelihood that inappropriate cassette sizes would be used. He therefore concludes that the X-ray systems will provide suitable radiation protection and is granting the variance in accordance with § 1010.4 (21 CFR 1010.4) for a period of 1 year. The variance will apply to beam-limiting devices with the following model numbers, to be used on fluoroscopic or radiographic/fluoroscopic X-ray systems marketed by the applicant:

12-74-836-G0865, 12-75-478-G0865, 16-23-180-G0865, 48-68-089-G0865, 02-83-176-G444G, 02-83-192-G444G, 04-90-227-G444G, 04-90-235-G444G, 42-71-490-G5139, 40-83-424-G5153, and 40-83-432-G5153.

The Director notes that the variance is being granted for 1 year to provide the applicant time to develop beam-limiting devices which comply with all provisions of the performance standard, and it is his intention that the variance not be extended beyond 1 year.

The applicant has been directed to modify, in accordance with § 1010.4(d), the tags, labels, or other certification required by § 1010.2 (21 CFR 1010.2), which are permanently affixed to or inscribed upon products marketed under this variance to state the following:

This product complies with variance 77003, effective November 3, 1977.

The terms of the variance further require that the applicant permanently label the products marketed under the variance to show those cassette sizes for which the system is designed and to warn users of the consequences of using a cassette for which the products are not designed. This label must be permanently affixed or attached to the X-ray system in the immediate vicinity of the cassette tray or holder and be clearly visible and legible to an operator during the installation of a cassette into the system.

The Commissioner of Food and Drug has reviewed the potential environmental impact of this variance and has concluded that the action will not significantly affect the quality of the human environment and that an environmental impact statement is not required. A copy of the environmental impact analysis report is on file in the office of the Hearing Clerk, Food and Drug Administration.

Variance No. 77003 shall become effective on November 3, 1977, and shall terminate on November 3, 1978, unless written objections and supporting documentation are filed with the Hearing Clerk, Food and Drug Administration, on or before November 3, 1977, requesting that the variance be modified or not granted. Upon receipt of such objections and supporting documentation, the effective date of the variance will be stayed until the Director, Bureau of Radiological Health, rules on them. Pursuant to § 1010.4(c)(3), the applicant shall be notified by certified mail, and a notice of the stay shall be published in the FEDERAL REGISTER. The ruling on the objections shall be made within 60 days, shall be published in the FEDERAL REGISTER, and shall constitute final agency action subject to judicial review under section 358 (d) (42 U.S.C. 263f(d)) of the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968.

The application for this variance and all related correspondence, except information covered by the confidentiality provisions of section 360A(e) of the act (42 U.S.C. 263i(e)), have been placed on public display in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Dated: September 28, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.77-29074 Filed 10-3-77; 9 a.m.]

[Docket No. 77N-0048]

LAETRILE

Commissioner's Decision

Correction

In FR Doc. 77-22310, appearing at page 39768 in the issue for Friday, August 5, 1977:

1. On page 39768, first column, under the heading "FOR FURTHER INFORMATION CONTACT:", the telephone number reading "310-44-3480" should read "301-443-3480".

2. On page 39768, third column, the word "energy" in the tenth line of footnote 1 should read "agency".

3. On page 39770, (a) first column, second line from the top, insert the word "would" after "which". (b) Third column, eighth line under *"Vitamin B-17"*, the word "cynophoric" should read "cyanophoric".

4. On page 39774, (a) second column, third line in the first full paragraph, change "glucsides" to "glucosides"; (b) second column, second line of the quoted material in the first full paragraph, the word "beta-glucronidase" should read "beta-glucuronidase"; (c) in the twenty-first line of that same paragraph, change "(R183 . . ." to "(R378 . . ."; and (d) in the third column, the twentieth line from the bottom, change "gulcuonic" to "glucuronic".

5. On page 39777, third column, thirteenth line of the first full paragraph and the last line of the second full paragraph, change "314.11" to "314.111".

6. On page 39781, first column, fourteenth line, change "§ 7" to "¶ 7".

7. On page 39785, second column, bottom line, insert "medicine" after "trional".

8. On page 39788, second column, thirty-first line, the word *"Urbutcit"* should read *"Urbuteit"*.

9. On page 39790, first column, seventh line of the first full paragraph, the word "patent" should read "patents".

10. On page 39794, second column, eighteenth line of the paragraph numbered "(v)", insert "C." after "U.S.".

11. On page 39794, third column, thirteenth line of the first full paragraph, change "us" to "use", and after the seventeenth line of that paragraph, insert "about its safety. Yet two volunteered".

12. On page 39799, (a) first column, nineteenth line of the first paragraph under "3. *Methods of Promotion of Laetrile*", change "388" to "389"; (b) second column, sixth line from the top, after the word "them", change "§" to "?" and (c) second column, in the first full paragraph, in the eighth line from the bottom, insert the word "time" after "survival"; and (d) in the fourth line from the bottom of that same paragraph, change "thearpy" to "therapy".

13. On page 39802, first column, twelfth line, insert "a" after "of", and in the fifteenth line, change "beta-glucosides" to "beta-glucosidase".

14. On page 39803, third column, fifth line from the bottom, change "(R148)" to "(R418)".

[4110-83]

Health Resources Administration

HEALTH CAREER OPPORTUNITY PROGRAM

Grant Orientation Conferences

The Office of Health Resources Opportunity, Health Resources Administration, Public Health Service, Department of Health, Education, and Welfare, is providing grant application information for the Health Career Opportunity Program (HCOP) through the conduct of twelve program orientation conferences. HCOP supports projects designed to assist students from disadvantaged backgrounds in entering and completing health professions training. These orientation conferences, scheduled to be conducted October 17-28, 1977, are for the benefit of interested, potential applicants who may be eligible to participate in HCOP.

Eligible applicants include any public or nonprofit private health or educational entity located in any one of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Each of the twelve conferences will be of one-day duration and will be conducted on the following dates in the cities indicated:

October 17, 1977—New York, N.Y.
October 17, 1977—Philadelphia, Pa.
October 18, 1977—Little Rock, Ark.
October 19, 1977—Atlanta, Ga.
October 20, 1977—Syracuse, N.Y.
October 20, 1977—Chicago, Ill.
October 20, 1977—Portland, Oreg.
October 25, 1977—Denver, Colo.
October 25, 1977—Boston, Mass.
October 26, 1977—Albuquerque, N. Mex.
October 27, 1977—San Francisco, Calif.
October 28, 1977—Kansas City, Mo.

Further information pertaining to the conferences may be obtained from the DHEW regional offices listed below or from the Program Coordination Branch, Office of Health Resources Opportunity, Health Resources Administration, Public Health Service, 3700 East-West Highway, Hyattsville, Md. 20782. Call area code 301-436-7230. Application kits will be distributed at each of the conferences or may be obtained from the Program Coordination Branch, Office of Health Resources Opportunity in Hyattsville, Md.

DHEW Region I, John F. Kennedy Federal Building, Room 1405A, Government Center, Boston, Mass. 02203, Ms. Rose Kennedy (617-223-4258).

DHEW Region II, 26 Federal Plaza, Room 3300, New York, N.Y. 10007, Mr. Josue Diaz (212-264-3936).

DHEW Region III, 3535 Market Street, Room 200, Post Office Box 13716, Philadelphia, Pa. 19101, Mr. Louis Coccodrilli (215-596-6472).

DHEW Region IV, Peachtree Seventh Building, Room 831, 50 Seventh Street NE., Atlanta, Ga. 30323, Mr. Al Witcher (404-881-3700).

DHEW Region V, 300 South Wacker Drive, Chicago, Ill. 60606, Ms. Arlene Granderson (312-353-4586).

DHEW Region VI, 1200 Main Tower Building, Room 18-35, 1114 Commerce Street, Dallas, Tex. 75202, Mr. David Diaz (214-655-3930).

DHEW Region VII, 601 East 12th Street, Kansas City, Mo. 64106, Ms. Sally Chappel (816-374-2008).

DHEW Region VIII, 9017 Federal Office Building, 19th and Stout Streets, Denver, Colo. 80202, Ms. Karen Hansen (303-837-2701).

DHEW Region IX, Federal Office Building, 50 United Nation's Plaza, San Francisco, Calif. 94102, Mr. Jack Maready (415-556-7007).

DHEW Region X, The Arcade Building, 1321 Second Avenue, Seattle, Wash. 98101, Dr. Larry Clausen (206-442-0536).

Interested applicants in Hawaii and in the Trust Territory of the Pacific Islands who are unable to attend one of the conferences may contact Dr. Margie R. Matthews, Director of Continuing Education, School of Public Health, University of Hawaii, 1960 East-West Road, D-202, Honolulu, Hawaii 96822 (808-948-7421), for information and assistance.

Dated: September 28, 1977.

HAROLD MARGULIES,
Deputy Administrator, Health Resources Administration.

[FR Doc.11-29134 Filed 10-3-77;8:45 am]

[4110-83]

HEALTH CARE TECHNOLOGY STUDY SECTION AND HEALTH SERVICES

Developmental Grants Study Section Meetings

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 bodies scheduled to meet during the month of October 1977:

NAME: Health Care Technology Study Section.

DATE AND TIME: October 19-21, 1977, 9 a.m.

PLACE: Sheraton-Silver Spring Motor Inn, 8727 Colesville Road, Silver Spring, Md. 20910.

OPEN: October 19, 9 a.m.-10 a.m.

CLOSED: For remainder of meeting.

PURPOSE: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research.

AGENDA: The open session of the meeting on October 19, 1977, will be devoted to a business meeting covering administrative matters. The closed portion of the meeting on October 19-21 will be utilized in a review of health services research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Acting Deputy Administrator, Health Resources Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301–436–6916.

NAME: Health Services Developmental Grants Study Section.

DATE AND TIME: October 27–28, 1977, 8:30 a.m.

PLACE: Potomac Room, Metropolitan Hotel, 1143 New Hampshire Ave. NW., Washington, D.C. 20037.

OPEN: October 27, 8:20 a.m.–9 a.m.

CLOSED: For remainder of meeting.

PURPOSE: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research.

AGENDA: The open session of the meeting on October 27, 1977, will be devoted to a business meeting covering administrative matters and reports. During the closed sessions, the Study Section will be reviewing research grant applications relating to the delivery, organization and financing of health services. The closing is in accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Acting Deputy Administrator, Health Resources Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Mr. David McFall, National Center for Health Services Research, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301–436–6916.

Agenda items are subject to change as priorities dictate.

Dated: September 23, 1977.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 77–29130 Filed 10–3–77;8:45 am]

[4110–83]

HEALTH SERVICES RESEARCH STUDY SECTION

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 meet during the month of November 1977:

NAME: Health Services Research Study Section.

DATE AND TIME: November 2–3, 1977, 9 a.m.

PLACE Fiesta West, Sheraton-Silver Spring, 8727 Colesville Road, Silver Spring, Md. 20910.

OPEN: November 2, 9 a.m.–10 a.m.

CLOSED: For remainder of meeting.

PURPOSE: The Committee is charged with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research.

AGENDA: The open session on November 2, 1977, will be devoted to a business meeting covering administrative matters and reports. During the closed session, the study section will be reviewing research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code and the Determination by the Acting Deputy Administrator, Health Resources Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782, telephone 301–436–6918.

Agenda items are subject to change as priorities dictate.

Dated: September 23, 1977.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc.77–29129 Filed 10–3–77;8:45 am]

[4110–]

Office of the Assistant Secretary for Education

COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITIES OF EDUCATION DIVISION AND THE OFFICE FOR CIVIL RIGHTS

Procedures for Review and Coordination

Pursuant to the authority contained in Section 406(g) of the General Education Provisions Act, as amended by Section 406 of the Education Amendments of 1976 (Pub. L. 94–482; 20 U.S.C. 1221e–1(g)), the Assistant Secretary for Education, with the approval of the Secretary of Health, Education, and Welfare hereby gives notice of the procedures established for review and coordination of proposed collection of information and data acquisition activities of the Education Division and the Office for Civil Rights in order to eliminate excessive detail and unnecessary or redundant information requests.

1. A "collection of information and data acquistion activity" (hereinafter called an activity) is any form, survey instrument, or plan for the collection of information that is subject to review by the Office of Management and Budget under the Federal Reports Act (44 U.S.C. 3502). The term "information" has the meaning given it by that Act and circulars of the Office of Management and Budget issued pursuant to it.

2. All activities proposed by any bureau or agency of the Education Division and of the education related activities of the Office for Civil Rights shall be submitted to the Administrator of the National Center for Education Statistics (hereinafter called the Administrator) for review and coordination in accordance with these procedures at such times and in such manner as hereafter prescribed by the Administrator. The Administrator shall require of each bureau, agency, and office a detailed justification of how the information once collected will be used; and an estimate of the man-hours required by respondent agencies or institutions to complete the request.

3. The Administrator is responsible for the preparation and maintenance of the HEW Education Data Acquisition Plan (hereinafter called the Plan), which shall include all proposed, continuing, preliminary approved, and approved activities of the Education Division and those of the Office for Civil Rights for which the respondents are educational agencies or institutions. No activity subject to these procedures may be submitted to the Office of Management and Budget for clearance under the Federal Reports Act unless it is approved for inclusion in the Plan; nor shall an activity subject to these procedures be included in any contract or request for proposal unless is has preliminary approval for inclusion in the Plan.

4. Furthemore, each educational agency or institution (i.e., any public or private agency or institution which is the recipient of funds under any applicable program) subject to a request under an activity and their representative organizations shall have an opportunity, during a 30-day period prior to transmittal of the activity to the Director of the Office of Management and Budget, to comment to the Administrator on the activity.

5. There is established the HEW Education Data Acquisition Council to be composed of the following: the Deputy Assistant Secretary for Education (Policy Development), who is the Chairman of the Council; the Deputy Assistant Secretary for Planning and Evaluation (Education); a Deputy Commissioner (to be named by the Commissioner of Education); the Deputy Director for Compliance and Enforcement, Office for Civil Rights; the Deputy Administrator of the National Center for Education Statistics; the Deputy Director, National Institute of Education. The Council shall advise the Administrator on: (1) appeals as to whether a proposed activity should be included in the Plan; and (2) the establishment of standards, criteria, and guidelines for planning and developing a sound body of national education data, and otherwise promoting the objectives of Section 406(g) of the General Education Provisions Act as amended. The Administrator shall designate an appropriately qualified staff person of the National Center for Education Statistics, of grade GS–15 or higher, to serve as the Executive Director of the Council.

The Council may establish such procedures as are needed to fulfill its responsibilities.

6. The heads of the agencies of the Education Division, the Assistant Secretary for Education, the Assistant Secretary for Planning and Evaluation, and the Director, Office for Civil Rights shall designate appropriate staff from their respective agencies and offices to serve on such committees and review groups as the Council, upon the recommendation of the Administrator, establishes for the purpose of carrying out these procedures.

7. The Administrator is authorized to decide on the inclusion of activities in the Plan after having received recommendations from the Executive Director and the appropriate review group. If the Administrator decides not to recommend inclusion of a proposed activity in the Plan, the head of the sponsoring agency, bureau, or office may appeal such decision to the Council, which will advise the Administrator. The head of any agency of the Education Division, the Assistant Secretary for Planning and Evaluation or the Director, Office for Civil Rights may appeal any decision of the Administrator made pursuant to these procedures to the Assistant Secretary for Education whose decision shall be final, except that the Assistant Secretary for Planning and Evaluation or the Director, Office for Civil Rights may further appeal any such decision of the Assistant Secretary for Education to the Secretary.

8. The head of each agency, bureau and office of the Education Division and the Office for Civil Rights is responsible for assisting the Administrator and the Council in the review and coordination of activities subject to these procedures; and shall each designate a Data Acquisition Coordination Officer whose responsibility is to assist the staff of the respective agencies, bureaus, and offices in complying with these procedures.

9. No action taken pursuant to these procedures shall interfere with the enforcement of the provisions of the Civil Right Act of 1964 or any other nondiscrimination provisions of Federal law.

10. The Administrator is responsible for the overall direction of the coordination and review procedures herein established and shall, after receiving the advice of the Council, issue such supplemental procedures as are necessary to carry out the objectives of these procedures.

(20 U.S.C. 1221–1(g)).

Dated: July 20, 1977.

MARY F. BERRY,
Assistant Secretary for Education.

Approved: August 8, 1977.

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

[FR Doc.77–29155 Filed 10–3–77;8:45 am]

[4110–02]

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. The meeting shall be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463, Section 10(a)(2)).

DATES: October 27, 1977, 7 p.m. to 10 p.m., Executive Committee Meeting; October 28–29, 1977, 9 a.m. to 5 p.m.; October 30, 1977, 9 a.m. to 12 noon.

ADDRESS: Detroit Plaza Hotel, Renaissance Center, Detroit, Mich. 48242.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St. NW., Washington, D.C. 20004 (202–376–8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes:

Education in Industry, Committee Meetings and Reports, Legislative Review with the Boards of the Adult Education Association, and the National Association for Public Continuing and Adult Education, 311(d) Project, Council Discussion and Approval of Legislative Package.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, Room 323, Pennsylvania Bldg., 425 13th St. NW., Washington, D.C. 20004.

Signed at Washington, D.C., on September 27, 1977.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc.77–29103 Filed 10–3–77;8:45 am]

[4310–84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M 9703]

MONTANA

Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

SEPTEMBER 23, 1977.

The Bureau of Reclamation filed application, Serial No. M 9703, on June 26, 1968, for a withdrawal in relation to the following described lands:

PRINCIPAL MERIDIAN, MONTANA

REICHLE RESERVOIR

T. 4 S., R. 8 W.,
Sec. 19, Lot 4, SE¼SW¼, and S½SE¼;
Sec. 28, Lots 3 and 4, E½SW¼, and SW¼SE¼;
Sec. 29, S½NE¼, N½NW¼, SE¼NW¼, and E½SE¼;
Sec. 31, Lot 4;
Sec. 32, NE¼SW¼;
Sec. 33, Lots 1 and 2, and NE¼NW¼; and
Sec. 34, Lots 4, 5, and 6, N½S½, and SE¼SE¼.
T. 5 S., R. 8 W.,
Sec. 2, SW¼NW¼;
Sec. 3, Lot 1, SE¼NE¼, and NE¼SE¼;
Sec. 4, SW¼NW¼, NE¼SW¼, S½SW¼, N½; SE¼, and SW¼SE¼;
Sec. 5, SW¼, NW¼SE¼, and S½SE¼;
Sec. 6, Lots 1, 4, 5, and 6, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 8, NE¼, NE¼NW¼, and E½SE¼;
Sec. 9, NE¼NE¼, and
Sec. 10, N½NW¼.
T. 4 S., R. 9 W.,
Sec. 11, SW¼NW¼;
Sec. 21, NE¼NE¼;
Sec. 23, NE¼NE¼;
Sec. 24, S½NE¼ and NE¼SE¼; and
Sec. 25, NE¼SW¼ and S½S½.

Total for Reichle Reservoir Area is 3,029.79 acres.

WORKS AND PROJECT AREA

T. 1 S., R. 4 W.,
Sec. 8, NW¼NW¼; and
Sec. 30, NE¼NW¼.
T. 2 S., R. 6 W.,
Sec. 11, E½SE¼;
Sec. 14, W½NE¼, SE¼NW¼, E½SW¼, and SW¼SW¼;
Sec. 22, Lot 7; and
Sec. 33, Lot 8.
T. 3 S., R. 6 W.,
Sec. 4, Lot 1 and SE¼NE¼.
T. 1 N., R. 1 W.,
Sec. 18, SE¼SE¼.
T. 10 N., R. 1 W.,
Sec. 12, W½NE¼SE¼.

T. 1 N., R. 2 W.,
Sec. 14, SW¼SW¼; and
Sec. 20, Lots 1 and 7.
T. 1 N., R. 3 W.,
Sec. 13, Lots 5, 7, and 8; and
Sec. 24, Lots 2 and 3, W½NE¼, and SE¼.
T. 1 N., R. 4 W.,
Sec. 32, Lots 1, 2, and 3, S½SE¼; and
Sec. 34, NW¼NW¼ less MS 5233.
T. 2 N., R. 5 W.,
Sec. 22, SE¼SE¼; and
Sec. 26, NW¼NW¼.
T. 2 N., R. 1 E.,
Sec. 30, Lots 1 to 4 inclusive, NW¼NE¼, NE¼NW¼, and SE¼SW¼.
T. 3 N., R. 1 E.,
Sec. 12, NW¼.
T. 4 N., R. 1 E.,
Sec. 5, S½NW¼ and SW¼; and
Sec. 8, N½NW¼, SW¼NW¼, and NW¼SW¼.
T. 5 N., R. 1 E.,
Sec. 17, S½NW¼ and SW¼.
T. 10 N., R. 1 E.,
Sec. 14, Lots 3, 4, and 5; and
Sec. 17, NW¼SW¼.
T. 5 N., R. 2 E.,
Sec. 13, NE¼ and S½SE¼; and
Sec. 24, NE¼.
T. 8 N., R. 2 E.,
Sec. 2, Lot 1, S½NE¼, SE¼NW¼, and NE¼SE¼.
T. 9 N., R. 2 E.,
Sec. 9, Lot 7;
Sec. 16, Lots 1, 5, and 6; and
Sec. 20, SW¼NW¼NE¼, NW¼SW¼ NE¼, and SE¼NW¼, and SW¼SE¼NW¼.
T. 7 N., R. 3 E.,
Sec. 6, Lot 7 and SE¼SW¼.

Total for Works and Projects Area is 3,428.56 acres.

The area described contains 6,458.35 acres in Broadwater, Jefferson, Lewis and Clark, and Madison Counties, Mont.

The applicant desires the land for Reichle Reservoir, diverson works, and for irrigation development.

A notice of the proposed withdrawal was published in the FEDERAL REGISTER on July 23, 1968, Volume No. 33, Page No. 10465, Document No. 68-8706.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given that an opportunity for a public hearing is afforded in connection with the pending withdrawal application. All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the State Director, Bureau of Land Management, P.O. Box 30157, Billings, Mont. 59107, on or before November 4, 1977. Notice of the public hearing will be published in the FEDERAL REGISTER, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with BLM Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before November 4, 1977.

The above-described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by the temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications (except for public hearing requests) in connection with the pending withdrawal application should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Department of the Interior, P.O. Box 30157, Billings, Mont. 59107.

ROLAND F. LEE,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-29126 Filed 10-3-77;8:45 am]

[4310-84]

[C-071520-C-063968]

WYOMING

Application

SEPTEMBER 26, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Amoco Pipeline Co. of Denver, Colo. has applied to amend right-of-way grants C-071520 and C-063968 to install cathodic protection units on the following public land:

SIXTH PRINCIPAL MERIDIAN, WYOMING
(C-071520)

T. 14 N., R. 91 W.,
Sec. 18, NW¼.

(C-063968)

T. 21 N., R. 85 W.,
Sec. 36, NE¼.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-29129 Filed 10-3-77;8:45 am]

[4310-84]

[Wyoming 61092]

WYOMING

Application

SEPTEMBER 26, 1977.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Amoco Pipeline Co. of Denver, Colo. filed an application for a right-of-way to construct a 4 inch pipeline for the purpose of transporting crude oil across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 15 N., R. 119 W.,
Sec. 4, Lot 4;
Sec. 6, S½NE¼.
T. 16 N., R. 119 W.,
Sec. 34, SW¼SE¼ and S½SW¼.

The pipeline will transport crude oil from wells in Section 6, T. 15 N., R. 119 W., and will tie into an existing pipeline facility in Section 34, T. 16 N., R. 119 W., Uinta County, Wyo.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyo. 82901.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-29128 Filed 10-3-77;8:45 am]

[4310-31]

Geological Survey

WYOMING

Proposed Approval of Coal Mining Plan

In accordance with the requirements of 30 CFR 211.5(c)(2), notice is hereby given that the Wyodak Resources Development Corp., P.O. Box 149, Gillette, Wyo., has submitted a plan to expand the North Pit of the Wyodak Mine by surface mining methods from Federal lease W-0111833 into Federal lease W-0313666. The current North Pit operation on Federal lease W-0111833 in secs. 21 and 22, T. 50 N., R. 71 W., 6th P.M., Campbell County, Wyo., was approved on April 1, 1971, by the Area Mining Supervisor. The plan to expand the North Pit into Federal lease W-0313666 in secs. 10, 15, 21, and 22, T. 50 N., R. 71 W., 6th P.M., was initially received for review by the Area Mining Supervisor on March 16, 1976. On May 17, 1977, the company submitted an updated mining plan to comply with the requirements of 30 CFR 211.10.

The purpose of this notice is to inform the public that the Area Mining Super-

visor proposes to approve the mining plan. Any person having an interest, which is or may be adversely affected by this action, may request a public meeting in writing. Requests should include the name and address of the requestor and should be submitted to the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, P.O. Box 2550, Billings, Mont. 59103. All requests should be made on or before October 24, 1977. No decision on the plan to expand the North Pit will be made prior to October 24, 1977.

V. E. McKELVEY,
Director.

Dated: September 20, 1977.

[FR Doc. 77-29104 Filed 10-3-77; 8:45 am]

[4310-10]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 1, 1977, Part IX, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

CHARLES A. HERRINGTON,
Acting Keeper of the National Register.

The following properties have been added to the National Register since Sept. 6, 1977. National Historic Landmarks are designated by NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; and properties recorded by the Historic American Engineering Record are designated by HAER.

ARIZONA

Maricopa County

Phoenix, *Monroe School*, 215 N. 7th St. (8-26-77).

ARKANSAS

Conway County

Morrilton, *Morrilton Railroad Station*, Railroad Ave. between Division and Moose Sts. (9-13-77).

Pulaski County

Little Rock, *Little Rock High School (Central High School)*, 14th and Park Sts. (8-19-77).

CALIFORNIA

Los Angeles County

Sierra Madre, *Episcopal Church of the Ascension*, 25 E. Laurel Ave. (8-19-77).

Whittier, *Bailey, Jonathan, House*, 13421 E. Camilla St. (8-29-77).

Orange County

Santa Ana, *Orange County Courthouse*, 211 W. Santa Ana Blvd. (8-29-77).

Santa Clara County

San Jose, *St. Joseph's Roman Catholic Church*, Market and San Fernando Sts. (8-26-77).

Tulare County

Three Rivers vicinity, *Hospital Rock*, NE of Three Rivers (8-29-77).

COLORADO

El Paso County

Colorado Springs, *Alamo Hotel*, 128 S. Tejon St. (9-14-77).

Grand County

Grand Lake vicinity, *Lulu City Site*, N of Grand Lake on Trail Ridge Rd. (9-14-77).

Jefferson County

Wheat Ridge, *Richards Mansion*, 5349 W. 27th Ave. (9-15-77).

CONNECTICUT

Fairfield County

Bethel, *Seelye, Seth, House*, 189 Greenwood Ave. (8-29-77).
Greenwich, *Lyon, Thomas, House*, W. Putnam Ave. and Byram Rd. (8-24-77).
Greenwich, *Riverside Avenue Bridge*, Riverside Ave. and RR. tracks. (8-29-77) HAER.
Monroe, *Monroe Center Historic District*, CT 110 and CT 111 (8-19-77).
Westport, *Godillot Place*, 60, 65 Jesup Rd. (8-29-77).

Hartford County

Burlington vicinity, *Hitchcock-Schwarzmann Mill*, N of Burlington at Foote and Vineyard Rds. (9-13-77).
Southington vicinity, *Webster, Horace, Farmhouse*, S of Southington at 577 South End Rd. (8-24-77).

Litchfield County

Gaylordsville vicinity, *Merwinsville Hotel*, E of Gaylordsville on Brown's Forge Rd. (8-29-77).
New Hartford vicinity, *Chapin, Philip, House*, S of New Hartford (8-29-77).
New Milford vicinity, *Noble, John Glover, House*, S of New Milford (8-29-77).
Torrington vicinity, *Gillette's Grist Mill*, E of Torrington on Maple Hollow Rd. (8-29-77).

Windham County

Woodstock, *Bowen, Henry C., House*, CT 169 (8-24-77).

FLORIDA

Broward County

Fort Lauderdale, *U.S. Car. No. 1*, 3398 S.W. 9th Ave. (8-24-77).

Jefferson County

Monticello, *Monticello Historic District*, irregular pattern along Madison, Jefferson, Dogwood, and Washington Sts. (8-19-77).

GEORGIA

Carroll County

Burns Quarry (8-29-77).

Cobb County

Marietta, *Brumby, Arnoldus, House*, 472 Powder Springs St. (8-29-77).

Dougherty County

Albany, *Smith, W. E., House*, 516 Flint Ave. (8-30-77).

Fulton County

Atlanta, *Candler Building*, 127 Peachtree St., NE (8-24-77).
Atlanta, *Swan House*, 3099 Andrews Dr., N.W. (9-13-77).

Hancock County

Devereux vicinity, *Roe-Harper House*, 2 mi. W of Devereux off SR 2133 (8-29-77).

Troup County

LaGrange vicinity, *Rutledge House*, S of LaGrange on Bartley Rd. (8-24-77).
Mountville vicinity, *van Boddie, Nathan, House*, W. of Mountville on GA 109. (8-29-77) HABS.

IDAHO

Latah County

Moscow, *Ridenbaugh Hall*, University of Idaho campus (9-14-77).

ILLINOIS

Cook County

Chicago, *Immaculata High School*, 600 W. Irving Park Rd. (8-30-77).
River Forest, *River Forest Historic District*, between Harlem Ave. and Des Plaines River with 2 extensions N of Chicago Ave. and 2 extensions S of Lake St. (8-26-77).

Fulton County

Canton vicinity, *Orenfort Site*, SE of Canton (9-13-77).

Gallatin County

New Haven vicinity, *Duffy Site*, S of New Haven (8-26-77).

IOWA

Black Hawk County

Waterloo, *Snowden House*, 306 Washington St. (9-14-77).

Delaware County

Delhi vicinity, *Bay Settlement Church and Monument*, SW of Delhi (9-13-77).

Dubuque County

Dubuque, *Hollenfelz House*, 1651 White St. (9-13-77).

Johnson County

Iowa City, *Windrem House*, 604 Iowa Ave. (9-13-77).

Mitchell County

Osage, *Mitchell County Courthouse*, 500 State St. (8-29-77).

Muscatine County

Muscatine, *First Presbyterian Church*, 401 Iowa Ave. (9-14-77).

KANSAS

Brown County

Hiawatha vicinity, *Davis Memorial*, 0.1 mi. E of Hiawatha, Mt. Hope Cemetery (8-29-77).

Doniphan County

Wathena, *Harding, Benjamin, House*, 308 N. 5th (8-29-77).

Douglas County

Lawrence, *Riggs, Samuel A., House*, 1501 Pennsylvania (8-29-77).

Johnson County

Olathe, *Mahaffie, J. B., House*, 1100 Kansas City Rd. (8-29-77).

Leavenworth County

Leavenworth vicinity, *Powers, David W., House*, 2 mi. NW of Leavenworth off U.S. 73 (8-30-77).

Sedgwick County

Wichita, *Arkansas Valley Lodge No. 21, Prince Hall Masons*, 615 N. Main St. (8-24-77).

KENTUCKY

Boyle County

Danville, *Trinity Episcopal Church*, 320 W. Main St. (9-15-77).

Campbell County

Newport, *Southgate-Parker-Maddux House*, 24 E. 3rd St. (8-29-77).

Casey County

Liberty, *Casey County Courthouse*, Courthouse Sq. (8-29-77).

Fayette County

Lexington, *Barton, Abraham, House*, 200 N. Upper St. (8-26-77).
Lexington, *Floral Hall*, 847 S. Broadway (8-29-77).

Fulton County

Fulton vicinity, *Whitesell, Jesse, House*, W of Fulton on KY 116 (8-29-77).

Mercer County

Harrodsburg, *Sutfield-Thompson House (Courtview)*, 362 N. Main (9-13-77).

Washington County

Springfield, *Walton Manor Cottage (John Pope Law Office)*, 2 mi W of Springfield on KY 150 (8-24-77).

LOUISIANA

Lafourche Parish

Thibodaux, *St. John's Episcopal Church and Cemetery*, 702 Jackson St. (9-13-77).

Orleans Parish

New Orleans, *Greenville Hall*, 7214 St. Charles Ave. (8-29-77).

MAINE

Waldo County

Belfast, *Hayford Block*, 47 Church St. 8-29-77).

MARYLAND

Baltimore City

Baltimore, *Belvedere Hotel*, 1 E. Chase St. (8-29-77).

Cecil County

Colora vicinity, *Colora Meetinghouse*, N of Colora on Lipencott Rd. (8-22-77).

Rising Sun vicinity, *East Nottingham Friends Meeting House*, E of Rising Sun at jct of MD 272 and MD 273 (8-19-77).

MASSACHUSETTS

Essex County

Haverhill, *Bradford Common Historic District*, S. Main St. (9-14-77).

Hampden County

Springfield, *Memorial Square District*, Main and Plainfield Sts. (8-29-77).

Middlesex County

Concord, *Concord Monument Square—Lexington Road Historic District*, MA 2A (9-13-77).

Tyngsboro vicinity, *Tyng, Col. Jonathan, House*, 80 Tyng Rd. (8-19-77) (HABS.)

MICHIGAN

Chippewa County

Sault Ste. Marie, *Federal Building*, 209 E. Portage Ave. (9-9-77).

MINNESOTA

Hennepin County

Minneapolis, *Carpenter, Elbert L., House*, 314 Clifton Ave. (9-13-77).
Minneapolis, *Carpenter, Eugene J., House*, 300 Clifton Ave. (9-13-77).
Minneapolis, *Flour Exchange Building*, 310 4th Ave. S. (8-29-77).
Minneapolis, *Pittsburgh Plate Glass Company Building*, 616 S. 3rd St. (9-13-77).

Ramsey County

St. Paul, *Beebe, Dr. Ward, House*, 2022 Summit Ave. (8-29-77).

MISSISSIPPI

Adams County

Natchez, *Routhland*, 92 Winchester Rd. (8-22-77).
Natchez vicinity, *Briars*, SW of Natchez (8-24-77) HABS.

MISSOURI

Dade County

South Greenfield vicinity, *Dilday Mill*, SE of South Greenfield on Turnback Creek (8-26-77).

Saline County

Marshall, *Saline County Courthouse*, Courthouse Sq. (8-24-77).

NEBRASKA

Sioux County

Agate vicinity, *Cook, Harold J., Homestead Cabin*, 3 mi. E of Agate off NE 29 on Agate Fossil Beds National Monument (8-24-77).

NEW HAMPSHIRE

Fitzwilliam, *Third Fitzwilliam Meeting House*, Village Green (8-26-77).

Grafton County

Orford, *Orford Street Historic District*, Orford St. (NH 10) from Rt. 25A to Archertown Rd., E to include cemetery, (8-26-77) HABS.

NEW JERSEY

Atlantic County

Atlantic City, *Blenheim Hotel*, Boardwalk and Ohio Aves. (8-23-77).

Burlington County

Pemberton, *Morris Mansion and Mill*, Hanover St. (9-13-77).

Gloucester County

Pitman, *Pitman Grove*, bounded by Holly, East, Laurel, and West Aves. (both sides) (8-19-77).

Morris County

Boonton vicinity, *Dixon, James, Farm*, NW of Boonton on Rockaway Valley Rd. (8-29-77).

Morristown, *Morris County Courthouse*, Washington St. between Court St. and Western Ave. (8-19-77).

Sussex County

Andover vicinity, *Waterloo*, 1 mi. S of Andover at Musconetcong River and SR 604 (9-13-77).

Branchville vicinity, *Log Cabin and Farm*, N of Branchville on Mattison Ave. (8-24-77).

NEW MEXICO

Socorro County

Socorro, *Val Verde Hotel*, 203 Manzanares St. (9-13-77).

Valencia County

Grants vicinity, *Dittert Site*, S of Grants (8-22-77).

NEW YORK

Bronx County

Bronx, *Dodge, William E., House*, 690 W. 247th St. (8-28-77).

Clinton County

Rouses Point, *Fort Montgomery*, N of Rouses Point (8-22-77).

Kings County

Brooklyn, *Brooklyn Museum*, Eastern Parkway and Washington Ave. (8-22-77).
Brooklyn, *Litchfield Villa*, Prospect Park W. and 5th St. (9-14-77)

Livingston County

Dansville, *Dansville Library*, 200 Main St. (9-14-77).
West Sparta vicinity, *Kemp, R. P. No. 1 Site*, W of West Sparta (8-22-77)

Montgomery County

Nelliston vicinity, *Reformed Dutch Church of Stone Arabia*, E of Nelliston on NY 10 (9-14-77).

New York County

New York, *DeVinne Press Building*, 393-399 Lafayette St. (9-14-77).
New York, *Old St. Patrick's Cathedral Complex*, Mott and Prince Sts. (8-29-77).

Oneida County

Utica, *St. Joseph's Church*, 704-8 Columbia St. (8-22-77).

Queens County

Flushing, *Bowne, John House*, 37-01 Bowne St. (9-13-77).

St. Lawrence County

Massena vicinity, *Robinson Bay Archeological District*, N of Massena at Robinson Bay (9-13-77).

Warren County

Chestertown, *Chestertown Historic District*, Canada Dr. (U.S. 9) (8-22-77).

NORTH CAROLINA

Dare County

Nags Head, *Nags Head Beach Cottages Historic District*, U.S. 158 (8-19-77).

Wake County

Cary vicinity, *Lane-Bennett House*, S of Cary (8-22-77).

NORTH DAKOTA

Burleigh County

Bismarck, *Foley, James W., House*, 522 6th St. (9-13-77).

Cass County

Amenia, *Burlington Northern Depot*, Woodard Ave. (8-29-77)

McHenry County

Granville, *Granville State Bank*, Main and 2nd Sts. (9-13-77).

Slope County

Marmarth, *Mystic Theatre*, Main St. (9-13-77).

PENNSYLVANIA

Butler County

Butler, *Butler County Courthouse*, S. Main and Diamond Sts. (9-15-77).

Centre County

Spring Mills vicinity, *Fisher, Maj. Jared B., House*, NE of Spring Mills on PA 45 (9–14–77).

Chester County

Coatesville, *Huston, Abram, House and Carriage House*, 53 S. 1st Ave. (9–15–77).
Coatesville, *National Bank of Coatesville Building*, 235 E. Lincoln Highway (9–14–77).
Marshallton vicinity, *Carter-Worth House and Farm*, 450 Lucky Hill Rd. (9–15–77).

Cumberland County

Shippensburg vicinity, *Blythe, Benjamin, Homestead*, 217 Means Hollow Rd. (9–15–77).

Dauphin County

Harrisburg, *State Capitol Building*, 3rd and State Sts. (9–14–77).

Lehigh County

Emmaus, *Kemmerer House*, 3 Iroquois St. (9–14–77).

McKean County

Mt. Jewett, *Kinzua Viaduct*, 4.2 mi. NE of Mt. Jewett (8–29–77).

Philadelphia County

Philadelphia, *Oakley, Violet, Studio*, 627 St. George's Rd. (9–13–77).
Philadelphia, *Strickland, William, Row*, 215–227 S. 9th St. (9–14–77).

Snyder County

Beavertown vicinity, *Gross Bridge*, 3 mi. W of Beavertown on SR 574 (8–29–77).

Venango County

Oil City, *U.S. Post Office*, 270 Seneca St. (9–15–77).

RHODE ISLAND

Providence County

Providence, *Loew's State Theatre*, 220 Weybosset St. (8–19–77).
Providence, *North Burial Ground*, between Branch Ave. and N. Main St. (9–13–77).

SOUTH DAKOTA

Custer County

Custer vicinity, *Norbeck, Peter, Summer House*, W of Custer at Custer State Park (9–13–77).

TENNESSEE

Davidson County

Nashville, *Church of the Assumption*, 1227 7th Ave. N. (8–22–77).

Decatur County

Decaturville vicinity, *Brownsport Furnace*, SE of Decaturville at Furnace Hollow (8–26–77).

Dickson County

Cumberland Furnace, *St. James Episcopal Church*, off TN 48 (8–22–77).

Franklin County

Cowan vicinity, *Cumberland Mountain Tunnel*, SE of Cowan (8–22–77).

Hamilton County

Signal Mountain vicinity, *Connor Toll House*, 4212 Anderson Pike (8–22–77).

Marion County

South Pittsburg, *Christ Episcopal Church and Parish House*, corner of 3rd and Holly Sts. (8–22–77) HABS.

Montgomery County

Clarksville, *Smith-Hoffman House*, Beech and A Sts. (8–22–77).

Shelby County

Memphis, *Peabody Hotel*, 149 Union Ave. (9–14–77).

Sullivan County

Bristol vicinity, *Steel-Seneker Houses*, 4 mi. W of Bristol on TN 126 (8–22–77).

Sumner County

Hendersonville vicinity, *Talley-Beals House*, N of Hendersonville off Saunderville Rd. (8–22–77).

Washington County

Limestone, *Gillespie, Col. George, House*, off U.S. 411 (8–22–77).

TEXAS

Bexar County

San Antonio, *Bexar County Courthouse*, Main Plaza (8–29–77) HABS.

Cameron County

Brownsville, *Browne-Wagner House*, 245 E. St. Charles St. (8–29–77).

Collin County

Farmersville vicinity, *Sister Grove Creek Site*, 4 mi. W of Farmersville off U.S. 380 (8–22–77).

Floyd County

Quitaque vicinity, *Quitaque Railway Tunnel*, 10 mi. SW of Quitaque (9–13–77).

Goliad County

Goliad vicinity, *Nuestra Senora del Espiritu Santo de Zuniga Site*, 0.5 mi. S of Goliad on U.S. 183 (8–22–77).

Irion County

Sherwood, *Irion County Courthouse*, Public Sq. (8–29–77).

Navarro County

Corsicana, *Corsicana Oil Field Discovery Well*, 400 block S. 12th St. (8–22–77).

Smith County

Tyler vicinity, *Tyler Hydraulic-Fill Dam*, W of Tyler off TX31.

UTAH

Salt Lake County

Salt Lake City, *Hills, Lewis S., House*, 126 S. 200 West (8–18–7).
Salt Lake City, *Lollin Block*, 238 S. Main St. (8–18–77).
Salt Lake City, *McCormick Building*, 10 W. 100 South (8–24–77).

Sanpete County

Manti, *Pattern, John, House*, 95 W. 400 North (8–22–77).
Mount Pleasant, *Rasmussen, Morten, House*, 417 W. Main St. (8–18–77).

Utah County

Provo, *Eggertsen, Simon P. Sr., House*, 390 S. 500 West (9–13–77).

Washington County

Hurricane vicinity, *Hurricane Canal*, E of Hurricane. (8–29–77) HAER.

VERMONT

Lamoille County

Johnson, *Nye Block*, Main and Railroad Sts. (8–19–77).

Windham County

Brattleboro, *Canal Street Schoolhouse*, Canal St. (8–19–77).

WASHINGTON

Clallam County

Port Angeles vicinity, *Humes Ranch Cabin*, S of Port Angeles on Elwha River (9–14–77).

Island County

Oak Harbor, *Loers, Benjamin, House*, 2046 Swantown Rd. (8–29–77).

King County

Seattle, *Cornish School*, 710 E. Roy St. (8–29–77).
Seattle, *Merrill, R.D., House*, 919 Harvard Ave., E. (8–22–77).

San Juan County

San Juan Island, *Roche Harbor*, Northern San Juan Island (8–29–77).

Whatcom County

Bellingham, *Fairhaven Historic District*, roughly bounded by 10th and 13th Sts., Columbia and Larrabee Aves. (8–19–77).

WEST VIRGINIA

Berkeley County

Martinsburg vicinity, *Van Metre Ford Stone Bridge*, E of Martinsburg across Opequon Creek on SR 36 (8–22–77).

Hampshire County

Romney, *Wilson-Wodrow-Mytinger House*, 51 W. Gravel Lane (8–22–77).

Monroe County

Union vicinity, *Walnut Grove*, N of Union on U.S. 219 (8–22–77).

WISCONSIN

Ashland County

Ashland, *Wheeler Hall, Northland* College, 1411 Ellis Ave. (9–13–77).
La Pointe vicinity, *Hadland Fishing Camp*, N of La Pointe on Rocky Island (8–18–77.

Columbia County

Portage, *Portage Canal*, between Fox and Wisconsin Rivers (8–26–77).

Rock County

Beloit, *Lathrop-Munn Cobblestone House*, 524 Bluff St. (8–22–77).
Beloit vicinity, *How-Beckman Mill*, W of Beloit (9–7–77).
Edgerton, *Culton, Charles L., House*, 708 Washington St. (8–22–77).

St. Croix County

Somerset vicinity, *Soo Line High Bridge* W of Somerset (8–22–77).

* * * * *

The following is a list of corrections to properties previously listed in the Federal Register.

HAWAII

Maui County

Kalaupapa, *Kalaupapa Leprosy Settlement*, Molokai Island (1–7–76) NHL.
Ualapue, vicinty, *Hokukano-Ualapue Complex*, on HI 45 (10–15–66) NHL.

NEW JERSEY

Morris County

Mendham vicinity, *Ralston Historic District*, 1 mi. W of Mendham at NJ 24 and Roxiticus Rd. (2–20–75) HABS.

* * * * *

The following properties have been determined to be eligible for inclusion in the National Register. All determinations of eligibility are made at the re-

quest of the concerned Federal Agency under the authorities in section 2(b) and 1(3) of Executive Order 11593 as implemented by the Advisory Council on Historic Preservation, 36 CFR Part 800. This listing is not complete. Pursuant to the authorities discussed herein, an Agency Official shall refer any questionable actions to the Director, Office of Archeology and Historic Preservation, National Park Service, Department of the Interior, for an opinion respecting a property's eligibility for inclusion in the National Register.

Historical properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before an agency of the Federal Government may undertake any project which may have an effect on such a property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

ALABAMA

Green County

Gainesville vicinity. *Archeological Sites in Gainesville Project.* Tombigbee Waterway (also in Pickens and Sumter counties).

Jefferson County

Site 1Je36. Project I–459–4(4).

Lowndes County

Jones Bluff Park Site (1 Au 139), Jones Bluff Lake Project.

Madison County

Huntsville, *Lee House,* Red Stone Arsenal.

Montgomery County

Gunter Hill Park Site (1 MT 134), Jones Bluff Lake Project.

Washington County

Sunflower vicinity, *Dr. Williams Home,* AL project RF–98(7).

ALASKA

Fairbanks Division

Davidson Ditch, Steese Hwy.

Nome Division

Little Diomede Island, *Iyapana, John House.*

Sitka Division

Crab Bay, *Crab Bay Petroglyph.*

ARIZONA

Apache County

Grand Canyon National Park, *Old Post Office.*

Apache County

Painted Cliffs Archeological District (Arizona K:12:3, K:12:87, K:12:238, K:12:239), Lupton Interchange of I–40.

Conconino County

Gray Mountain Site, (AR–02–020–946).
House Rock Springs, Upper Houserock Valley.
Paria Plateau Archeological District.

Graham County

Foote Wash—No name Wash Archeological District.

Maricopa County

Beth Israel Synagogue, 120 E. Culver.
Cave Creek Archeological District.
Glendale vicinity, *Cave Creek Dam.*
New River Dams Archeological District.
Phoenix, *Brooks, M. B., House,* 334B 75th Ave.
Phoenix, *Ellis-Shackleford House,* 1242 N. Central.
Phoenix, *Evans Barn,* 67th Ave., between Van Buren and McDowell.
Phoenix, *Fennemore House,* 501 E. Moreland.
Phoenix, *Hidden-Porcher House,* 763 E. Moreland.
Phoenix, *Ivy House,* 111 W. Monroe St.
Phoenix, *Kenilworth Elementary School,* 1210 N. 5th Ave.
Phoenix, *La Ciudad Archeological Site.*
Phoenix, *Las Colinas (Arizona T:12810),* 1200 block of N. 27th Ave.
Phoenix, *Pieri-Elliott House,* 767 E. Moreland.
Phoenix, *Stewart House,* 1115 N. Central.
Site T:4:6.
Site U:1:30 (A.S.U.).
Site U:1:31 (A.S.U.).
Skunk Creek Archeological District.

Mohave County

Colorado City vicinity, *Short Creek Reservoir States NA 13,257 and NA 13,258.*

Navajo County

Polacca vicinity, *Walpi Hopi Village,* adjacent to Polacca.

Pima County

Tucson, *Convento Site.*

Yavapai County

Copper Basin Archeological District, Prescott National Forest.

Yuma County

Eagle Tail Mountains Archeological Site.

ARKANSAS

Archeological Sites, Black River Watershed.

Clay County

Site 3CY34, Little Black River Watershed.

Craighead County

Mangrum Site (State Site Number 3CG636).

Faulkner County

Site 3WH145, E fork of Cadron Creek Watershed (also in White county).
Sites 3VB49–3VB51, N fork Cadron Creek Watershed.

Hempstead County

Archeological Sites in Ozan Creeks Watershed.

Lonoke County

Scott vicinity, *William S. Pemberton House.*

Ouachita County

Camden, Old Post Office, Washington St.

Poinsett County

Riverside Site (State Site Number 3P0395).

CALIFORNIA

Archeological Sites, Buchanan Dam at Chowchilla River.

Alpine County

Woodsford vicinity, *Archeological Site 4-Alp–105.*

Amador County

Amador City, 35 mi. SE of Sacramento.

Benito County

Chalone Creek Archeological Sites, Pinnacles National Monument.

Calaveras County

New Melones Historical District, New Melones Lake Project area, Stanislaus River (also in Tuolumne County).

Colusa County

Stoneyford vicinity, *Upper and Lower Letts Valley Historical District,* 12 mi. SW of Stoneyford.

Del Norte County

Chimney Rock, Six Rivers National Forest.
Doctor Rock, Six Rivers National Forest.
Peak No. 8, Six Rivers National Forest.

El Dorado County

Site Eld–58.
Giebenhahn House and Mountain Brewery Complex.

Fresno County

Helms Pumped Storage Archeological Sites, Sierra National Forest.
Home Camp T.S. (6 archeological sites) in Sierra National Forest.

Glenn County

Stick Lake Prehistoric Site, Case No. 05–08–67, Mendocino National Forest.
Upper Leach Lake Prehistoric Site, Case No. 05–08–67, Mendocina National Forest.
Willows vicinity, *White Hawk Top Site,* Twin Rocks Ridge Road Reconstruction Project.

Humbolt County

Eureka, *Eureka Historic District.*

Imperial County

Glamis vicinity, *Chocolate Mountain Archeological District.*
Lake Cahuilla, *Lot 1.*
Lake Cahuilla, *Lot 5.*

Inyo County

Scotty's Castle, Death Valley National Monument.
Scotty's Ranch, Death Valley National Monument.
The Twenty Mule Team Borax Wagon Road (also in Kern and San Bernardino counties).

Kern County

Site Ca-Ker-322.

Lassen County

Archeological Site HJ–1 and HJ–5.

Los Angeles County

Big Tuijunga Prehistoric Archeological Site, I 210 Project.
Los Angeles, *Fire Station No. 26,* 2475 W. Washington Blvd.
Van Norman Reservoir, Site CA–LAN 646, CA–LAN 643, Site CA–LAN 490, and a cluster made up of Sites CA–LAN, 475, 491, 492, and 493.

Madera County

Bass Lake Archeological Sites
CA–MAD 176–185.
Lower China Crossing.
New Site.

Marin County

Point Reyes, *P. E. Booth Company Pier,* Point Reyes National Seashore.
Point Reyes, *Point Reyes Light Station.*

Modoc County

Alturas vicinity, *Rail Spring,* about 30 mi. N of Alturas in Modoc National Forest.
Johnson Slough Site (Site 1).

Tulelake vicinity, *Lava Bed National Monument Archeological District*, S of Tulelake (also in Siskiyou County).

Mono County

Archeological Site CA–MNO–684.

Monterey County

Big Sur, *Point Sur Light Station.*
Pacific Grove, *Point Pinos Light Station.*

Napa County

Archeological Sites 4–Nap–14, 4–Nap–261. Napa River Flood Control Project.

Plumas County

Mineral, *Hay Barn and Cook's Cabin, Drakesbad (Sifford Family) Guest House*, Lassen Volcanic National Park.
Mineral, *Summit Lake Ranger Station*, Lassen Volcanic National Park.

Riverside County

Twentynine Palms, *Cottonwood Oasis (Cottonwood Springs)*, Joshua Tree National Monument.
Twentynine Palms, *Lost Horse Mine*, Joshua Tree National Monument.

Sacramento County

Sacramento River Bank Protection Project, Site 1, Sacramento River.
Sacramento Weir
Sacramento, *Tower Bridge*, M St. over Sacramento River (also in Yolo County).

San Bernardino County

Squaw Spring Well Archeological District.
Steam Well Petroglyph Archeological District.
Trona Pinnacles Railroad Camp.
Twentynine Palms, *Keys, Bill, Ranch*, Joshua Tree National Monument.
Twentynine Palms, *Twentynine Palms Oasis*, Joshua Tree National Monument.

San Diego County

North Island, *Camp Howard, U.S. Marine Corps*, Naval Air Station.
North Island, *Rockwell Field*, Naval Air Station.
San Diego, *Marine Corps Recruit Depot*, Barnett Ave.

San Francisco County

Forest Hill Station.
North Point Park/Marina (Eagle Cafe and Pier Facades), San Francisco northern waterfront.
San Francisco, *Twin Peaks Tunnel.*

San Luis Obispo County

New Cuyana vicinity, *Caliente Mountain Aircraft Lookout Tower*, 13 mi. NW of New Cuyana off Rte. 166.
San Luis Obispo, *San Luis Obispo Light Station.*

San Mateo County

Hillsborough, *Point Montara Light Station.*

Santa Barbara County

Santa Barbara, *Site SBa–1330*, Santa Monica Creek.
Site CA–Sba–1325.

Santa Clara County

Sunnyvale, *Theuerkauf House*, Naval Air Station, Moffett Field.

Shasta County

Mineral, *Comfort Station*, Lassen Volcanic National Park.
Mineral, *Park Entrance Station and Residence*, Lassen Volcanic National Park.
Mineral, *Park Naturalist's Residence*, Lassen Volcanic National Park.
Mineral, *Warner Valley Ranger Station*, Lassen Volcanic National Park.
Redding vicinity, *Squaw Creek Archeological Site*, NE of Redding.
Whiskeytown, *Irrigation System (165 and 166)*, Whiskeytown National Recreation Area.

Sierra County

Archeological Site HJ–5 (Border Site 26WA–1676).
Properties in Bass Lake Sewer Project.

Siskiyou County

Thomas-Wright Battle Site, Lava Beds National Monument.

Sonoma County

Dry Creek-Warm Springs Valley Archeological District.
Petaluma, *Ferrell Home*, 500 E. Washington St.
Santa Rosa, *Santa Rosa Post Office.*

Tehama County

Los Molinos vicinity, *Ishi Site (Yahi Camp)*, E of Los Molinos in Deer Creek Canyon.

Tulare County

Atwell's Mill, Sequoia National Park.
Cattle Cabins, Sequoia National Park.
Quinn Ranger Station.

Ventura County

Simi Valley, *Archeological Site Ven–341.*

Yuba County

Site 4–Yub–S27 (Marysville Riverfront Park Project), along the Feather River, City of Marysville.

COLORADO

Denver County

Douglas County

Keystone Railroad Bridge, Pike National Forest.

El Paso County

Colorado Springs, *Old El Paso County Jail*, corner of Vermijo and Cascade Ave.

Larimer County

Estes Park, *Beaver Meadows Maintenance Area*, Rocky Mountain National Park utility area.
Sites 5–LR–257 and 5–LR–263, Boxelder Watershed Project.

Pueblo County

Pueblo, *Pueblo Federal Building (U.S. Post Office)*, 5th and Main Sts.

CONNECTICUT

Fairfield County

Bridgeport Harbor, *Bridgeport Canal Barges.*
Norwalk, *Washington Street—S. Main Street Area.*

Hartford County

Farmington, *Gridley-Parsons-Staples Homestead*, Rte. 4, Farmington Ave.
Granby, *Granby Center.*
Hartford, *Christ Church Cathedral and Cathedral House*, 955 Main St. and 45 Church St.
Hartford, *Houses on Charter Oak Place.*
Hartford, *Houses on Wethersfield Avenue*, between Morris and Wyllys Sts., particularly Nos. 97–81, 65.
Manchester, *Portions of Cheney Silk Mills Industrial Complex* (Cheney Homes Area).
Southington, *Lewis, Sally, House*, 500 N. Main St.

Middlesex County

Middletown, *Cookson, John, House*, S. Main St.
Middletown, *Fuller, Caleb, House*, Upper Williams St.
Middletown, *Main Street Firehouse*, 533 Main St.
Middletown, *Southmayd, William, House*, Lower Williams St.

New London County

New London, *Bank Street Historic District.*
New London, *Buckingham Memorial Building*, 307 Main St.
New London, *Williams Memorial Institute Building*, 110 Broad St.
Norwich, *Washington Street Historic District*, Project 103–159.

New Haven County

Ansonia Opera House, 100 Main St.
New Haven, *Grand Avenue Drawbridge*, over Quinnipiac River.

Windham County

Brooklyn, *Quebec Historic District (Quebec Village).*

DISTRICT OF COLUMBIA

Auditors' Building, 201 14th St. SW.
Brick Sentry Tower and Wall, along M St.
Central Heating Plant, 13th and C Sts. SW. SE between 4th and 6th Sts SE
1700 Block Q Street NW, 1700–1744, 1746, 1748 Que St. NW.; 1536, 1538, 1540, 1602, 1604, 1606, 1608, 17th St. NW.

FLORIDA

Broward County

Hillsboro Inlet, *Coast Guard Light Station.*

Collier County

Marco Island, *Archeological Sites on Marco Island.*

Monroe County

Knights Key Moser Channel—Packet Channel Bridge (Seven Mile Bridge)
Long Key Bridge
Old Bahia Honda Bridge

Pinellas County

Bay Pines, *VA Center*, Sections 2, 3, and 11 TWP 31–S, R–15E.

GEORGIA

Bibb County

Macon, *Vineville Avenue Area*, both sides of Vineville Ave. from Forsyth and Hardman Sts. to Pio Nono Ave.

Carroll County

Jordan-Hampton House, Route 1.

Chatham County

Archeological Site, end of Skidway Island.
Savannah, *516 Ott Street.*
Savannah, *908 Wheaton Street.*
Savannah, *914 Wheaton Street.*
Savannah, *920 Wheaton Street.*
Savannah, *928 Wheaton Street.*
Savannah, *930 Wheaton Street.*
Skidaway Island, *Priest's Landing Mounds.*

Clay County

Archeological Site WGC–73, downstream from Walter F. George Dam.

Cobb County

Bostwick, Charles C., House, 325 Atlanta St.
Brumby, Arnoldus, House, 472 Powder Springs St.
Clay, Alexander Stephens, House, 353 Atlanta St.

McCullock–Wellons House, 348 Powder Springs Rd.
Slaughter, M. G., Cottage, 216 Fraser St.

De Kalb County

Atlanta, *Atkins Park Subdivision*, St. Augustine, St. Charles, and St. Louis places.
Decatur, *Sycamore Street Area.*

Fulton County

Atlanta, *Downtown Atlanta Historic District*, beginning at jct. Atlanta St. and Central Ave.

Gordon County

Haynes, Cleo, House and Frame Structure, University of Georgia.
Moss—Kelly House, Sallacoa Creek area.

Greene County

Wallace Reservoir Archeological District, (also in Hancock, Morgan, and Putnam counties).

Gwinnett County

Duluth, *Hudgins, Scott, Home (Charles W. Summerour House)*, McClure Rd.

Heard County

Philpott Homesite and Cemetery, on bluff above Chattahoochee River where Grayson Trail leads into river.

Richmond County

Archeological Sites Project F–117–1 (7).
Augusta, *Blanche Mill.*
Augusta, *Enterprise Mill.*
Augusta, *Green Street.*

Stewart County

Rood Mounds, Walter F. George Dam and Reservoir.

Sumter County

Americus, *Aboriginal Chet Quarry*, Souther Field.

HAWAII

Hawaii County

Hawaii Volcanoes National Park, *Mauna Loa Trail.*
Kwalakakwa Bay, *Kona Field System*

Maui County

Hana vicinity, *Kipahulu Historic District*, SW of Hana on Rts. 31.

Oahu County

Barber's Point Harbor.
Moanalua Valley.

IDAHO

Ada County

Boise, *Alexanders*, 826 Main St.
Boise, *Falks Department Store*, 100 N. 8th St.
Boise, *Idaho Building*, 216 N. 8th St.
Boise, *Simplot Building (Boise City National Bank)*, 805 Idaho St.
Boise, *Union Building*, 712½ Idaho St.

Clearwater County

Orofino vicinity, *Canoe Camp—Suite 18*, W of Orofino on U.S. 12 in Nez Perce National Historical Park.

Gem County

Marsh and Ireton Ranch, Montour Flood project.
Town of Montour, Montour Flood project.

Idaho County

Kamiah vicinity, *East Kamiah*—Suite 15, SE of Kamiah on U.S. 12 in Nez Perce National Historical Park.

Lemhi County

Tendoy, *Lewis and Clark Trail, Pattee Creek Camp.*

Nez Perce County

Lapwai, *Fort Lapwai Officer's Quarters*, Phinney Dr. and C St. in Nez Perce National Park.
Lapwai, *Spalding.*
Lewiston, *Fix Building*, 211–213 Main St.
Lewiston, *Lower Snake River Archeological District*
Lewiston, *Moxley Building*, 215 Main St.
Lewiston, *Scully Building*, 209 Main St.

ILLINOIS

Bureau County

I & M Canal (also in Henry, Rock Island, and Whiteside counties).

Carroll County

Savanna vicinity, *Spring Lake Cross Dike Island Archeological Site*, 2 mi. SE of Savanna.

Cook County

Chicago, *Ogden Building*, 180 W. Lake St.
Chicago, *Oliver Building*, 159 N. Dearborn St.
Chicago, *Springer Block (Bay, State, and Kranz Buildings)*, 126–146 N. State St.
Chicago, *Unity Building*, 127 N. Dearborn St.

De Kalb County

De Kalb, *Haish Barbed Wire Factory*, corner of 6th and Lincoln Sts.

Henry County

Genesco, *Ristau Brewery.*

Lake County

Fort Sheridan, *Museum Bldg. 33*, Lyster Rd.

Madison County

American Botroms, 69 archeological sites in Madison, Monroe, and St. Clair counties.

Rock Island County

Archeological Site 11–Ri–337, East Moline Mississippi and Rock Rivers.

Scott County

Naples vicinity, *Naples-Castle Site*, SW of Naples.

Williamson County

Wolf Creek Aboriginal Mound, Crab Orchard National Wildlife Refuge.

INDIANA

Lawrence County

Bedford, *Main Post Office*, 1324 K St.
Mitchell, *Riley School.*

Marion County

Indianapolis, *Lockfield Gardens Public Housing Project*, 900 Indiana Ave.
Indianapolis vicinity, *Garfield Park Pagoda*, 2 mi S of Indianapolis in Garfield Park.

Monroe County

Bloomington, *Carnegie Library.*

Orange County

Cox Site, Lost River Watershed.
Half Moon Spring, Lost River Watershed.
Jackson, *Ten Prehistoric Sites in the Patoka Lake.*

St. Joseph County

Mishawaka, *100 NW Block*, properties fronting N. Main St. and W. Lincoln Way.

Spencer County

Evansville, *Pollard, Maier, House.*

Vanderburgh County

Evansville, *Alhambra Theater*, 50 Adams St.
Evansville, *Riverside Neighborhood.*

Vermillion County

Houses in SR 63/32 Project, jct. of SR 32 and SR 63 and 1st rd. S. of Jct.

IOWA

Allamakee County

Marquette vicinity, *Fire Point Site (Nine Foot Channel Navigation Project).*

Boone County

Saylorville Archeological District (also in Polk and Dallas counties).

Ida County

Muri Brown Site (13–IA–4), County Courthouse.

Johnson County

Indian Lookout.

KANSAS

Douglas County

Lawrence, *Curtis Hall (Kiva Hall)*, Haskell Institute.

KENTUCKY

Boone County

Rabbit Hash, *Sites 15Be75 and 15Be76.*

Jefferson County

Archeological Sites: Section 2, SW Jefferson County Local Protection Project.
Louisville, *Levin Bates House*, Bardstown Rd.

Johnson County

Fishtrap United Methodist Church.
Volga, *McKenzie Log Cabin*, McKenzie Branch.

Lawrence County

Fort Ancient Archeological Site.

Trigg County

Golden Pond, *Center Furnace*, N of Golden Pond on Bugg Spring Rd.

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Spanish Town*, Baton Rouge.

Orleans Parish

New Orleans, *Algiers Point Historic District*, bounded by Mississippi River, Atlantic St., and Opelousas St.
New Orleans, *Casey, Kate, House*, 932–934 Howard.
New Orleans, *Central City District.*
New Orleans, *Cordes, John, House*, 3027–3029 Royal St., Square 170.
New Orleans, *Deyron, Dr. J. A., House*, 3037 Royal St., Square 170.
New Orleans, *Dunn, Andrew Jackson, House*, 928–930 Calliope St., Square 119.
New Orleans, *Duyer, James, House*, 933–935 Gaienne St., Square 119.
New Orleans, *Gasquet, William, Houses*, 1128–1130 Constance St., Square 119.
New Orleans, *Hart, James S., House*, 615 Erato St., Square 71.
New Orleans, *I-Sea Storage and Transfer Company Building*, 2201 Clio St., Square 348.
New Orleans, *Jahucke Building*, 814 Howard Ave., Square 237.
New Orleans, *Lee Circle and Lee Monument*, St. Charles Ave. at Howard Ave.
New Orleans, *Maginnis Cotton Mills*, 1054 Constance St., Square 120.
New Orleans, *McDowall, Robert, House*, 1119–1121 Constance St., Square 130.
New Orleans, *McLaughlin, M. A., House*, 1122–1126 Constance St., Square 119.
New Orleans, *McLeod, Euphenia Napir House*, 1523–1525 Calliope St., Square 183.
New Orleans, *Murray, Thomas, House*, 1131 S. Rampart St., Square 290.

New Orleans, *Old Firehouse*, 1045 Magazne St., Square 158.
New Orleans, *Peyton, William H., House*, 1135 S. Rampart St., Square 290.
New Orleans, *Roper, George W., House*, 1032 St. Charles Ave., Square 183.
New Orleans, *St. John the Baptist Church*, 1139 Dryedes St., Square 277.
New Orleans, *Saulet, Marie Theresa, House*, 1218–1222 Annunciation St., Square 100.
New Orleans, *Schwegmaun, G. A., House* 3044 Royal St., Square 142.
New Orleans, *Sincer, Louis, House*, 1061 Camp St., Square 183.
New Orleans, *Sporl, C. J., House*, 3015 Royal St., Square 142.
New Orleans, *Talen, Aaldemar Appollonius, Studio-House*, 1029 Calliope St., Square 137.
New Orleans, *Temple Sinai*, 1032 Ceroudelet St., Square 215.
New Orleans, *Verret, Theodore, House*, 1216 Annunciation St., Square 109.
New Orleans, *Tourae, Nicholas, House*, 1169 Tchoupitoulas St., Square 71.
New Orleans, *Zangel, Frederick, House*, 1118 Constance St., Square 119.

Red River County

Hanna Site (16RR4).

St. Martins Parish

Site 16, Sm—45, Atchafalaya Basin Floodway.

Vernon Parish

Ft. Polk, *Site 16 VN 18.*

MARYLAND

Allegany County

Flintstone vicinity, *Martin Gordon Farm*, Breakneck Rd. (Rte. 1).
Flintstone vicinity, *Martins Mountain Farm*, Breakneck Rd. (Rte. 1).

Anne Arundel County

Claiborne, *Bloody Point Bar Light*, on Chesapeake Bay.
Skidmore, *Sandy Point Shoal Light*, on Chesapeake Bay.

Baltimore (independent city)

Baltimore Belt (Baltimore and Ohio) Railroad (Howard Street Tunnel and Power House).
Barre Circle Historic District, Lombard St., Fremont Ave., Scott St.
Eastern Avenue Sewage Pumping Station, SW corner of Eastern Ave. and President St.
Fayette Street Methodist Episcopal Church, 745 West Fayette St.
Mount Calvary Church Historic District, Biddle St., Madison Ave., N. Eutaw St.

Baltimore County

Federal Hill-Riverside Park Historic District, Federal Hill and Riverside Park areas.
Fort Howard, *Craighill Channel Upper Range Front Light*, on Chesapeake Bay.
Hollins-Lombard Historic District, 800 blocks of Hollins and Lombard Sts., bet. Fremont and Callender; unit block of Parkin St.
New Owings Mills Railroad Station, W of Reisterstown Rd.
Old Owings Mills Railroad Station, Reisterstown Rd.
Old Western Police Station (Old Pine Street Station).
Reisterstown Historic District, Butler and Walston Rds.
Ridgely's Delight Historic District.
Sparrows Point, *Craighill Channel Range Front Light*, on Chesapeake Bay.
St. Paul's Cemetery, Union Block, Fremont Ave.

Carroll County

Bridge No. 1–141 on Hughes Road.

Cecil County

Sassafras Elk Neck, *Turkey Point Light*, at Elk River and Chesapeake Bay.

Dorchester County

Hoopersville, *Hooper Island Light*, Chesapeake Bay-Middle Hooper Island.

Frederick County

Fort Detrick, *Horton Test Sphere (One-Million-Liter Test Sphere).*

Montgomery County

Rockville, *Third Addition to Rockville and Old St. Mary's Church and Cemetery.*

St. Marys County

St. Inigoes, *St. Inigoes Manor House*, Naval Electronic System Test and Evaluation Detachment.
St. Marys City, *Point No Point Light*, on Chesapeake Bay.

Talbot County

Tilghman Island, *Sharps Island Light*, on Chesapeake Bay.

MASSACHUSETTS

Barnstable County

Rider, Samuel, House, Gull Pond Rd. off Mid-Cape Hwy. 6.
Truro, *Highland Gold Course*, Cape Cod Light, area.

Hampden County

Holyoke, *Caledonia Building (Crafts Building)*, 185–193 High St.
Holyoke, *Cleary Building (Stiles Building)*, 190–196 High St.
Holyoke, *Steamer Company No. 3.*

Middlesex County

Wayland, *Old Town Bridge (Four Arch Bridge)*, Rte. 217, 1.5 m. NW of Rte. 126 Jct.

Suffolk County

Northern Avenue Bridge, Fort Point Channel.

Worcester County

Leicester, *Shaw Site (Sites 4, 5, and 6)*, Upper Quaboag River Watershed project.
North Brookfield, *Meadow Site No. 11*, Upper Quaboag River Watershed.

MICHIGAN

Kalamazoo County

Masonic Temple, corner Rose and Eleanor Sts.
Little Forks Archeological District.

MINNESOTA

St. Louis County

Duluth, *Morgan Park Historic District.*

Winona County

Winona, *Second Street Commercial Block.*

MISSISSIPPI

Lowndes County

Tibbee Creek Archeological Site, Columbus lock and dam project.

Tishomingo County

Tennessee—Tombigbee Waterway.

MISSOURI

Buchanan County

St. Joseph, *Hall Street Historic District*, bounded by 4th St. on W., Robidoux on S., 10th on E., and Michel, Corby, and Ridenbaugh on N.

Dent County

Lake Spring, *Hyer, John, House.*

Franklin County

Leslie, *Noser's Mill and adjacent Miller's House*, Rural Rte. 1.

Greene County

Springfield, *Landers Theater*, 311 E. Walnut St.

Henry County

La Due, *Batschelett House*, near Harry S Truman Dam and Reservoir.
Little Black River Watershed (also in Ripley County).

Monroe County

Violette, Alexander House.

MONTANA

Cascade County

Great Falls, *Building at 108 Central Avenue.* 108 Central Ave.

Custer County

"Old Fort" at Fort Keogh.

Fergus County

Lewis & Clark, Campsite, May 23, 1805.
Lewis & Clark, Campsite, May 24, 1805.

Lewis and Clark County

Marysville, *Marysville Historic District.*

NEBRASKA

Cherry County

Valentine vicinity, *Fort Niobrara National Wildlife Refuge.*
Valentine vicinity, *Newman Brothers House.*

Knox County

Niobrara Historic Properties.

NEVADA

Clark County

Las Vegas vicinity, *Blacksmith Shop*, Desert National Wildlife Range.
Las Vegas Vinicity, *Las Vegas Wash Archeological District.*
Las Vegas vicinity, *Mesquite House*, Desert National Wildlife Range.

Elko County

Carlin vicinity, *Archeological Sites 26EK1669, 26EK1672.*

Nye County

Las Vegas vicinity, *Emigrant's Trail*, about 75 mi. NW of Las Vegas on U.S. 95.

Pershing County

Lovelock vicinity, *Adobe in Ruddell Ranch Complex.*
Lovelock vicinity, *Lovelock Chinese Settlement Site.*

Storey County

Sparks vicinity, *Derby Diversion Dam*, on the Truckee River 19 mi. E of Sparks, along I 80 (also in Washoe County).

Washoe County

Site 26Wa2065.

NEW HAMPSHIRE

Cheshire County

Arch Bridge, between N. Walpole and Bellows Falls (also in Windham Co., VT).

Hillsborough County

Amoskaag Millyard Complex.
Smyth Tower.

Rockingham County

Portsmouth, *Pulpit Rock Observation Station,* Portsmouth Harbor.

Strafford County

Odd Fellow's Hall (Morning Star Block).
O'Neill House (Cocheco Co. Housing).
Public Market (Morrill Block).
Trella House (Dover Manufacturing Co. Housing).
Veteran's Building (Central Fire House).
Western Auto Block (Merchants Row).

NEW JERSEY

Hudson County

S.S. Newton, midway between Ellis and Liberty islands.

Mercer County

Hamilton and West Windsor Townships, *Assunpink Historic District.*
Trenton, *Lamberton Interceptor.*
West Windsor Township Wastewater Facilities (Archeological Site 3313.14)—Extended.

Middlesex County

Cranbury Historic District.

Monmouth County

Long Branch, *The Reservation,* 1–9 New Ocean Ave.

Morris County

Morristown, *Abbett Avenue Bridge.*

Ocean County

Joseph Holmes Mill (The Mill Site), SW corner of intersection of Mill and Parker Sts.

Passaic County

Forsberg House, 3 Edgemont Crescent.

NEW MEXICO

Chaves County

Cites LA11809—LA11822, Cottonwood-Walnut Creek Watershed (also in Eddy County).

Dona Ana County

Placitas Arroyo, *Sites SCSPA 1—8.*

Guadalupe County

Los Esteros Lake Archeological Site.

Lee County

Laguna Plata Archeological District.

McKinley County

Zuni Pueblo Watershed, *Oak Wash Sites N.M.G.:13:19—N.M.G.:13:37.*

Otero County

Three Rivers Petroglyphs.

Rio Arriba County

Cerrito Recreation Site Archeological District.

NEW YORK

Albany County

Guilderland, *Nott Prehistoric Site.*
Tetilla Peak Site.

Bronx County

New York, *Bronx Post Office.*
New York, *North Brothers Island Light Station,* in center of East River.

Broome County

Mill Site at Site 7–A, Manticoke Creek project (also in Tioga County).
Vestal, *Vestal Nursery Site,* Vestal Project (also in Union County).

Cattaraugus County

Olean, Forness *Park Development-Archeological Sites.*

Chautauqua County

Dunkirk, *Properties in the city of Dunkirk.*
Loomis Archeological Site, South and Central Chautauqua Lake

Erie County

Erie Canal.

Greene County

New York, *Hudson City Light Station,* in center of Hudson River.

Kings County

Steeplechase Parachute Jump.

Nassau County

Greenville, *Toll Gate House,* Northern Blvd.
Long Island, *Seafood Park Archeological Site.*

New York County

New York, *Colonial Park Pool Complex,* Bradhurst Ave.
New York, *Harlem Courthouse,* 170 E. 121st St.

Orange County

Port Jervis, *Church Street School,* 55 Church St.
Port Jervis, *Farnum, Samuel, House,* 21 Ulster Pl.

Oswego County

Gustin-Earle Factory Site, village of Mexico.
Musico Motors Building, W. First and W. Seneca Sts.

Otsego County

Swart-Wilcox House

Queens County

Fort Totten Officers' Club.

Rensselaer County

Sand Lake, *Troy and New England Railway* (Trolley Embankment), Sand Lake Sewer Project/Wynantskill Trunk Sewer.

Richmond County

New York, *Romer Shoal Light Station,* located in lower bay area of New York Harbor.
Staten Island, *U.S. Coast Guard Base, St. George.*

Saratoga County

Saratoga Springs, *Yaddo House and Gardens, District.*
Saratoga Springs, *Yaddo House and Gardens,* Saratoga Springs Historic District.
Schuylerville, *Archeological Site,* Schuylerville Water Pollution Control Facility.

Staten Island

Tottenville, *Ward's Point,* Oakwood Beach Project.

Suffolk County

Janesport vicinity, *East End Site.*
Janesport vicinity, *Hallock's Pond Site*
New York, *Fire Island Light Station,* U.S. Coast Guard Station.
New York, *Little Gull Island Light Station,* off North Point of Orient Point, Long Island.
New York, *Plum Island Light Station,* off Orient Point, Long Island.
New York, *Race Rock Light Station,* S. of Fishers Island, 10 mi. N. of Orient Point.
Northville Historic District, houses along Sound Ave.

Ulster County

Kingston vicinity, *Esopus Meadows Light Station,* middle of Hudson River.
New York, *Rondout North Dike Light,* center of Hudson River at Jct. of Rondout Creek and Hudson River.
New York, *Saugerties Light Station,* Hudson River.
Wildmere and Cliffhouse Resort Hotels (Minnewaska Acquisition Project), towns of Gardiner and Rochester.

Warren County

Lake George, *Boyau,* portion of Montcalm St.

Washington County

Greenwich, *Palmer Mill (Old Mill),* Mill St.

Westchester County

Port Washington vicinity, *Execution Rocks Light Station,* lower SW portion of Long Island Sound.
Yonkers, *Women's Institute Building.*
Yorktown, *Yorktown Railroad Station.*

NORTH CAROLINA

Alamance County

Burlington, *Clapp's Mill and Dam Site* (also in Guilford County).
Burlington, *Faust Mill* (also in Guilford County).
Burlington, *Low House* (also in Guilford County).
Burlington, *Southern Railway Passenger Depot,* NE corner Main and Webb Sts.

Buncombe County

Asheville, *Battery Park Hotel,* Battle Sq. (7–14–77).

Caswell County

Archeological Sites CS–12, County Line Creek Watershed Project (also in Rockingham County).
Womack's Mill, in County Creek Watershed Project (also in Rockingham County).

Cleveland County

Archeological Resources in Second Brood River Watershed Project (also in Rutherford County).

Cumberland County

Fayetteville, *Veterans Administration Hospital Confederate Breastworks,* 23 Ramsey St.

Dare County

Buxton, *Cape Hatteras Light,* Cape Hatteras National Seashore.

Forsyth County

Winston-Salem, *Atkins, Dr. Simon Green, House,* 346 Atkins St.
Winston-Salem, *Hill, James S., House,* 914 Stadium Dr.
Winston-Salem, *Paisley, J. W., House,* 934 Stadium Dr.
Winston-Salem, *Patterson, Ackerman, and Sussdorf Houses,* 434, 440, 448 S. Trade St.

Hyde County

Ocracoke, *Ocracoke Lighthouse.*

NORTH DAKOTA

Burleigh County

Bismarck, *Fort Lincoln Site.*

OHIO

Adams County

Wrightsville vicinity, *Grimes Site (33 AD 39)*, Killen Electric Generating Station.
Wrightsville vicinity, *Killen Bridge Site, (33 AD 36), Killen Electric Generating Station.*

Astabula County

Astabula, *West Fifth Street Bridge,* over Astabula River.

Clermont County

Neville vicinity, *Maynard House,* 2 mi. E of Neville off U.S. 52.

Crawford County

Calvary Reformed Church, First United Methodist Church, Crestline Shunk Museum.

Darke County

DAR–S.R.–571–0.00.

Montgomery County

Columbia Bridge Works.
Lower Cratis Road Bridge.

Richland County

Mansfield, *Ritter, William, House,* 181 S. Main.

Seneca County

Tiffin, *Old U.S. Post Office,* 215 S. Washington St.

Summit County

United Way Building, Perkins St.

Tuscarawas County

Conotton Creek Bridge, CR 90 in Warren Township, over Conotton Creek.

Warren County

Corwin, *Shaffer Mound,* S of New Burlington Rd.
Harveysburg, *E. L. Anderlee Mound,* S of New Burlington Rd. in Caesar Creek Lake Project.

Wayne County

Wooster, *Thorne House,* 1576 Beall Ave.

OKLAHOMA

Atoka County

Estep Shelter, Lower Clear Boggy Watershed.
Graham Site, Lower Clear Boggy Watershed.

Comanche County

Fort Sill, *Blockhouse on Signal Mountain* off Mackenzie Hill Rd.
Fort Sill, *Chiefs Knoll, Post Cemetery,* N of

Kay County

Newkirk vicinity, *Bryson Archeological Site,* NE of Newkirk.

OREGON

Baker County

Baker vicinity, *Virtue Flat Mining District,* 10 mi. E of Baker off Hwy. 86.

Columbia County

Scappose vicinity, *Portland and Southwestern Railroad Tunnel,* 13 mi. NW of Scappose.

Coos County

Charleston, *Cape Arago Light Station.*

Curry County

Port Orford, *Cape Blanco Light Station.*

Douglas County

Winchester Bay, *Umpqua River Lighthouse.*

Gilliam County

Archeological Sites (Ghost Camp Reservoir).
Arlington vicinity, *Four Mile Canyon Area (Oregon Trail),* 10 mi. SE of Arlington.
Crum Gristmill, Ghost Camp Reservoir area.
Old Wagon Road, Ghost Camp Reservoir area.
Olex School, Ghost Camp Reservoir area.
Steel Truss Bridge, Ghost Camp Reservoir area.

Klamath County

Crater Lake National Park, *Crater Lake Lodge.*

Lane County

Coburg vicinity, *McKenzie River Railroad Bridge.*
Roosevelt Beach, *Heceta Head Lighthouse.*
Roosevelt Beach, *Heceta Head Light Station.*

Lincoln County

Agate Beach, *Yakuina Head Lighthouse.*

Tillamook County

Tillamook, *Cape Meares Lighthouse.*

Wasco County

Memaloose Island, River Mile 177.5 in Columbia River.

Wheeler County

Antone, *Antone Mining Town,* Barite 1901–1906.

PENNSYLVANIA

Adams County

Gettysburg, *Barlow's Knoll,* adjacent to Gettysburg National Military Park.
Kuhn's Fording Bridge, spans Conewago Creek.

Allegheny County

Bruceton, *Experimental Mine,* U.S. Bureau of Mines, off Cochran Mill Rd.
McJunkin Site, New Texas Rd.
Pittsburgh, *St. Boniface Church,* 2208 East St.

Berks County

Brownsville vicinity, *Lauer/Gerhart Farm.*
Mt. Pleasant, *Berger-Stout Log House,* near jct. of Church Rd. and Tulephocken Creek.
Mt. Pleasant, *Conrad's Warehouse,* near jct. of Rte. 183 and Powder Mill Rd.
Mt. Pleasant, *Heck-Stamm-Unger Farmstead,* Gruber Rd.
Mt. Pleasant, *Miller's House,* jct. of Rte. 183 and Powder Mill Rd.
Mt. Pleasant, *O'Bolds-Billman Hotel and Store,* Gruber Rd. and Rte. 183.
Mt. Pleasant, *Pleasant Valley Roller Mill,* Gruber Rd.
Mt. Pleasant, *Reber's Residence and Barn,* on Tulephocken Creek.
Mt. Pleasant, *Union Canal,* Blue Marsh Lake Project area.
Reading vicinity, *Blue Marsh Archeological District.*

Butler County

Butler, *Bonnie Brook Archeological Site.*

Chester County

Charlestown, *Nesspor House (Thomas Davis House),* State Rd.
Charlestown, *Pickering Creek Ice Dam,* State Rd.
Lock Aerie.
Nature Center of Charleston, State Rd. Charleston township.

Clinton County

Lockhaven, *Apsley House,* 302 E. Church St.
Lockhaven, *Harvey Judge, House,* 29 N. Jay St.
Lockhaven, *McCormick, Robert, House,* 234 E. Church St.
Lockhaven, *Mussina, Lyons, House,* 23 N. Jay St.

Delaware County

I 476 Historic Sites (20 Historic Sites), Mid-County Expwy. (also in Montgomery County).
Minshall House, Media Borough.

Huntingdon County

Brumbaugh Homestead, Raystown Lake Project.

Lackawanna County

Carbondale, *Miners and Mechanics Bank Bldg.,* 13 N. Main St.

Lancaster County

Bainbridge Township, *Haldeman Mansion.*

Lehigh County

Colesville vicinity, *Site 1: Farmhouse, barn, and outbuildings,* I–78.
Dorneyville, *King George Inn and two other stone houses,* Hamilton and Cedar Crest Blvds.

Lycoming County

Williamsport, *Faxon Co., Inc.,* Williamsport Beltway.

Northampton County

Lehigh Canal.
Site 3: Farmhouse, barn, and outbuildings, I–78.
Site 4: Farmhouse, barn, and outbuildings, I–78.

Philadelphia County

Philadelphia, *Bridge on "I" Street, over* Tacony Creek.
Philadelphia, *Courthouse and Post Office,* 9th St., between Chestnut and Market Sts.
Philadelphia, *New Forest Theatre,* 1108–1114 Walnut St.
Philadelphia, *Poth, Frederick, House,* 216 N. 33rd St.
Philadelphia, *Tremont Mills,* Wigonocking St. and Adams Ave.
U.S. Naval Base, *Quarters "A" Commandant's Quarters.*

Washington County

Charlerol, *Ninth Street School.*
Cross Creek Village (36 Wh 293) (Cross Creek Watershed).
Somerset Township, *Wright No. 22 Covered Bridge.*

York County

Wellsville Historic District.

RHODE ISLAND

Providence County

Providence, *Woonesquatucket Bridge.*
Woonsocket, *Club Marquette Building (St. Anne's Gymnasium)* Cumberland St.

Washington County

Narragansett, *Sprague, Gov., Bridge,* Boston Neck Rd.

SOUTH CAROLINA

Beaufort County

Parris Island, *Marine Corps Recruit Depot.*

Charleston County

Charleston, *139 Ashley St.*
Charleston, *69 Barre St.*
Charleston, *69r Barre St.*
Charleston, *316 Calhoun St.*
Charleston, *316r Calhoun St.*
Charleston, *268 Calhoun St.*
Charleston, *274 Calhoun St.*
Charleston, *Old Rice Mill,* off Lockwood Dr.

Florence County

Florence, *United States Post Office-Florence,* South Carolina, corner of Irby St. and Evan St.

SOUTH DAKOTA

Minnehaha County

Orpheum Theater, 315 N. Phillips Ave.
Pennington County

TENNESSEE

Rapid City, *612–632 Main St.*
Davidson County

Nashville, *Ancient Indian Village and Burial Ground*, section 203(b).

TEXAS

Bexar County

Fort Sam Houston, *Eisenhower House*, Artillery Post Rd.

Concho County

Middle Colorado River Watershed, *Prehistoric Archeology in the Southwest Laterals Subwatershed* (also in McCulloch County).

Denton County

Hammons, George House, between Sangers and Pilot Point.

Galveston County

Galveston, *U.S. Customhouse*, bounded by Avenue B, 17th, Water, and 18th Sts.

Hardeman County

Quanah, *Quanah Railroad Station*, Lots 2, 3, and 4 in Block 2.

Uvalde County

Leona River Watershed, Archeological Sites.

Webb County

Laredo, *Bertani, Paul Prevost House*, 604 Iturbide St.
Laredo, *De Leal, Viscaya, House*, 620 Zaragoza St.
Laredo, *Garza, Zoila De La, House*, 500 Iturbide St.
Laredo, *Leyendecker/Salinas House*, 702 Iturbide St.
Laredo, *Montemayor, Jose A., House (Carols Vela House)*, 601 Zaragosa St.

Williamson County

Archeological Districts of North Fork and Granger Lake.

TRUST TERRITORY OF THE PACIFIC ISLANDS

Truk District

Sapore Village, *Aikei/Winas*, Fefen Island.

UTAH

Emery County

Site ML–2145, Manti-LaSal National Forest.

VERMONT

Chittenden County

Clark Memorial Building.

Windham County

Rockingham, *Bellow Falls Armory*, 72 Westminster St., Bellows Falls.

Windsor County

Windsor, *Post Office Building.*

VIRGINIA

Charlottesville (independent city)

U.S. Post Office and Courthouse (Old Post Office).

Accomack County

Captain's Cove Dev., Archeological Sites (Chincoteague Bay).

Allegheny County

Gathright Lake Project (Archeological sites), (also in Bath County).

Wythe County

Fort Criswell.

WASHINGTON

Benton County

Richland vicinity, *Paris Archeological Site*, Hanford Works Reservation.
Richland vicinity, *Wooded Island Archeological District*, N of Richland.

Callam County

Cape Alava vicinity, *White Rock Village Archeological Site, S o. Cape Alava.*
Olympic National Park Archeological District, Olympic National Park (also in Jefferson County).
Seglum, *New Dungeness Light Station.*

Grays Harbor County

West Port, *Grays Harbor Light Station.*

King County

Burton, *Point Robinson Light Station.*
Seattle. *Alki Point Light Station.*
Seattle, *Home of the Good Shepherd.*
Seattle, *West Point Light Station.*

Kitsap County

Hansville, *Point No Point Light Station.*

Pacific County

Ilwaco, *North Head Light Station.*

Pierce County

Fort Lewis Military Reservation, *Captain Wilkes, July 4, 1841, Celebration Site.*
Longmire, *Longmire Cabin*, Mount Rainier National Park.

San Juan County

San Juan Islands, *Patos Island Light Station.*

Skamania County

North Bonneville, *Site 44SA11*, Bonneville Dam Second Powerhouse Project.

Snohomish County

Mukilteo, *Mukiltea Light Station.*

Wahkiakum County

Skamokawa village, *Archeological site 45–WK–5.*

WEST VIRGINIA

Barbour County

Covered Bridge across Rooting Creek, Elk Creek Watershed (also in Harrison County).

Cabell County

Huntington, *Old Bank Building*, 1208 3rd Ave.

Kanawha County

Charleston, *Kanawha County Courthouse.*
St. Albans, *Chilton House*, 439 B St.

Pendleton County

Wayside Inn (Site's Inn), Monongahela National Forest.

Wood County

Parkersburg, *Wood County Courthouse.*
Parkersburg, *Wood County Jail.*

WISCONSIN

Ashland County

Ashland vicinity, *Madeline Island Site 7302.*

LaCrosse County

LaCrosse, *LaCrosse Post Office.*

Rock County

Portion of Evansville Historic District.

WYOMING

Albany County

Woods Landing vicinity, *Boswell Ranch, WY 10.*

Fremont County

Pilot Butte Powerplant, Wind River Basin.

Johnson County

Casper, *Castle Rock Archeological Site.*
Casper, *Dull Knife Battlefield.*
Casper, *Middle Fork Pictograph-Petroglyph Panels.*
Casper, *Portuguese Houses.*

Park County

Mammouth, *Chapel at Fort Yellowstone*, Yellowstone National Park.

PUERTO RICO

Mona Island, *Sardinero Site and Ball Courts.*

[FR Doc.77–28786 Filed 10–3–77;8:45 am]

[4310–10]

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 Sept. 23, 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 October 13, 1977.

CHARLES A. HERRINGTON,
Acting Keeper of the National Register.

CALIFORNIA

Contra Costa County

Richmond, *Winehaven*, Point Molate.

Fresno County

Fresno, *Forestiere Underground Gardens*, 5021 W. Shaw Ave.

Kings County

Hanford, *Kings County Courthouse*, 114 W. 8th St.

Los Angeles County

Newhall, *Horseshoe Ranch*, 24151 Newhall Ave.

Napa County

Napa, *Buford House*, 1930 Clay St.

Orange County

El Toro vicinity, *El Toro Grammar School*, 21802 Serrano Rd.
Santa Ana, *Smith-Tuthill Funeral Parlors*, 518 N. Broadway.

San Diego County

Julian, *Robinson Hotel*, 2032 Main St.
La Jolla, *Scripps, George H., Memorial Marine Biological Laboratory*, 8602 La Jolla Shores Dr.

San Mateo County

Woodside, *Independence Hall*, 129 Albion Ave.

Santa Barbara County

Santa Barbara vicinity, *Hammond's Estate Site*, E of Santa Barbara.
Santa Barbara vicinity, *Hope, Thomas, House*, 399 Nogal Dr.

FLORIDA

Duval County

Jacksonville, *Bethel Baptist Institutional Church*, 1058 Hogan St.

Putnam County

Melrose, *Melrose Woman's Club*, Pine St.

GEORGIA

Baldwin County

Milledgeville vicinity, *Rockwell, Samuel House*, 165 Allen Memorial Dr. HABS.
Milledgeville vicinity, *Rutherford, John, House*, 550 Allen Memorial Dr.
Milledgeville vicinity, *Storehouse, State Lunatic Asylum*, Broad St. and Lawrence Rd.
Milledgeville vicinity, *Thalian Hall*, Ivey and Allen Memorial Drives.

MASSACHUSETTS

Hampden County

Westfield, *Westfield Municipal Building*, 59 Court St.

Norfolk County

Brookline, *Devotion, Edward, House*, 347 Harvard St.

Plymouth County

Duxbury vicinity, *Bradford, Capt. Gershom, House*, 931 Tremont St.

Worcester County

Millbury, *Waters, Asa, Mansion*, 123 Elm St.

NEVADA

Carson City County

Carson City, *Meder, Lew M., House*, 308 N. Nevada St. HABS.
Carson City, *Nevada State Printing Office*, 101 S. Fall St. HABS.

NEW JERSEY

Bergen County

New Milford, *DesMarest, Jacobus, House*, 618 River Rd. HABS.
Waldwick, *Waldwick Railroad Station*, Hewson Ave. and Prospect St.

Essex County

Newark, *Newark City Hall*, 920 Broad St.

Middlesex County

Woodbridge, *Baron Library*, 582 Rahway Ave.

Monmouth County

Allentown, *Allentown Mill*, 42 S. Main St.
Eatontown, *St. James Memorial Church of Eatontown*, 69 Broad St.
West Long Branch, *Shadow Lawn*, Cedar and Norwood Aves.

OKLAHOMA

Beaver County

Mocane vicinity, *Rose, Billy, Archeological Site*, S of Mocane.

Cimarrron County

Felt vicinity, *Cedar Breaks Archeological District*, W of Felt.
Kenton vicinity, *Bat Cave Archeological Site*, S of Kenton.

Harper County

Laverne vicinity, *Beagley-Stinson Archeological Site*, N of Laverne.

Texas County

Guymon vicinity, *Nash II–Clawson Archeological Site*, E of Guymon.
Guymon vicinity, *Two Sisters Archeological Site*, N of Guymon.

PENNSYLVANIA

Adams County

Gettysburg vicinity, *Black Horse Tavern (Bream's Tavern)*, W of Gettysburg on PA 116 HABS.

Allegheny County

Pittsburgh, *Allegheny West Historic District*, roughly bounded by Jabok Way, Brighton Rd., Ridge and Allegheny Aves.
Pittsburgh, *Frick Building and Annex*, 437 Grant St.

Armstrong County

Cowansville vicinity, *St. Patrick's Roman Catholic Church*, W of Cowansville off PA 268.

Berks County

Douglassville, *St. Gabriel's Episcopal Church*, U.S. 422.

Bucks County

New Hope vicinity, *Eagle Tavern*, S of New Hope.
Quakertown, *Liberty Hall*, 1237 W. Broad St.

Centre County

Centre Hall vicinity, *Penn's Cave and Hotel*, 5 mi. E of Centre Hall off PA 192.
Centre Hall vicinity, *Potter-Allison Farm*, SE of Centre Hall on PA 144.

Chester County

Birchrunville, *Birchrunville General Store*, Hollow and Flowing Springs Rds.
Kennett Square vicinity, *Harvey, Peter, House and Barn*, E of Kennett Square on Hillendale Rd.
Phoenixville vicinity, *Hare's Hill Road Bridge*, W of Phoenixville on Hare's Hill Rd.
Phoenixville vicinity, *Williams, Davis B., Farm*, S of Phoenixville.
Pottstown vicinity, *Coventryville Historic District*, S of Pottstown on PA 23.

Crawford County

Meadville, *Independent Congregational Church*, 346 Chestnut St.

Erie County

Erie, *Erie Land Lighthouse*, Dunn Blvd., Lighthouse Park HABS.

Fayette County

Belle Vernon vicinity, *Cook, Col. Edward, House*, E of Belle Vernon HABS.
Farmington, *Rush House*, jct. U.S. 40 and PA 381.

Lackawanna County

Carbondale, *Delaware and Hudson Canal Company Shops*, 91 N. Main St.

McKean County

Kane, *Kane, Thomas L., Memorial Chapel*, 30 Chestnut St.

Mercer County

Sharon, *Buhl, Frank H., Mansion*, 422 E. State St.

Venango County

Franklin, *Plumer Block*, 1205 Liberty St.

Washington County

Avella vicinity, *Meadowcroft Rockshelter*, W of Avella.
Marianna vicinity, *Ulery Mill*, SE of Marianna.

Westmoreland County

Greenbsburg, *Greensburg Railroad Station*, Harrison Ave.

York County

York, *Willis House*, 190 Willis Rd. HABS.
York, *York Dispatch Newspaper Offices*, 15–17 E. Philadelphia St.

TENNESSEE

Montgomery County

Clarksville vicinity, *Old Post House*, N of Clarksville on US 41A.

TEXAS

Burnet County

Marble Falls vicinity, *Page, Louis, Archeological Site*, E of Marble Falls.

VIRGINIA

Richmond (independent city)

200 Block West Franklin Street Historic District, 200–212 W. Franklin St.

[FR Doc.77-28785 Filed 10-3-77;8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

COLLABORATION RESEARCH, INC.

Manufacture of Controlled Substances; Correction

On August 23, 1977, Notice was published in the FEDERAL REGISTER (No. 163, 42 FR 42392) that on July 18, 1977, Collaborative Research, Inc., 1365 Main Street, Waltham, Mass. 02154, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of lysergic acid diethylamide, a basic class of controlled substance in schedule I.

The latest date, September 26, 1977, for filing comments, objections and requests for a hearing was inadvertently omitted from the Notice.

Time for filing comments, objections and requests for a hearing is extended to October 14, 1977.

Dated: September 29, 1977.

PETER B. BENSINGER,
Administrator.

[FR Doc.77-29140 Filed 10-3-77;8:45 am]

[4410-01]

CONTROLLED SUBSTANCES IN SCHEDULE II

Proposed 1977—Revised Aggregate Production Quota—Oxycodone for Conversion

Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate

production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On August 1, 1977, a notice of the final aggregate production quota for this substance was published in the FEDERAL REGISTER (42 FR 38945). Since the finalization of this quota, DEA has been advised by the producer of oxymorphone, which is derived by conversion from oxycodone, that calculation errors were made in the derivation of data supplied to DEA in support of the quota request for this substance. These errors on the part of the manufacturer of oxymorphone dosage units has now resulted in an inadequate supply of oxycodone for conversion to produce the entire oxymorphone quota issued this manufacturer.

Factors which the Administrator of the Drug Enforcement Administration is required to consider pursuant to § 1303.-11(b) (5 of Title 21 Code of Federal Regulations are yield and stability problems as well as potential disruption to production. Considering these factors as well as the other factors listed in § 1303.11 of Title 21 Code of Federal Regulations, the Administrator has deemed that it is necessary to allow the production during 1977 of additional amounts of oxycodone which will be utilized expressly for conversion to oxymorphone. Therefore, the Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by Section 306 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations does hereby propose the following change of the aggregate production quota for 1977 for Oxycodone for Conversion expressed in grams in terms of anhydrous base:

Basic class	Previously finalized 1977 aggregate production quota	Proposed revised 1977 aggregate production quota
Oxycodone for conversion	8,400	11,000

All interested persons are invited to submit their comments and objections in writing regarding this proposal. The comments or objections should state with particularity the issues concerning which the person desires to be heard. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative, and must be received by October 28, 1977. If a person believes that one or more issues raised by him warrant a full adversary-type hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrants a fully adversary-type hearing, the Administrator shall order a public hearing in the FEDERAL REGISTER summarizing the issues to be heard and setting the time for the hearing.

Dated: September 28, 1977.

PETER B. BENSINGER,
Administrator.

[FR Doc.77-29141 Filed 10-3-77;8:45 am]

[4510-01]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER RURAL DEVELOPMENT ACT

Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924 (b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilties to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such finanical or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applcant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing withn two weeks of publication of this notice to:

Deputy Assistant Secretary for Employment and Training, 601 D St. NW, Washington, D.C. 20213.

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

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

Applications received during the week ending September 23, 1977

Name of applicant	Location of enterprise	Principal product or activity
Marlboro Family Recreation Center, Inc.	Monmouth County, N.J.	Roller skating area.
Resorcinol Puerto Rico, Inc.	Penuelas, Puerto Rico	Manufacture of resorcinol and sodium sulfite.
Cumberland Wood Products, Inc. (tenant of industrial development board of Scott County).	Scott County, Tenn.	Manufacture of plywood reels.
Refrigerated Transport Co., Inc. (tenant of city of Madison).	Madison, Fla.	Transportation of perishable commodities.
Toral Shirtmakers, Inc. (tenant of town of Ponce De Leon).	Ponce De Leon, Fla.	Manufacture of men's and ladies' knit shirts.
Curtis Eatman (tenant of city of Montevallo).	Montevallo, Ala.	Manufacture of ladies' sportswear.
Line Fast Corp. (tenant of city of Montevallo).	Montevallo, Ala.	Container and trailer fastening systems.
Young's Dairy Queen, Inc.	Batesville and Brookville, Ind. and Cincinnati, Ohio.	Restaurant.
Nordmeyer, Inc.	Rio Grande City, Tex.	Manufacture of bricks.
Chris-T Emulsion Co.	Van Buren, Ark.	Manufacture of emulsified asphalt and liquid prime asphalt.
Kennett Oil Mill, Inc.	Kennett, Mo.	Receive and process cottonseed.
Cardwell Memorial Hospital, Inc.	Stella, Mo.	Health care services.
Cedar Bowl, Inc.	North Platte, Nebr.	Bowling center, restaurant, and lounge.
Ventana Big Sur	Big Sur, Calif.	Resort and restaurant.

[FR Doc.77-28955 Filed 10-3-77;8:45 am]

[4510-27]

Office of Federal Contract Compliance Programs

WOMEN IN CONSTRUCTION UNDER EXECUTIVE ORDER 11246, AS AMENDED

Proposed Goals and Timetables Pursuant to Proposed Rule; Extension of Comment Period

On August 16, 1977, a notice proposing goals and timetables for women in construction was published in the FEDERAL REGISTER (42 FR 41383). These goals and timetables would be issued under regulations (41 CFR Part 60-4) also proposed by the Department of Labor on August 16, 1977, pursuant to Executive Order 11246. That notice invited comment on the goals and timetables until September 30, 1977.

Since the publication of that document, various requests for the extension of the period provided for the receipt of comments have been received. The importance of the issues addressed in that proposal requires that the Department proceed to establish goals and timetables for women in construction as expeditiously as possible. However, the Department also wishes to provide sufficient time for all interested parties to prepare and submit their comments. Therefore, an additional 15-day period is provided and comments will be received on this proposal until October 15, 1977.

Dated: September 29, 1977.

WELDON J. ROUGEAU,
Director, Office of Federal Contract Compliance Programs.

[FR Doc.77-29203 Filed 10-3-77;8:45 am]

[4510-26]

Occupational Safety and Health Administration

[V-77-3]

CLARK GRAVE VAULT CO.

Grant of Variance

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Grant of Variance.

SUMMARY: This notice announces the grant of a variance to the Clark Grave Vault Co. from the standards prescribed in 29 CFR 1910.22(c) and 1910.23(c)(3) concerning guardrails.

DATES: The effective date of the variance is October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210, telephone: 202-523-7121.

or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 32nd Floor, Room 3263, 230 South Dearborn Street, Chicago, Ill. 60604.
U.S. Department of Labor, Occupational Safety and Health Administration, 360 S. 3rd Street, Room 109, Columbus, Ohio 43215.

I. BACKGROUND

The Clark Grave Vault Co., 375 East Fifth Avenue, Columbus, Ohio 43201 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the safety and health standards prescribed in 29 CFR 1910.22(c) and 1910.23(c)(3). Section 1910.22(c) requires that covers and/or guardrails shall be provided to protect personnel from the hazards of open pits, tanks, vats, ditches, etc. Section 1910.23(c)(3) requires that all galvanizing tanks be guarded with a standard guardrail and toeboard. Section 1910.23(e) states, among other things, that a standard guardrail shall consist of top rail, intermediate rail, and posts and shall have a vertical height of 42 inches nominal from upper surface of top rail to floor, platform, runway, or ramp level. The purpose of the standard is to protect employees from falling into these particularly hazardous areas. The facility affected by this application is as follows:

The Clark Grave Vault Co., 375 East Fifth Avenue, Columbus, Ohio 43201.

Notice of the application, and of the granting of the interim order, was published in the FEDERAL REGISTER on July 1, 1977 (42 FR 33813). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance request. In addition, affected employers and employees were notified of their right to request a hearing on the application for a variance. No written comments or requests for a hearing have been received.

II. FACTS

The applicant operates a galvanizing tank which has a 30 inch side height and a 31½ inch ledge width. The applicant asserts that the erection of a 42 inch guardrail around its galvanizing tank would seriously interfere with necessary work practices such as the moving of items into and out of the tank and the skimming of the zinc.

The applicant argues that the combined 30 inch wall height and 31½ inch width would provide the same protection as would a 42 inch guardrail.

III. DECISION

Section 1910.22(c) requires that guardrails be provided to protect personnel from the hazards of open pits, tanks, etc. Section 1910.23(c)(3) requires that regardless of height, open-sided floors, walkways, platforms or runways above or adjacent to dangerous equipment, pickling or galvanized tanks, degreasing units or similar hazards shall be guarded with a standard railing and toeboard.

In the work area described, the 31½ inch ledge width prevents an employee from accidentally stepping into the tank. The 30 inch side height is sufficient to allow an employee to right himself if he should fall towards the tank. The combination of side height and ledge width, together with the applicant (1) assuring that no employee walks, steps or sits on the ledge around the tank, and (2) training the employees regarding the proper performance of the operation and the hazards associated with walking, stepping, and sitting on the ledge around the tank, provides protection as safe as that which would be provided by use of a standard guardrail and toeboard.

IV. ORDER

Pursuant to authority in section 6(d) of the Occupational Safety and Health Act of 1970, and in the Secretary of Labor's Order No. 8-76 (41 FR 25059), it is ordered that The Clark Grave Vault Company, be, and it is hereby, authorized to continue its operation while using its galvanizing tank having ledges 31½ inches wide and sides 30 inches high, in lieu of the standard guardrail and toeboard required by 29 CFR 1910.22(c) and 1910.23(c)(3) provided that:

(1) No employee shall walk, step, or sit on the ledge around the tank.

(2) Training and information regarding the hazards associated with and the prohibition against walking, stepping or sitting on the ledge around the tank shall be provided for current employees within one week of the effective date of this variance, for new employees at the time of their initial assignment, and for all employees on a quarterly basis after their initial training.

As soon as possible, The Clark Grave Vault Co. shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for variance.

Effective date. This order shall become effective on October 4, 1977, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 27th day of September, 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-29157 Filed 10-3-77;8:45 am]

[4510-26]

CONNECTICUT STATE STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the

Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the FEDERAL REGISTER (39 FR 1012) of the approval of the Connecticut plan and the adoption of Subpart X to Part 1952 containing the decision.

The Connecticut plan provides for the adoption of Federal standards as State standards (or "for the adoption of State standards which are at least as effective as the comparable Federal standards" where relevant). On May 3, 1977 the Occupational Safety and Health Administration (OSHA) adopted pursuant to section 6(c) of the Act, an emergency temporary standard for Occupational Exposure to Benzene, (42 FR 22516). By letter dated June 8, 1977 from Frank Santaguida, Commissioner, Connecticut Department of Labor to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the plan, the State submitted its emergency temporary standard. This standard was promulgated on May 20, 1977, in accordance with applicable State law contained in Sections 31–372 and 4–168(b) of the Connecticut State laws.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly should be approved. The detailed standards comparison is available at the location specified below.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor—OSHA, John F. Kennedy Federal Building, Room 1804, Government Center, Boston, Mass. 02203; State of Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Conn. 06109; and the Technical Data Center, Room N3620, 200 Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* 29 CFR 1953.22 (b) (1) provides that emergency temporary standards which are identical to or "at least as effective as" the comparable Federal standards may be approved effective upon publication under the Administrative Procedure Act requirements for good cause, 5 U.S.C. 553(b) (3) (B), for the following reasons:

1. The standard was adopted in accordance with the procedural requirements of State law which authorizes promulgation without public participation for emergency standards, and participation at the Federal level would be impractical.

2. The emergency nature of the standard requires that its approval be implemented immediately.

This decision is effective October 4, 1977.

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

Signed at Boston, Mass., this 2nd day of August 1977.

GERALD M. DUWORS,
Acting Regional Administrator.

[FR Doc.77–29158 Filed 10–3–77;8:45 am]

[4510–26]

[V–77–12]

FRANCIS HANKIN & CO., INC.

Variance and Interim Order

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: (1) Notice of application for variance and interim order; (2) Grant of interim order.

SUMMARY: This notice announces the application of Francis Hankin & Co., Inc. for a variance and interim order pending a decision on the application for a variance from the standards prescribed in 29 CFR 1926.552(c) concerning personnel hoists, and 1926.451(1)(5) concerning boatswain's chairs. It also announces the granting of an interim order until a decision is rendered on the application for variance.

DATES: The effective date of the interim order is October 4, 1977. The last date for interested persons to submit comments is November 3, 1977. The last date for affected employers and employees to request a hearing on the application is November 3, 1977.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Room N–3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, at the above address telephone 202–523–7121.

or the following Regional Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, JFK Federal Building, Room 1804—Government Center, Boston, Mass. 02203.

U.S. Department of Labor, Occupational Safety and Health Administration, 1515 Broadway (1 Astor Plaza)—Room 3445, New York, N.Y. 10036.

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, 1375 Peachtree Street, N.E.—Suite 587, Atlanta, Ga. 30309.

U.S. Department of Labor, Occupational Safety and Health Administration, 32nd Floor—Room 3263, 230 South Dearborn Street, Chicago, Ill. 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 555 Griffin Square Building—Room 602, Dallas, Tex. 75202.

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Walnut Street—Room 3000, Kansas City, Mo. 64106.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building—Room 15010, 1961 Stout Street, Denver, Colo. 80294.

U.S. Department of Labor, Occupational Safety and Health Administration, 9470 Federal Building, 450 Golden Gate Avenue—P.O. Box 36017, San Francisco, Calif. 94102.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Office Building, Room 6048, 909 First Avenue, Seattle, Wash. 98174.

I. NOTICE OF APPLICATION

Notice is hereby given that Francis Hankin & Co., Inc., 117 Crockford Blvd., Scarborough, Ontario, Canada M1R 3B9, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and an interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1926.552(c) Personnel Hoists and 29 CFR 1926.451(1)(5) Boatswain's chairs.

The places of employment that will be affected by the application are all the applicant's chimney construction sites in States under Federal jurisdiction, and all future stack erection sites in States under Federal jurisdiction.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

The applicant requested a variance from § 1926.451(1)(4) to permit the use of wire rope in lieu of manila rope. Section 1926.451(1)(4) requires an employee using a boatswain's chair to be protected by a safety belt and lifeline in accordance with § 1926.104. Under § 1926.104(c) manila or equivalent rope is permitted. Since wire rope is equivalent to manila rope, a variance from § 1926.451(1)(4) is unnecessary.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by §§ 1926.451(1)(5) and 1926.552(c).

The applicant is engaged in the construction of chimneys and/or chimney liners. In erecting or repairing the chimney and/or chimney liner, work must be performed at elevations at which access ladders are impractical.

The applicant contends that it is not feasible to use personnel hoists meeting the requirements of 1926.552(c) inside a chimney. In a small chimney there would be insufficient room to construct a hoist tower and the hoist tower would interfere with the design and construction of the chimney and/or chimney liner.

Instead, the applicant states that it would use a system incorporating Special Workmen's Hoist and Safety Cages, boatswains chairs, and a material hoist. Specifically, the applicant proposes to transport personnel to and from the elevated platform, during maintenance (repair) or construction work on chimneys, utilizing a Special Workmen's Hoist, including the hoist machine, safety cage with safety cables on opposite sides, safety devices that will grip the safety cables in the event of any failure of the hoisting cable and limit switches to prevent overrun of the cage at both top and bottom of the chimney; to transport personnel one at a time to and from the elevated scaffold during maintenance or construction work on chimneys or chimney liners of a small diameter or from a bracket scaffold on the outside of a chimney utilizing a boatswain's chair attached to the hoisting cable of a material hoist from which the material bucket shall be temporarily disconnected; to attach the safety belt of the personnel being transported one at a time to or from the elevated scaffold in the boatswain's chair to a clamp riding a separate lifeline of ⅜-inch diameter wire rope securely attached to the rigging at the top and to a weight at the bottom; and to substitute the material hoist for the "block and falls" when transporting personnel one at a time in a boatswain's chair. The applicant has submitted detailed procedures which it will follow in transporting personnel by these means in lieu of the requirements of 29 CFR 1926.451(1)(5) and 29 CFR 1926.552(c).

II. Interim Order

It appears from the application for a variance and interim order that, as required by section 6(d) of the Act, the use of a Special Workmen's Hoist to transport employees and the substitution of a materials hoist for block and falls on a boatswain's chair will provide to the affected employees a place of employment as safe as that which would be provided if the applicant complied with 29 CFR 1926.451(1)(5) and 1926.552(c). It further appears that an interim order is necessary to prevent undue hardship to the applicant and its employees pending a decision on the variance. Therefore it is ordered, pursuant to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.11(c), and in Secretary of Labor's Order No. 8–76 (41 FR 25059), that Francis Hankin Co., Inc., be, and it is hereby, authorized to utilize a Special Workmen's Hoist consisting of a hoist machine and a special two-man safety cage to transport employees to and from the work platform, and to use a boatswain's chair to transport employees one at a time while substituting a materials hoist for the block and falls, provided that the following conditions are complied with:

I. HOIST MACHINE

a. *Requirements.* (1) The hoist machine shall be designated as a portable man hoist.

(2) The hoist machine shall be powered both in the up and down direction.

(3) The hoist machine shall be located far enough from the footblock to obtain correct fleet angle or proper spooling on the hoist drum.

(4) The hoisting machine shall be a type of which the car hoisting drum is driven in both directions of rotation and is automatically stopped and held rotationless upon loss of applied power so that the drum cannot be in a freewheeling condition. A drive system of which the hoisting drum can be placed into a freewheeling position for the purpose of lowering the car by use of the braking system or a system of which the velocity of the car being lowered is reduced by increasing the engine or motor speed shall not be allowed.

(5) The hoist machine shall be equipped with a "deadman" control switch in top of operating lever or in conventional foot-type location which shall stop the hoist immediately if released.

(6) The hoist machine shall be equipped with a winding drum of not less than 30 times the diameter of rope used, with rope not to be spooled closer than two inches to edge of flange.

(7) The hoist machine shall be equipped with a line speed indicator maintained in good working condition.

(8) The hoist machine shall be equipped with either two independently operated brakes each capable of holding the load as follows:

(i) An externally contracting band type brake mounted directly on the hoist drum. A foot pedal shall be located near the operator's seat for sit down control.

(ii) An electromagnetic braking device, capable of holding 150 percent of the rated load, which shall be automatically applied upon cessation of power. The electromagnetic brake shall be properly located in the drive between the power source and the drum or two independent band type brakes in conjunction with hydraulic braking, each capable of holding the load as follows:

(*i*) Two independent band type brakes, one mounted directly on the hoist drum, the second mounted directly on the hydraulic motor which are spring engaged and hydraulically disengaged and will automatically engage upon cessation of power and capable of withstanding 150 percent of the rated load.

(*ii*) Hydraulic braking system which is concurrent with hand control lever.

(9) (i) The hoist machine frame shall be self supporting rigid, welded steel frame with skid base and holding brackets for anchor lines located at corners, as well as legs for anchor bolts.

(ii) The hoisting machine shall be securely anchored to prevent machine displacement, movement or dislodgement.

(10) Hoist machine wiring shall be equipped with terminal blocks for connections with limit switches that are placed at upper and lower end of travel to prevent the bottom of the cage from being taken above the platform level of the top scaffold or below the bottom loading platform. The hoist shall stop automatically if limit switch contact is opened.

(11) All electrical equipment shall be waterproof.

(12) The hoisting machine shall be electrically grounded.

(13) Single lever control for both speed and direction shall be used.

b. *Operating control.* (1) The operator of the hoist shall be an experienced operator.

(2) The hoist shall not be operated in excess of 250ft/min. when carrying personnel.

(3) Signals shall consist of two-way radio or wired intercom between hoist operator, the lower landing and the upper landing.

c. *Hoist rope.* (1) The hoisting rope shall be improved plow steel or equivalent quality of nonrotating type or regular lay rope with proper swivel and shall be not less than one-half inch diameter. It shall be attached to the cage by a closed hook or hook with locking swivel safety latch.

(2) Where clip fastener is used, the clips shall be installed in accordance with Table H–20, 29 CFR 1926.251(a)(2) and they shall be installed with "U" of clip on dead end of rope. Spacing clip-to-clip shall be six times the diameter of the rope.

(3) The load end of the hoist rope shall be weighted to prevent line run.

d. *Footblock.* (1) The footblock shall be of construction type of solid single piece ball, which will prevent rope escapement due to sheave failure, and provide for rope return.

(2) The line diameter of the footblock shall be not less than 24 times the rope diameter.

(3) The change in directions of hoist rope at the footblock shall be approximately 90°.

e. *Cathead.* (1) The overhead sheave supports shall be securely fastened together by bolts or weld to prevent spreading. The sheaves shall be installed between the supporting members and shall rotate on a fixed shaft or the shaft shall revolve in pillow block bearings.

(2) The sheaves used on cathead shall have a minimum diameter equal to 24 times diameter of rope when travel of rope on the sheaves is approximately 90°. When using ½ inch diameter rope, the corresponding minimum sheave diameter shall be 12 inches.

II. SAFETY CAGE

a. *Cage.* (1) The cage shall be of welded construction of two-man capacity.

(2) The framework of the cage shall be covered with aluminum expand-X or equivalent.

(3) The floor shall be of ¾ inch thick plywood securely fastened in place, or equivalent.

(4) The roof shall be slanted and of ⅛ inch thick aluminum or equivalent.

(5) The entrance to the cage shall have positive mechanical locking.

(6) Safety clamps shall be of a type that are portable and can be attached or detached from the safety cable. The clamps shall be fabricated 100 percent of stainless steel, having instant holding action, and a solid self-locking pin, spring loaded, for locking the two parts together.

(7) The safety clamps attached on opposite sides of the cage shall grip the safety cables in case of emergency.

(8) The safety clamps shall operate on the broken rope principle.

b. *Safety cables.* (1) There shall be two steel safety cables suitable for use with safety clamps, as described in paragraph (g) (6), (7) and (8), or equivalent.

(2) One end shall be fastened to an overhead support which is supported independently of the overhead support for the hoist rope and the bottom end securely attached with approximately 100 pound tension in ropes. Safety cables shall be ⅜ inch diameter when used with two-man cage.

c. *Capacity.* The maximum for the two-man cage shall be 2 men or 400 pounds. A

sign stating capacity shall be posted in the cage.

d. *Emergency escape.* An emergency escape device with accommodations for each man in the cage with a minimum 5/16 inch braided nylon rope or better, long enough to reach the bottom landing from the highest escape point below the upper landing shall be securely attached to the inside of the cage. Not more than one man shall use the escape means at a time.

III. WELDING

All welding shall be done by welders in accordance with § 1926.556(b)(5).

IV. INSPECTION

(1) Visual inspection shall be performed daily on the manlift system.

(2) A drop test shall be performed before initial use at each job and monthly thereafter for the duration of the job.

Francis Hankin & Co., Inc., shall give notice of this interim order to employees affected thereby by the same means required to be used to inform them of the application for variance.

Effective date: This interim order shall be effective as of October 4, 1977, and shall remain in effect until a decision is rendered on the application for variance.

Signed at Washington, D.C. this 27th day of September, 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc.77-29156 Filed 10-3-77;8:45 am]

[4510-23]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these elegibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations with further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 1977.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 14, 1977.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of September 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Astatic Corp. (USWA)	Conneaut, Ohio	Sept. 8, 1977	Aug. 15, 1977	TA-W-2,320	Phonograph needles, tone arms, cartridges, and microphones.
Birmingham Southern RR Co. (United Transportation Union).	Fairfield, Ala	Sept. 2, 1977	Aug. 29, 1977	TA-W-2,321	Transporting of commodities.
Cory/Eric (ILGWU)	Farmingdale, N.Y.	Sept. 6, 1977	Sept. 1, 1977	TA-W-2,322	Women's leather coats.
Leader Dyeing and Finishing Co., Inc. (workers).	Paterson, N.J	Sept. 2, 1977	Aug. 30, 1977	TA-W-2,323	Textile processing of fabrics.
Liberty Belle Fishing Corp. (workers).	Provincetown, Mass.	Sept. 8, 1977	Aug. 27, 1977	TA-W-2,324	Catching and selling of fish.
Lish Enterprises, Inc. (workers).	New Bedford, Mass.	Sept. 6, 1977	Aug. 31, 1977	TA-W-2,325	Ladies' outerwear.
J. F. McElwain Co. (New Hampshire Shoe Workers Union).	Nashua, N.H	Sept. 2, 1977	Aug. 25, 1977	TA-W-2,326	Men's dress shoes.
Stafford Garment (workers).	Fall River, Mass	Aug. 31, 1977	Aug. 29, 1977	TA-W-2,327	Ladies' cotton dresses.
Wean United, Inc. (USWA).	Vandergrift, Pa	Sept. 8, 1977	Aug. 15, 1977	TA-W-2,328	Steel rolls and steel castings.
Do	Hendricks Rd., Youngstown, Ohio.	do	do	TA-W-2,329	Metal working machinery and rubber working machinery.
Do	Phelps St., Youngstown, Ohio.	do	do	TA-W-2,330	Metal working machinery.
Do	Warren, Ohio	do	do	TA-W-2,331	Do.
Do	Canton, Ohio	do	do	TA-W-2,332	Iron rolls.
Aiken Industries, Inc., P. R. Hoffman Division (company).	Cherry St., Carlisle, Pa.	Sept. 7, 1977	Sept. 2, 1977	TA-W-2,333	Quartz crystal blanks for wrist watches and CB radios.
Do	East High St., Carlisle, Pa.	do	do	TA-W-2,334	Machinery used to make quartz crystals.
Do	Lincoln St., Carlisle, Pa.	do	do	TA-W-2,335	Quartz crystal blanks for wrist watches and CB radios.
Goralnick Shoe Trim Co., Inc. (workers).	Haverhill, Mass	do	Sept. 1, 1977	TA-W-2,336	Sock linings for the shoe industry.
Kramer Corp. (workers)	Avon, Mass	do	Sept. 2, 1977	TA-W-2,337	Combs and brushes.
Mayflower Coat Co., Inc. (workers).	Paterson, N.J	do	do	TA-W-2,338	Ladies' and children's coats.
Norrwock Shoe Co. (workers).	Showhegan, Maine	do	Sept. 1, 1977	TA-W-2,339	Women's and men's shoes.
Exeter Footwear, Inc. (workers).	Exeter, N.H	Sept. 12, 1977	Sept. 6, 1977	TA-W-2,340	Men's, women's; and children's sandals.
Ghia Sportswear, Inc. (company).	Manchester, Md	Sept. 13, 1977	Sept. 9, 1977	TA-W-2,341	Sport coats, dress coats, and vests.
Mari Anne Bag Corp. (ILGPNWU).	New Windsor, N.Y.	Sept. 12, 1977	Sept. 7, 1977	TA-W-2,342	Ladies' vinyl handbags.
Neevel Luggage Manufacturing Co. (workers).	Kansas City, Mo	do	Sept. 6, 1977	TA-W-2,343	Vinyl luggage and tote bags.
Penny Bag, Inc. (ILGP NWU).	Newburgh, N.Y	do	Sept. 7, 1977	TA-W-2,344	Ladies' vinyl handbags.
Plesco Products, Inc. (workers).	St. Petersburg, Fla.	Sept. 13, 1977	Sept. 9, 1977	TA-W-2,345	Disposable surgical shoe covers and hats.
Do	Worcester, Mass	do	do	TA-W-2,346	Do.
Standard Rubber Products, Inc. (workers).	Hanover, Mass	Sept. 12, 1977	Sept. 7, 1977	TA-W-2,347	Rubber soling compound for rubber footwear companies.
The Peerless Machinery Co. (company).	Newton, Mass	do	Sept. 6, 1977	TA-W-2,348	Machinery used for the production of shoes and belts.
Vincent Bach (workers)	Elkhart, Ind	Sept. 7, 1977	Sept. 1, 1977	TA-W-2,349	Brass wind instruments and saxophones.
Well Made Pants Co., Inc. (company).	Baltimore, Md	Sept. 13, 1977	Sept. 9, 1977	TA-W-2,350	Men's dress trousers, suits, and sportswear.
Great Western Ry Co	Loveland, Colo	Sept. 7, 1977	Aug. 30, 1977	TA-W-2,351	Shipping of raw materials into factories.
E. F. Johnson Co. (workers).	Waseca, Minn	Sept. 2, 1977	Sept. 1, 1977	TA-W-2,352	Citizen band radios.
Johnson-American (workers).	Clear Lake, Iowa	do	do	TA-W-2,353	Do.

Petitioner: Union/ workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Michaels Stern and Co. (ACTWU).	North Clinton Ave., Rochester, N.Y.	Sept. 12, 1977	Sept. 7, 1977	TA-W-2,354	Men's suits, sport coats, and slacks.
Do	Bridges Dr., Rochester, N.Y.	do	do	TA-W-2,355	Do.
Do	Nassau St., Rochester, N.Y.	do	do	TA-W-2,356	Do.
Do	Penn Yan, N.Y	do	do	TA-W-2,357	Do.
U.S. Pipe and Foundry Co. (workers).	Birmingham, Ala	do	Sept. 8, 1977	TA-W-2,358	Gray iron and ductile iron pipe.
Albe Manufacturing (workers).	New Bedford, Mass.	do	Aug. 30, 1977	TA-W-2,359	Women's and juniors' outerwear.
Brown Shoe Co. (USWA)	Owensville, Mo	Sept. 7, 1977	do	TA-W-2,360	Women's dress shoes.
Patmore Coat Co. (workers).	Paterson, N.J	Sept. 15, 1977	Sept. 8, 1977	TA-W-2,361	Ladies' coats.
Roth Transfer Print (workers).	Fairlawn, N.J	do	Sept. 7, 1977	TA-W-2,362	Transferring of prints from paper to fabrics.
True Temper Corp. (USWA).	Geneva, Ohio	Sept. 8, 1977	Aug. 15, 1977	TA-W-2,363	Shafts for golf clubs, tennis rackets, handles for hardwear and antennas.
U.S. Steel Corp. (USWA).	Bessemer, Ala	Sept. 2, 1977	Aug. 31, 1977	TA-W-2,364	All iron and steel products.
Do	Birmingham, Ala	do	do	TA-W-2,365	Do.
Do	Fairfield, Ala	do	do	TA-W-2,366	Do.
Compton and Knowles Corp. (USWA).	Worcester, Mass	Sept. 14, 1977	Sept. 9, 1977	TA-W-2,367	Castings and weaving loom parts.
Devon, Inc. (workers)	Thurmont, Md	Sept. 16, 1977	Sept. 2, 1977	TA-W-2,368	Custom tailored men's clothes.
South Buffalo Ry Co. (United Transportation Union).	Lackawanna, N.Y.	do	Aug. 28, 1977	TA-W-2,369	Transports raw materials within Bethlehem Steel Corp., Lackawanna, N.Y., and for other firms.
The Arrow Co. (ACTWU).	Cedartown, Ga	Sept. 20, 1977	Sept. 6, 1977	TA-W-2,370	Men's dress shirts.
Do	Bremen, Ga	do	do	TA-W-2,371	Do.
Do	Buchanan, Ga	do	do	TA-W-2,372	Do.
Kala Manufacturing Co. (workers).	Fall River, Mass	do	Sept. 14, 1977	TA-W-2,373	Ladies' outerwear.
Macon Shirt Co. (ACTWU).	Macon, Ga	do	Sept. 6, 1977	TA-W-2,374	Men's dress shirts.

[FR Doc.77-28873 Filed 10-3-77;8:45 am]

[4510-01]

Employment and Training Administration

FEDERAL COMMITTEE ON APPRENTICESHIP

Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Federal Committee on Apprenticeship, Employment and Training Administration, October 6-7, 1977, at The Harry Lundeberg School, Lundeberg Maryland Seamanship School, Inc., Piney Point, Md., which was published in the FEDERAL REGISTER on September 21, 1977 (42 FR 47595) and again on September 23, 1977 (42 FR 48413).

This cancellation is due to the uncertain funding authority for the Department of Labor until the enactment of the 1978 Labor-HEW Appropriation Bill.

Signed at Washington, D.C., this 3rd day of October 1977.

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

[FR Doc.77-29305 Filed 10-3-77;10:38 am]

[7510-01]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (77-65)]

RESEARCH AND TECHNOLOGY ADVISORY COUNCIL INFORMAL COMMITTEE ON AERIAL APPLICATIONS TECHNOLOGY

Meeting

A meeting of the NASA Research and Technology Advisory Council Informal Committee on Aerial Applications Technology originally scheduled for October 5-6, 1977 and announced in FEDERAL REGISTER Doc. 77-60 dated Friday, September 16, 1977 on page 46621 has been rescheduled and will be held November 8-10, 1977. The previously announced places, hours and agenda remain the same. The meeting is open to the public.

KENNETH R. CHAPMAN,
Assistant Administrator for DOD and Interagency Affairs, National Aeronautics and Space Administration.

SEPTEMBER 28, 1977.

[FR Doc.77-29098 Filed 10-3-77;8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

RESEARCH INITIATION AND SUPPORT (RIAS)

Project Directors' Meeting

A project directors' meeting will be held from 7:30 p.m. to 9 p.m. on October 20, 1977 at the Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, and from 8:30 a.m. to 5 p.m. on October 21, 1977 at 5225 Wisconsin Avenue NW., Room 651, Washington, D.C.

The purpose of this meeting is to give project directors of the Research Initiation and Support program an opportunity to become better informed regarding appropriate methods for conducting internal project evaluation and to allow the RIAS staff to set into motion mechanisms for monitoring of projects.

While this project directors' meeting is not considered to be a meeting of an "advisory committee" as that term is defined in Section 3 of the Federal Advisory Committee Act (Public Law 92-463), the meetings are believed to be of sufficient importance and interest to the general public to be announced in the FEDERAL REGISTER as meetings open for public attendance and participation.

The meeting will be chaired by Dr. Alfred F. Borg. Because of space limitation, members of the public who wish to attend should call 202-282-7950 regarding attendance at any of these meetings.

TERENCE L. PORTER,
Acting Division Director, Division of Science Education, Resources Improvement.

September 29, 1977.

[FR Doc.77-29151 Filed 10-3-77;8:45 am]

[7555-01]

SUBCOMMITTEE ON ANTHROPOLOGY OF ADVISORY COMMITTEE FOR BEHAVIORAL AND NEURAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

NAME: Subcommittee on Anthropology of the Advisory Committee for Behavioral and Neural Sciences.

DATE & TIME: October 20, 21 and 22, 1977, 9 a.m. to 5 p.m. each day.

PLACE: Room 628, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON:

John E. Yellen, Program Director for Anthropology, Room 320, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550, telephone: 202–632–4208.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in anthropology.

AGENDA: To review and evaluate research proposals and projects as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

SEPTEMBER 29, 1977.

[FR Doc.77–29149 Filed 10–3–77;8:45 am]

SUBCOMMITTEE FOR GENETIC BIOLOGY OF ADVISORY COMMITTEE FOR PHYSIOLOGY, CELLULAR AND MOLECULAR BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

NAME: Subcommittee for Genetic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

DATE & TIME: October 20, 21, and 22, 1977—9 a.m. to 6 p.m. each day.

PLACE: Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON:

Dr. Philip D. Harriman, Program Director, Genetic Biology Program, Room 326, National Science Foundation, Washington, D.C. 20550, telephone 202–632–5985.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in genetic biology.

AGENDA: To review and evaluate research proposals and projects as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

SEPTEMBER 29, 1977.

[FR Doc.77–29148 Filed 10–3–77;8:45 am]

[7555–01]

SUBCOMMITTEE ON POPULATION BIOLOGY AND PHYSIOLOGICAL ECOLOGY OF THE ADVISORY COMMITTEE FOR ENVIRONMENTAL BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

NAME: Subcommittee on Population Biology and Physiological Ecology of the Advisory Committee for Environmental Biology.

DATE & TIME: October 20 and 21, 1977—8:30 a.m. to 5 p.m. each day.

PLACE: Room 643, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON:

Dr. Donald W. Kaufman, Associate Program Director, Population Biology and Physiological Ecology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone 202–632–7317.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

SEPTEMBER 29, 1977.

[FR Doc.77–29150 Filed 10–3–77;8:45 am]

[3110–01]

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 26, 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 extenstion 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.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Statement of Continuing Eligibility for Supplemental, Security Income Payments, SSA–8200, on occasion, aged, blind, disabled individual—eligible SSI payments established, Caywood, D. P., 395–3443.

EXTENSIONS

PENSION BENEFIT GUARANTY CORPORATION

Technical Assistance Needs Questionnaire, single time, pension practitioners, Strasser, A., 395–5867.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service:
Tree Nut Shellers and Processors Inquiries, annually, tree nut shellers and processors survey, Caywood, D. P., 395–3443.
Citrus Inquiries—Growers, Monthly, Citrus growers, Caywood, D.P., 395–3443.

Farmers Home Administration, Statement of Personal History—FHA Business and Industrial Loan Program, FHA 449–4, on occasion, business and industry in towns less than 50,000, Ellett, C.A., 395–5867.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, Purchases from Fishing Vessel—Northeast, NOAA 88-30, weekly, wholesale dealers of fishery products and fishermen, Ellett, C. A., 395-5867.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-29240 Filed 10-3-77;8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[SR-Amex-77-17; Release No. 13952]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

SEPTEMBER 13, 1977.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, N.Y. 10006 (SR-Amex-77-17).

On July 27, 1977, the American Stock Exchange, Inc. ("Amex") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change to provide a procedure whereby a listed company may obtain review of Exchange determinations to halt or suspend trading in its securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13811 (August 1, 1977)) and by publication in the FEDERAL REGISTER (42 FR 40301 (August 9, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-29166 Filed 10-3-77;8:45 am]

[8010-01]

[SR-Amex-77-10; Release No. 13957]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

SEPTEMBER 14, 1977.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, N.Y. 10006 (SR-Amex-77-10).

On May 13, 1977, the American Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The rule change would require that options be restricted on that exchange only when such options are required to be restricted on all exchanges which list such options.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13586 (June 1, 1977)), and by publication in the FEDERAL REGISTER (42 FR 29978 (June 10, 1977)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on May 13, 1977, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-29167 Filed 10-3-77;8:45 am]

[8010-01]

[812-4084; Release No. 9947]

FIRST INVESTORS FUND, INC. ET AL.

Application for Order Exempting Proposed Transactions From Certain Provisions

SEPTEMBER 26, 1977.

In the matter of First Investors Fund, Inc., First Investors Fund for Growth, Inc., First Investors Discovery Fund, Inc., First Investors Fund for Income, Inc., First Investors Trend Fund, Inc., First Investors Tax Exempt Fund, Inc. and First Investors Management Company, Inc., 120 Wall Street, New York, N.Y. 10005 (812-4084).

Notice is hereby given That First Investors Fund, Inc., First Investors Fund for Growth, Inc., First Investors Discovery Fund, Inc., First Investors Fund for Income, Inc., First Investors Trend Fund, Inc., and First Investors Tax Exempt Fund, Inc. (hereinafter referred to collectively as "Funds"), each of which is an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), and the Funds' investment adviser, principal underwriter and distributor, First Investors Management Company, Inc. ("Management Company") (hereinafter referred to collectively with the Funds as "Applicants"), have filed an application on January 23, 1977, and amendments thereto on June 27, 1977, and July 15, 1977, pursuant to Section 6(c) of the Act, for an order of the Commission exempting certain transactions described herein from the provisions of Section 22(d) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

According to the Application, the Management Company is a member of the National Association of Securities Dealers, Inc. and a registered broker-dealer, all of whose common stock is owned by First Investors Consolidated Corporation. Applicants represent that Fund shares are sold to the public primarily by representatives licensed to the Funds' co-underwriter, First Investors Corporation; these representatives are life insurance salesmen who sell the life insurance products of First Investors Life Insurance Company ("Insurance Company"), which is 81.6 percent owned by First Investors Consolidated Corporation. Applicants also represent that as of December 31, 1976, total life insurance in force issued by the Insurance Company was over $260 million, of which approximately $68 million was of the dividend-paying participant type; the dividends arising from such dividend paying policies currently approximate $220,000 per annum and approximately 5,200 such policies are in force.

Applicants have filed this application pursuant to Section 6(c) of the Act for an order of the Commission exempting from Section 22(d) of the Act a proposed plan which permits the holders of such dividend-paying policies to invest the dividends paid by the Insurance Company in shares of any of the Funds at net asset value. According to Applicants, the proposed plan would be submitted to policyholders of the Insurance Company, in writing, as a separate supplement to their application for insurance and as a sixth option for the distribution of such dividends. Applicants state that the alternative options for the distribution of such dividends are (1) payment in cash; (2) application towards premium payments; (3) accumulation at interest; (4) purchase of paid-up additions of insurance; and (5) purchase of one-year term insurance. According to the application, the proposed sixth option has been approved by the appropriate departments of insurance for the states of New York, New Jersey, Connecticut, Ohio and Virginia

Applicants submit that the proposed plan would be implemented in the following manner: (1) policyholders of the Insurance Company would be offered their choice of investment in any of the Funds; (2) at the time the policyholder executes his option to invest, he would be furnished a prospectus of the Fund which he indicated as his choice for investment; (3) dividends in the amount of $50 or more would be applied wholly to the purchase of whole and fractional shares of the Fund; (4) dividends of less than $50 would not be applied to the purchase of any Fund shares and such dividends would be distributed in some

other manner as designated by the policyholder; (5) the premiums paid by the policyholder will be the same whether or not he chooses to purchase shares of one of the Funds pursuant to this plan; (6) purchases of Fund shares in this manner are limited to the amount of dividends derived from the policyholder's insurance; (7) a policyholder may revoke the authority to apply his dividends to the purchase of Fund shares and notice of such a right of revocation shall be made a part of such authorization; (8) cancellation or other termination of insurance shall terminate such authorization to purchase Fund shares but shall not affect the policyholder's interest in any Fund shares already so purchased; and (9) revocation by the policyholder of the authority to apply dividends to the purchase of Fund shares will not affect any insurance in force or the status of any Fund shares previously purchased by the policyholder. Applicants state that should the order requested herein be granted, dividends which have been designated by policyholders for the purchase of Fund shares shall be held by the Insurance Company; the Insurance Company, on the dividend date, will place an order with the designated Funds for the appropriate amount of shares, which order shall be executed at the net asset value next computed after receipt of the order.

Section 22(d) of the Act provides, in part, that no registered investment company or principal underwriter for any redeemable security issued by such company shall sell any such security to any person except at a current public offering price described in the prospectus.

Applicants submit that their request for exemption from Section 22(d) of the Act to permit policyholders of the Insurance Company to invest their annual dividends from the Insurance Company in shares of each and any of the Funds at net asset value, rather than at their public offering price (which includes a "sales load"), is motivated, in part, by the fact that such policyholders have already paid a sales charge on the purchased insurance. Moreover, Applicants submit that such a procedure would not be unfair to present shareholders of the Funds since the purchase at net asset value would not dilute the per share value of Fund shares. Applicants state that the requested order of exemption is further justified because most agents of the Insurance Company are also representatives of First Investors Corporation and sell both life insurance and the Funds' shares; elimination of the sales charge on shares of the Funds purchased by policyholders would, in Applicants' view, be proper since there would be no additional sale efforts, commissions or expenses incurred in connection with such purchases.

Section 6(c) of the Act provides, in part, that the Commission, upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given That any interested person may, not later than October 20, 1977, at 5:30 p.m., summit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-29168 Filed 10-3-77;8:45 am]

[8010-01]

[812-4184; Rel. No. 9943]

FORD INTERNATIONAL CAPITAL CORP.

Application for Order Amending a Prior Order of the Commission Granting an Exemption

SEPTEMBER 23, 1977.

In the Matter of Ford International Capital Corp., The American Road, Dearborn, Mich. 48121 (812-4184).

Notice is hereby given That Ford International Capital Corp. ("Applicant"), a wholly-owned finance subsidiary of Ford Motor Co. ("Ford"), has filed an application on September 2, 1977 and an amendment thereto on September 16, 1977, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") and Rule 6c-1(c)(2) thereunder for an order amending an order of the Commission dated November 14, 1969 and published as Release No. IC-5886 (the "1969 Order") to permit the Applicant to issue certain debt securities to purchasers in foreign countries. All interested persons are referred to the application and amendment thereto on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a Delaware corporation, was formed by Ford in 1968 primarily to raise funds abroad for Ford's foreign operations. The 1969 Order under Section 6(c) of the Act exempted the Applicant from all provisions of the Act subject to the condition that it not issue, subsequent to the offer and sale of certain of its guaranteed debentures, without further order of the Commission, any securities (except to its parent or to a subsidiary of the parent company which is not an investment company) in the event that the United States Interest Equalization Tax ("IET") was not reenacted or was reenacted and expired, was repealed or the rate thereof was reduced to zero and was not replaced by a comparable tax.

It is proposed that the Applicant be permitted to issue for offer and sale to purchasers in foreign countries its unsecured promissory notes in the aggregate principal amount of $25 million (the "1977 Notes"). Payment of principal of and interest on these notes would be guaranteed by Ford. The notes would not be offered or sold directly or indirectly in the United States or to a United States Person or to any person purchasing any note for resale to, or for the benefit of, or for the account of, any United States Person. The term "United States" means the United States of America and includes its territories, its possessions and all areas subject to its jurisdiction; and the term "United States Person" means any person who is a national, citizen or resident of, or a person normally resident in, the United States, including any corporation or other entity organized under the laws of the United States or any political subdivision thereof.

Applicant states that the 1977 Notes will not be subject to the IET at a rate greater than zero or any other tax providing a comparable deterrent to the purchase of the 1977 Notes by United States Persons. Therefore, the Applicant seeks a Commission order amending the 1969 Order to permit the Applicant to issue the 1977 Notes.

Applicant represents that it should be permitted to proceed with the issuance of the 1977 Notes for, among others, the following reasons:

(1) A significant effect of the Applicant's operations is to assist in improving the balance of payments position of the United States by obtaining funds for foreign operations in foreign countries.

(2) It is asserted that it is unlikely that United States Persons would be interested in investing in the 1977 Notes because (a) the coupon rate on the 1977 Notes would probably not be attractive to investors when compared to interest rates available on similar quality and denomination notes in the United States, (b) the restrictions on purchase and sale will make acquisition of the 1977 Notes by United States Persons difficult, and (c) the large minimum denomination

and the lack of a listing on any securities exchange will discourage a secondary market in the 1977 Notes.

(3) The payment of the principal of and interest on the Notes is guaranteed by Ford and does not depend on the operations or investment policy of the Applicant, because the holders of the 1977 Notes are entitled ultimately to look to the business of Ford for assurance of repayment. Accordingly, it is asserted that the public policy that led to the enactment of the Act is not applicable to the Applicant, nor do the security holders of the Applicant require the protections afforded by the Act.

In addition, the Applicant has agreed that an order amending the 1969 Order to provide that the Applicant may issue the 1977 Notes may be issued subject to the conditions (i) that the Applicant comply with all of the requirements of paragraph (b) of Rule 6c–1 and (ii) that the Applicant will not issue, subsequent to the offering and sale of the 1977 Notes, any additional securities (except to Ford or a subsidiary of Ford which is not an investment company) without a further order of the Commission; provided, however, that in the event that (i) the Applicant becomes exempt from each and every provision of the Act pursuant to Rule 6c–1 under the Act or (ii) the Commission adopts, amends, or interprets a Rule under the Act which would exempt the Applicant from each and every provision of the Act, nothing contained in the order requested by the application, or the conditions to which it may be subject, shall preclude the Applicant from being exempt from the Act by virtue solely of the applicability of said Rule or interpretation.

Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provisions of the Act and the rules and regulations thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given, That any interested person may, not later than October 14, 1977 at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address set forth above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 77–29169 Filed 10–3–77;8:45 am]

[8010–01]

[812–4091; Release No. 9946]

GROMAN MORTUARIES INC.

Filing of Application for Order Exempting Applicant from all the Provisions of the Act

SEPTEMBER 26, 1977.

In the matter of Groman Mortuaries, Inc., 830 West Washington Boulevard, Los Angeles, Calif. 90015 (812–4091).

Notice is hereby given, That Groman Mortuaries, Inc. ("Applicant"), a California corporation, filed an application on February 14, 1977, and amendments thereto on April 21, 1977, and June 10, 1977, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all the provisions of the Act and the rules and regulations thereunder in connection with the completion of installment sales of certain debentures issued by Applicant under existing subscription agreements and for so long as Applicant has outstanding certain debentures which were sold on an installment basis. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below:

Applicant, a wholly-owned subsidiary of Hargrom Services Corp., and its predecessors and affiliates have been engaged principally in the mortuary and funeral related business since 1914, and Applicant currently operates two mortuaries in Los Angeles, Calif. Applicant represents that, since July 1, 1960, it has offered to California residents debentures which may be converted into services upon the death of the owner or any persons he may designate, or may be redeemed at maturity for face value. Applicant states that a purchaser of its debentures ordinarily purchases a debenture the principal amount of which covers the price of the services and products that he desires to be provided at his funeral.

According to the application, the debentures most recently offered and sold bear interest at 4½% payable annually, mature in 20 years, and may be purchased pursuant to a subscription agreement by a single lump sum payment or by a 10% cash down payment with the balance of the purchase price payable in not more than 36 additional payments (the debentures sold on the installment basis are hereinafter referred to as the "Debentures"). It is submitted that each payment received toward the purchase of a Debenture is placed into the Groman Accumulation Trust ("Trust") and a Debenture is purchased and issued only when all of the payments have been received. Applicants assert that a purchaser can revoke the Trust arrangement at any time and receive the full amount of prior payments with interest less a Trust administrative cancellation charge of 10% of the prior payments. If a purchaser is willing to allow the 4½% interest on a fully paid Debenture to accumulate, Applicant will guarantee the price of the funeral package chosen by the purchaser and represented by the face amount of the Debenture at the then-current price, regardless of the date on which the Debenture is surrendered for cancellation. Applicant states that it maintains a sinking fund, the proceeds of which are used to pay off the Debentures at maturity and that the sinking fund requirements historically have been met through conversions of Debentures into services. Applicant asserts that it has never defaulted on any of its Debenture obligations.

On January 5, 1976, the Commission announced its decision in *In the Matter of International Funeral Services of California, Inc.* ("International") (Investment Company Act Release No. 9112), in which it found that installment sales of pre-need funeral service debentures of the type issued by Applicant constitute the issuance of face-amount certificates of the installment type requiring the issuer to be registered under and to comply with the provisions of the Act.

Section 3(a)(2) of the Act defines "investment company" to mean an issuer which is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or which has been engaged in such business and has any such certificates outstanding.

Section 2(a)(15) of the Act defines "face-amount certificate" to include "any * * * security which represents an obligation of its issuer to pay a stated or determinable sum at a fixed or determinable date more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate of the installment type)."

Applicant believes that, based upon the Commission's opinion in the *International* case, the Commission may assert that Applicant has outstanding face-amount certificates of the installment type and that Applicant, by issuing Debentures pursuant to existing subscription agreements, is engaged in the business of issuing face-amount certificates of the installment type, thus necessitating registration under and compli-

ance with the provisions of the Act unless an exemption from all the provisions of the Act is granted. Section 6(c) provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any or all provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Applicant has, therefore, applied for an exemption from all the provisions of the Act pursuant to Section 6(c) of the Act in connection with the completion of Debenture sales by Applicant under existing subscription agreements and under the circumstance of its having outstanding Debentures which were sold on an installment basis.

Applicant makes six basic representations which it asserts make it appropriate in the public interest and consistent with the protection of investors to grant the application:

1. Applicant represents that it has ceased selling Debentures on an installment basis except under existing subscription agreements and that it will no longer offer and sell Debentures on an installment basis.

2. Applicant represents that all future pre-need funeral arrangements made on an installment basis will be made only by way of trust arrangements established pursuant to the provisions of Section 7735 et seq. of the California Business and Professions Code ("Short Act") which requires, among other things, that all cash or other property received by a funeral director in advance of need be maintained by trustees in segregated accounts and held in specified investments. Applicant states that Debenture sales for which 100 percent of the purchase price is paid in one lump sum payment will continue to be made but only pursuant to permits obtained from the Department of Corporations of the State of California ("Department").

3. Applicant represents that it has established a segregated trust account ("Subscription Trust") for the purpose of holding all monies received and to be received since February 9, 1976 on outstanding subscription agreements for Debentures. These funds, to be deposited with a bank custodian and invested in securities of the kind permitted by the Short Act, may be used only to meet redemption requests on Debentures issued after February 9, 1976, pursuant to existing subscription agreements, or to reimburse Applicant for funeral services performed for holders of such Debentures. Applicant asserts that none of said funds will be used to meet sinking fund requirements on any previously issued or outstanding Debentures. Income on the corpus of the Subscription Trust is to be applied first toward the expenses of administering the Trust, second to the payment of interest due on the Debentures if purchasers have not waived such interest, and third to Applicant. If interest income on the Subscription Trust is insufficient to meet these expenses, Applicant submits that it will pay such excess expenses from other of its funds. Applicant represents that, as of June 7, 1977, a total of approximately $253,922 was being held in the Subscription Trust.

4. Applicant proposes to offer to the original purchaser, his conservator or other legal representative in the case of his incapacity, or any member of his immediate family to whom he has transferred his Debentures, a right to redeem for cash all outstanding Debentures. The redemption right will be available only during the life of the original purchaser. Debentures purchased since February 9, 1976, will be redeemable at the full face amount of the Debenture plus any accrued and unpaid interest. With respect to Debentures issued or paid for prior to February 9, 1976, Applicant will have the option for three years after the date of the order granting this application to charge an administrative fee for cash redemptions of up to 7 percent of the amount of Debentures redeemed. To the extent Applicant has outstanding Debentures having existing provisions affording more liberal redemption rights Applicant will continue to be bound by such provisions. On the expiration of the 3 year period following the date of the order issued on this application, all outstanding Debentures issued by Applicant will be redeemable upon request at the full face amount of the Debentures plus interest, if any, without the 7 percent administrative charge.

5. Applicant represents that it will notify all holders of outstanding Debentures of their redemption rights, the exemption obtained from the Commission, and the trust arrangements created. Notice will be in the form of a letter sent to each Debenture holder promptly upon the grant of the requested exemption or, at the option of the Applicant, with the next interest payment on the Debentures subsequent to the granting of the application.

6. Applicant represents that it will establish a second trust ("Performance Trust") as a reserve against insolvency of the Applicant. The initial amount of the Performance Trust will be $40,148. The corpus of the Performance Trust may not be reduced without the concurrence of the Department, and may not be used to pay the expenses of maintaining the Performance Trust. Applicant represents that the interest earned on the amount held in the Performance Trust will be applied to the payment of the expenses of the Performance Trust but that any interest earned in excess of its expenses will be accumulated and added to its corpus. Applicant states that the Performance Trust corpus will be deposited with a bank as custodian and will be administered by three trustees, a majority of whom will be independent of the Applicant. The trustees will maintain the Performance Trust for the benefit of Debenture holders requesting redemption in the event that Applicant becomes insolvent.

Applicant asserts that the granting of its requested exemption would be necessary or appropriate in the public interest and consistent with the protection of investors because its proposal, consisting of the six enumerated representations, provides purchasers of Debentures the protections envisioned by the Act.

Notice is further given That any interested person may, not later than October 21, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-29170 Filed 10-3-77;8:45 am]

[8010-01]

[File No. SR-MSE-77-23; Release No. 13894]

MIDWEST STOCK EXCHANGE, INC.

Filing of Amended Proposed Rule Change

AUGUST, 26, 1977.

The Midwest Stock Exchange, Inc. ("MSE") has filed an amendment to a proposed rule change under Rule 19b-4 to redesignate as the basis under the Act for the proposed rule change Section 6(b)(5) rather than those provisions of Section 6(d) and 19 relating to the denial of access to exchange services.

Publication of the submission is expected to be made in the FEDERAL REGISTER during the week of August 29, 1977. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the FEDERAL REGISTER. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange

Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR–MSE–77–23.

Copies of the submission and of all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of the filing will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77–29171 File 10–3–77;8:45 am]

[8010–01]

[File No. SR–NYSE–76–34; Release No. 13953]

NEW YORK STOCK EXCHANGE INC.

Order Extending Time for Commission Action on Proposed Changes to New York Stock Exchange Rule 405

SEPTEMBER 13, 1977.

In the matter of New York Stock Exchange, Inc., 55 Water Street, New York, N.Y. 10041.

The New York Stock Exchange, Inc. (the "NYSE") has filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s (b)(1) and Rule 19b–4 thereunder, 17 CFR 240.19b–4, proposed changes to NYSE Rule 405, the "Know Your Customer" rule.[1]

The proposed rule would:

(1) Require that a member or member organization "make reasonable effort to ascertain * * *." the essential facts relative to certain persons and accounts in place of the present duty imposed by the rule to "use due diligence to learn * * *." the essential facts;

(2) Eliminate the specification that the member must learn such facts as to "every order";

(3) Provide that, with respect to accounts introduced on a disclosed basis, only the introducing member or member organization would be required to inquire into the essential facts as to those customers and accounts;

(4) Delete the specification that a member or member organization "diligently" supervise compliance with the requirements of Rule 405; and

(5) Permit members and member organizations to effect isolated (i.e., not more than five transactions for a customer during a 12 month period) and unsolicited purchases and sales of securities valued at not more than $2,000 under certain conditions without complying with Rules 405 (a) and (b) and Rule 409.

EXTENSION OF TIME FOR COMMISSION ACTION

Pursuant to Section 19(b)(2) of the Act, the Commission is required to approve a proposed rule change within 35 days of the publication of the notice of the filing of the proposal. However, the Commission may act in a longer period not to exceed ninety days from the date of publication if it finds such period appropriate and publishes its reasons for this finding.

The Commission published notice of the amended filing of proposed changes to Rule 405 on August 9, 1977. Absent an extension of time, Commission action with respect to this proposal would be required by September 13, 1977.

For the reasons summarized below, the Commission finds that a period longer than thirty-five days is appropriate and designates a period of ninety days from the date of publication of the amended filing as the appropriate time for Commission action.

The primary issue raised by these proposals is whether or not the rule as amended would be inconsistent with the purposes of the Act and, in particular, with the public interest and the protection of investors. In its previous consideration of these changes, the Commission expressed the concern that the proposed amendments to the central provisions of the rule diminish the obligation of the member or member organization to know its customer and to supervise customer accounts. In particular, the Commission noted that the rule, on its face, relieves the clearing broker or dealer of any responsibility to make the inquiry required by Rule 405 and to supervise the activity in customer accounts introduced to it on a disclosed basis; it questioned whether this complete, or at least substantial, relief of responsibility would be consistent with the protection of investors.

Although the NYSE had deferred Commission consideration of the proposed rephrasing of the duty of the member under Rule 405, the Commission advised the NYSE of its concern that this rephrasing sanctioned a less thorough inquiry that might be inconsistent with the public interest and the protection of investors.

Further, while specifying that the rule should be amended to include a definition of the term "isolated" with respect to transactions in the common purchase and sale account and a statement that such transactions must be "unsolicited," the Commission adverted to the fact that allowing members to effect any securities purchases without securing certain information relative to the customer posed serious questions as to the impact on investor protection.

Since each exchange which lists equity securities has adopted a "know your customer" rule which is substantially similar to NYSE Rule 405, any change in the duty to customers which may be affected by the approval of the amendments to Rule 405 can be expected to become the industry standard.

As a result of its most recent review, the Commission believes that the proposed amendments continue to pose a number of substantial questions which require extended consideration before any decision is made to approve the rule proposal or to institute proceedings, pursuant to Section 19(b)(2) of the Act, to determine whether it should be disapproved.

Accordingly, in order to evaluate further the potential impact of the amendments and to consider in greater depth whether the proposed amendments are inconsistent with the Act, the Commission, pursuant to Section 19(b)(2) of the Act, hereby extends until November 7, 1977 the time within which the Commission must act on the proposed rule changes.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 13, 1977.

[FR Doc.77–29172 Filed 10–3–77;8:45 am]

[8010–01]

[SR–PHLX–77–7; Release No. 13958]

PHILADELPHIA STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

SEPTEMBER 14, 1977

In the matter of Philadelphia Stock Exchange, Inc., 17th Street and Stock Exchange Place, Philadelphia, Pa., 19103.

On July 8, 1977, the Philadelphia Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b–4 thereunder, copies of a proposed rule change. The rule change would require that options be restricted on that exchange only when such options are required to be restricted on all exchanges which list such options.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 13775 (July 18, 1977)) and by publication in the FEDERAL REGISTER (42 FR 38035 (July 26, 1977)).

The Commission finds that the proposed rule change is consistent with the

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[1] Notice of the amended proposal was given by publication of Securities Exchange Act Release No. 13821 (August 2, 1977) and 42 FR 40290 (August 9, 1977); notice of the initial filing was given in Securities Exchange Act Release No. 12674 (July 20, 1976) and 41 FR 34136 (August 22, 1976). No comments were received.

requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, That the proposed rule change filed with the Commission on July 8, 1977, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.77-29173 Filed 10-13-77; 8:45 am]

[8010-01]

[Release No. 34-13995; File No. SR-MSE-77-34]

MIDWEST STOCK EXCHANGE, INC.

Proposed Rule Change; Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 1, 1977 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's statement of the terms of substance of the proposed rule change: Options fees schedule charges

Fee	From—	To—
Leasing transfer fee	New fee	$100.
Quotron rental	$200 per month	$250 per month.
Firm contract	$0.03 per contract side	$0.05 per contract side.
Order book official contract	As below	As below.

Rates are per contract

Premium price	Old 1-10 rate	New 1-10 rate	Old 11 and over	New 11 and over
Under $0.50	$0.40	$0.48	$0.32	$0.38
$0.50 to $1	.60	.72	.52	.62
$1 to $2	.72	.86	.60	.72
$2 to $4	.88	1.06	.72	.86
$4 to $8	1.20	1.44	1.04	1.25
$8 to $14	1.60	1.92	1.20	1.44
$14 to $20	2.00	2.40	1.48	1.78
$20 to over	2.40	2.88	1.84	2.21

NOTE.—New rates reflect a 20-pct increase over old.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change creates increases in providing the above-mentioned services which reflect a corresponding increase in the costs of personnel, equipment and technical support needed to perform them. Also, the new leasing transfer fee represents administrative costs involved in the transfer of leased option membership seats.

The proposed rule change represents an equitable allocation of reasonable dues among its members using its facilities in that they apply to all options members without discrimination.

The Midwest Stock Exchange, Inc. has neither solicited nor received any comments.

The Midwest Stock Exchange, Inc. believes that no burdens have been placed on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 3, 1977.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 26, 1977.

[FR Doc.77-28905 Filed 10-3-77;8:45 am]

[8010-01]

[Release No. 34-13993; File No. SR-PSE-77-29]

PACIFIC STOCK EXCHANGE INC.

Proposed Rule Change; Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 16, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Pacific Stock Exchange Incorporated ("PSE") hereby requests to amend Commentary .02 of Rule X, Section 18(e) of the Rules of its Board of Governors as follows (brackets indicate deletions):

RULE X

CONDUCT OF ACCOUNTS

DOING A PUBLIC BUSINESS IN OPTIONS

Sec. 18. (e)
Commentary:

.02 Member organizations are required to obtain the written authorization of customers prior to the exercise of discretionary power with respect to exchange options transactions in their account. (These written authorizations by customers shall be renewed annually.) Furthermore, a Registered Options Principal who is an officer or general partner of the member organization shall approve discretionary accounts in writing before discretionary power may be exercised with respect to such accounts. It is consistent to handle discretionary accounts for options transactions wherein limited discretionary power has been authorized. For example, discretionary power may be granted for closing existing positions or exercising existing contracts.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSES

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is designed to eliminate the requirement that member organizations qualified to conduct a non-member customer business, on an annual basis, renew written authorization to maintain a discretionary account.

The PSE is currently the only self-regulatory organization with such a requirement (The Chicago Board of Options Exchange "CBOE" has eliminated a similar rule on August 17, 1977). It is the belief of the PSE that, because of the expansion of the options industry, this requirement is causing a significant amount of paperwork for our member organizations.

In addition, as the rule presently stands, member organizations would be required to discontinue exercising discretion in a customer's account unless they could obtain a timely renewal. In

the event a timely renewal could not be obtained, for example, if the customer were traveling or unable to be located for some other reason, the PSE believes that the member organization's inability to continue to exercise discretion could cause the investor losses and could result in unwanted member organization/public customer controversy.

Moreover, in the opinion of the CBOE, the public and the member organizations will be protected because most discretionary authorization forms contain a provision that the authorizations are valid until terminated. Thus, a customer will be able to enjoy discretionary management of his account until he takes affirmative action to terminate that relaship.

The PSE believes that the foregoing amendment fosters cooperation and coordination with other self-regulatory organizations, facilitates transactions in securities and protects investors and the public interest as provided in Section 6(b)(5) of the Securities Exchange Act of 1934, as amended.

Comments have neither been solicited nor received from members on the proposed rule change.

The proposed rule change imposes no burden upon competition.

On or before November 8, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 3, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 26, 1977.

[FR Doc.77-28906 Filed 10-3-77;8:45 am]

[8010-01]

[Release No. 34-13992; File No. SR-PSE-77-25]

PACIFIC STOCK EXCHANGE INC.

Proposed Rule Change: Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 7, 1977, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Pacific Stock Exchange Incorporated ("PSE") hereby requests to amend Section 11, of Rule VI, of the Rules of its Board of Governors as follows (italics indicates additions):

RULE VI

EXCHANGE OPTION TRADING

RESTRICTION OF OUT-OF-THE-MONEY OPTIONS

Sec. 11.

(a) to (c) No Change.

Commentary:

.01 No. Change.

.02 If the two tests in clauses (i) and (ii) with respect to calls and in clauses (x) and (y) with respect to puts of paragraph (a) are met at the close on a particular day, paragraph (a) applies to orders after the close on such day. *However, with regard to an option contract traded on the Exchange which has otherwise met the tests of the previous sentence, the prohibitions of paragraph (a) will not apply to transactions on the Exchange; provided such option is traded on another participating Exchange: And further provided, A transaction has occurred on the last previous day on another such exchange when the closing price of such option does not meet the test clause (ii) with respect to calls or clause (y) with respect to puts.*

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to establish uniformity with respect to the application of the restricted option rule to dually listed exchange traded options.

At present, pursuant to PSE Rule VI, Section 11, (a) members and member organizations may not enter an order for their own accounts or for accounts of their customers involving an opening transaction (either purchase or sale) in any call option when two conditions exist at the close of the last previous trading: (1) The exercise price of the option is more than $5 above the price of the underlying stock in the primary market on which it is traded, and (2) the price of the option on the PSE is less than $0.50 per share ($50 per contract). The restriction is automatic and remains in effect until the day following the close of a trading day when either condition is not met.

With the advent of dual listings in exchange traded options, the two conditions referred to above which would otherwise cause the prohibition to become effective may exist on one exchange but not on another exchange which trades the same option series. For example, as of the close of a given day, the exercise price of a dually listed call option may be more than $5 above the price of the underlying stock; however, the price of the option may close at $0.50 per share (½) on one exchange but less than that price on another exchange. As a result, opening transactions would be restricted on the former exchange.

Although the restricted option rules as adopted by each of the options exchanges provide that an exchange may make exceptions with respect to one or more options series when it is in the public interest to do so. The PSE believes it is advisable to amend its rule to provide for uniformity among the exchanges in respect to restricted options to eleminate situations as described above.

Accordingly, the PSE proposes to amend its restricted options rule to provide that, in the case of dually listed options only, the Exchange will not impose a restriction on an option series unless the conditions giving rise to such restriction exist on all exchanges that trade such option series.

The amendment to Rule VI, Section 11 is authorized by Section 6(b) of the Securities Exchange Act of 1934 (the "1934 Act") and the PSE believes that such Amendment will serve to promote just and equitable principles of trade and to protect investors in dual traded exchange option contracts.

Comments have neither been solicited nor received from members on the proposed rule change.

The proposed rule change imposes no burden upon competition.

On or before November 8, 1977, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and

copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 26, 1977.

[FR Doc.77-28907 Filed 10-3-77;8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1292; Amdt. No. 4]

CALIFORNIA

Declaration of Disaster Loan Area

The above numbered Declaration (See 42 FR 11301), Amendment No. 1 (See 42 FR 21339), Amendment No. 2 (See 42 FR 32864), and Amendment No. 3 (See 42 FR 37265), are amended by extending the date for physical damage until the close of business on November 30, 1977, and for economic injury until the close of business on June 30, 1978.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 12, 1977.

A. VERNON WEAVER,
Administrator.

[FR Doc.77-29152 Filed 10-3-77;8:45 am]

[8025-01]

DENVER DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Denver District Advisory Council will hold a public meeting at 9:00 a.m., Friday, November 18, 1977, in the United States Courthouse, Room 595, (5th Floor), 1961 Stout Street, Denver, Colo., to discuss such business as may be presented by members, the staff of the Small Business Administration and others attending. For further information, write or call Douglas F. Graves, District Director, U.S. Small Business Administration, 721 19th Street, Room 426, Denver, Colo. 80202 (303-837-3673).

Dated: September 26, 1977.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc.77-29153 Filed 10-3-77;8:45 am]

[4710-01]

DEPARTMENT OF STATE

[Public Notice CM 7/13]

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW; STUDY GROUP ON LEASING OF AND SECURITY INTERESTS IN MOVABLE PROPERTY

Meeting

A meeting of the Study Group on Leasing of and Security Interests in Movable Property, a subgroup of the Secretary of State's Advisory Committee on Private International Law, will be held at 10:30 a.m. on Friday, November 4, 1977, at Harvard Law School, Cambridge, Mass.

The purpose of the meeting will be to prepare for the second meeting of the International Institute for the Unification of Private Law's working group on the leasing contract, to be held in Rome November 17-19, 1977.

The meeting will be open to the public and members of the general public may attend up to the limits of the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman. It is requested that prior to November 4, 1977, members of the general public who plan to attend the meeting inform their name and affiliation and address to Miss Dorothy Fagan, Office of the Legal Adviser, Department of State; the telephone number is 202-632-8134.

Dated: September 27, 1977.

RICHARD D. KEARNEY,
Chairman.

[FR Doc.77-99105 Filed 10-3-77;8:45 am]

[4830-01; 4510-]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

PENSION AND WELFARE BENEFIT PROGRAMS

[Prohibited Transaction Exemption 77-11; Application No. D-850]

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

Exemptions for Certain Transactions

AGENCIES: Department of the Treasury/Internal Revenue Service; Department of Labor.

ACTION: Grant of exemptions.

SUMMARY: The Internal Revenue Service (the Service) and the Department of Labor (the Department) hereby grant several exemptions for certain transactions involving the Central States, Southeast and Southwest Area Pension Fund (the Fund). In the absence of the exemptions, these transactions would be prohibited by the Internal Revenue Code of 1954 (the Code) and the Employee Retirement Income Security Act of 1974 (the Act).

FOR FURTHER INFORMATION CONTACT:

Neil Grossman, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20024, Attn: E:EP:PT, Phone 202-566-4260.

Martha McLane, Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, Phone 202-523-9141.[1]

SUPPLEMENTARY INFORMATION: On September 9, 1977, notice was published in the FEDERAL REGISTER (42 FR 45425) that the Service and the Department (hereinafter collectively referred to as the Agencies) had under consideration proposed exemptions from the taxes imposed by section 4975 (a) and (b) of Code by reason of sections 4975(c)(1)(A) through (F) of the Code and from the restrictions of sections 406(a), 406(b), 407(a) of the Act. The exemptions were requested in applications filed pursuant to section 4975(c)(2) of the Code and section 408(a) of the Act by The Equitable Life Assurance Society of the United States (Equitable) and Victor Palmieri & Co. Inc. (VPCO). The proposed exemptions applied to a number of transactions involving Equitable, VPCO, entities related to Equitable and VPCO, the Fund's other investment managers, and the Fund as a result of contractual agreements dated June 30, 1977.

The exemptions were proposed in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and all interested persons were invited to submit written comments on the proposed exemptions and to present oral comments at the hearing to be held on the proposed exemptions. A public hearing was held on September 26, 1977, in which interested persons were afforded the opportunity to present their views on the proposed exemptions.

COMMENTS RECEIVED

No comments relating to the substantive provisions of the proposed exemption were received by the Agencies. Equitable submitted a comment in order to clarify any misunderstanding regarding the operation of the Fund's Benefits and Administration Account (the Account). At 42 FR 45427, Part III, second paragraph of the Summary of Representations, the Notice stated:

Generally, money for the Account will be derived from two sources: employer contributions and income earned by the Fund

[1] These are not toll-free numbers.

on its real estate and mortgage investments which is not needed to offset the Fund's expenses in managing such investments. Although the influx of money from these sources should ordinarily be sufficient to pay pension benefits and the Fund's administrative expenses, it is conceivable that additional money may be needed for the Account at some time in the future. In such a case, the Fund's Executive Director is authorized to request Equitable to transfer additional funds to the Account, and under the agreements, Equitable can comply with the request by directing the investment managers, including itself and VPCO, to liquidate assets and transfer money to the Account. Equitable, acting on its own, has no authority to initiate a transfer of assets to the Account.

Although the above statement is based on the representations contained in Equitable's application for exemption, Equitable believes that it could be interpreted in a manner that could create confusion with respect to the operation of the Account. It is Equitable's understanding that the Account, which is to be used for the payment of pension benefits and Fund administrative expenses, is to derive its funds principally from employer contributions. If at any time the assets in the Account should prove insufficient to pay pension benefits and Fund administrative expenses, the Fund's Executive Director is authorized under the agreements of June 30, 1977, to request Equitable to transfer additional funds to the Account. Equitable can then comply with such requests by directing the transfer of funds from any one or combination of sources available to it for this purpose, including available investment funds generated by the Fund on its real estate and mortgage investments which are not needed to offset the Fund's expenses in managing such investments, and the assets held by the Fund's investment managers, which could be liquidated and transferred to the Account. Equitable does not expect to be required to direct a liquidation of assets held by the investment managers when there are available investment funds from Fund real estate and mortgage investments.

Accordingly, in order to eliminate any confusion in connection with the operation of the Account, Equitable requests and the Agencies hereby amend the second paragraph and first sentence of Part III of the Notice of Pendency to read as follows:

Generally, money for the Account will be derived primarily from employer contributions. Although the influx of money from this source should ordinarily be sufficient to pay pension benefits and the Fund's administrative expenses, it is conceivable that additional money may be needed for the Account at some time in the future. In such a case, the Fund's Executive Director is authorized to request Equitable to transfer additional funds to the Account, and, under the agreements, Equitable can comply with the request by transferring available investment funds generated by the Fund on its real estate and mortgage investments which are not needed to offset the Fund's expenses in managing such investments, or by directing the investment managers, including itself and VPCO, to liquidate assets and transfer money to the Account. Equitable, acting on its own, has no authority to initiate a transfer of assets to the Account.

Although the likelihood that investment manager will be directed to liquidate assets in connection with such a transfer is remote, if a transfer is requested that requires such a liquidation, Equitable will determine the best source of funds from which to make the transfer. * * *

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other disqualified person or party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Code and the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) The exemptions set forth herein are supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) In accordance with section 4975(c)(2) of the Code and section 408(a) of the Act and based upon the entire record, the Agencies make the following determinations:

(i) The exemptions set forth herein are administratively feasible;

(ii) The exemptions set forth herein are in the interests of the Fund and its participants and beneficiaries; and

(iii) The exemptions set forth herein are protective of the rights of participants and beneficiaries of the Fund.

EXEMPTIONS

Accordingly, the exemptions proposed in the notice of September 9, 1977, 42 FR 45425, as amended above are hereby granted under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

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

ALVIN D. LURIE,
Assistant Commissioner (Employee Plans and Exempt Organizations),
Internal Revenue Service.

J. VERNON BALLARD,
Deputy Administrator, Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc.77-29188 Filed 10-3-77;8:45 am]

[4810-25]

[Treasury Department Order No. 250-2 (Revision 1)]

ESTABLISHMENT OF THE OFFICE OF TARIFF AFFAIRS IN THE OFFICE OF THE GENERAL COUNSEL AND THE DELEGATION OF AUTHORITY TO THE DEPUTY ASSISTANT SECRETARY (TARIFF AFFAIRS)

Under authority of Treasury Department Orders Nos. 190 (Revised) and 250-1, the Office of Tariff Affairs is established within the Office of the General Counsel. Pursuant to the authority delegated to me by those orders, I hereby delegate to the Deputy Assistant Secretary (Tariff Affairs) the following authority, subject to the limitations prescribed herein:

1. To supervise the Office of Tariff Affairs and to make recommendations relative to the employment, promotion, and evaluation of personnel therein.

2. To review all antidumping and countervailing duty cases investigated by the U.S. Customs Service and to recommend their disposition to the General Counsel.

3. To represent the General Counsel on Departmental, interdepartmental, and international meetings or committees concerned with tariff matters within the jurisdiction of the General Counsel's office.

4. To handle all other matters falling within the responsibility of the Office of Tariff Affairs, or as further assigned by me.

5. In the absence of both the General Counsel and the Deputy General Counsel, the Deputy Assistant Secretary (Tariff Affairs) will sign antidumping and countervailing duty notices and determinations in his own name and under his own title.

6. In other respects the Office of Tariff Affairs will conform to the orders and directives issued for the administration of the Legal Division.

Dated: September 23, 1977.

ROBERT H. MUNDHEIM,
General Counsel.

[FR Doc.77-29193 Filed 10-3-77;8:45 am]

[4810–25]

Office of the Secretary

ROLLER CHAIN, OTHER THAN BICYCLE, FROM JAPAN

Antidumping; Notice of Tentative Determination To Modify or Revoke Dumping Finding

AGENCY: United States Treasury Department.

ACTION: Tentative modification of finding of dumping.

SUMMARY: This notice is to advise the public that it appears that Daido Kogyo Co., Ltd. of Japan is not selling roller chain, other than bicycle, from Japan at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. In addition, Daido Kogyo has given assurances that future sales will not be at less than fair value. If this action is made final, entries of this merchandise from Daido Kogyo, on or after the effective date of this notice, will no longer be liable for special dumping duties under the Antidumping Act, 1921. Interested persons are invited to make comments.

EFFECTIVE DATE: October 4, 1977.

FOR FURTHER INFORMATION CONTACT:

David R. Chapman, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5492).

SUPPLEMENTARY INFORMATION: A finding of dumping with respect to roller chain, other than bicycle, from Japan was published as Treasury Decision 73–100 in the FEDERAL REGISTER of April 12, 1973 (38 FR 9226). After due investigation, it has been determined that roller chain, other than bicycle, produced and sold by Daido Kogyo Co., Ltd. of Tokyo, Japan, is not being, nor is likely to be, sold in the United States at less than fair value within the meaning of the Antidumping Act, 1927, as amended (19 U.S.C. 160 et seq.).

STATEMENT OF REASONS ON WHICH THIS TENTATIVE DETERMINATION IS BASED

The investigation indicated that sales of roller chain, other than bicycle, by Daido Kogyo Co., Ltd., have not been made at less than fair value for a period of two years since the finding of dumping, and assurances have been given that future sales of such merchandise to the United States will not be made at less than fair value.

Accordingly, notice is hereby given that the Department of the Treasury intends to modify the finding of dumping with respect to roller chain, other than bicycle, from Japan to exclude such merchandise produced and sold by Daido Kogyo Co., Ltd. of Tokyo, Japan.

In accordance with §153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or requests in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229 in time to be received by his office no later than October 14, 1977. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than November 3, 1977.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

SEPTEMBER 29, 1977.

[FR Doc.77–29135 Filed 10–3–77;8:45 am]

[7035–01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 489]

ASSIGNMENT OF HEARINGS

SEPTEMBER 29, 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 136168 (Sub-No. 11), Wilson Certified Express, Inc., now assigned October 12, 1977, at Omaha, Nebr., will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 142899 (Sub-No. 2), Corrugated Carriers, Inc., now assigned October 13, 1977, at Omaha, Nebr., will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 113678 (Sub-No. 63), Curtis, Inc., now assigned October 17, 1977, at Omaha, Nebr., will be held in Room 616, Union Pacific Plaza, 110 N. 14th Street, 14th and Dodge.

MC 111375 (Sub-No. 85), Pirkle Refrigerated Freight Lines, Inc., now assigned November 9, 1977, is postponed to November 14, 1977 (1 week), at Denver, Colo., in a hearing room to be later designated.

No. AB 18 (Sub-No. 6), Chesapeake & Ohio Railway Co. Abandonment Between Coleman and Union, Isabella County, Mich., and FD 27412, Chesapeake & Ohio Railroad Co.—Trackage Rights—A Line of Railroad of The Ann Arbor Railroad Co. Between Mount Pleasant and Clare, in Isabella County, Mich., now assigned October 13, 1977, at Mount Pleasant, Mich., will be held in Room 124, Isabella County Building, 200 North Main Street.

MC 139495 (Sub-No. 181), National Carriers, Inc., now assigned October 17, 1977, at Chicago, Ill., will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 140792 (Sub-No. 3), Staney E. Whitehead, now assigned October 18, 1977, at Chicago, Ill., will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 138144 (Sub-No. 19), Fred Olsen Co., Inc., now assigned October 19, 1977, at Chicago, Ill., will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn St.

MC 139973 (Sub-No. 12), J. H. Ware Trucking, Inc., now assigned October 20, 1977, at Chicago, Ill., will be held in Room 1319, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC–F 13091, System 99—Control—Nevada Freight Lines, Inc., and MC 97526 (Sub-No. 3), Nevada Freight Lines, Inc., now being assigned November 7, 1977 (1 week) at Reno, Nev., in a hearing room to be later designated. This hearing will be continued to November 14, 1977 (1 week) at Las Vegas, Nev., in a hearing room to be later designated.

MC 129480 (Sub-No. 26), Tri-Line Expressway Ltd., now assigned October 12, 1977, at Denver, Colo., will be held October 12 through 19, 1977, in Room 422, U.S. Customs House, 721 19th Street, Denver, Colo., and October 20 through 21, 1977, in Room 158, U.S. Customs House, 721 19th Street, Denver, Colo.

AB 43 (Sub-No. 30), Illinois Central Gulf Railroad Co. Abandonment Between Waggoner and Glen Carbon in Montgomery, Macoupin, and Madison Counties, Ill., now assigned October 12, 1977, at Litchfield, Ill., will be held at the City Hall, 120 East Ryder.

MC 141779 (Sub-No. 1), Richard Allen Long, d.b.a. Richard's Towing Service, now assigned October 20, 1977, at St. Louis, Mo., will be held in Court Room 3, U.S. Court of Appeals, 1114 Market Street.

MC 135410 (Sub-No. 11), Courtney J. Munson, d.b.a. Munson Trucking, now assigned October 18, 1977, at St. Louis, Mo., will be held in Court Room 3, U.S. Court of Appeals, 1114 Market Street.

MC 130442, Shelmont, Inc., now assigned October 5, 1977, in Atlanta, Ga., is cancelled and application dismissed.

MC 142920, Oliver Trucking Corp., now assigned October 17, 1977, at New York, N.Y., will be held in Room 2206, 26 Federal Plaza.

MC 108937 (Sub-No. 47), Murphy Motor Freight Lines, Inc., now being assigned January 17, 1978 (9 days) for hearing in South Bend, Ind., in a hearing room to be later designated.

MC 115353 (Sub-No. 25), Louis J1, Kennedy Trucking Co., now assigned October 20, 1977, at New York, N.Y., will be held in Room 2206, 26 Federal Plaza.

MC 143305, John H. Shuffer & Robert W. Hanna, d.b.a John & Bob's Auto Service, now assigned October 18, 1977, at New York, N.Y., will be held in Room 2206, 26 Federal Plaza.

MC 121489 (Sub-No. 12), Nebraska-Iowa Express, Inc., now assigned November 28, 1977, at Denver, Colo., will be held in Room 158, U.S. Customs House, 721 19th Street.

MC 140586 (Sub-No. 1), Golden North Van Lines, Inc., now assigned November 15, 1977, at Anchorage, Alaska, will be held in McKay Building, 10th Floor, 338 Denali Street.

MC 142797 (Sub-No. 1), Fulton Oregon Air, Inc., now assigned November 1, 1977, at Salem, Oreg., will be held in Room 346, State Capitol Building.

MC 125551 (Sub-No. 13), K & W Trucking Co., Inc., now assigned October 31, 1977, at Anchorage, Alaska, will be held in McKay Building, 10th Floor, 338 Denali Street.
MC 143013, Roger Chilton, d.b.a. Chilton Trucking Co., now assigned October 3, 1977, at Houston, Tex., is cancelled and application dismissed.
MC 111594 (Sub-No. 75), C. W. Transport, Inc., now being assigned January 17, 1977 (9 days) at Chicago, Ill., in a hearing room to be later designated.
MC 946 (Sub-No. 7), Ferdinand Arrigoni, Inc., now assigned October 18, 1977, at New York, N.Y., and will be held in Room C-2220, Federal Building, 26 Federal Plaza. This hearing also embraces MC 142530 (Sub-No. 2), Pioneer Bus Corp. and MC 67340 (Sub-No. 11), Bosort Bus Lines, Inc.
MC 143187, R. G. Degaetano Transportation, Inc., now assigned November 17, 1977, at Boston, Mass., is cancelled and transferred to Modified Procedure.
MC 113855 (Sub-No. 378), International Transport, Inc., now assigned November 4, 1977, at San Francisco, Calif., is cancelled, application dismissed.
MC 141864 (Sub-No. 1), James D. Dickson, now assigned November 3, 1977, at Chicago, Ill., is cancelled, application dismissied.
MC 107541 (Sub-No. 45), Washington-Oregon Lumber Freighters, Inc., now assigned November 7, 1977, at Portland, Oreg., is cancelled, application dismissed.
MC 55898 (Sub-No. 53), Decato Bros., Inc., now assigned October 12, 1977, is postponed to November 17, 1977 (2 days) at Boston, Mass., will be held on the 5th Floor, 150 Causeway.
AB 83 (Sub-No. 3), Maine Central Railroad Co. Abandonment, Between North Anson and Bingham in Somerset County, Maine, now assigned November 9, 1977, at Bingham, Maine, will be held in the Conference Room, Town Municipal Bldg., Murray Street.
MC 142610 (Sub No. 4), Action Motor Express, Inc., now assigned December 12, 1977, at Jacksonville, Fla., is cancelled, application dismissed.
MC 135425 (Sub. No. 24), Cycles Ltd., now assigned November 14, 1977, at Boston, Mass., will be held on the 5th Floor, 150 Causeway.
MC 119619 (Sub- No. 102), Distributors Service Co., now assigned November 15, 1977, at Boston, Mass., will be held on the 5th Floor, 150 Causeway.
MC 119988 (Sub-No. 108), Great Western Trucking Co., Inc., now assigned October 18, 1977, at Dallas, Tex., is cancelled, application dismissed.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 77-29142 Filed 10-3-77; 8:45 am]

[Notice No. 490]

ASSIGNMENT OF HEARINGS

SEPTEMBER 29, 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.

CORRECTION [1]

MC 33641 (Sub-No. 128), IML Freight, Inc., now assigned November 1, 1977, at Spokane, Wash., and will be held November 1 through November 4, 1977, in the Spokane Convention Center, Spokane Falls Boulevard and November 7, 1977, through November 18, 1977, at the Sheraton Hotel, 322 Spokane Falls Courts.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-29143 Filed 10-3-77;8:45 am]

[7035-01]

FOURTH SECTION APPLICATION FOR RELIEF

SEPTEMBER 29, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

FSA No. 43438—*Barley, Corn, Etc., from Illinois Central Gulf Railroad Co. Stations in Illinois.* Filed by Illinois Central Gulf Railroad Co. (No. 77-1), for interested rail carriers.

Rates on barley, corn, oats, rye, soybeans, or wheat, in carloads, as described in the application, from Illinois Central Gulf Railroad Co. stations in Illinois, to Chicago, Ill., for export.

Grounds for relief—Market competition.

Tariff—Supplement 4 to Illinois Central Gulf Railroad Co. tariff 605-A, I.C.C. No. 68. Rates are published to become effective on October 24, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-29144 Filed 10-3-77;8:45 am]

[7035-01]

[Notice No. 125]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 27, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 531 (Sub-No. 350TA), filed September 15, 1977. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, P.O. Box 14048, Houston, Tex. 77021. Applicant's representative: Wray E. Hughes (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid plastics* (polyester resins), in bulk, in tank vehicles, from Oxnard, Calif., to Grand Junction, Tenn., for 180 days. Supporting shipper(s): Diamond Shamrock Corp., 617 Veterans Blvd., Redwood City, Calif. 94063. Send protests to: John Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk, Room 8610, Houston, Tex. 77002.

No. MC 19778 (Sub-No. 98TA), filed September 6, 1977. Applicant: THE MILWAUKEE MOTOR TRANSPORTATION CO., Suite 508, 516 West Jackson Blvd., Chicago, Ill. 60606. Applicant's representative: W. E. Gallagher (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, plywood, mill work* and (2) *related articles* (molding, fasteners, adhesive, caulking, nails) not to exceed 5 percent by weight of commodity described in (1) when transported in connection therewith from Potlatch and Princeton, Idaho, to Bavil, Idaho, restricted to shipments having a subsequent movement by rail, for 180 days.

[1] This notice corrects the docket title and the city and state of the hearing.

Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Washington, Idaho & Montana Railroad Co., 516 West Jackson Blvd., Chicago, Ill. 60606. Send protests to: Mrs. Patricia A. Roscoe, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn, Room 1386, Chicago, Ill. 60604.

No. MC 35807 (Sub-No. 78TA), filed September 13, 1977. Applicant: WELLS FARGO ARMORED SERVICE CORP., P.O. Box 4313, Atlanta, Ga. 30302. Applicant's representative: David E. Wells (same address as applicant) and Harry J. Jordan, 1000 16th St. NW., Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin, currency, securities, and food stamps*, between points in Virginia, West Virginia, and North Carolina, under a continuing contract or contracts with Federal Reserve Bank of Richmond, for 180 days. Supporting Shipper: Federal Reserve Bank of Richmond, P.O. Box 27622, Richmond, Va. 23261. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, Ga. 30309.

No. MC 44989 (Sub-No. 6TA), filed September 15, 1977. Applicant: WILLIAMS TRUCK LINES, INC., P.O. Box 143, Audubon, Iowa 50025. Applicant's representative: Scott E. Daniel, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen pork*, from the plantsite and storage facilites utilized by Weinstein International Corp., located at or near Worthington, Minn., Sioux City, Iowa, and Omaha, Nebr.; to Miami, Tampa, and Riviera Beach, Fla., restricted to traffic originating at the named origins and destined to the named destinations. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brad McAlister, Director of Export Transportation, Weinstein International Corp., 5738 Olson Highway, Minneapolis, Minn. 55422. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 51146 (Sub-No. 525TA), filed September 14, 1977. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, Wis. 54306. Applicant's representative: Neil A. DuJardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood burning stoves and furnaces*, from Cobleskill, N.Y., to Green Bay and Madison, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Energy Options, Inc., P.O. Box 303, Green Bay, Wis. 54305 (John Wilson). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, room 619, Milwaukee, Wis. 53202.

No. MC 51146 (Sub-No. 526TA), filed September 14, 1977. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, Wis. 54306. Applicant's representative: Neil A. DuJardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation*, from Kenosha, Wis., to Minneapolis, Minn., for 180 days. Supporting shipper: Koos, Inc., 4500 13th Court, Kenosha, Wis. 53140 (James H. Rosenow). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, room 619, Milwaukee, Wis. 53202.

No. MC 51146 (Sub-No. 527TA), filed September 16, 1977. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, Wis. 54306. Applicant's representative: Neil A. DuJardin (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Monroe, Mich., to Ogdensburg, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Union Camp Corp., 1600 Valley Road, Wayne, N.J. 07470 (Roger L. Schoening). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, room 619, Milwaukee, Wis. 53202.

No. MC 83539 (Sub-No. 468TA), filed September 14, 1977. Applicant: C&H TRANSPORTATION CO., INC., 1936–2010 West Commerce Street, P.O. Box 5976, Dallas, Tex. 75222. Applicant's representative: Thomas E. James, 2010 West Commerce Street, P.O. Box 5976, Dallas, Tex. 75222. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete roof tile*, from plantsite of Skandia Roof Tile at or near San Marcos, Tex., to all points in the States of Arkansas, California, Florida, Indiana, Nebraska, and New Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Skandia Roof Tile, Ltd., 1710 Westminster, Denton, Tex. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, room 13C12, Dallas, Tex. 75242.

No. MC 107403 (Sub-No. 1037TA), filed September 12, 1977. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude peanut oil*, in bulk, in tank vehicles, from Hershey, Pa., to Charlotte, N.C., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Gold Kist, Inc., P.O. Box 2210, Atlanta, Ga. 30301. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, room 3238, Philadelphia, Pa. 19106.

No. MC 109689 (Sub-No. 313TA), filed September 12, 1977. Applicant: W. S. HATCH CO., a Utah corporation, 643 South 800 West, Woods Cross, Utah 84087. Applicant's representative: Mark K. Boyle, 345 South State Street, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Marine oils* (fish oil), in bulk, from Seattle, Wash., to Murray, Utah, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James Farrell & Co., 1612 Hoge Building, Seattle, Wash. 98104 (Jack Miller, President). Send protests to: District Supervisor, Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 110988 (Sub-No. 348TA), filed September 14, 1977. Applicant: SCHNEIDER, TANK LINES, INC., Giltedge Bldg., 4321 West College Avenue, Appleton, Wis. 54911. Applicant's representative: Paul C. Schneider (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Caustic soda*, 50% liquid, from LaCrosse, Wis., to points in Illinois, Iowa, Minnesota, and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hydrite Chemical Co., 1273 West Bruce Street, Milwaukee, Wis. 53204 (Edward A. Wex). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, room 619, Milwaukee, Wis. 53202.

No. MC 110988 (Sub-No. 349TA), filed September 15, 1977. Applicant: SCHNEIDER, TANK LINES, INC., Giltedge Bldg., 4321 West College Avenue, Appleton, Wis. 54911. Applicant's representative: Paul C. Schneider (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum* sulphate, or liquid alum, in bulk, in tank vehicles, from Wisconsin Rapids, Wis., to Des Moines and Waterloo, Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Allied Chemical Corp., P.O. Box 1139R, Morristown, N.J. 07960 (Joseph D. Guittari). Send protests to: Gail Daugherty,

Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, room 619, Milwaukee, Wis. 53202.

No. MC 111401 (Sub-No. 501TA), filed September 13, 1977. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, Okla. 73701. Applicant's representative: Victor R. Comstock (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alumina slurry*, in bulk, in tank vehicles, from Bauxite, Ark., to Cincinnati, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: W. R. Grace & Co., Davison Chemical Division, Charles and Baltimore Streets, Baltimore, Md. 21202. Send protests to: Joe Green, District Supervisor, room 240, Old Post Office and Courthouse Bldg., 215 Northwest 3d, Oklahoma City, Okla. 73102.

No. MC 112520 (Sub-No. 344TA), filed September 14, 1977. Applicant: McKENZIE TANK LINE, INC., P.O. Box 1200, Tallahassee, Fla. 32302. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, Fla. 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid can coatings*, in bulk, in tank vehicles, from the plantsite of Mobile Chemical Co., at Covington, Ga., to points in South Carolina, for 180 days. Applicant has also filed an underling ETA seeking up to 90 days of operating authority. Supporting shipper: Mobile Chemical Co., Division of Mobile Oil Corp., Chemical Coatings Division, 1024 South Avenue, Plainfield, N.J. 07062. Send protests to: District Supervisor, G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 112617 (Sub-No. 376TA), filed September 16, 1977. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, 1292 Fern Valley Road, Louisville, Ky. 4021. Applicant's representative: Larry Thompson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gases*, in bulk, in tank vehicles, from Institute, W. Va., to points in Kentucky and Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wm. R. Anderson Manager-Propane, Columbia Hydrocarbon Corp., P.O. Box 575, South Shore, Ky. 41175. Mr. Charles C. Wells, President, Hardware Charlie Gas Co., Inc., P.O. Box 590, Paintsville, Ky. 41240. Mr. Arnold Grate Owner/Manager, Rutland Furniture & Bottle Gas Co., Inc., P.O. Box 326, Rutland, Ohio 45775. Send protests to: Lnda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, Ky. 40202.

No. MC 114761 (Sub No. 12TA), filed September 16, 1977. Applicant: GETTER TRUCKING INC., P.O. Box 368, Cut Bank, Mont. 59427. Applicant's representative: Thomas M. Roholt, P.O. Box 1611, Billings, Mont. 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bentonite*, from Big Horn County, Wyo., to points in Washington, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Robert N. Garity, Transportation Specialist, American Colloid Co., P.O. Box 228, Skokie, Ill. 60076. George G. Kirsch Supervisor—Domestic Traffic, Minerals and Manufacturing Group, Dresser Industries, P.O. Box 6504, Houston, Tex. 77005. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, Mont. 59101.

No. MC 117119 (Sub-No. 653TA), filed September 14, 1977. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, Ark. 72728. Applicant's representative: Martin M. Geffon, P.O. Box 338, Willingboro, N.J. 08046. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, pigments, paint and dyes, and personnel safety devices*, (except in bulk), in vehicles equipped with mechanical refrigeration, from Marietta, Ohio, to Portland, Oreg., for 180 days. Applicant as also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Cyanamid Co., Bound Brook, N.J. 08805. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 117589 (Sub-No. 43TA), filed September 16, 1977. Applicant: PROVISIONERS FROZEN EXPRESS, INC., 3801 7th Avenue South, P.O. Box 24507, Seattle, Wash. 98108. Applicant's representative: Michael D. Duppenthaler, 515 Lyon Building, 607 Third Avenue, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen human blood plasma*, from the United States-Canada International Boundary Line located at or near Blaine, Lynden, or Sumas, Wash., to Los Angeles, Calif., shipments originating in Vancouver, British Columbia, Canada, for 180 days. Supporting shipper(s): Hyland, a Division of Travenol Laboratories, 3300 Hyland Avenue, Costa Mesa, Calif. 92626.

No. MC-118838 (Sub-No. 14TA), filed September 15, 1977. Applicant: GABOR TRUCKING, INC., Rural Route No. 4, Box 124B, Detroit Lakes, Minn. 56501. Applicant's representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and animal and poultry feed ingredients*, from Culbertson, Mont., to points in Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, for 180 days. Supporting shipper: Continental Grain Company, 277 Park Avenue, New York, N.Y. 10017. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 119702 (Sub-No. 51TA), filed September 16, 1977. Applicant: STAHLY CARTAGE CO., P.O. Box 486, 130-A Hillsboro Avenue, Edwardsville, Ill. 62025. Applicant's representative: Jeff S. Wohlford, P.O. Box 486, Edwardsville, Ill. 62025. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid calcium chloride*, in bulk, in tank vehicles, from the plant site of W & W Sales & Leasing Co., located in Pike County, Ill., near Meredosia, Ill., to all points in the State of Okla., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mr. Wendell C. Wholford President, W & W Sales & Leasing Co., P.O. Box 486, Edwardsville, Ill. 62025. Send protests to: District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 119917 (Sub-No. 45TA), filed September 14, 1977. Applicant: DUDLEY TRUCKING COMPANY, INC., 724 Memorial Drive SE., Atlanta, Ga. 30316. Applicant's representative: William F. Dudley, 724 Memorial Drive SE., Atlanta, Ga. 30316. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery products* and all products manufactured and distributed by Crackin Good Bakers, Inc., from the plantsite and shipping facilities of Crackin Good Bakers, Inc., Valdosta, Ga., to the warehouse and distribution facilities of Winn Dixie, Inc., in Montgomery, Ala., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Crackin Good Bakers, Inc. 701 North Forrest Road, Valdosta, Ga. 31601. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree Street NW., Room 300, Atlanta, Ga. 30309.

No. MC 121525 (Sub-No. 6TA), filed September 16, 1977. Applicant: SNIDER TRUCKING SERVICE, INC., 110 E. 5th, Ritzville, Wash. 99169. Applicant's representative: Jeffrey D. Snider, Ritzville, Wash. 99169. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizers*, from Plant Food Center, Inc., plantsite at Interstate, Idaho, to points in Adams, Grant, Lincoln, and Whitman Counties, Wash., for 180 days. Supporting shipper(s): Ritzville Chemicals, Inc., 107 North Adams, Ritzville, Wash. 99169. Cominco American, Inc., West 818 Riverside, P.O. Box 3087, Spokane, Wash. 99220.

No. MC 123392 (Sub-No. 74TA), filed September 14, 1977. Applicant: JACK B. KELLEY, INC., Rt. 1, Box 400, U.S. 66 West at Kelly Drive, Amarillo, Tex. 79106. Applicant's representative: Weldon M. Teague (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Compressed methane gas*, in bulk, in tube trailers, from Oakland, Calif., to Harrison, N.J., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Liquid Carbonic Corp., 135 S. LaSalle, Chicago, Ill. 60603. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box H–4395 Herring Plaza, Amarillo, Tex. 79101.

No. MC 124344 (Sub-No. 8TA), filed September 7, 1977. Applicant: HINER TRANSPORT, INC., 1317 South Jefferson Street, P.O. Box 621, Huntington, Ind. 46750. Applicant's representative: Robert W. Loser II, 1009 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Ice cream, ice cream mix, ice milk, sherbert, water ices, milk products, and vegetable-fat frozen desserts*, in containers, in mechanically refrigerated vehicles, and *ice cream novelties*, including water ice bars, fudge bars, ice cream bars, ice cream cups, ice cream sandwiches, ice cream cake rolls, ice cream pies, and articles of a like nature, in containers, in mechanically refrigerated vehicles, (1) From Huntington, Ind., to Jacksonville, Fla.; Prestonsburg, Ky.; Peoria, Ill.; Lansing, Port Huron, Battle Creek, Muskegon, Bay City, and Cadillac, Mich.; St. Louis, Mo.; Cleveland and Mount Vernon, Ohio; Fayette City, Altoona, Evans City, and Pittsburgh, Pa.; and Wheeling, Wharton, Clarksburg, Fairmont, and Elkins, W. Va.; and, (2) From Peoria, Ill.; Detroit, Mich.; and Louisville, Ky., to Huntington Ind. *Over-aged, rejected, or damaged merchandise* on return, and, *Fruits and fruit segments*, in containers, From Cincinnati, Ohio to Huntington, Ind. Restrictions: (1) The operations authorized herein are restricted to traffic originating at and/or destined to a plantsite or storage facility of Kraft Foods Dairy Group. (2) The operations authorized herein are limited to a transportation service to be performed under a continuing contract or contracts with Kraft Foods Dairy Group (formerly Sealtest Foods Division, Kraftco Corp.), Philadelphia, Pa., under a continuing contract or contracts with Kraft Foods Dairy Group, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kraft Foods Dairy Group, 435 W. State Street, Huntington, Ind. 46750. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, Ind. 46802.

No. MC 124511 (Sub-No. 38TA), filed September 2, 1977. Applicant: JOHN F. OLIVER, P.O. Box 223, Mexico, Mo. 65265. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore Avenue, Kansas City, Mo. 64105, Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, from points in Missouri to points in Iowa, Illinois, Nebraska, and Kansas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Missouri Mining, Inc., P.O. Box 207, Unionville, Mo. 63565. Universal Coal & Energy, Inc., P.O. Box 207, Unionville, Mo. 63565. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission—BOp, 600 Federal Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 126118 (Sub-No. 52TA), filed September 15, 1977. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. AckLie (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Jacksonville and Tampa, Fla., and their commercial zones to Alabama, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Robert Brown, Sr., President, Coosa Valley Budweiser Co., Inc., Box 1141, Sylacuga, Ala. 35150. Robert Brown, Sr., Secretary-Treasurer, Bama Beverage Co., Inc., Box 1601, Anniston, Ala. 36202. Send protests to: Max H. Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Bldg., and U.S. Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 128555 (Sub-No. 21TA), filed September 12, 1977. Applicant: MEAT DISPATCH, INC., 2103 17th Street, East, Palmetto, Fla. 33561. Applicant's representative: S. Michael Richards, 44 North Avenue, P.O. Box 225, Webster, N.Y. 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Unfrozen foodstuffs* (except in bulk), from Merced, Calif., to points in Texas and Colo., under a continuing contract, or contracts, with Ragu Foods, Inc., for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ragu Foods, Inc., 1680 Lyell Avenue, Rochester, N.Y. 14606. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 NW., 53rd Terrace, Miami, Fla. 33166.

No. MC 129625 (Sub-No. 9TA), filed September 14, 1977. Applicant: ROBERT COLE TRUCKING CO., P.O. Box N, Falls Creek, Pa. 15840. Applicant's representative: William J. Lavelle, Wick, Wuono & Lavelle, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, in dump vehicles, from the mines, plantsites and storage facilities of Morton Salt Co. located in Erie County, N.Y., to points in Clarion, Clearfield, Elk, Forest, McKean, Warren, and Jefferson (except Falls Creek, Pa., and points within its commercial zone) Counties, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Morton Salt Co., 110 North Wacker Drive, Chicago, Ill. 60606. Send protests to: Richard C. Gobbell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pa. 15222.

No. MC 134978 (Sub-No. 13TA), filed September 13, 1977. Applicant: C. P. BELUE, doing business as BELUE'S TRUCKING, Route 2, Chesnee, S.C. 29323. Applicant's representative: Mitchell King, Jr., P.O. Box 1628, Greenville, S.C. 29602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime and limestone products*, from points in Scott County, Va., to points in Georgia, North Carolina, South Carolina, and Tennessee, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Piedmont Mining Corp., P.O. Box 876, Kingsport, Tenn. 37662. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, S.C. 29201.

No. MC 136689 (Sub-No. 10TA), filed September 15, 1977. Applicant: SLAUGHTER TRANSPORTATION CORP., 10910 Lane Street, Houston, Tex. 77029. Applicant's representative: Jo E. Shaw, 816 Houston First Savings Bldg., Houston, Tex. 77002. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Deodorants*, other than medicinal and other than toilet preparations, in containers, in mixed shipments with currently authorized commodities transported for the Clorox Co., under a continuing contract, or contracts, with The Clorox Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Clorox Co., 1221 Broadway, Oakland, Calif. 94612. Send protests to: Mensing District Supervisor, Interstate Commerce Commission, 515 Rusk, 8610 Federal Building, Houston, Tex. 77002.

No. MC 136832 (Sub-No. 3TA), filed September 16, 1977. Applicant: SOUTHERN IDAHO TRANSPORT, INC., P.O. Box "W", Filer, Idaho 83328. Applicant's representative: Timothy R. Stivers, P.O. Box 162, Boise, Idaho 83701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fibreboard boxes*, from the plantsite of Longview Fibre at or near Twin Falls, Idaho to points in Delta, Messa, and Montrose Counties, Colo., under a continuing contract, or contracts, with Longview Fibre Co., for 180 days. Applicant does not intend to tack or interline authority. Supporting ship-

per(s): Longview Fibre Co., 348 South Park Avenue W., P.O. Box 387, Twin Falls, Idaho 83301. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 550 W. Fort Street, Box 07, Boise, Idaho 83724.

No. MC 136832 (Sub-No. 4TA), filed September 16, 1977. Applicant: SOUTHERN IDAHO TRANSPORT, INC., P.O. Box "W", Filer, Idaho 83328. Applicant's representative: Timothy R. Stivers, P.O. Box 162, Boise, Idaho 83701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fibreboard boxes, corrugated fibre-pulpboard and fibreboard lining materials*, from the plantsite of Longview Fibre at or near Twin Falls, Idaho to points in Humboldt County, Nev., under a continuing contract, or contracts, with Longview Fibre Co., for 180 days. Applicant does not intend to tack or interline authority. Supporting shipper(s): Longview Fibre Co., 348 South Park Avenue W., P.O. Box 387, Twin Falls, Idaho 83301. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 550 W. Fort Street, Box 07, Boise, Idaho 83724.

No. MC 138732 (Sub-No. 10TA), filed September 15, 1977. Applicant: OSTERKAMP TRUCKING, INC., 1049 N. Glassell Street, Orange, Calif. 92667. Applicant's representative: Anthony H. Osterkamp, Jr., P.O. Box 5546, Orange, Calif. 92667. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated fibreboard or pulpboard products*, moving on flatbed trailering equipment, from the plantsite of Hoerner Waldorf-Champion International Corp. at or near Salinas, Calif., to the plantsite of Hoerner Waldorf-Champion International Corp. at or near Sparks, Nev., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hoerner Waldorf-Champion International Corp., 2250 Wabash Avenue, St. Paul, Minn. 55165. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 138882 (Sub-No. 15TA), filed September 8, 1977. Applicant: WILEY SANDERS, INC., P.O. Box 161, Troy, Ala. 36081. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, over irregular routes, transporting: (1) *Wheel Weights, materials, equipment and supplies* used in the manufacture and sale of wheel weights, (except commodities in bulk), between the facilities of Bada Co., Inc., division of Hennessey Industries Co. Bowling Green, Ky., (2) *Tire Changers, Jacks, Tire Balancers, materials, equipment and supplies* used in the manufacture and sale of tire changers, jacks and tire balancers, (except commodities in bulk), between the facilities of Coats Co., Inc., division of Hennessey Industries Co., Nashville, Tenn., on the one hand, and, on the other, Accord, Albany, Tarrytown, N.Y., Atlanta, Ga., Baltimore, Md., Boston, Brighton, Springfield, Mass., Brook Park Cleveland, Ohio, Chicago, Ill., Concord, N.H., Irving, Dallas, Tex., Denver, Colo., Des Moines, Ia., Dover, Del., Fair Lawn, N.J., Hanford, Los Angeles, Calif., Jacksonville, Fla., Janesville, Wisc., Natchez, Miss., Philadelphia, Pa., Richmond, Va., West Haven, Conn. Restricted to shipments having origin and destination at the above facilities. Supporting shipper(s): Hennessy Industries, Inc., 1601 J. P. Hennessy Drive, LaVergne, Tenn. 37086. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, Ala. 35203.

No. MC 139193 (Sub-No. 67TA), filed September 13, 1977. Applicant: ROBERTS & OAKE, Inc., 527 East 52nd St. North, Sioux Falls, S. Dak. 57101. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except fresh meats), from Omaha, Nebr., to points in North and South Dakota, under a continuing contract or contracts with Campbell Soup Co., for 180 days. Supporting shipper: Campbell Soup Co., 1202 Douglas Street, Omaha, Nebr. 68102, Stephen M. Jander, Manager-Transportation. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, S. Dak. 57501.

No. MC 140118 (Sub-No. 3TA), filed September 15, 1977. Applicant: S.T.L. TRANSPORT, INC., 1000 Jefferson Road, P.O. Box 9776, Rochester, N.Y. 14623. Applicant's representative: S. Michael Richards, representative: Raymond A. Richards, 44 North Avenue, Webster, N.Y. 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds and pre-mixed windshield washer and anti-freeze solvent preparations*, from Rochester, N.Y., to all points in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont, under a continuing contract, or contracts, with Kleen Brite Chemical Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kleen Brite Chemical Co. Inc., 10 Moore Street, P.O. Box 485, Rochester, N.Y. 14602. Send protests to: Morris H. Gross, District Supervisor, U.S. Courthouse and Federal Building, 100 S. Clinton Street, Room 1259, Syracuse, N.Y. 13202.

No. MC 142268 (Sub-No. 23TA), filed September 6, 1977. Applicant: GORSKI BULK TRANSPORT, INC., R.R. 4, Harrow, Ontario, Canada NOR 1GO. Applicant's representative: Bernard S. Gorski, 843 Central Avenue, Windsor, Ontario, Canada N8Y 4S2. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol liquors, wine, vermouth, and brandy*, in bulk, *alcoholic liquors* in bulk, from points of entry at United States and Canada border in Michigan to Menlo Park, Calif. From points of entry at United States and Mexico border in Texas to Hartford, Conn., and Allen Park, Mich., *alcoholic liquors, wine, vermouth, and brandy*, in bulk, from points in California to Hartford, Conn., and Allen Park, Mich., for 180 days. Supporting shipper: Heublein, Inc., 330 New Park Avenue, Hartford, Conn. 06101. David F. Tucker, Transportation Manager—Spirits. Send protests to: Erma W. Gray, Secretary of the Detroit Office of the Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Blvd., Detroit, Mich. 48226.

No. MC 142346 (Sub-No. 4TA), filed September 16, 1977. Applicant: LARMER TRANSFER CO., 90129 Prairie Road, P.O. Box 706, Eugene, Oreg. 97401. Applicant's representative: Russell M. Allen, 1200 Jackson Tower, Portland, Oreg. 97205. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel plate, angle iron, bars, pipe, chanel and reinforcing steel*, from the plantsites of Farwest Steel Corp. and Farwest Rebar Co. at or near Eugene, Oreg., to Boise, Idaho and Brownlee Dam Site at Wildhorse, Idaho, under a continuing contract, or contracts, with Farwest Steel Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Farwest Steel Corp., 2000 Henderson Avenue, Eugene, Oreg. 97403. Send protests to: A. E. Odoms District Supervisor, Bureau of Operations, Interstate Commerce Commision, 114 Pioneer Courthouse, 555 S.W. Yamhill Street, Portland, Oreg. 97204.

No. MC 142844 (Sub-No. 2TA), filed September 15, 1977. Applicant: DON HAUSAUER, d/b/a DON HAUSAUER TRUCKING, Fort Lincoln Estates, Bismarck, N. Dak. 58501. Applicant's representative: Charles E. Johnson, 418 East Rosser Avenue, Bismarck, N. Dak. 58501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from Washington, Oregon, Montana, and Idaho to Minnesota and Wisconsin, restricted to a transportation service to be performed under a continuing contract or contracts with Owens Forest Products, Inc., Duluth, Minn., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Owens Forest Products, Inc., 2320 East First Street, Duluth, Minn. 55812. Send protests to: Ronald R. Mau District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak., 58102.

No. MC 143592 (Sub-No. 2TA), filed September 14, 1977. Applicant: ED-

WARDS TRUCKING CO., INC., P.O. Box 123, Clinton, Md. 20735. Applicant's representative: James E. Savitz, Suite 145, 4 Professional Drive, Gaithersburg, Md. 20760. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Microfilm, magnetic tapes, office furniture, and microfilm equipment and supplies*, between the National Headquarters of the Social Security Administration located in Baltimore, Md., and the National Records Center in Boyers, Pa., under a continuing contract, or contracts, with Social Security Administration, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Social Security Administration, P.O. Box 7696, Baltimore, Md. 21207. Send protests to: W. C. Hersman, District Supervisor, Room 1413, Interstate Commerce Commission, 12th & Constitution Avenue NW., Washington, D.C. 20423.

No. MC 143655 (Sub-No. 1TA), filed September 8, 1977. Applicant: R. STANLEY, doing business as R. STANLEY TRUCKING, Lot 152 Waples Mobile Est., Fairfax, Va. 22030. Applicant's representative: R. Stanley (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Saw dust*, in bulk, from the facilities of W. W. Bowie Lumber Co., in or near Pisgah, Md., and from the facilities of Osborn Brothers Lumber Co., in or near Waldorf, Md., to points in Fairfax, Prince William, Loudoun, Fauquier and Stafford Counties, Va., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately fourteen (14) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Interstate Commerce Commission, 12th & Constitution Avenue NW. Room 1413, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 143659 (Sub-No. 1TA), filed September 14, 1977. Applicant: VALLEY TRUCKING, INC., Rural Route 2, Box 55, Fargo, N. Dak. 58102. Applicant's representative: James B. Hovland, P.O. Box 1637, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising material*, from Memphis, Tenn., to Fargo, N. Dak., and (2) *empty malt beverage containers*, from Fargo, N. Dak., to Memphis, Tenn., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Bergseth Bros. 501 23rd Street North, Fargo, N. Dak. 58102. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 2340, Fargo, N. Dak. 58102.

No. MC 143675 (Sub-No. 1TA), filed September 13, 1977. Applicant: PHILLIPS TRUCKING CO., INC., 100 Addison Avenue, Alamoso, Colo. 81101. Applicant's representative: Richard Gibson, P.O. Box 36, LaJara, Colo. 81140. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal or poultry feed and feed ingredients and exempt commodities*, from Rio Grande County, Colo., to points in Arizona and New Mexico, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Brown Feed and Seed Co., Inc., P.O. Box 68, Monte Vista, Colo. 81144. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, Colo. 80202.

No. MC 143676 (Sub-No. 1TA), filed September 15, 1977. Applicant: DAS, INC., 2153 Patrridge Place, Cedar Point, Suffolk, Va. 23433. Applicant's representative: Blair P. Wakefield, Suite 1001, First and Merchants Bank Bldg., Norfolk, Va. 23510. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pelletized peanut shells*, in bulk, in dump vehicles, from Aulander, N.C., to Norfolk, Va., and its commercial zone, under a continuing contract, or contracts, with Inter Proteine S.A., for 180 days. Applicant does not intend to tack authority or interline with other carriers. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Inter Proteine S.A. 15 Avekrieg, Geneva, Switzerland (United States Agent)—United Feed Co., Little Rock, Ark. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Room 10–502, Federal Building, 400 North 8th Street, Richmond, Va. 23240.

No. MC 143717TA, filed September 12, 1977. Applicant: GAYLE K. POWELL, P.O. Box 12090, Lexington, Ky. 40511. Applicant's representative: Gayle K. Powell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Thoroughbred race horses*, between Lexington, Ky., on the one hand, and, on the other hand, Cincinnati & Columbus, Ohio, for 180 days. Supporting shippers: Gene Woods, Avenstoke Road, Alton, Ky. Herbert Reed. 2136 Tamarack Dr., Lexington, Ky. 40504. Send protests to: Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 216 Bakhaus Building, 1500 West Main St., Lexington, Ky. 40505.

By the Commission

H. G. Homme, Jr.
Acting Secretary.

[FR Doc.77-29145 Field 10-3-77;8:45 am]

[7035-01]

[Notice No. 126]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

September 26, 1977.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Motor Carriers of Property

No. MC 107295 (Sub-No. 860TA), filed September 15, 1977. Applicant: PREFAB TRANSIT CO., P.O. Box 146, 100 South Main Street, Farmer City, Ill. 61842. Applicant's representative: Duane Zehr (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulating materials* (except commodities in bulk), from Newark, N.J., to points in Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, for 180 days. Supporting shipper: Mr. Joseph C. Mohen, Marketing Manager, Spraycraft Corp., 2508 Coney Island Avenue, Brooklyn, New York, N.Y. 11223. Send protests to: District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 59640 (Sub-No. 58TA), filed September 16, 1977. Applicant: PAULS TRUCKING CORP., Three Commerce

Drive, Cranford, N.J. 07016. Applicant's representative: Charles J. Williams, 1815 Front Street, Scotch Plains, N.J. 07076. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Disposable dishes, plates, and trays*, from Brentwood, N.Y., to Woodstown, N.J., Lawrence and North Bellerica, Mass., and (2) *paperboard*, in rolls, from Leominister, Mass., to Brentwood, N.Y., under a continuing contract, or contracts, with Carnation Paper Products Corp., of Brentwood, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Carnation Paper Products Corp., 86 Emjay Blvd., Brentwood, N.Y. 11717. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 64932 (Sub-No. 575TA), filed September 2, 1977. Applicant: ROGERS CARTAGE CO., 10735 South Cicero Avenue, Oak Lawn, Ill. 60453. Applicant's representatives: Allan C. Zuckerman, Axelrod, Goodman, Steiner & Bazelon, 39 South LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bisphenol*, in bulk, in tank or hopper type vehicles, from the facilities of United States Steel Corp., at Haverhill, Scioto County, Ohio, to all points in the United States (except Alaska and Hawaii), and returned and rejected shipments from the above named destination territory to the above named origin point, for 180 days. Supporting shipper(s): United States Steel Corp., 600 Grant Street, Pittsburgh, Pa. 15230. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, room 1386, Chicago, Ill. 60604.

No. MC 108006 (Sub-No. 24TA), filed September 15, 1977. Applicant: MAISLIN TRANSPORT LTD., 7401 Newman Boulevard, Lasalle, Quebec, Canada. Applicant's representative: Edward L. Nehez, P.O. Box 1409, 167 Fairfield Road, Fairfield, N.J., 07006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Talc*, Moving in ISO (International Standard Organization) 20' Ocean containers, from Balmat and Hailesboro, N.Y., to the United States-Canada Boundary Line at or near Champlain, Rouses Point, Alexandria Bay, and Trout River, N.Y., restricted to traffic having a subsequent movement by water through a Canadian port, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cast North America Ltd., 1 Westmount Square, Montreal, Quebec, Canada. Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, 87 State Street, Montpelier, Vt. 05602.

No. MC 110525 (Sub-No. 1209TA), filed September 12, 1977. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, P.O. Box 200, Downingtown, Pa. 19335. Applicant's representative: Thomas J. O'Brien, 520 East Lancaster Avenue, Downingtown, Pa. 19335. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bisphenol*, in bulk, in tank or hopper type vehicles, from the facilities of United States Steel Corp., at Haverhill, Scioto County, Ohio, to all points in the United States (except Alaska and Hawaii), and returned and rejected shipments from the above named destination territory to the above named origin point, for 180 days. Supporting shipper(s): United States Steel Corp., 600 Grant Street, Pittsburgh, Pa. 15230. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch Street, room 3238, Philadelphia, Pa. 19106.

No. MC 111170 (Sub-No. 241TA), filed September 12, 1977. Applicant: WHEELING PIPE LINE, INC., P.O. Box 1718, 2811 North West Avenue, El Dorado, Ark. 71730. Applicant's representative: Tom E. Moore, P.O. Box 1718, El Dorado, Ark. 71730. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk (except bromine, petro-chemicals, brominated vegetable oils, and cryogenic liquids), from Union County, Ark., to points in California, Illinois, Mississippi, Pennsylvania, South Carolina, and Wisconsin, for 180 days. Supporting shipper(s): Velsicol Chemical Corp., 351 East Ohio Street, Chicago, Ill. 60611. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 114457 (Sub-No. 328TA), filed September 13, 1977. Applicant: DART TRANSIT Co., 2102 University Avenue, St. Paul, Minn. 55114. Applicant's representative: James C. Hardman, 33 North LaSalle Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and plastic products*, from the warehouse facilities of The Continental Group, Inc., at Louisville, Ky., to points in Illinois, Indiana, Missouri, and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Continental Group, Inc., 800 East Northwest Highway, Palatine, Ill. 60067. Send Protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th St., Minneapolis, Minn. 55401.

No. MC 117200 (Sub-No. 20TA), filed September 15, 1977. Applicant: TISCH & DREWS. INC., 212 Green Bay Avenue, Oconto Falls, Wis. 54154. Applicant's representative: Michael J. Wyngaard, 329 West Wilson Street, Madison, Wis. 53708. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the plantsites and warehouse facilities of Scott Paper Co., at Oconto Falls and Marinette, Wis., to South Beloit, Ill., under a continuing contract, or contracts, with Scott Paper Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): Scott Paper Co., 106 East Central Avenue, Oconto Falls, Wis. (Joseph C. Scott). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, room 619, Milwaukee, Wis. 53202.

No. MC 117940 (Sub-No. 231TA), filed September 2, 1977. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, Minn. 55359. Applicant's representative. Allan L. Timmerman, P.O. Box 104, Maple Plain, Minn. 55359. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of Swift Fresh Meats Co., at or near Grand Island, Nebr., Des Moines and Glenwood, Iowa, to points in Georgia, North Carolina, South Carolina, and Tennessee, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Swift Fresh Meats Co., a division of Swift & Co., 115 West Jackson Boulevard, Chicago, Ill. 60604. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, Minn. 55401.

No. MC 118959 (Sub-No. 152TA), filed September 12, 1977. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, Mo. 63701. Applicant's representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay, clay products, paper trays, corrugated posts*, from the plantsite of Absorbent Clay Products, Inc., at or near Mounds, Ill., to points in Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Absorbent Clay Products, Inc., P.O. Box 687, Anna, Ill. 62906. Send protests to: J. P. Werthmann, District

Supervisor, Interstate Commerce Commission, Bureau of Operations, room 1465, 210 North 12th Street, St. Louis, Mo. 63101.

No. MC 124211 (Sub-No. 63TA), filed September 2, 1977. Applicant: HOWARD BAER, P.O. Box 27, Route 98W, Morton, Ill. 61550. Applicant's representative: Robert W. Loser, 1009 Chamber of Commerce Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products*, from Cincinnati, Ohio, to points in North Carolina. Restrictions: (1) Restricted to the transportation of traffic originating at and/or destined to a facility of the Kroger Co., (2) restricted to movements in vehicles equipped with mechanical refrigeration, and (3) limited to a transportation service performed under a continuing contract or contracts with the Kroger Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Kroger Co., 1014 Vine Street, Cincinnati, Ohio. 43201. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, room 1386, Chicago, Ill. 60604.

No. MC 125433 (Sub-No. 125TA), filed September 16, 1977. Applicant: F-B TRUCK LINE CO., 1045 South Redwood Road, Salt Lake City, Utah 84104. Applicant's representative: David J. Lister (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products, and wood products*, from the facilities of Neiman Sawmill, Inc., located at or near Hulett, Wyo., to points in Illinois, Indiana, and Kentucky, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Neiman Sawmill, Inc., Box 218, Hulett, Wyo. (Jim D. Neiman). Send protests to: District Supervisor, Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, Utah 84138.

No. MC 125470 (Sub-No. 26TA), filed September 12, 1977. Applicant: MOORE'S TRANSFER, INC., P.O. Box 1151, Norfolk, Nebr. 68701. Applicant's representative: Gailyn L. Larsen, 521 South 14th Street, P.O. Box 81849, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products and materials and supplies* used in the agricultural, water treatment, food processing, wholesale grocery, and institutional supply industries in mixed loads with salt and salt products, from the facilities of American Salt Co., at or near Lyons, Kans., to points in Utah, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): John Branham, Traffic Manager, American Salt Co., 3142 Broadway, Kansas City, Mo. 64111. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, suite 620, 110 North 14th Street, Omaha, Nebr. 68102.

No. MC 128007 (Sub-No. 110TA), filed September 15, 1977. Applicant: HOFER, INC., P.O. Box 583, 4032 Parkview Drive, Pittsburg, Kans. 66762. Applicant's representative: Larry E. Gregg, 641 Harrison, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fabricated concrete reinforcing materials, joints, and accessories*, from points in Labette County, Kans., to points in California and Oregon, and from Houston, Tex., to points in Labette County, Kans., and (2) *materials and supplies* used or useful in the manufacture of the commodities listed in part (1) above, from points in Illinois, Indiana, Missouri, and Texas, to points in Labette County, Kans., for 180 days. Supporting shipper(s): Superior Concrete Accessories, Inc., 1900 Wilson, Parsons, Kans. 67357. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, Kans. 67202.

No. MC 128375 (Sub-No. 154TA), filed September 9, 1977. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Erie and Lock Haven, Pa., Indianapolis, Ind., Oswego, N.Y., and their commercial zones and points in Ohio to Kansas, under a continuing contract, or contracts, with Western Paper Co., Division of Hammermill Paper Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): W. R. Hearshman, President, Western Paper Co., Division of Hammermill Paper Co., P.O. Box 12210, Overland Park, Kans. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 135410 (Sub-No. 13TA), filed September 2, 1977. Applicant: COURTNEY J. MUNSON d.b.a MUNSON TRUCKING, 700 South Main, Monmouth, Ill. 61462. Applicant's representative: Donald L. Stern, Suite 530, Univac Building, 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fresh meats and packinghouse products*, from the plantsites and storage facilities of Wilson Foods Corp., at Cedar Rapids, and Des Moines, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia; and (2) from the plantsite and storage facilities of Wilson Foods Corp., at Des Moines, Iowa, to points in Virginia, for 180 days. Supporting shippers(s): Wilson Foods Corp., 4545 Lincoln Blvd., Oklahoma City, Okla. 73105. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, room 1386, Chicago, Ill. 60604.

No. MC 136689 (Sub-No. 9TA), filed September 15, 1977. Applicant: SLAUGHTER TRANSPORTATION CORP., 10910 Lane Street, Houston, Tex. 77029. Applicant's representative: Jo E. Shaw, 816 Houston First Savings Bldg., Houston, Tex. 77002. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: straight loads of *dry bleach* and dry bleach in mixed loads of liquid bleach, cleaning compounds, animal litter, cooking oils, and food stuffs (not frozen, not in bulk), from New Orleans, La., to the plantsite and facilities of The Clorox Co., at or near Houston, Tex., restricted to traffic having an immediately prior rail movement, under a continuing contract, or contracts, with The Clorox Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Clorox Co., 1221 Broadway, Oakland, Calif. 94612. Send protests to: John Mensing, District Supervisor, Interstate Commerce Commission, 515 Rusk, room 8610, Houston, Tex. 77002.

No. MC 140612 (Sub-No. 32TA), filed September 14, 1977. Applicant: ROBERT F. KAZIMOUR, P.O. Box 2207, Cedar Rapids, Iowa 52406. Applicant's representative: J. L. Kazimour (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household, commercial, and institutional kitchen and laundry equipment, fixtures, appliances and parts, electrical appliances, equipment and parts, and tools and hardware* (except commodities in bulk and commodities which, because of size or weight, require the use of special equipment), from the facilities of the McGraw-Edison Co., located at or near Chattanooga, Tenn., Ripon, Wis., Searcy, Ark., and Columbia and St. Louis, Mo., to points in the United States in and west of Louisiana, Arkansas, Missouri, Illinois, and Wisconsin (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): McGraw-Edison Co., P.O. Box U, Columbia, Mo. 65201. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, Iowa 50309.

No. MC 141273 (Sub-No. 3TA), filed September 7, 1977. Applicant: CARL NEESAM, 228 West Chestnut Street, Pardeeville, Wis. 53954. Applicant's representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, Wis.

53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Blood, meat scraps, entrails, offal, tripe, ground bones, tallow, animal fats, cracklings, feather meal, fish and fish meal, animal poultry and fish byproducts, tankage, and other feed ingredients*, all in bulk, from the plantsite of Badger By-Products Co., Inc., located at Milwaukee, Wis., to Bloomington, Kankakee, Mendota, Rockford, and Springfield, Ill., restricted to shipments moving in open-top, hopper-bottom trailers, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Badger By-Products Co., Inc., 511 East Menomonee Street, Milwaukee, Wis. 53201. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, room 202, Madison, Wis. 53703.

No. MC 142189 (Sub-No. 18TA), filed September 15, 1977, Applicant: C. M. BURNS, d.b.a., WESTERN TRUCKING, 521 Lincoln Avenue, Baker, Mont. 59313. Applicant's representative: C. M. Burns, P.O. Box 980, Baker, Mont. 59313. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and animal and poultry feed ingredients*, from Culbertson, Mont., to points in Arizona, California, Colorado, Idaho, Nevada, Oregon, Texas, Utah, Washington, and Wyoming, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ian Muir, Manager—Domestic Traffic, Continental Grain Co., 277 Park Avenue, New York, N.Y. 10017. Send protests to: District Supervisor, Paul J. Labane, Interstate Commerce Commission, 2602 First Avenue North, Billings, Mont. 59101.

No. MC 143482 (Sub-No. 1TA), filed September 13, 1977. Applicant: THOMAS D. SHOUP, R.D. 1, Strattanville, Pa. 16258. Applicant's representative: Pope and Pope, 10 Grant Street, Clarion, Pa. 16214. Authority sought to oerrate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Coal*, in bulk, in dump vehicles, from points in Clarion Township, Clarion County, Pa., and points in Strattanville Borough, Clarion County, Pa., to Niagara Mohawk at Dunkirk, Chautauqua County, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Clacial Minerals, Inc., 8 South Eighth Avenue, Clarion, Pa. 16214. Send protests to: Richard C. Gobbell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, Pittsburgh, Pa. 15222.

No. MC 143660TA, filed August 30, 1977. Applicant: CENTURY SERVICES, INC., Suite 852, American Security Bank Building, 1314 South King Street, Honolulu, Hawaii 96814. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, new household appliances, and new household articles*, restricted to home delivery service, for the account of J. C. Penney Co., Inc., from Langhorne, Pa., to points in Atlantic, Bergen, Burlington, Camden, Cumberland, Essex, Gloucester, Hudson, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union, and Warren Counties, N.J., and New Castle County, Del., Cecil and Harford Counties, Md., under a continuing contract, or contracts, with J. C. Penney Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. C. Penney Co., Inc., Bucks County Business Park, 905 Wheeler Way, Langhorne, Pa. 19047. Send protests to: A. J. Rodriguez, District Supervisor, 211 Main, Suite 500, San Francisco, Calif. 94105.

No. MC 143697TA, filed September 12, 1977. Applicant: NORTH JERSEY TANK LINES, INC., P.O. Box 119, Wyckoff, N.J. 07481. Applicant's representative: Robert DeKroyft, 201 Bloomfield Avenue, Verona, N.J. 07044. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Corn products and blends thereof, fish oil, and vegetable oil*, in bulk, in tank vehicles, between Bayway (Elizabeth), N.J., on the one hand, and, on the other, points in Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Maryland, Virginia, and Washington, D.C., for 180 days. Supporting shipper(s): Archer Daniels Midland Co., P.O. Box 1470, 4666 Faries Parkway, Decatur, Ill. 62525. Send protests to: Joel Morrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Newark, N.J. 07102.

No. MC 143716TA, filed September 12, 1977. Applicant: GILLESPIE TRUCKING CO., Rural Route 1, Clifton, Ill. 60927. Applicant's representative: Edward D. McNamara, Jr., 907 South Fourth Street, Springfield, Ill. 62703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heat transfer products and supplies* used in the manufacture of heat transfer products and supplies for the crating, palletting, and packaging of heat transfer products, between the plantsites of Young Radiator Co. at Matoon, Ill., on the one hand, and on the other, points in the United States excluding Alaska and Hawaii, for 180 days. Supporting shipper(s): Young Radiator Co., Burl Bauer, Plant Manager, 120 North 14th, Matoon, Ill. 61938. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, room 1386, Chicago, Ill. 60604.

By the Commission,

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc.77-29146 Filed 10-3-77;8:45 am]

[7035-01]

[Ex Parte No. 343]

NATIONWIDE INCREASED FREIGHT RATES AND CHARGES—1977

Authority To File Master Tariff

By petition and verified statements filed September 26, 1977, the railroads listed in Appendix I of the petition, and certain water and motor carriers having joint rates with the Appendix I railroads, request the Commission to institute an investigation into the adequacy of freight rates and charges of all railroad common carriers within the United States. Petitioners request that all such railroad common carriers be made respondents in such investigation. Petitioners ask that the Commission authorize and permit increases in freight rates and charges from, to, and within all territories of 5 percent, effective November 30, 1977, to offset labor cost increases and increases in the cost of materials, supplies, and certain other items, subject to exceptions and holddowns set forth in Appendix II of the petition.

Petitioners seek permission to make the proposed increases effective November 30, 1977, subject to the condition that refunds shall be made in the event that, after any investigation that the Commission deems necessary, no increase or a lesser increase that that requested is authorized. Petitioners also seek entry of an order modifying all outstanding Commission orders to the extent necessary to enable the railroads to file and make effective the proposed increased rates and charges. Such order is also requested to allow the entry of appropriate orders under Sections 4 and 6 of the Interstate Commerce Act.

The petitioners have filed and served 30 verified statements constituting their evidential case pursuant to the requirements set forth in Procedures Governing Rail Carriers General Increase Proceedings, 49 CFR 1102, including certain financial data suggested in Appendix B of the report and order in *Ex Parte No. 281*, Increased Freight Rates and Charges, 1972, 341 I.C.C. 288. Petitioners have also submitted data of the type called for in *Ex Parte No. 290* (Sub-No. 1), Procedures—Rail Car General Increase Proceedings, 349 I.C.C. 22, namely detailed information on estimated revenues which would have been obtained had the last authorized increase been fully applied, and the actual total increase in revenues realized by application of the last authorized general increase.

The petitioners have given notice of the petition and have furnished data to the public in compliance with *Ex Parte No. 286*, Notice of Increases in Frt. Rates and Pass. Fares, 349 I.C.C. 741, and with section 5b of the Interstate Commerce Act.

The petitioners have also submitted information of the type called for in *Ex parte No. 55* (Sub-No. 4), revised Guidelines for the Implementation of the National Environmental Policy Act of 1969, 352 I.C.C. 451 and 49 CFR 1108, namely a supplemental evaluation of environmen-

tal considerations with regard to the petitioners' increased rate proposal. The petitioners contend that the requested increases will have no significant adverse effects upon the movement of the traffic or transportation of recyclable commodities by rail. Any person or persons believing that the requested increases, if authorized, would have a significant impact upon the quality of the human environment are invited to comment upon this matter in verified statements authorized to be filed pursuant to this order. Environmental matters and the requirements of the National Environmental Policy Act of 1969 will be fully considered by this Commission in any subsequent action on the merits of the requested general increases.

By Special Permission Order No. 77-5350, served in conjunction with this order, the Commission is authorizing the filing of tariff schedules increasing rates and charges sought in the petition. These tariff schedules are to become effective upon not less than 30 days' notice to the Commission and the general public, subject to protest and possibly suspension as provided by the Interstate Commerce Act. By this Special Permission Order, the Commission is also authorizing the modifying of outstanding orders to the extent necessary to permit this filing.

It is ordered, That all common carriers by railroad be, and they are hereby, made respondents to this proceeding.

It is further ordered, That pursuant to the special permission authority granted in conjunction with this order, the tariff schedules shall be published and filed upon not less than 30 days' notice effective not earlier than November 30, 1977, nor later than December 30, 1977,[1] subject to protest and possible suspension. These schedules are to contain an appropriate refund provision. Verified statements shall be filed on or before October 28, 1977, in accordance with the procedures as outlines in the following paragraph.

It is further ordered, That any person opposing or wishing to comment on the proposed 5-percent increase in rates and charges shall file and serve verified statements,[2] as provided below.

(a) The verified statements shall contain all evidence relevant and material to the issues in this proceeding which the parties desire to have considered by the Commission, as a basis for a decision on the merits. Any submission on asserted environmental impact shall be set forth under an appropriate subheading in order to identify properly such subject matter.

(b) Verified statements may include arguments in support of an affiant's position but such argument shall be set forth in a separate section of the document containing the verified statement. If desired, such argument may be contained in a separate document simultaneously filed and served.

(c) Each verified statement shall be signed in ink by affiant and verified (notarized) in the manner provided by Rule 48 and Form No. 6 of the Commission's General Rules of Practice (see 49 CFR 1100.48 and Appendix B, Form No. 6, to 49 CFR 1100). The post office address of affiant or his counsel shall be shown.

(d) Verified statements and arguments shall be filed and served as follows:

The original and 20 copies of each such document for the use of the Commission shall be adressed to the Secretary, and sent to the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, except that a lesser number of copies may be filed upon showing of good cause. All documents filed with the Commission in this matter shall contain the following notation on the envelope: *Ex parte No. 343.*

One copy shall be served upon the representative of the petitioning railroads, James L. Howe III, Esq., 527 American Railroads Building, 1920 L Street NW., Washington, D.C. 20036, which service shall constitute service upon all respondents. However, all parties able to do so shall serve 20 copies upon the railroads' representative. In all cases, where service is made by mail, the document shall be mailed in time to be received by the respective due dates.

(e) Each verified statement shall contain a certificate of service stating that it has been timely served on opposing parties, as herein provided.

(f) Verified statements and arguments by persons opposed to the proposed increases in rates and charges shall include all matters which they desire the Commission to consider with respect to statutory suspension of the rates pending completion of the investigation, as well as evidence relevant to the ultimate decision.

It is further ordered, That on or before November 4, 1977, the respondents shall file with the Commission and serve upon opposing parties such replies to protests or other pleadings seeking suspension, and rebuttal evidence on the merits of the proceeding as they desire to present. Such evidence shall be in the form and served in the same manner as the opening statements filed in accordance with the regulation published in 49 CFR 1102, except that replies and rebuttal evidence need be served only upon the party (and his counsel if known) to whose evidence the reply or rebuttal is directed. However, replies or rebuttal statements proposing changes in the tariff shall be served on all parties. All such statements shall be furnished to interested parties upon request.

It is further ordered, That the request for fourth-section relief will be considered following the filing of verified statements and replies.

And it is further ordered, That in all other respects the petition be, and it is hereby, denied.

SPECIAL PERMISSION NO. 77-5350

It is ordered, for good cause shown:

1. All railroads, and water and motor carriers to the extent they have joint rates with the railroads, and their tariff-publishing agents, be, and they are hereby, except as otherwise provided herein, authorized to depart from the Commission's tariff publishing rules in Tariff Circular No. 20 (49 CFR 1300), when publishing and filing tariffs, and tariff amendments, to become effective upon not less than 30 days' notice to the Commission and the public but not earlier than November 30, 1977, nor later than December 30, 1977, providing for increased rates and charges as set forth in the petition:

(a) By publishing and filing a master tariff of increased rates and charges, and supplements to the master tariff, providing increases by means of conversion tables of rates and charges, which shall include, and maintain in effect, a refund provision reading as follows:

> In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Interstate Commerce Commission, the carriers will refund the difference between the increase resulting from the application thereof and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission with ____ percent interest.[3]
>
> In the event any increase resulting from the application of this tariff is disapproved by the Commission and no increase is authorized, the carriers will refund the full amount of the increase collected with ____ percent interest.[4]

The master tariff shall be indicated to expire on interstate and foreign commerce with a date not beyond one year after the effective date, which may not be extended or cancelled except upon specific authorization of this Commission, and all relief granted in this order expires with that date. The master tariff must initially contain all provisions for application of the increases (including provisions for no increase, part of the overall proposal) following which (unless suspended) any provisions other than those of a general character may be cancelled and transferred to the particular tariff affected upon a common effective date with appropriate notation to that effect in the master tariff amendment.

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[1] In the event the tariff is not filed prior to October 10, 1977, the due date specified for the filing of protests and verified statements will be extended to a date 20 days prior to the effective date, and the reply date will be correspondingly extended.

[2] Section 15(8)(d) of the Interstate Commerce Act specifically requires the filing of verified complaints seeking suspension of proposed rate changes.

[3] The interest rate to be inserted in the refund provision shall be equal to the average yield (on the date such schedule is filed) of marketable securities of the United States which have a duration of 90 days. See Section 15(8)(e) of the Interstate Commerce Act.

[4] See, footnote 3.

(b) By publication and filing of a connecting link supplement to each tariff to be made subject to the master tariff, connecting such tariffs with the master. Such supplements may be blanket supplements (a common supplement issued to two or more tariffs).

(c) The master tariff and connecting link supplements issued and filed under this order shall not provide for nonapplication on interstate traffic competitive with intrastate traffic between the same points unless the interstate rates and routes are specifically identified in the connecting link supplements.

(d) By publication and filing of tariffs or amendments to tariffs effective concurrently with the master tariffs and upon the same notice which provide specifically increased rates and charges but which do not result in an increase in charges for transportation and other services greater than those specified in the petition, provided all such publication is identified in the tariffs and made subject to a refund clause worded substantially as in paragraph 1(a) above.

(e) By publication of provisions in tariffs or amendments thereto subjecting rates and charges therein to the provisions of the master tariff, subject to the restriction in (c) above.

2. (a) The master tariff, as amended, and all other tariffs and amendments to tariffs, that employ the short-form methods authorized herein shall bear the notation:

Form of publication authorized, I.C.C. permission No. 77-5350.

(b) Tariffs or amendments to tariffs publishing specifically increased rates or charges hereunder shall bear a notation reading:

Publication made in accordance with I.C.C. permission No. 77-5350.

3. Connecting-link supplements authorized herein shall be exempted from the Commission's tariff-publishing rules governing the number of supplements and the volume of supplemental matter permissible.

4. The master tariff filed under this order shall not be amended except to correct errors and to comply with findings and orders of the Commission, except when specifically authorized to do so. The terms of rule 9(e) (40 CFR 1300.9 (e)) are not waived as to supplements to the master tariff.

5. Outstanding orders of the Commission are hereby modified only to the extent necessary to permit the filing of tariff publications containing the proposed increases, and all tariffs publications filed shall be subject to protest and possible suspension and rejection. In that regard, we direct petitioners' attention to our admonitions in prior general increase proceedings concerning maintenance and preservation of existing port relationships. See, for example, Increased Freight Rates and Charges, 1972, 341 I.C.C. 288, 336, and Increased Freight Rates, 1970 and 1971, 339 I.C.C. 125, 188. The rate increase table on grain shall progress in one-half cent increments.

It is further ordered, That future orders and notices of the Commission in this proceeding will be sent only to those participating as herein provided, and those interested persons who specifically request to be included on the service list.

And it is further ordered, That notice of this order be given by serving a copy thereof on each party to the proceedings in *Ex parte No. 336*, to the Governor and public utility regulatory body of each State, the Environmental Protection Agency, the Special Assistant to the President for Consumer Affairs, and by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register for publication in the FEDERAL REGISTER.

Decided September 29, 1977.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-29147 Filed 10-3-77;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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[6320–01]

1

CIVIL AERONAUTICS BOARD.

[MA–56 amending M–61]

SEPTEMBER 27, 1977.

Notice of addition of item to the September 29, 1977 meeting agenda.

TIME AND DATE: 2 p.m., September 29, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington D.C. 20428.

SUBJECT: Dockets 31232, 31234, 31235, 31246, 31247, 31285, and 31305, Complaints of National Air Carrier Association, Brendan Tours, Inc., Charter Travel Corp., The Educational Cooperative, and Laker Airways Ltd. against Tariffs of Pan American World Airways, Inc., Trans World Airlines, Inc., British Airways, and Air India Proposing Standby, Budget, and Super-Apex Fares over the North Atlantic.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202–673–5068.

SUPPLEMENTARY INFORMATION: In order to discuss the President's disapproval on September 26, 1977, of the Board's action suspending passenger fares in this matter, the following Members have voted that agency business requires the addition of this item to the agenda of its September 29, 1977, meeting and that no earlier announcement of this addition was possible.

Chairman Alfred E. Kahn, Vice-Chairman Richard J. O'Melia, Member G. Joseph Minetti, Member Elizabeth E. Bailey.

[S–1497–77 Filed 9–30–77;9:16 am]

[6320–01]

2

[MA–55 amending M–61]

CIVIL AERONAUTICS BOARD.

Notice of addition of items to the September 29, 1977 meeting agenda.

TIME AND DATE: 2 p.m., September 29, 1977.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 2a. Dockets 31302 and 31303, Ozark's proposal to reduce fares for multistop service (Memo No. 7262–E, BFR).

2b. Proposed Fare Increase of Aloha and Hawaiian Airlines (Memo No. 7371–A, BFR).

12a. Docket 28807, Petition for extension of time in *Trans International Airlines, Inc., Enforcement Proceeding* (Memo No. 7339–A, OGC).

12b. Docket 30746, Discretionary review on Board's initiative of the decision of the Director, BOE, declining to institute an enforcement proceeding in the complaint of *LACO Travel Service* v. *Air Travel Conference of America* (Memo No. 7456, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202–673–5068.

SUPPLEMENTARY INFORMATION: At the meeting of September 27, 1977, the Board instructed the staff to write an order in the matter of Ozark's proposal to reduce fares for multistop service, Dockets 31302 and 31303. If the Board desires to suspend the tariff pending investigation, it must act before October 1, 1977, or lose the authority to do so under section 1002(g) of the Federal Aviation Act. Accordingly, the following members voted that agency business requires the addition of this item to the agenda of September 29, 1977, and that no earlier announcement was possible:

Chairman Alfred E. Kahn, Vice Chairman Richard J. O'Melia, Member, G. Joseph Minetti, Member, Elizabeth E. Bailey.

Because of other business the staff was unable to forward to the Board the recommendation concerning Aloha and Hawaiian Airlines' fare increase. If the Board desires to suspend the tariff pending investigation, then it must act before October 1, 1977, or lose the authority to do so under section 1002(g) of the Federal Aviation Act. The Board must make a determination concerning a petition in the *Trans International Airlines, Inc., Enforcement Proceeding*, Docket 28807, by September 29, 1977, whether or not to extend the time for certain notice requirements. Also in Docket 30746, *LACO Travel Service* v. *Air Travel Conference of America*, the Board must make a determination befor October 5, 1977, whether or not to review the decision of the Bureau of Enforcement not to institute an enforcement proceeding or, under Rule 205 of the Board's Procedural Regulations, the BOE decision will become that of the Board on October 5, 1977. Therefore, the following Board Members have voted that agency business requires the addition of these items to the September 29, 1977, agenda and that no earlier announcement of these additions was possible:

Chairman Alfred E. Kahn, Vice Chairman Richard J. O'Melia, Member, G. Joseph Minetti, Member, Elizabeth E. Bailey.

[S–1498–77 Filed 9–30–77;9:16 am]

[6351–01]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., October 4, 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

Recommended action on 1.35(g) petitions
CME Application for designation to trade Stud Lumber
Comex Application for designation to trade New Zinc Contract

PORTIONS CLOSED TO THE PUBLIC

Enforcement Matter

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254–6314.

[S–1494–77 Filed 9–29–77;2:35 pm]

[6351-01]

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., October 7, 1977.

PLACE: 8th Floor Conference Room, 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Meeting.

Market Surveillance Meeting.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1495-77 Filed 9-29-77;2:35 pm]

[6570-06]

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (Eastern Time), Tuesday, October 4, 1977.

PLACE: Chairman's Conference Room, No. 5240, on the fifth floor of the Columbia Praza Office Building, 2401 E Street N.W., Washington, D.C. 20506.

STATUS: Part of the meeting will be open to the public, and part will be closed to the public.

MATTERS TO BE CONSIDERED:

PART OPEN TO THE PUBLIC

A proposed Notice for publication in the FEDERAL REGISTER, concerning the impact of the Commission's new investigative and reasonable cause standards on private Title VII litigation.

PART CLOSED TO THE PUBLIC

Litigation Authorization; General Counsel Recommendations: Matters closed to the public under Sec. 1612.13(a) of the Commission's regulations (42 FR 13830, March 14, 1977).

A majority of the entire membership of the Commission determined by recorded vote that Commission business required that this meeting be called for this date, and that no earlier announcement was possible.

In favor of motion: Eleanor Holmes Norton, Chair; Ethel Bent Walsh, Commissioner; Daniel E. Leach, Commissioner.

Opposed: None.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This Notice Issued September 29, 1977.

[S-1496-77 Filed 9-29-77;2:52 pm]

[6715-01]

6

FEDERAL ELECTION COMMISSION.

DATE & TIME: Thursday, October 6, 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—September 22, 1977.
III. Appropriations and budget.
IV. Pending legislation.
V. Random audits—procedures for releasing reports.
VI. Clearinghouse advisory panel—July meeting.
VII. Classification action.
VIII. Liaison with other Federal agencies.
IX. Report on pending litigation.
X. Routine administrative matters.
A. Request for Distribution of draft advisory opinions prior to placing them on the agenda.
B. Other.

PORTIONS CLOSED TO THE PUBLIC

(EXECUTIVE SESSION)

Audit matters.
Compliance.
Personnel.
Foia appeals.

PERSON TO CONTACT FOR INFORMATION:

David Fiske, Press Officer, telephone: 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-1492-77 Filed 9-29-77;2:23 p.m.]

[6720-01]

7

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., October 6, 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:

Application to Increase Accounts of an Insurable Type (Merger); Cancellation of Membership and Insurance—United Savings & Loan Association of Palestine, Palestine, Ill., into Illinois Guarantee Savings & Loan Association, Effingham, Ill.

Branch Office Application—Norwood Federal Savings & Loan Association, Chicago, Ill.

Application to Dissolve the Beltway Land 1976 Trust—Affiliated Capital Corp., Houston, Tex.

Branch Office Application—Citizens Federal Savings & Loan Association of Cleveland, Cleveland, Ohio.

Application for Approval of Management Interlock—The Leavell Co., El Paso, Tex., and El Paso Financial Corp., El Paso, Tex.

Satellite Office Application—Florida Federal Savings & Loan Association, St. Petersburg, Fla.

Consideration of Proposed Satellite Office Amendments.

Branch Office Application—Bell Federal Savings & Loan Association, Chicago, Ill.

EFTS-RSU Application—California Federal Savings & Loan Association, Los Angeles, Calif.

Branch Office Application—Eureka Federal Savings & Loan Association of San Francisco, San Francisco, Calif.

Agency Office Application—Colorado County Federal Savings & Loan Association, Columbus, Tex.

Branch Office Application—County Federal Savings & Loan Association of Westport, Westport, Conn.

Consideration of Association Request for Release and Discharge of Receiver—Northwest Guaranty Savings & Loan Association, Seattle, Wash.

Consideration of Cost-of-Living Adjustment for Bank Retirees.

No. 75, September 28, 1977.

Branch Office Application—Biscayne Federal Savings & Loan Association, Miami, Fla.

Consideration of Amendments Relating to Service Corporations.

[S-1499-77 Filed 9-30-77;9:16 am]

[6720-01]

8

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: At the conclusion of the open meeting to be held at 9:30 a.m., October 6, 1977.

PLACE: 320 First Street NW., Room 630, Washington, D.C.

STATUS: Closed meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall (202-376-3012).

MATTERS TO BE CONSIDERED: Aplication for Permission to Organize a New Federal Association.

No. 76, September 28, 1977.

[S-1500-77 Filed 9-30-77;9:16 am]

[6740-02]

9

FEDERAL POWER COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 48955.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: September 22, 1977, 11:30 a.m.

CHANGE IN MEETING: The following items have been added.

Item No., Docket No., and Company

2. CP77-100, et al., Tenneco Atlantic Pipe Line Co.
3. CI77-412, Phillips Petroleum Corp.

KENNETH F. PLUMB,
Secretary.

[S-1501-77 Filed 9-30-77;9:16 am]

[6740-02]

10

FEDERAL POWER COMMISSION.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. § 332b:

AGENCY HOLDING MEETING: Federal Power Commission.

TIME AND DATE: September 23, 1977, 7:55 p.m.

PLACE: 825 North Capitol Street.

STATUS: Open.

MATTER TO BE CONSIDERED: 1. Docket No. CP77-631, Lo-Vaca Gathering Co.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, Telephone 202-275-4166.

[S-1502-77 Filed 9-30-77;9:16 am]

[7600-01]

11

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 3 p.m., October 5, 1977.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudication process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Lottie Richardson (202-634-7970).

Date: September 29, 1977.

[S-1493-77 Filed 9-29-77;2:35 pm]

[7715-01]

12

POSTAL RATE COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, October 5, 1977.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Draft of Tentative Decision Concerning Meredith Corp. Proposal That Invoices and Billing Statements Enclosed With Second-Class Publications Qualify for Second-Class Rates, Docket No. MC76-2.

2. Draft of Tentative Decision Concerning Proposals (1) to Admit Nonidenticals as Bulk Third-Class Mail and (2) to Allow Matter Reproduced by Typewriting or Handwriting to be Mailed at Third-Class Rates, Docket No. MC76-3.

Meeting closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION:

Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone 202-254-5614.

[S-1503-77 Filed 9-30-77;10:37 am]

federal register

TUESDAY, OCTOBER 4, 1977

PART II



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

APPEALS FROM FLOOD ELEVATION DETERMINATIONS

Proposed Base Flood Elevation Determinations for Various Communities

[4210–01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI–3456]

FRANKLINVILLE, CATTARAUGUS COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Village of Franklinville, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Village Clerk's Office, Franklinville N.Y.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor William Hunter, 28 Chestnut Street, Franklinville, 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 the proposed determinations of base flood elevations (100-year flood) for the Village of Franklinville, Cattaraugus County, N.Y., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gates Creek	Upstream corporate limits.	1,618
	4th Ave	1,586
	Route 16	1,578
Ischua Creek	Bakerstand Rd	1,583
	Downstream corporate limits.	1,581

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28479 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3457]

GREAT VALLEY, CATTARAUGUS COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Great Valley, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Post Office, Great Valley, Cattaraugus County, New York.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Joseph F. Ward, Great Valley, 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 the proposed determinations of base flood elevations (100-year flood) for the Town of Great Valley, Cattaraugus County, N.Y., 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 P.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Wrights Creek	Humphrey Rd	1,495
	Route 219	1,448
Great Valley Creek	Upstream corporate limits.	1,510
	Brewer Rd	1,500
	Confluence with Forks Creek.	1,468
	Route 219	1,462
	Confluence with Wrights Creek.	1,445
	Route 219	1,438
	Baltimore & Ohio RR.	1,426
	Route 219	1,422
	Highland Ave	1,406
	Route 219	1,405
	Baltimore & Ohio RR.	1,401
	Route 17, Allegheny Indian Reservation.	1,391

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 77-28480 Filed 10-3-77; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3458]

NIAGARA FALLS, NIAGARA COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Niagara Falls, Niagara County, New York.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the City Hall, Niagara Falls, N.Y. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Honorable Michael C. O'Laughlin, Mayor of Niagara Falls, 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 the proposed determinations of base flood elevations (100-year flood) for the City of Niagara Falls, Niagara County, N.Y. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Gill Creek	Confluence with Niagara River.	563
	Upstream of the first railroad crossing.	565
	Upstream of the second railroad crossing.	569
	Downstream of Buffalo Ave. (Route 384).	570
	Niagara St	571
	Upstream of Walnut Ave.	573
	Pine Ave	573
	Upstream of Hyde Park Dam.	578
	Robbins Dr	578
	Upstream of the footbridge above Porter Rd.	579
	Downstream of the ConRail bridge.	583
	Upstream of the ConRail bridge.	585
	Lockport Rd	585
Cayuga Creek	Confluence with the Little Niagara River.	565
	Buffalo Ave	566
	South Military Rd	568
	Upstream of Lindbergh Ave.	572
	Upstream of Pear Ave.	573
	Cayuga Dr	574
	Corporate limits	574
Bergholtz Creek	Confluence with Cayuga Creek.	574
	93d St	574
	Corporate limits	574

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28481 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3459]

OGDEN, MONROE COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Ogden, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Bulletin Board in the Town Clerk's Office, 409 South Union Street, Spencerport.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Bertil A. Stomquist, Supervisor, 409 South Union Street, Spencerport, N.Y. 14559.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Ogden, Monroe County, N.Y. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Northrup Creek	Town Line Rd.	469
	Downstream Big Ridge Rd.	485
	Downstream side of Nichols St.	568
	Ogden Center Rd.	581
West Branch Northrup Creek.	Corporate limits.	566
	Colby St.	581
Little Black Creek	Route 33	577
	Hutchins Rd.	585
	Route 259	591

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28482 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3460]

OYSTER BAY, NASSAU COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Oyster Bay, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Lobby of the Town Hall, Audrey Avenue, Oyster Bay, N.Y. 11771.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Joseph Colby, Town Supervisor, Town Hall, Audrey Avenue, Oyster Bay, N.Y. 11771.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Oyster Bay, Nassau County, N.Y. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Massapequa Creek	Massapequa Lake	8
	Sunrise Highway	12
	Long Island RR.	12
	Clark St.	18
	Footbridge at Chicago Avenue extended.	19
	Footbridge at Rhode Island Ave. extended.	25
	Footbridge at Walnut St. extended.	34
	Linden St.	36
	Southern State Highway.	38
	Footbridge at 10th St. extended.	41
Tributary No. 1	Confluence with Massapequa Creek.	39
	Footbridge.	40
Tributary No. 2	Confluence with Massapequa Creek.	41
	Bethpage Parkway.	41

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28483 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3461]

ROCHESTER, MONROE COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Rochester, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the lobby in Rochester City Hall, 30 West Broad Street, Rochester, N.Y. 14614.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Thomas P. Ryan, Jr., mayor of Rochester, Rochester City Hall, Room 34, 30 West Broad Street, Rochester, N.Y. 14614.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of Rochester, Monroe County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other

Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Genesee River	Mouth	249
	Stutson St	249
	State Route 104 (Ridge Rd.).	251
	Park Ave	258
	Lyell Ave	397
	Platt St	403
	Andrews St	491
	Broad St	494
	I-490	512
	Clarissa St	514
	Elmwood Ave	517
	Southern corporate limits.	520
Lake Ontario	Lake Ave	251
	Corporate limits at east end of Durand-Eastman Park.	252
Red Creek	Confluence with barge canal.	518
	Hawthorne Dr	518
	East River Rd	519
	Confluence of west branch Red Creek	521
West Branch Red Creek.	Confluence with Red Creek.	521
	Critienden Rd	522
Irondequoit Creek	Eastern corporate limits (Tryon Park Rd.).	256

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28484 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3462]

WELLSVILLE, ALLEGANY COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the village of Wellsville, Allegany 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevations are available for review at the Village Clerk's Office, Wellsville, N.Y. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Robert G. Gardner, 156 North Main Street, Wellsville, N.Y. 14895.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872 Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Wellsville, Allegany County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Genesee River	Northern corporate limits.	1,486
	Upstream of Madison St.	1,494
	Southern corporate limits.	1,499
Dyke Creek	Miller St. (extended)	1,500
	Northern corporate limits.	1,505

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28485 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3463]

POMPEY, ONONDAGA COUNTY, NEW YORK

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the town of Pompey, Onondaga 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Pompey Town Hall, Hamlet of Pompey Center, Route 20 and Pompey Center Road, Pompey, N.Y.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Elwin Chartrand, Supervisor of the Town of Pompey, 3232 Windy Hill Lane, Manlius, N.Y. 13104.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the town of Pompey, Onondaga County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact plain management requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Brown's Gulf	Burke Rd. (upstream).	1,326
	Burke Rd. (downstream).	1,269
	Hennaberry Rd.	1,257
	Brown Gulf Rd. (upstream).	1,199
	Brown Gulf Rd. (downstream).	984
	Watervale Rd.	908
	Confluence with west branch Limestone Creek.	892
Limestone Creek	Corporate limits	998
	Gardner Rd.	998
	Delphi Falls Rd.	955
	East Pompey Hollow Rd.	923
	Fairport Rd.	906
	Tracy Rd.	872
	Woodard Rd.	815
	U.S. Route 20	813
	Hills Rd.	792
	East Road No. 2	776
	Oran Delphi Rd.	771
	Corporate limits	741
West Branch Limestone Creek.	Old Steep Hill Rd.	1,285
	West Road No. 4	1,225
	U.S. Route 20	1,115
	East Road No. 2	910
	Indian Hill Rd.	800
	Broadfield Rd.	744
	Gibbs Rd.	710
	Corporate limits	600

(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, February 24, 1974)).

Issued: August 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28486 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3464]

CHILI, MONROE COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the town of Chili, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Town Hall in the meeting room, 3235 Chili Avenue, Rochester, N.Y.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. James Powers, supervisor of Chili, 3235 Chili Avenue, Rochester, N.Y. 14624.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the town of Chili, Monroe County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricted requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Genesee River	Downstream corporate limits.	520
	Confluence with Little Black Creek.	521
	ConRail	522
	Route 522 (Ballantyne Rd.).	523
	New York State Thruway (I-90).	529
	Upstream corporate limits.	529
Black Creek	Confluence with Black Creek.	523
	Abandoned railroad	525
	B.&O. RR	525
	Route 252 (Archer Rd.).	526
	Humphrey Rd.	528
	Route 251 (Chili-Scottsville Rd.).	530
	Stottle Rd.	534
	Union St.	540
	Stuart Rd.	543
	Route 33A (Buckbee Corners Rd.).	543
	Upstream corporate limits.	544

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28487 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3466]

PARMA, MONROE COUNTY, NEW YORK

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the town of Parma, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Town Hall, 1300 Hilton-Parma, Hilton, N.Y. 14468.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. John F. JenneJahn, supervisor of the town of Parma, 1300 Hilton-Parma, Hilton, N.Y. 14468.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the town of Parma, Monroe County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub.L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub.L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Northrup Creek	Manitou Rd.	329
	Peck Rd.	345
	Dean Rd.	386
	Route 104	433
	Webster Rd.	459
	Town Line Rd.	468
Salmon Creek	Payne Beach Rd.	252
	Wilder Rd.	262
	Hill Rd.	277
West Creek	Bennett Rd.	256
	North Ave.	273
	Collamer Rd.	275
	Town Line Rd.	279
Otis Creek	Hill Rd.	278
	Town Line Rd.	290
East Creek	West Beach Rd.	249
	Lake Ontario Parkway.	249
	Heffer Rd.	253
Brush Creek	Lake Ontario Parkway.	249
	Town Line Rd.	249
Lake Ontario	North Ave.	251
	Payne Beach Rd.	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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28488 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3465]

YOUNGSTOWN, NIAGARA COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the propoed base flood elevations (100-year flood) listed below for selected locations in the village of Youngstown, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Village Office, 240 Lockport Street, Youngstown, N.Y. 14174.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Hon. Watson C. McCalister, mayor of Youngstown, 240 Lockport Street, Youngstown, N.Y. 14174.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the village of Youngstown, Niagara County, N.Y., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Niagara River	Northwest corporate limits.	250
	Hinman St. (extended).	250
	Campbell St. (extended).	253
	Mary's St. (extended).	254
	Southwest corporate limits.	254

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28489 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3467]

BREVARD, N.C.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Brevard, N.C. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 151 West Main, Brevard, N.C.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Charles H. Campbell, City Hall, 151 Main, Brevard, N.C. 28712.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Brevard, N.C., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
French Broad River.	Lambo Creek confluence.	2,106
	Nicholson Creek confluence.	2,109
Davidson River	Upstream of Southern Ry.	2,107
	Upstream of U.S. Highways 64 and 276.	2,128
Unnamed tributary to Davidson River.	Upstream of Ecusta Rd.	2,128
Lamb Creek	Upstream of Southern Ry.	2,112
	Upstream of U.S. Highways 64 and 276.	2,140
	Extraterritorial limit (upstream limit).	2,254
Allison Creek	Upstream of U.S. Highways 64 and 276.	2,132
Lambo Creek	Upstream of Neely Rd.	2,108
	Upstream of Southern Ry.	2,138
Gilbreath Branch	Upstream of Old Hendersonville Highway.	2,113
King Creek	Upstream of Neely Rd.	2,108
	Upstream of Tinsley Rd.	2,178
Long Branch	Southern Ry.	2,152
	Tinsley Rd.	2,221
Singing Branch	Field Rd.	2,119
Jumping Branch	Confluence with French Broad River.	2,120
Nicholson Creek	Country Club Rd.	2,120
	Upstream of Nicholson Creek Rd.	2,120
Norton Creek	Upstream of U.S. Highway 64.	2,135
	Southern Ry.	2,158
	Confluence with Brushy Creek.	2,192
Hunts Branch	Upstream of Secondary Rd.	2,196
Brushy Creek	Upstream of Music Camp Rd.	2,201
Graham Creek	Upstream of second private road crossing.	2,159
Unnamed tributary to the French Broad River.	Upstream of Country Club Rd.	2,135
	Downstream of Illahee Rd.	2,160

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28490 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3468]

HUBBARD, TRUMBULL COUNTY, OHIO

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Hubbard, Trumbull 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Building Inspector's office, Hubbard City Building, 33 West Liberty Street, Hubbard, Ohio 44425.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Arthur U. Magee, Mayor of Hubbard, City Building, 33 West Liberty Street, Hubbard, Ohio 44425.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Hubbard, Trumbull County, Ohio, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mud Run	Confluence with Little Yankee Run.	928
	ConRail	930
	Myron St.	936
	North Main St.	938
	East Water St.	944
	East Liberty St.	953
	Confluence with Tributary No. 3.	991
	South Main St.	1,017
	Upstream corporate limits.	1,026
Little Yankee Run	Dam	923
	ConRail	927
	Confluence with Mud Run.	928

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28491 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3469]

REYNOLDSBURG, FRANKLIN COUNTY, OHIO

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Reynoldsburg, Franklin 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the lobby of City Hall, 7232 Main Street, Reynoldsburg, Ohio.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Richard J. Daugherty, Mayor of Reynoldsburg, City Hall, 7232 Main Street, Reynoldsburg, Ohio 43068.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Reynoldsburg, Franklin County, Ohio in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities.

These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Blacklick Creek	Downstream corporate limits.	832
	Confluence of lateral D.	834
	Livingston Ave. (downstream).	848
	Livingston Ave. (upstream).	850
	Main St. (U.S. Route 40), downstream.	858
	Main St. (U.S. Route 40), upstream.	860
	Confluence of lateral F.	870
	Upstream corporate limits.	882
Lateral D	Confluence with Blacklick Creek.	834
	State Route 256 (downstream).	853
	State Route 256 (upstream).	855
	Corporate limits	871
Lateral K	State Route 256 (downstream).	852
	State Route 256 (upstream).	854
	Grahm Rd.—corporate limits (downstream).	854
	Grahm Rd.—corporate limits (upstream).	855
	Palmer Rd. (downstream).	887
	Palmer Rd. (upstream).	889
	Dam	944
	Main St. (corporate limits).	949
French Run (lateral G).	Confluence with Blacklick Creek.	860
	Confluence of lateral G–A.	867
	Confluence of lateral G–B.	883
	Rodebaugh Rd.—corporate limits (downstream).	906
	Rodebaugh Rd.—corporate limits (upstream).	910
Lateral G–A	Confluence with French Run (lateral G).	867
	Waggoner Rd. (downstream).	879
	Waggoner Rd. (upstream).	881
	Upstream corporate limits.	1,005
Lateral G–B	Confluence with French Run (lateral G).	883
	Waggoner Rd. (downstream).	902
	Waggoner Rd. (upstream).	913
Lateral F	Confluence with Blacklick Creek.	870
	Rodebaugh Rd. (downstream).	882
	Rodebaugh Rd. (upstream).	883
	Corporate limits	898
Lateral N	Corporate limits	825
	Brice Rd. (downstream).	832
	Brice Rd. (upstream).	835

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Deyelopment 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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28492 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3470]

LOUISVILLE, STARK COUNTY, OHIO

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Louisville, Stark 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the lobby of the Louisville City Hall, 215 South Mill Street, Louisville, Ohio.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Stephen Williams, City Manager of Louisville, 215 South Mill Street, Louisville, Ohio 44641.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872; Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Louisville, Stark County, Ohio, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any

existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
East Branch Nimishillen Creek.	State Highway 153	1,105
	North Chapel St	1,107
	Nickelplate Ave	1,111
Tributary No. 1	Chapel St	1,108
	South St	1,130
	Nickelplate Ave	1,131
	Broad St	1,141
	Brookfield St	1,154

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28493 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3471]

CANFIELD, MAHONING COUNTY, OHIO

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Canfield, Mahoning 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Canfield City Building, 104 Lisbon Street, Canfield, Ohio.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Jack C. Eversman, Mayor of Canfield, Canfield City Building, 104 Lisbon Street, Canfield, Ohio 44406.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Canfield, Mahoning County, Ohio, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Sawmill Creek	Corporate limits	1,050
	Camelot Ct	1,065
	Sleepy Hollow Dr	1,080
	Garwood Dr	1,088

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28494 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3472]

CLEVELAND, CUYAHOGA COUNTY, OHIO

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Cleveland, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review in Auditorium "B" of the Department of Public Utilities, 201 Lakeside Avenue, Cleveland.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Ralph J. Perk, 601 Lakeside Avenue, Cleveland.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Cleveland, Cuyahoga County, Ohio, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its

own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Big Creek	Confluence with Cuyahoga River.	591
	Upstream of Jennings Rd.	594
	Upstream of private drive.	605
	Downstream of Pearl Rd.	613
	Upstream of Pearl Rd.	596
	Fulton Rd	627
	Downstream of drop structure.	642
	Upstream of drop structure.	669
	16,500 ft above mouth	679
	18,800 ft above mouth	700
Big Creek Tributary.	I-71	720
	Bellaire Rd	728
	6,900 ft above mouth	732
	Retaining basin	765
	Con Rail	769
	Brookpark Rd	773
Cuyahoga River	Maine Ave	576
	West 3d St	576
	Upstream of Clark Ave.	578
	Norfolk & Western RR. at 34,000 ft above mouth.	586
	Harvard Ave	590
	46,900 ft above mouth	596
Mill Creek	Downstream of Con Rail at 10,400 ft above mouth.	660
	Upstream of Con Rail at 13,400 ft above mouth.	698
	Downstream of waterfall.	713
	Upstream of waterfall.	762
	Upstream of Warner Rd.	777
	Upstream of pedestrian bridge.	789
Doan Brook	Downstream limit of detailed study.	715
	Upstream of East Blvd.	778
	2,400 ft above mouth	788
Euclid Creek	Confluence with Lake Erie.	576
	Upstream of Lake Shore Blvd.	585
	Upstream of I-90	596
	Upstream of Con Rail	609
	Upstream of St. Clair Ave.	612
	11,500 ft above mouth	625

(National Flood Insurance Act of 1969 (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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28495 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3473]

SALLISAW, SEQUOYAH COUNTY, OKLA.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Sallisaw, Sequoyah County, Okla. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Sallisaw, Okla. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor George Glenn, 111 North Elm, Sallisaw, Okla. 74955.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of Sallisaw, Sequoyah County, Okla., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Hog Creek	Upstream of Redwood St.	499
Shiloh Creek	Adams St. (extended)	550
Tributary No. 1	Upstream of Interstate 40 West.	511
	Upstream of U.S. Highway 64 Bridge.	527
	Redwood Avenue Bridge.	535
Tributary No. 3	Upstream of Cedar Street Bridge	516
West branch, Tributary No. 3.	Upstream of Cedar St.	507
Tributary No. 4	Upstream of U.S. Highway 64 (western crossing).	505
	Upstream of U.S. Highway 64 (eastern crossing).	517
	Approximately 100 ft downstream of Redwood Ave.	520
Tributary No. 5	Approximately 100 ft east of Dogwood Street Bridge.	525
Tributary No. 7	Approximately 100 ft downstream of U.S. Highway 59.	545

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28496 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3493]

RINGGOLD, GA.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Ringgold, Ga. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 301 Mountain Street, Ringgold, Ga. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Joseph Barger, City Hall, 301 Mountain Street, Ringgold, Ga. 30736.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of Ringgold, Ga., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
South Chickamauga Creek.	Georgia Highway 2	761
	Georgia Highway 151	760
	U.S. Highways 41 and 76.	756

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28497 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3492]

CAROL STREAM, DU PAGE COUNTY, ILL.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Village of Carol Stream, Du Page 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the lobby of Village Hall, 415 North Gary Avenue, Carol Stream.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Donald M. Swanson, 415 North Gary Avenue, Carol Stream, Ill. 60187.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Village of Carol Stream, Du Page County, Ill. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Klein Creek	Kunn Rd	746
	Downstream corporate limits.	746
	Treatment Plant Rd	746
	Thunderbird Trail	747
	Illini Dr	749
	Low Flow Dam	749
	Lies Rd	754
Thunderbird Trail Creek.	Seminole La	747
	Thunderbird Trail	748
	Blackhawk Dr	752
Winfield Creek	Geneva Rd	747
	Upstream corporate limits.	747

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28498 Filed 10–3–77;8:45 am]

[4210–01].

[24 CFR Part 1917]

[Docket No. FI–3494]

FAIRVIEW HEIGHTS, ILL.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Fairview Heights, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of

local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 10251 Lincoln Trail, Fairview Heights, Ill.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Everett W. Moody, City Hall, 10251 Lincoln Trail, Fairview Heights, Ill. 62208.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Fairview Heights, Ill., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ogles Creek	Private drive bridge	569
	Route 50	568
	St. Clair, west entrance.	565
	St. Clair, east entrance.	560
	Footbridge	557
	Mount Vernon Dr.	556
	Footbridge	555
	Hampton Dr.	553
	Foot bridge	551
	Old Collinsville Rd.	549

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28499 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3495]

GLENDALE HEIGHTS, DU PAGE COUNTY, ILL.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the village of Glendale Heights, Du Page 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the bulletin board in the Village Hall, 1611 Bloomingdale Road, Glendale Heights.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Robert L. Lippert, president of the Village of Glendale Heights, 1611 Bloomingdale Road, Glendale Heights, Ill. 60137.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the village of Glendale Heights, Du Page County, Ill., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevation together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevation will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
East Branch Du Page River.	Downstream corporate limits.	702
	Illinois Central RR.	703
	Upstream corporate limits.	705
Armitage Ditch	Downstream corporate limits.	707
	Wayne Ave.	713
	Jill Ct.	718
	Leslie La.	719
	Armitage Ave.	722
	Glen Ellyn Rd.	726
	Highland Ave.	732
	Winthrop Ave.	733
	Fullerton Ave.	737
	Ardmore Ave.	740
	Lincoln Ave.	751
	Placid Ave.	760
	Upstream corporate limits.	760
Armitage Fork	Confluence with Armitage Ditch.	733
	Pearle Ave.	753
	Bleden Ave.	756
	Upstream corporate limits.	758

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28500 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3496]

GLENWOOD, COOK COUNTY, ILLINOIS

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the village of Glenwood, Cook 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the bulletin board in the lobby of the Village Hall, 13 South Rebecca Street, Glenwood.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Bob Pitrowski, 13 South Rebecca Street, Glenwood, Ill. 60425.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the village of Glenwood, Cook County, Ill., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Thorn Creek	Chessie System railroad bridge.	614
	Chicago Heights-Glenwood Rd.	615
	Chessie System	615
	Corporate limits (upstream).	616
Butterfield Creek	Chicago Heights-Glenwood Rd.	615
	Confluence of Gay Stream.	616
	Halsted St.	618
Deer Creek	C.&E.I., L.&N. RR Bridge:	
	Upstream	620
	Downstream	618
	Young St.	620

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28501 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3497]

VILLA GROVE, ILL.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Villa Grove, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 223 North Main, Villa Grove, Ill. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor John A. Leon, City Hall, 223 North Main, Villa Grove, Ill. 61956.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of Villa Grove, Ill., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Embarrass River	Sycamore Street Bridge.	652
	Harrison Street Bridge.	652
	C. & E.I. RR Bridge.	651
Jordan Slough	Intersection of Ash and Maple Sts.	652
West Ditch	Harrison St.	651
	Walnut St.	651
	Adams St.	651

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28502 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3498]

BLOOMINGTON, MONROE COUNTY, IND.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Bloomington, Monroe County, Ind. 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 qualifed for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Bulletin Board, Municipal Building, 22 East 3d Street, Bloomington, Ind.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Frances X. McCloskey, Box 100, Municipal Building, Bloomington, Ind.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of Bloomington, Monroe County, Ind., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clear Creek	Corporate limits (downstream).	646
	Louisville & Nashville R.R. spur.	649
	Rodgers St.	664
	Gordon Rd.	672
	Winslow Rd.	695
	Access Road	717
	Hillside Dr.	719
	Grimes St.	723
	Footbridge	726
	Dodds St.	730
	First St.	731
West Fork, Clear Creek.	Victor Pike	660
	That Rd.	667
	Gordon Rd.	680
	Rockport Rd.	692
	Quarry railroad spur.	704
	Tapp Rd.	713
	Private Road	726
West Branch, Clear Creek.	Rodgers St.	722
	Fairview St.	737
	Allen St.	741
	2d St.	768
	3d St.	778
Jackson Creek	Corporate limits (downstream).	653
	Rhorer Rd.	681
	Elliston Dr.	691
	Clairmont Pl.	696
	East Rodgers St.	710
	Spicewood Ct. (extended).	723
	Sare Rd.	737
	Moores Pike	747
	College Mall Rd.	764
	Buick-Cadillac Blvd.	772
East Fork, Jackson Creek.	Rhorer Rd.	687
	East Rodgers Rd.	752
	Smith Rd.	786
	Moores Pike	822
East Branch, Jackson Creek.	At confluence	738
	Private road	767
	Moores Pike	775
West Branch, Jackson Creek.	Sare Rd.	739
	Private drive	768
	Hillside Dr.	775
	Brooks La.	785
	Corentar St.	796
Bean Blossom Creek.	Corporate limits (upstream).	589
	State Route 37	587
	Route 37 Bypass	586
	Corporate limits (downstream).	584
Griffy Creek	Route 37 Bypass	586
	Bayle Rd.	588
	State Route 37	595
	U.S. Route 37	598
	Dam	602
Cascade Creek	At confluence with Griffy Creek.	593
	Private drive	670
	do	685
	45 and 64 Bypass	687
Stout Creek	Corporate limits	582
	Acuff Rd.	648

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28503 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3499]

NOBLE COUNTY, IND.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in Noble County, Ind. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Bulletin Board in the Hall of the County Courthouse, Albion, Ind.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Omar Stangland, President of the Board of Commissioners, County Courthouse, Albion, Ind. 46701.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for Noble County, Ind., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Black Creek	State Route 205	856
	County Road 300 south.	870

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Branch Creek	County Road 150 east	892
Carrol Creek	County Road 250 west.	892
	State Route 109	893
Crane Lake Ditch	State Route 109	902
Croft Ditch	County Road 75 west	887
	County Road 150 east	927
	Skinner Lake Rd	934
Diamond Lake Ditch.	County Road 575 west.	879
Dry Run	County Road 800 north.	922
	U.S. Highway 6	933
Winebrenner Ditch	County Road 250 west.	899
	U.S. Highway 33	901
Elkhart River	County Road 1100 west.	862
	County Road 600 west.	876
Forker Creek	County Road 50 west	892
Gilbert Lake Ditch.	County Road 250 south.	888
Henderson Lake Ditch.	County Road 850 north.	924
	State Route 3	956
Huston Ditch	County Road 200 west.	895
	County Road 600 north.	917
Little Cedar Creek.	Downstream county line.	858
	Upstream county line.	865
Little Elkhart Creek.	State Route 3	946
	County Road 1600 north.	959
Long Lake Ditch	County Road 200 north.	890
	County Road 100 north.	893
North branch, Elkhart River.	County Road 450 west.	875
	County Road 800 north.	884
Rimmel Ditch	County Road 300 east.	951
	State Route 8	963
Solomon Creek	County Road 900 west.	886
	County Road 200 north.	897
South branch, Elkhart River.	U.S. Highway 6	877
	River Rd	886
Sparta Lake Ditch	County Road 750 north.	872
	County Road 500 north.	882
Sycamore Creek	County Road 1150 east.	922
	State Route 3	969
Tippecanoe River	County Line Rd	858
	County Road 1050 west.	882
	County Road 470 west.	902
Turkey Creek	County Road 150 north.	874
	Knapp Lake	881
Waterhouse Ditch	Lima Rd	954
	County Road 900 east	955
Willow Creek	State Route 205	856
	County Road 800 east.	871

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28504 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3500]

PANORAMA PARK, SCOTT COUNTY, IOWA

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Panorama Park, Scott County, Iowa. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information in the National Flood Insurance flood-prone areas and the proposed base flood elevations are available for review at the Town Hall, Short Street, Panorama Park.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Honorable Robert Longley, Mayor of Panorama Park, 717 Park Avenue, Panorama Park, Bettendorf, Iowa.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Panorama Park, Scott County, Iowa in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level	Area flooded
Crow Creek	2d St	591	South of 2d St. to corporate limit.

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28505 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3501]

SHIVELY, JEFFERSON COUNTY, KY.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Shively, Jefferson County, Ky.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review in the Entrance Way of City Hall, 3920 Dixie Highway, Shively.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor William S. O'Daniel, P.O. Box 16007, Shively, Ky. 40216.

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 Fedral Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Shively, Jefferson County, Ky. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies establed by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Upper Mill Creek	Rockford La.	443
	Kieffer Rd.	445
	U.S. Highway 31W–60.	449
	Upstream corporate limit.	451
Heatherfield Ditch	Cottage La.	449
	Crums La.	449
	Devron Dr.	449
City Park Ditch	Park Rd.	448
	Matheis La.	449
	Appleton La.	450

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28506 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3502]

UNINCORPORATED AREAS OF IBERIA PARISH, LA.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the unincorporated areas of Iberia Parish, La. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the Police Jury Office of Iberia Parish, New Iberia, La. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify president of the Police Jury Errol A. Romero, P.O. Box 970, New Iberia, La. 70560.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the unincorporated areas of Iberia Parish, La., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Rodere Canal	Downstream of Curits La.	10
Peebles Coulee	Approximately 0.47 mi upstream from U.S. Highway 90.	11
	Approximately 400 ft downstream from the southern New Iberia corporate limits.	13
Vermilion Bay	Delcambre Canal, downstream of the town of Delcambre.	9
	Wilkins Canal of the confluence of Little Valley Bayou.	10
	Petite Anse Canal at the Avery Island Oil field.	10
	Weeks Bayou at the northern Week Island oil and gas field.	11

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28507 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3503]

PATTERSON, ST. MARY PARISH, LA.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the town of Patterson, St. Mary Parish, La. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Patterson, La. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Fred Allen Mensman, P.O. Box 89, Patterson, La. 70392.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the town of Patterson, St. Mary Parish, La., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lower Atchafalaya River.	Bridge Rd. (extended).	5
Ponding	Intersection of Louisiana St. and Red Cypress Rd.	3
	Intersection of Catherine and Lee Sts.	5

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: August 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28508 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3392]

NORTHFIELD, VERMONT

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the town of Northfield, Vt. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Municipal Building, Main Street, Northfield, Vt. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Robert Dorman, town and village manager, Municipal Building, Main Street, Northfield, Vt. 05663.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the town of Northfield, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Dog River	Route 12A	897
	Stoney Brook Rd.	777
	Kingston Bridge (upstream).	735
	Kingston Bridge (downstream).	733
	Route 12	668
Cox Brook	Queen Post Covered Bridge.	658
	Central Vermont R.R.	654
Union Brook	Pleasant St. (inside Village limits).	733
Sunny Brook	Route 12	853
	Lovers La.	787
	Route 12A	756

(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: September 8, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28509 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3441]

ORONO, PENOBSCOT COUNTY, MAINE

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Orono, Penobscot County, Maine.

These base flood elevations are the basis for flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review on the Bulletin Board at the Town Hall.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should im-

mediately notify Mr. Mark Schnur, Town Manager of Orono, P.O. Box 150, Orono, Maine 04473.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Orono, Penobscot County, Maine in accordnace with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Unnamed stream	Downstream corporate limits.	115
	Forest Ave.	120
	Essex St.	121
Penobscot River	Downstream corporate limits.	46
	Route 178 (extended)	49
	Downstream Ayers Island.	51
	Upstream Ayers Island.	53
	Confluence of Stillwater River.	57
	Penobscot St. (extended)	60
	Maine Central RR.	67
	Upstream corporate limits.	73
Stillwater River	Confluence with Penobscot River.	57
	Maine Central RR.	63
	Orono Dam.	67
	U.S. Route 2.	81
	Riverdale Rd. (extended).	82
	Kell St. (extended)	84
	Upstream corporate limits.	85

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28510 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3442]

EDDINGTON, PENOBSCOT COUNTY, MAINE

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION. Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the Town of Eddington, Penobscot County, Maine.

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the bulletin board in the Town Office, Route 9, Eddington.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Earl Brown, Jr., Town Manager of Eddington, R.D. 1, Box 380, East Holden, Maine 04429.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the Town of Eddington, Penobscot County, Maine in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448, 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Penobscot River	Corporate limits (downstream).	32
	Veazie Dam:	
	Downstream.	34
	Upstream.	44
	Veazie-Orono Town line.	46
	Confluence with Meadow Brook.	50
	Corporate limits (upstream).	50
Chemo Pond	(1)	129
Davis Pond	(1)	199

[1] It should be noted that the flood zones along Chemo Pond and Davis Pond are limited to a narrow band extending upward from the lake shore to elevations 128.6 and 198.6, respectively.

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28511 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3443]

MENOMINEE, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Menominee, Mich. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publica-

tion of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 2511 10th Street, Menominee, Mich.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Harry F. Johnson, City Hall, 2511 10th Street, Menominee, Mich. 49858.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Menominee, Mich., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Green Bay	47th Ave	584
	3d St	584
	Henes Park Rd	584
	39th Ave	584
	Chicago and Northwestern RR.	584
	Harbor Dr	584
	Ogden Rd	584
	U.S. Highway 41	584
Menominee River	Chicago and Northwestern RR.	585
	Hattie St	587
	Scott Paper Co., lower dam (upstream side).	596
	Scott Paper Co., upper dam (upstream side).	610

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28512 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI-3193]

PINCONNING, MICHIGAN

Correction of Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: The notice published on July 28, 1977, at 42 FR 38536 in the FEDERAL REGISTER, and in The Pinconning Journal on July 13, 1977, and July 20, 1977, showing the flood locations in Pinconning along Pinconning Road Bridge at Taver Beach Road should be corrected to read Pinconning Road Bridge at Tower Beach Road, and Newman Road east of Z mile Road should be corrected to read Newman Road east of 2 Mile Road. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Ben Wilczynski, Pinconning Township Superior, 1480 East Mount Forest Road, Pinconning, Mich. 48650.

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.

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28513 Filed 10-3-77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI-3444]

ST. CLAIR, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of St. Clair, Mich. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, 411 Trumbull Street, St. Clair, Mich. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Raymond Gellein, City Hall, 411 Trumbull Street, St. Clair, Mich. 48079.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of St. Clair, Mich., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
St. Clair River	Brown St	581
Pine River	Port Huron-Detroit RR.	588
	New Fred W. Moore Highway.	595
Jordan Creek	Railroad spur	591
	Standard Oil private drive.	595
	Fred W. Moore Highway.	597
	Adams St	603
	Vine St	606
	Brown St	608

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28514 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3445]

ST. CLAIR, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations 100-year flood listed below for selected locations in the township of St. Clair, Mich. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Township Hall, 1539 South Bartlett Road, St. Clair, Mich. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Robert J. Ellery, township supervisor, Township of St. Clair, Township Hall, 1539 South Bartlett Road, St. Clair, Mich. 48079.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the township of St. Clair, Mich., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pine River	New Fred W. Moore Highway.	595
	Vine St	600
	I-94 westbound	605
	Gratiot Rd	610
	Frith Rd	611
St. Clair River	Yankee Rd	581
	Newman Rd	581
	Davis Rd	582

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28515 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3446]

CHINA, MICH.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the township of China, Mich. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at Township Hall, 4560 Indian Trail Road, Marine City, Mich. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Anthony Pizzo, supervisor, Township of China, Township Hall, 4560 Indian Trail Road, Marine City, Mich. 48039.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the township of China, Mich., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pine River	Old Fred W. Moore Highway.	594
Belle River	King Rd.	591
	Indian Trail	599
	Westrick Rd.	610
	Trail Rd.	616

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28516 Filed 10-3-77;8:45 am.]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3447]

FLOODWOOD, MINN.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the city of Floodwood, Minn. These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the City Office, Highway 73, Floodwood, Minn. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Sanfrid Ruohoniemi, Box 348, Floodwood, Minn. 55736.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the city of Floodwood, Minn., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
St. Louis River	5th Ave. and county State aid Highway 8 Bridge.	1,245
East Savanna River.	Burlington Northern, Inc., railroad bridge.	1,244
	U.S. Highway 2 and county State aid Highway 73 Bridge.	1,244
Floodwood River	Elm St. and county State aid Highway 73 Bridge.	1,245

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28517 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3200]

RULEVILLE, MISS.

Correction of Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Correction of proposed rule.

SUMMARY: The notice published on July 28, 1977, at 42 FR 38541 in the FEDERAL REGISTER, and in The Sunflower County News on July 14, 1977, and July 21, 1977, showing the name of the chief executive officer for Ruleville, should be corrected to read: Any person having knowledge, information or wishing to make a comment on these proposed elevations should immediately notify Mayor Carrol Land, Town Hall, 200 Floyce Street, Ruleville, Miss. 38771.

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.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: August 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28518 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3448]

ST. CHARLES COUNTY, MO.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in St. Charles 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the County Administration Building, 118 North Second Street, St. Charles, Mo. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Judge Charles L. Schwendemann, County Administration Building, 118 North Second Street, St. Charles, Mo. 63301.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-yard flood) for St. Charles County, Mo., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mississippi River	Burlington Northern RR.	437
Missouri River	U.S. Highways 40 and 67.	467
	Burlington Northern RR.	437
Belleau Creek	Plackmeier Dr	532
	U.S. Highway 40	470
	Missouri Highway 79 (new).	448
Dardene Creek	Hennings Rd	490
	State Route N	474
	Cottleville Rd	465
	State Route C	447

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28519 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3449]

ST. LOUIS COUNTY, MO.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at County Government Center, 41 South Central Clayton, Mo. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mr. Gene McNary, County Supervisor, St. Louis Count, County Government Center, 41 South Central, Clayton, Mo. 63105.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for St. Louis County, Mo., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Meramec River	Missouri Pacific RR	438
	Missouri Highway 21	421
	Interstate Highway 55.	419
Mattese Creek	Interstate Highway 55 (upstream side).	459
	Ringer Rd	434
	Yeager Rd	420
Fishpot Creek	Sulphur Springs Rd. (downstream side).	520
	Big Bend Woods Rd.:	
	Upstream side	498
	Downstream side	482
	Vance Rd	433
Tributary 1 to Fishpot Creek.	Oak Rd. (downstream side).	513
	Sulfur Springs Rd. (upstream side).	466
Caulks Creek	Manchester Rd. (downstream side).	630
	Strecker Rd. (crossing near powerline):	
	Upstream side	536
	Downstream side	533
	Shepherd Rd	504
	Kehrs Mill Rd. (upstream side).	490
	Wild Horse Creek Rd.:	
	Upstream side	476
	Downstream side	475
Creve Coeur Creek.	Baxter Rd.:	
	Upstream side	548
	Downstream side	542
	Schoettler Rd.:	
	Upstream side	515
	Downstream side	513
	Conway Rd	495
	Ladue Rd	487
	Olive Street Rd.:	
	Upstream side	472
	Downstream side	470
Smith Creek	Ladue Rd. (downstream side).	492
	Mason Rd.:	
	Upstream side	484
	Downstream side	483
Tributary 1 to Creve Coeur Creek.	Fee Fee Rd. (downstream side).	478
	Bookbinder Dr.:	
	Upstream side	468
	Downstream side	467
	Creve Coeur Mill Rd.	466
Grand Glaize Creek.	East side Manchester city limits.	475
	Braeshire Dr	470
	Dietrich Rd	457
	Mason La	454
	Big Bend Rd	436
Glaize Creek	Weidmann Rd	474
	Manchester Rd.:	
	Upstream side	461
	Downstream side	458

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28520 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3450]

KEARNEY, CLAY COUNTY, MO.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Kearney, Clay 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Kearney, Mo. 64060. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify The Honorable Dennis Watson, Mayor, City of Kearney, City Hall, Kearney, Mo. 64060.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Kearney, Clay County, Mo., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected location are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Clear Creek	At eastern corporate limits.	786
	200 ft downstream of Grove St.	791
	200 ft upstream of Grove St.	793
	200 ft downstream of Interstate 35.	797
	200 ft upstream of Interstate 35.	800
	At State Highway 33	803
	At western corporate limits.	804

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28521 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3451]

OLIVETTE, ST. LOUIS COUNTY, MO.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Olivette, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall, Olivette, Mo. Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Robert I. Bean, 9473 Olivette Boulevard, Olivette, Mo. 63132.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–2755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Olivette, St. Louis County, Mo., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
River Des Peres	Arrowhead Dr, (extended).	558
	Upstream of Dielman Road Bridge.	587

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28522 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3452]

OLEAN, CATTARAUGUS COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Olean, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the display table, City Clerk's Office, Municipal Building, Olean.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor William Smith, Olean Municipal Building, Olean, N.Y. 14760.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator; Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Olean, Cattaraugus County, New York in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Allegheny River	Downstream corporate limits.	1,422
	South Union St.	1,425
	Upstream corporate limits.	1,427
Olean Creek	ConRail and State St.	1,426
	Main St.	1,428
	Route 17	1,432
	Upstream corporate limits.	1,432
Kings Brook	Route 417	1,423
	Griffin St.	1,426
	ConRail	1,434
	Brook St.	1,449
Two Mile Creek	North 28th St.	1,413
	North 24th St.	1,414
	Buffalo St.	1,418
	Johnson St.	1,420
	Route 17	1,422
	Homer St.	1,427

(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 16, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77–28523 Filed 10–3–77;8:45 am]

[4210–01]

[24 CFR Part 1917]

[Docket No. FI–3146]

UNIVERSITY CITY, ST. LOUIS COUNTY, MO.

Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of University City, St. Louis County, Mo. Due to recent engineering analysis, this notice revises the proposed determinations of base flood elevations published in 42 FR 38542 on July 28, 1977, and in the *Clayton Citizen* published on July 20, 1977 and July 27, 1977, and hence supersedes those notices.

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Planning and Development Department, City Hall, 4th Floor, 6801 Delmar, University City, Mo. 63130.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify the Honorable Nathan B. Kaufman, Mayor, City of University City, City Hall, 6801 Delmar, University City, Mo. 63130.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard W. 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: Proposed flood elevations (100-year flood) are listed below for selected locations in the City of University City, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4 (a)).

These base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year Flood Elevations are:

Source of Flooding	Location	Elevation in feet, national geodetic vertical datum
River Des Peres	Downstream face of Pennsylvania Ave.	502
	Downstream face of Vernon Ave.	507
	Downstream face of footbridge.	508
	Downstream face of Purdue Ave.	511
	Downstream face of Midland Blvd.	515
	Downstream face of Shaftesbury Bridge.	520
	Downstream face of Hanley Rd.	521
	Downstream face of North and South Blvd.	524
	Downstream face of Olive Blvd.	534
	At the confluence with Southwest branch.	538
	At the downstream face of 82d Blvd.	540
	At the downstream face of Appelton Dr.	545
	At the downstream face of Kempland Pl.	549

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Northeast branch of River Des Peres.	At the downstream face of Kingsland Ave.	502
	At the downstream face of Julian Ave.	507
	At the downstream face of Raymond Ave.	512
Northwest branch of River Des Peres.	Downstream face of Canton Ave.	534
	At the downstream face of footbridge at Wayne Ave.	537
	At the downstream face of culvert outlet.	551
Southwest branch of River Des Peres.	At the culvert inlet	539
	600 ft upstream from the culvert inlet.	540
	At the downstream face of McKnight Rd.	553
Southwest branch of River Des Peres.	At the upstream face of McKnight Rd.	559
	At the downstream face of Spoon Dr.	565
	At the upstream face of Spoon Dr.	573

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28524 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3453]

AUBURN, CAYUGA COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Auburn, 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review on the Bulletin Board, in the City Hall, 24 South Street, Auburn.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify Mayor Paul Lattimore, City Hall, 24 South Street, Auburn, N.Y. 13021.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Auburn, Cayuga County, N.Y., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Owasco Outlet	Canoga St.	559
	Aurelius St.	585
	Division St.	626
	Washington St.	649
	State St.	661
	Route 5 and 20 arterial.	666
	North St.	667
	Lake Ave.	690
	State Dam (downstream).	704
	State Dam (upstream).	716
Hunter Brook	Con Rail.	667
	McIntosh Rd.	674
	Schwartz Rd.	679
	Grant Ave.	686
	Franklin St. (downstream).	711
	Herman Ave.	726
	Marvine Ave.	742
	Upstream corporate limits.	764
Hunter Brook Tributary.	Grant Ave.	704
	Prospect St.	724
	Upstream corporate limit.	760
Cold Spring Brook	Downstream corporate limit.	560
	Division St.	574
	Old railroad grade.	588

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28525 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3454]

BUFFALO, ERIE COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Buffalo, Erie 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at the lobby of City Hall, 11 Niagara Square, Buffalo, N.Y. 14202.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable Stanley Makowski, Mayor of Buffalo, Room 201, City Hall, 11 Niagara Square, Buffalo, N.Y. 14202.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or toll free line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base flood elevations (100-year flood) for the City of Buffalo, Erie County, N.Y. in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected location are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Buffalo River	Mouth of the Buffalo River.	581
	Bailey Ave	583
	Seneca St	584
	Con Rail	587
	South Ogden Rd	591
Cazenovia Creek	Confluence with Buffalo River.	582
	Bailey Ave	583
	Southside Parkway	584
	Stevenson St	586
	Cazenovia St	587
	Cavenovia Parkway	594
Scajaquada Creek	Exit ramp Route 90	571
	Southbound to Route 198, New York State thruway Route 90.	578
	Exit ramp, Route 198 northbound to Route 90.	581
	Niagara St	582
	Entrance ramp, Route 198 eastbound.	582
	West Ave	583
	Grant St	585
	Elmwood Ave	587
	Delaware Ave. ramp	588
	Private road	588

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28526 Filed 10-3-77;8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-3455]

DUNKIRK, CHAUTAUQUA COUNTY, N.Y.

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations (100-year flood) listed below for selected locations in the City of Dunkirk, Chautauqua 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).

DATES: The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations are available for review at City Hall on the bulletin board, 342 Central Avenue, Dunkirk, N.Y.

Any person having knowledge, information, or wishing to make a comment on these proposed elevations should immediately notify the Honorable William Smyder, City Hall, 342 Central Avenue, Dunkirk, 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 the proposed determinations of base flood elevations (100-year flood) for the City of Dunkirk, Chautauqua County, N.Y., in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917.

These elevations together with the flood plain management measures required by § 1910.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

The proposed 100-year flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tributary of Crooked Brook.	Circular culvert	679
	New York State Thruway.	678
	Circular culvert	666
	Central Ave	661
	Corporate limits	640
	Corporate limits	630
	Culvert	625
	Brigham Rd	618
	Willow Rd	614
	Box culvert	606
	Confluence of unnamed tributary.	598
	Norfolk-Western RR	597
	Penn Central RR	589
	Circular culvert	587
	Confluence of Crooked Brook.	586
Crooked Brook	Limit of detailed study.	650
	Confluence of unnamed tributary.	635
	Central Ave	633
	Howard Avenue	630
	Western RR	628
	Lucas Ave	623
	Arch culvert	618
	Arch culvert	614
	Sixth St. West	606
	Woodrow Ave	664
	West 5th St	600
	Brigham Rd	595
	Penn Central RR	592
	Bridge (wood and steel).	588
	Lake Shore Dr	585
	Drive West	580

(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 26, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-28527 Filed 10-3-77;8:45 am]

federal register

TUESDAY, OCTOBER 4, 1977

PART III



FEDERAL ENERGY ADMINISTRATION

■

ENERGY CONSERVATION PROGRAM FOR COMPLIANCES

Test Procedures for Water Heaters

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 430—ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Test Procedures for Water Heaters

AGENCY: Federal Energy Administration.

ACTION: Final rule.

SUMMARY: This rule prescribes final test procedures for water heaters. Appliance test procedures are one element of the appliance energy efficiency program required by the Energy Policy and Conservation Act.

EFFECTIVE DATE: November 8, 1977.

FOR FURTHER INFORMATION CONTACT:

James A. Smith (Office of Conservation), Room 307 Old Post Office Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461 (202-566-4635).

Jim Merna (Media Relations), Room 3104 Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461 (202-566-9833).

Robert D. R. de Sugny (Office of the General Counsel), Room 5116 Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461 (202-566-9750 or 202-566-9380).

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Energy Administration (FEA) hereby amends Part 430, Chapter II of Title 10, Code of Federal Regulations, in order to prescribe test procedures for water heaters pursuant to section 323 (42 U.S.C. 6293) of the Energy Policy and Conservation Act (Pub. L. 94-163). Water heater test procedures were proposed by notice issued April 21, 1977 (42 FR 21576, April 27, 1977), and a public hearing on the proposed test procedures was held on June 13, 1977.

By notice issued May 24, 1977 (42 FR 27896, June 1, 1977), FEA established Subparts A and B of Part 430, Chapter II of Title 10, Code of Federal Regulations. Certain definitions and general provisions applicable to the energy conservation program for appliances have been promulgated in Subpart A. Final test procedures for room air conditioners, dishwashers, television sets, clothes dryers, electric refrigerators, freezers, and electric refrigerator-freezers, have been prescribed in Subpart B and the final test procedure for clothes washers has been issued today by separate notice. Several other test procedures have been proposed for inclusion in Subpart B and FEA has also proposed a Subpart C for appliance energy efficiency improvement targets. An outline of the provisions of Part 430 which have so far been established, including provisions in today's notice, is as follows:

Subpart A—General Provisions

Sec.
430.1 Purpose and scope.
430.2 Definitions.

Subpart B—Test Procedures

430.21 Purpose of scope.
430.22 Test procedures for measures of energy consumption.
(a) Refrigerators and refrigerator-freezers.
(b) Freezers.
(c) Dishwashers.
(d) Clothes dryers.
(e) Water heaters.
(f) Room air conditioners.
* * * * *
(h) Television sets.
* * * * *
(j) Clothes washers.
430.23 Units to be tested [reserved].
430.24 Representations regarding measures of energy consumption.
(a) Refrigerators and refrigerator-freezers.
(b) Freezers.
(c) Dishwashers.
(d) Clothes dryers.
(e) Water heaters.
(f) Room air conditioners.
* * * * *
(h) Television sets.
* * * * *
(j) Clothes washers.

Appendices to Subpart B

Appendix A1—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-freezers.
Appendix B—Uniform Test Method for Measuring the Energy Consumption of Freezers.
Appendix C—Uniform Test Method for Measuring the Energy Consumption of Dishwashers.
Appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers.
Appendix E—Uniform Test Method for Measuring the Energy Consumption of Water Heaters.
Appendix F—Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners.
* * * * *
Appendix H—Uniform Test Method for Measuring the Energy Consumption of Television Sets.
* * * * *
Appendix J—Uniform Test Method for Measuring the Energy Consumption of Clothes Washers.

B. Discussion of Comments

Comments were received from industry, consumers, and both Federal and State agencies. Those comments which were directly concerned with the labeling program under section 324 of the Act were forwarded to the Federal Trade Commission for consideration in developing labeling rules applicable to water heaters and they are not addressed here.

The following is a discussion of the issues raised by those comments which pertained to the technical aspects of the proposed water heater test procedures. The comments have been analyzed by topic, rather than source, since in many cases the same or similar comments were received from more than one person.

1. The burden of testing

Both the electric water heater manufacturing industry and the oil water heater manufacturing industry commented that the proposed test procedure was unduly burdensome, however, their objections were based on different grounds.

The basis of the electric water heater industry's objection was that testing costs would be prohibitive due to the extremely large number of basic models they would be considered to manufacture under the test procedure's proposed definition of basic model. That definition categorized units as different basic models not only if they differed in factors such as tank capacity and insulation, but also if they differed in heater element wattage or voltage ratings. As a consequence, one manufacturer commented that he theoretically offered 20,000 basic models. Another manufacturing firm stated that 144 different electrical input configurations are available for each of its electric water heater tank sizes.

FEA finds that the test procedure, as proposed, would prove unduly burdensome for manufacturers of electric water heaters with immersed heating elements in view of the large number of basic models that would have to be tested and the attendant high cost of testing. As a result, FEA has made changes to the proposed test procedure which are designed to reduce the burden of testing for manufacturers of electric water heaters with immersed heating elements. The changes are based on the fact noted at the hearing and in the comments that the electrical characteristics of an electric water heater with immersed heating elements have a minimal effect on efficiency for many purposes of the test procedure. It was therefore feasible to eliminate the distinction between units made on the basis of electrical characteristics. This reduces the number of basic models that most manufacturers would be considered to produce to twenty according to testimony received at the hearing.

As a consequence, several important changes in the test procedure have been made. First, the definition of a water heater basic model was revised to exclude immersed heating elements from consideration. Second, the standby loss test for electric water heaters with immersed heating elements was revised to require the installation of "standardized" heating elements in the water heaters to be tested. Third, the hot water supply rating test and the recovery rate calculation were deleted from the test procedure. Finally, the method for determining the power input for electric water heaters with immersed heating elements was changed. Each of these changes is discussed in detail in other sections of the preamble.

The oil water heater manufacturing industry also commented that the test procedure was burdensome as applied to them and they requested to be exempted from testing. They based their request on the fact that they represent only one percent of water heater sales and the

claim that their costs of testing would be higher than for manufacturers of other types of water heaters. The oil water heater manufacturing industry presented a cost analysis to demonstrate how the costs of testing would result in a much higher per unit cost increase for water heaters produced by a small manufacturer of oil water heaters with small production runs than for a large manufacturer of electric water heaters with large production runs. Thus, it was claimed, the much greater increase in price due to testing costs of oil water heaters over gas and electric water heaters would price the oil water heaters outside of the water heater market and lead to the demise of the oil water heater manufacturing industry.

FEA finds that insufficient evidence has been produced by the oil water heater manufacturing industry to establish grounds for excluding oil water heaters from the water heater test procedure. The cost analysis presented is a comparison of hypothetical cases. No evidence was presented to indicate that these hypothetical cases are representative of industry-wide conditions or that the costs would be any different for a small electric water heater manufacturer. The sampling plan used in the cost analysis was not the sampling plan which appeared in the proposed test procedure and the assumption was made that each manufacturer would test his own units even though independent testing laboratories could be utilized. FEA rejects the recommendation that oil water heaters be excluded from the water heater test procedure at this time but may reconsider its position upon the submission of sufficient evidence that the test procedure is unduly burdensome or significantly more burdensome to oil water heater manufacturers as compared to similar sized manufacturers of other types of water heaters.

2. FLUE REQUIREMENTS

A comment made was that a specification is needed for the attachment of a flue pipe extension to gas or oil water heaters having horizontal vent outlets. FEA concurs. The flue requirement specification in the proposed test procedure inadvertently addressed only water heaters with vertical vent outlets. Section 2.2 of Appendix E has been revised to incorporate a specification for attaching a flue pipe to a water heater with a horizontal vent outlet.

Another comment made was that the test procedure should require that a direct vent water heater be set up as specified in the manufacturer's instructions that accompany the water heater. FEA concurs with this comment with the proviso that the length of vertical flue pipe attached to the water heater must not be greater than the specified five foot length. Section 2.2 of Appendix E has been revised to incorporate this specification.

A third comment suggested the use of a longer flue pipe extension in the test procedure to better represent actual conditions of gas and oil water heater installation in the home. While it would be more representative of field conditions to use a longer length of flue pipe for testing water heaters, e.g., 15 feet instead of the specified 5 feet, the physical limitations of the manufacturer's test laboratories might make such a requirement unduly burdensome. FEA has therefore not adopted this suggestion.

3. FUEL HEATING VALUE

Many comments were directed toward Section 2.4 of Appendix E, "Energy Supply." Most of these comments concerned the heating values assigned to gas and oil fuels. One such comment was a recommendation that a manufacturer of oil water heaters be permitted to conduct testing either by using fuel oil with a presumably certified heating value of 138,000 Btu per gallon or by determining the actual heating value of the fuel oil used in the test. FEA has assumed that the figure 138,000 cited in the comment above was a typographical error in the comment and was supposed to be 138,500, the heating value of fuel oil in Btu per gallon cited in the proposed test procedure. Another comment was a recommendation that the heating value of natural gas and propane should be designated as approximate net values. A comment was also made that specifying a heating value for natural gas of 1025 Btu per standard cubic foot is unrealistic since the heating value of the natural gas supplied by local utilities varies with geographic location. A manufacturing firm implied that the requirement that the actual heating value of the natural gas used in the test be determined with an error no greater than one percent is unduly burdensome. This firm stated that it does not have the instrumentation available at its water heater manufacturing plants to measure the heating value of the natural gas supplied by the local utilities. It has been this firm's practice to rely on the local utility to furnish on an "as needed" basis the heating value of the natural gas supplied. The firm recommended allowing the use of the gas supplied by the local utility for testing on the condition that is identified by the utility as "natural gas." The firm also stated that its comments concerning the determination of the heating value of natural gas apply to propane gas as well. A comment was made that an ERDA report indicated that the heating value of fuel oil supplied by utilities may be as low as 120,000 Btu per gallon. It was also pointed out that FEA did not state what type of test was to be used for determining the heating value of fuel oil. This can have a dramatic impact on the results it was claimed. Finally, a comment recommended that the requirement that natural gas with a heating value of 1025 Btu per standard cubic foot be used in the test be deleted, the reason being that the manufacturers performing the tests would have no control over the gas supplied by the utilities.

The concerns expressed in the comments above fall into two categories: (1) the proposed test procedures specification of exact heating values for gas and oil fuels, and (2) the burden of having to determine the heating value of the fuel used in testing with an error of no greater than one percent.

In the proposed test procedure heating values for gas and oil fuels were inadvertently specified as exact values. The actual heating value of the fuel used in testing need only approximate the value specified for that fuel in the proposed test procedure. Therefore, section 2.4 of Appendix E has been revised to specify approximate heating values for gas and oil fuels.

FEA rejects the recommendations that a standard heating value be assumed for each fuel or that local utilities be relied upon to provide the heating value of the fuel they supply. Fluctuations in the heating value of fuels supplied by utilities do occur as studies have shown. FEA does not have sufficient information on the capability of local utilities to provide accurate and meaningful heating value information on the fuel or fuels they supply to warrant acceptance of this means of determining fuel heating value. On the other hand, FEA accepts the recommendation made at the public hearing that water heater manufacturers be permitted the option of purchasing "bottled" fuel which has had its actual higher heating value determined with an error of no greater than one percent as certified by the supplier. Thus, a manufacturer would have the choice of either purchasing a calorimeter, if one is not already available, to determine the actual heating value of the fuel or fuels supplied by the local utility or purchasing the necessary quantity of "bottled" fuel of a certified heating value. Section 2.4 of Appendix E has been revised to allow for the use of "bottled" gas or a tested oil of a certified heating value in the test procedure.

4. WATER TEMPERATURE RISE AND THERMOSTAT SETTING

Several comments were made which questioned the specification of 90° F. in the test procedure for the temperature rise through which a water heater under test must heat the inlet water. One comment recommend that values of temperature rise be selected on the basis of geographical regions to better reflect actual conditions where water heaters are marketed. In other words, the water heater test procedure should be regionalized to account for different water inlet temperatures which result in different temperature rises in various parts of the country. FEA rejects this recommendation on the basis that it would require water heater manufacturers to conduct many more tests than currently required and it would therefore be unduly burdensome.

Comments were made that the 90° F. temperature rise figure was too high and should be lowered to reflect conditions of operation advocated by FEA, i.e., that consumers should lower the thermostat settings on their water heaters to reduce energy consumption. FEA rejects this recommendation. Water heater thermo-

stats are normally factory-set for gas heaters at 140° F. and at 150° F. for electric water heaters. The fact that these settings may be adjusted both up or down by the installer or the homeowner is irrelevant to the determination of the cost of operation unless field surveys indicate that water heaters in representative use are normally adjusted to a different thermostat setting than at the time of purchase. No such field survey data was presented at the public hearing. Therefore, the test procedure uses the average value of the two common factory settings of water heater thermostats, 145° F., as the best approximation of the typical field water heater thermostat setting. Since, as stated in the proposed test procedure, NBS has determined that the national average inlet water temperature is 55° F., the difference between these two temperatures, 90° F., is used a the water temperature rise in the test procedure.

Further comments questioned FEA's selection of the inlet water temperature and the water heater thermostat setting for the purposes of the test procedure. It is true that these values, 70° F. and 160° F., respectively, do not represent field conditions as described by FEA. However, for some testing facilities, climatic conditions and/or other factors may be such that for all or part of the year tap water temperatures will exceed 55° F. Therefore, if a 55° F. inlet water temperature were to be specified in the test procedure, these facilities would have to purchase additional equipment to cool the available tap water prior to conducting a test. FEA believes that appropriate and comparable results can be obtained and the test procedure can be made less burdensome if water heaters are tested with an inlet water temperature of 70° F. This inlet water temperature can normally be achieved in laboratories throughout the country at any time of year without the need for cooling of the tap water. When the inlet water temperature of 70° F. is coupled with the requirement of a 90° F. water temperature rise, it results in a thermostat setting of 160° F. FEA finds that specifying an inlet water temperature of 70° F. and a water heater thermostat setting of 160° F. makes for a less burdensome test procedure which justifies their use.

5. OIL WATER HEATER DEFINITION

Comments were made that the definition of an oil water heater in the proposed test procedure included oil water heaters predominantly used in commercial and industrial facilities. To exclude commercial and industrial type units and thereby make the types of oil water heaters covered by the test procedures comparable to the types of gas and electric water heaters covered, it was recommended that the value of the maximum energy input rate, 172,500 But per hour in the proposed test procedure, be reduced to 103,875 Btu per hour which equates to an oil consumption rate of 0.75 gallons per hour. It was further recommended that the value of the maximum energy input rate, 172,500 Btu per the proposed definition of an oil water heater be reduced from 50 gallons to 40 gallons for the same reason.

FEA finds that the proposed definition of an oil water heater does cover units which are not normally purchased by individuals for household use. FEA has revised the proposed definition of an oil water heater to specify a maximum energy input rating of 103,875 Btu per hour (which equates to an oil consumption rate of 0.75 gallons per hour) but has not revised the specified maximum tank capacity value, 50 gallons. With the reduction of the maximum specified energy input rate, FEA finds that oil water heaters with 50 gallons tank capacities are purchased by individuals for household use and therefore will be covered by the test procedure.

6. HOT WATER USE RATE

Many comments questioned the daily hot water usage rate of 64.3 gallons per day specified in the test procedure to compute annual costs of operation. Most of these comments stated that this rate is too high to represent national average conditions. The reason for the apparent discrepancy between the hot water usage rate specified by FEA and the studies cited in the comments is that FEA's usage rate is based upon representative conditions of use of the types of water heaters covered by the proposed test procedure. The comments cited national average use rates based on household surveys which includes water usage data from households not serviced by the type of water heaters covered by the proposed test procedures such as apartment dwellings serviced by large commercial water heaters. Including these types of households also lowers the number of persons per household from four, which is used by FEA to determine the daily hot water usage rate, to three, further contributing to a lower usage rate than that used by FEA.

The hot water usage rate of 64.3 gallons per day was arrived at from a survey of 50 gas and 50 electric utility companies for hot water and energy usage data for water heaters. Eighteen of these companies supplied metered data. Data obtained were normalized to a family of four and to a 90° F. temperature rise. The family size of four was taken from Census Bureau data as the average family size. The types of water heaters covered by the proposed test procedure are usually found in the service of single families. The use of a 90° F. temperature rise is explained in the previous section, Water Temperature Rise and Thermostat Setting. When the hot water usage rate of 64.3 gallons per day and the temperature rise of 90° F. are inserted into the water heater test procedure equations along with typical water heater performance parameters of recovery efficiency and standby loss as determined by laboratory tests, the result correlates well with typical home energy usage as determined by the field survey.

Therefore no changes to the proposed test procedure are considered necessary with respect to the national average value of hot water usage rate as used in the calculation of average daily energy consumption.

7. WATER HEATERS NOT COVERED BY THE TEST PROCEDURES

Comments were made that the proposed test procedures do not address solar water heaters, water heater/boiler combinations, or recirculating water heaters. Although the Energy Policy and Conservation Act empowers the Administrator to include other energy sources, at this time only those appliances powered by electricity or fossil fuels are subject to testing. Therefore solar water heater manufacturers are not subject to the Act, however, they may use the present test procedure to provide the consumer with information concerning solar water heater performance if they so choose.

Boiler/water heater combinations are not considered in this test procedure because it is more appropriate to consider such combinations as systems rather than to attempt to consider the water heater and boiler components separately. Since the water heater portion of a boiler/water heater combination is a secondary system of the boiler, FEA finds that it is more appropriate to include boiler/water heater combinations with furnaces. Therefore the boiler/water heater type of appliance will be considered in, and subject to, the test procedure which is currently under development for furnaces.

The recirculating water heater is generally used in large apartment buildings or for other commercial applications such as office buildings where long runs of piping from the water heater to the point of use would result in a long delay period before hot water becomes available at the fixture if a recirculating system were not used. Very few of these systems are sold to the typical consumer and many are custom designed and custom built. Therefore, the inclusion of recirculating systems in the test procedure is not recommended at this time.

8. TEMPERATURE DIFFERENCE BETWEEN STORED WATER AND ROOM TEMPERATURE AS USED IN THE CALCULATIONS

A comment stated that the mean temperature difference between the stored water and room temperature is more likely in the range of 70–80° F. since most water heaters are located indoors. The proposed test procedure specifies that a temperature difference of 90° F. is to be used as the temperature difference between the stored water and the room temperature. Unlike all of the other values specified in this test procedure, this value for temperature difference is a derived value rather than a value determined by empirical data. FEA has no data on typical ambient temperatures where water heaters are installed, however, the assumed value of 90° F., when coupled with a hot water usage rate of 64.3 gallons per day heated through a 90° F. temperature rise, will yield values of calculated energy consumption that agree with actual energy consumption

data for water heaters. A change in this value would necessitate a change in one of the other parameters such as hot water usage rate, water temperature rise, etc., in order to maintain agreement between the energy consumption calculated by use of the test procedure and actual energy consumed in representative use. Therefore, no change to the specified temperature difference between stored water and room temperature is recommended.

9. MEASUREMENT AND CALCULATION OF STANDBY LOSS

Concerning the standby loss test, FEA concurs with the comments that standby loss for electric water heaters with immersed heating elements is virtually independent of energy input rating. Standby loss is a measure of the hot water storage performance of a water heater. This measure is primarily a function of the type and configuration of the tank insulation since most of the heat loss during standby is through the water heater jacket to the air surrounding the water heater. This is particularly true for electric water heaters which do not have flue losses and therefore their only other heat loss is through the inlet and outlet pipes when no heat traps are present. Because of this and because virtually all input energy to the heating elements goes towards heating water by the very nature of their design of having the heating elements in direct contact with the water in the water heater tank, standby loss will be the same for all electric water heaters with immersed heating elements of a given basic model. Therefore, FEA has adopted the recommendation that standby loss tests for electric water heaters with immersed heating elements be performed with the water heaters to be tested equipped with "standardized" heating elements. The procedure for determining standby loss for electric water heaters with immersed heating elements is presented in section 3.4.2 of Appendix E.

A suggestion was made that determining standby loss in terms of the fraction of the heat content of the stored water lost per hour instead of in units of energy lost per hour hides the actual value of standby loss. FEA finds that the determination of standby loss in terms of units of energy lost per hour can be accomplished by additional calculations which utilize the results obtained by the present test procedure. The determination of standby loss in terms of the fraction of the heat content of the stored water above room temperature lost per hour, however, allows the test for standby loss to be run without maintaining an exact 90° F. temperature difference between the stored water and the ambient laboratory room temperature since the test procedure compensates for ambient temperature and will yield the same value of standby loss as long as the ambient room temperature is within the range specified, 65° F. to 85° F. In order to directly determine standby loss in absolute terms of Btu per hour, the test would need to be run under conditions of a constant room temperature of 70° F. with stored water at 160° F. in order to obtain an exact 90° F. temperature difference. Alternatively, the stored water temperature would have to be adjusted depending on the laboratory room temperature at the time of tests.

Thus, the determination of standby loss in terms of the fraction of the heat content of the stored water lost per hour makes for a less burdensome test procedure than the one which would have to be developed if the suggestion that standby loss be determined in terms of units of energy lost per hour were to be adopted. In addition, it allows FTC to label the standby loss in the manner suggested if the FTC deems it appropriate. Therefore, the suggestion has not been adopted.

A comment was made that a calculation be included in the test procedure to determine a cost of operation for a water heater on standby in terms of dollars per month. FEA finds such a cost can be determined from the test results of the current test procedure. Therefore, FTC can adopt this proposal to determine a cost of operation of a water heater on standby as part of their water heater labeling program, if they so choose.

Another comment suggested that a single test be conducted to determine both standby loss and recovery efficiency. The test recommended consists of a 12-hour standby period followed by a draw period repeated enough times to provide acceptable accuracy. It was stated that the standby test proposed may not credit the savings to be expected from an electric ignition system and that recovery during dynamic conditions such as a water draw schedule may be different than recovery from 70° F. to 165° F., as proposed in the static test. Although no testing with intermittent ignition has been conducted by NBS to date, preliminary testing with a reduced pilot input rate has shown energy savings for a 72-hour standby test. The question of accurately predicting an energy savings for electric ignition alone seems to be a moot point since that design option is not considered economically practical unless it is accompanied by the use of a flue damper. In any event, NBS considers the test procedure as proposed to be sufficient to detect energy savings for intermittent ignition systems. FEA concurs with the NBS position. Therefore, this suggestion has not been adopted.

10. MEASUREMENT AND CALCULATION OF RECOVERY EFFICIENCY

A comment noted that a recovery efficiency of 100 percent is assumed for electric water heaters with immersed heating elements in the calculation of standby loss yet a value for the recovery efficiency of an electric water heater with immersed heating elements is calculated in a previous section. This apparent inconsistency results from the different methods used to calculate recovery efficiency and standby loss between the electric and gas or oil fueled heaters.

The recovery efficiency of an electric water heater with immersed heating elements is very near to 100 percent since, as explained in the section on standby loss, an immersed heating element delivers practically 100 percent of the energy input at the point of use to the water. To make a direct measurement of the recovery efficiency of such a water heater would be very difficult. The procedure would require that the temperature of the water in the water heater tank be determined very accurately. The six thermocouple array that is required to be installed in the tank according to section 2.5 for the purpose of measuring water temperature is not sufficient for the purpose of such a test. In fact, attempts made to measure the recovery efficiency of an electric water heater with this thermocouple array could result in values of recovery efficiency greater than 100 percent due to the error introduced by variations in water temperature which exist in the spherical portion at the bottom of the tank. An analysis would have to be made of the geometry of the tank and additional thermocouples would have to be used in order to achieve the accuracy requisite to directly measure recovery efficiency. The requirements of making such a direct measurement would result in a test procedure which would be unduly burdensome for a manufacturer to conduct.

Instead of requiring that the recovery efficiency of an electric water heater with immersed heating elements be determined directly, the test procedure provides for calculating the recovery efficiency as one minus the standby losses during recovery since standby loss is the only energy loss for such water heaters. This indirect method for determining recovery efficiency is more accurate than any direct method of determination which would not be unduly burdensome.

The standby loss measurement procedure is the same for each type of heater. However, the calculation differs in that an assignment of 0.98 for the recovery effciency, E_r*, is made for the electric water heater with immersed heating elements. Since one does not know the exact recovery efficiency for electric water heaters until the standby loss is measured and the standby loss contains a correction based on recovery efficiency, there exists two equations with three unknowns. It therefore becomes necessary to assign a recovery efficiency in the standby loss equation. In the proposed test procedure, an assignment of 1.00 was made. The actual value of the recovery efficiency is more likely in the range of 0.97 to 0.99. Therefore, in order to reduce the error introduced into the standby loss equation for electric water heaters with immersed heating elements, FEA has changed the assigned value for recovery efficiency from 1.00 to 0.98.

One comment proposed that the water heater tank should be preheated for the purposes of performing the recovery efficiency test since oil fueled heaters are affected more by a cold start test than either gas or electric heaters. Elimination of the tank preheating test reduced the test time and the cost of testing. NBS testing has revealed that the cold start

procedure gives test results 2 percent to 3 percent lower than if the tank were preheated for oil fueled water heaters. The preheated tank procedure would credit the recovery test with heat retained in the tank from the preheating of the tank. This does not represent actual field conditions since heat input is not obtained free in actual use. However, the cold start test as proposed also does not represent actual use in the field. In the interest of reducing the time and the costs required to include a tank preheating test in the test procedure, the use of a tank preheating test has not been adopted.

A comment stated that the static tests, without drawing water for measuring recovery efficiency, are not sufficiently accurate for determining the recovery efficiency of gas or oil fueled water heaters. Tests at NBS using a typical withdrawal schedule have shown a good correlation between the static test measurements and calculations compared to actual metered energy consumption for a 16-hour withdrawal schedule. Therefore, no change to the static test procedure has been made.

A comment was made that a calculation be included in the test procedure to determine a cost of operation for a water heater during the recovery stage in terms of dollars per 1000 gallons of hot water delivered per month. Such a cost can be determined from the test results of the current test procedure. Therefore, FTC can adopt this proposal to determine a cost of operation of a water heater on recovery as part of their water heater labeling program, if they so choose.

11. POWER INPUT DETERMINATION

As a result of the change made to the definition of a basic model of a water heater, a method for determining the power input for an electric water heater with immersed heating elements had to be developed. Section 3.2.2 of Appendix E of this subpart presents the method for making this determination. The method does not require that power input measurements be made. The manufacturer's assigned design energy ratings for the immersed heating elements that are installed in a water heater are used to calculate the power input term. Although this means of determining the power input for an electric water heater with immersed heating elements is an approximation of the actual value, the error that may be present will have little bearing on the two measures, recovery efficiency and average daily energy consumption, that use the power input term in their equations, by the nature of the equations themselves. The values determined from these equations are sufficiently insensitive to error in the power input term to justify using an approximation for power input and not requiring that it be directly measured.

12. HOT WATER SUPPLY RATING AND RECOVERY RATE

The hot water supply rating test and the recovery rate determination that were part of the proposed test procedure have been deleted from the test procedure on the basis that, in their present form, they would make the test procedure unduly burdensome for manufacturers of electric water heaters with immersed heater elements to conduct. Unlike standby loss, hot water supply rating and recovery rate determinations are very dependent on the actual wattage and location of the immersed heating elements installed in the water heater, the number of such elements installed, and the configuration of the auxiliary electrical system of the water heater which controls the operation of the heating elements. Testing for hot water supply rating and recovery rate would have to be done for all possible combinations of these factors which goes back to the problems associated with the proposed definition of a basic model of a water heater.

Comments were made that the hot water supply rating of an electric water heater with immersed heating elements could be predicted for all basic models of electric water heaters in much the same way that standby loss could be predicted. No hot water supply rating prediction scheme was presented. Neither was any data submitted from which a hot water supply rating prediction scheme might be developed. Without a hot water supply rating prediction scheme and without test data to verify that a particular prediction scheme is sufficiently accurate, FEA cannot consider making such a modification to the hot water supply rating test at the present time.

In the case of recovery rate, the power input to the water heater must be determined. The current procedure for determining power input for electric water heaters with immersed heating elements is to accept the design value assigned by the manufacturer. Unlike recovery efficiency and average daily energy consumption, recovery rate is sensitive to error in the power input term and the approximations of power input determined in section 3.2.2 would introduce a potentially significant error into the determination of recovery rate which would be unacceptable.

FEA finds that in the absence of a hot water supply rating prediction scheme and a recovery rate prediction scheme, the hot water supply rating test and the recovery rate determination must be deleted from the water heater test procedure at the present time. FEA recognizes that this deletion will eliminate an important measure of water heater performance from the test procedure. FEA also recognizes that without a hot water supply rating, or some other measure of hot water delivery performance, the test procedure leaves a consumer with less than the best information to select a water heater which will satisfy his needs. Therefore, FEA plans to investigate prediction schemes for the determination of hot water supply rating or for the determination of some other measure of hot water delivery performance for water heaters. The goal of this investigation will be to provide consumers with a useful measure of hot water delivery performance for water heaters while not imposing unduly burdensome test requirements on any segment of the water heater industry.

FEA hereby invites the water heater industry and any other interested parties to provide input to FEA concerning this proposed investigation. This investigation will be completed by December 1, 1977. In its present form, nothing in this final test procedure prohibts a manufacturer from making representations concerning the hot water supply rating of any of his water heater products.

13. SYMBOLS USED IN THE TEST PROCEDURE EQUATIONS

Coments were made that the symbols used in the equations of the proposed test procedure exhibited inconsistencies which made interpretation of the equations difficult. Further comments recomended that the symbols used be revised in accordance with standard practices. FEA concurs. The equations of section 4 of Appendix E of this subpart reflect the recommended changes.

14. TESTING CONDITIONS

Comments on section 2.5 of the proposed test procedure pointed out that the requirement that thermocouples be installed along the centerline of the water heater tank may lead to confusion since for many gas and oil water heaters the flue is located at the centerline of the tank. Section 2.5 has been revised to eliminate this potential source of confusion.

In response to a comment concerning the hook-up of the water heater inlet and outlet pipe connections to water supply and delivery pipes, the test procedure has been revised to require a heat trap type of configuration for water heaters with vertical inlet and/or outlet pipe connections.

15. CALCULATIONS OF THE ENERGY FACTOR

The proposed test procedure did not clearly state the appropriate section of Appendix E to be used in the calculation of the energy factor in section 430.22(e). This resulted in misinterpretation of the use of the average daily energy consumption. Section 430.22(e) has been corrected to properly reference the appropriate section of Appendix E.

16. INDIRECT ENERGY CONSUMPTION

A comment was made that the test procedure should account for the increased operating time and energy consumption of a furnace or air conditioner which is caused by gas and oil water heaters. The increased energy consumption arises from the fact that most gas and oil water heaters utilize interior air for combustion and draft maintenance which is then vented out of the house and replaced by the infiltration of exterior air which must then be heated by the furnace or cooled by the air conditioner depending on the season. The loss of interior conditioned air continues even when the water heater is not in the combustion state due to the natural draft of the flue unless the water heater is

equipped with a flue damper which is usually not the case.

FEA is sensitive to such hidden costs of operation and will incorporate them whenever they are of sufficient magnitude to warrant the burden of additional testing designed to measure and quantify such costs.

Secondary costs have been included in the final test procedures for dishwashers and clothes washers, and in the proposed test procedures for dehumidifiers and furnaces, however, FEA has decided not to incorporate these costs in the water heater test procedure at this time. FEA bases its decision on data forwarded by NBS which indicates that the secondary costs represent only 2 percent of the cost of operation of a water heater and that the testing burden to account for such costs would be large. Furthermore, NBS has reported to FEA that the potential dollar savings achieved by the use of a direct vent system, which utilizes exterior air rather then interior air and thereby avoids imposing additional costs on furnaces or air conditioners, is not sufficient to pay for the cost of such devices. Only when direct vent systems are combined with preheating devices do they become economically viable and the test procedure, as currently written, will measure most of the increased efficiency of water heaters so equipped. Therefore there is little justification for modifying the test procedures at this time.

Anyone with information indicating that direct vent systems alone are currently economically justified for water heaters or that the cost associated with the loss of interior conditioned air is greater than 2 percent of the cost of operation of a gas or oil water heater is hereby requested by FEA to submit such information. Should the assumptions on which FEA has based its decision be shown to be incorrect, FEA will consider modifying the water heater test procedure to incorporate the secondary costs of operation.

17. PRIMARY ENERGY LABELING

While a comment suggested primary energy labeling, i.e., taking into consideration the energy consumed by a power plant to produce the amount of electrical energy consumed by an appliance, the Energy Policy and Conservation Act specifically requires that the estimated annual operation cost of an appliance be calculated in terms of the retail cost of energy likely to be consumed in representative use. Therefore, this suggestion has not been adopted.

18. NUMBER OF UNITS TO BE TESTED

Some comments expressed objections to the sampling provision for water heaters. Proposed section 430.23(e) provided for sampling of each basic model to be tested when testing of water heaters is required by the Act or by program regulations of agencies responsible for administering the Act. This provision was intended both to provide an acceptable level of assurance that the test results are applicable to all units of a basic model for which testing is required and to minimize the testing burden on manufacturers.

Test procedures prescribed under section 323 of the Act are intended ultimately to be used, for example, for labeling under section 324, for monitoring the progress of manufacturers toward accomplishing the energy efficiency improvement targets under section 325, and for enforcement testing under section 326. These aspects of the appliance program have not, however, been implemented. It is quite possible that the objectives of appliance testing under each of these parts of the program, as well as the instructions as to how a test procedure should be applied, e.g., sampling of production units, may differ. FEA, NBS, and FTC are continuing to evaluate the appropriate method or methods for sampling the units to be tested in order to comply with the statute and satisfy all of the different elements of the appliance program.

While the various parts of the appliance program identified above are not in effect at this time, section 323(c) of the Act provides:

> Effective 90 days after a test procedure rule applicable to a covered product is prescribed under this section, no manufacturer, distributor, retailer or private labeler may make any representation—
>
> (1) In writing (including a representation on a label), or
>
> (2) In any broadcast advertisement,
>
> respecting the energy consumption of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

In order to eliminate the problem discussed above associated with a general sampling provision, § 430.23 has been reserved in the final test procedure, and sampling requirements which apply only for purposes of advertising have been reorganized into § 430.24(e) of the final test procedures. Section 430.24(e) is similar to proposed § 430.23(e), but contains several revisions. Most notably, the units tested may now be either representative of production units, or actual production units. This change is intended to reduce the burden which might be caused by requiring post-production rating of basic models in every instance of testing pursuant to section 323(c) of the Act.

In addition, certain technical changes have been made in sampling language. Specifically, there is to be 90 percent confidence that the true mean of any measure of the basic model lies within ±10 percent of the mean of such measure of the sample. Comments pertaining to several proposed test procedures criticized the language of the proposed sampling provision. These comments suggested that a sampling provision should refer to the estimate of the mean rather than to the true mean. FEA has considered this suggestion and has determined that the language prescribed today is more technically correct because the statistical measure "estimate of the mean" and "mean of the sample" are generally considered to be identical. The final test procedures for room air conditioners and dishwashers used both these terms in a manner that could be confusing, and the language prescribed today is intended to eliminate this possibility.

Until a labeling rule has been implemented pursuant to section 324, manufacturers are not required to test unless they choose to make representations regarding a measure of energy consumption. It should be emphasized that the test procedures prescribed today apply only to the initial rating of a basic model.

19. MISCELLANEOUS

After careful consideration of all of the comments and further consultation with NBS and FTC, FEA has incorporated some minor changes in the proposed test procedures in the final rule that are not discussed above.

C. REGULATIONS PRESCRIBED

1. TEST PROCEDURES

The test procedures for water heaters prescribed today are included in Subpart B and are substantially the same as those proposed with the exception of the elimination of the hot water supply rating test and the recovery rate determination. As with the proposed procedures, test methods and conditions incorporate the approach contained in American National Standards Institute standard Z21.-10.1—1971 and C72.1—1972. The test procedure also uses the definition of the term "oil" contained in the American Society for Testing and Materials (ASTM) D396-71. Subsequent amendments of either the standard or the supplement made by the standard setting organization will have no effect on the test procedure which can only be amended by FEA.

Under the requirements of section 32(c) of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.) as amended by section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95-70), the Administrator is to consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact on competition of any rules prescribed by FEA which utilize or incorporate any commercial standards.

The Administrator has transmitted copies of the final test procedures for water heaters, which incorporate the above mentioned commercial standards, to the Attorney General and the Chairman of the Federal Trade Commission for their comments concerning the impact of such standards on competition in accordance with section 32(c). Neither individual has any comments nor do they recommend against the incorporation or use of these commercial standards in the final test procedures for water heaters.

2. GENERAL PROVISIONS

Prescribed today are certain definitions applicable to water heaters which were previously proposed in Subpart A (41 FR 19977, May 14, 1976; 42 FR 15423, March 22, 1977). Comments were received regarding these definitions and the issues and changes have been discussed earlier in this notice. All definitions appearing in section 321 of the Act were incorporated by reference into Sub-

part A of Part 430 in the final test procedures for room air conditioners issued May 24, 1977 (42 FR 27896, June 1, 1977). Definitions of the terms "Administrator", "Btu" and "FEA" were also incorporated into Subpart A by the final room air conditioner test procedures. The definition of the term "basic model" for water heaters has been changed, as discussed above. Definitions of the terms "cutout" and "design power rating" have been added.

It should be noted that some of the definitions prescribed today may be applicable to test procedures for other appliances. While these definitions are final, comments to the effect that any of these definitions are inapplicable to a particular appliance will be evaluated to determine whether amendment or modification is appropriate.

3. APPLICATION OF TEST PROCEDURES

As discussed previously, the final water heater test procedures prescribed today must be applied before representations regarding a measure of energy consumption can be made. Because the purposes and needs of the different elements of the appliance program, such as labeling or targets, vary, application of the standard test methodology prescribed today may differ in some respects for each program element. Instructions on how to apply the standard test methodology will be proposed for comment as these other element of the appliance program are developed.

The requirements of § 430.24(e) of the final regulations apply until such time as final labeling requirements for a particular measure of energy consumption and the associated test procedure application provision are prescribed. After that time, all representations regarding a measure of energy consumption covered by a labeling rule must be the same as represented on the label.

D. UNIT COSTS OF ENERGY

Under section 323(b)(2) of the Act, FEA is to provide manufacturers information as to the representative average unit costs of energy. This information was provided by notice issued July 11, 1977 (42 FR 36549, July 15, 1977).

E. PREEMPTION

Today's rulemaking prescribing final test procedures for water heaters supersedes any State regulation to the extent required by section 327 of the Act. Pursuant to section 327, all State regulations which provide for the disclosure of information with respect to any measure of energy consumption of water heaters or which provide for any energy efficiency standard or similar requirement with respect to energy efficiency or energy use of water heaters must now employ test procedures identical to those specified in today's final rule.

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations is amended as set forth below, effective November 8, 1977.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 94-385; Federal Energy administration Act of 1974, Pub. L. 93-275, as amended by Pub. L. 94-385; E.O. 11790, 39 FR 23185.)

Issued in Washington, D.C., September 27, 1977.

ERIC J. FYGI,
Acting General Counsel,
Federal Energy Administration.

1. Section 430.2 is amended by adding paragraph (5) as part of the definition of "basic model" and by adding in appropriate alphabetical order the definition of "immersed heating element" and "water heater" to read as follows:

§ 430.2 Definitions.

* * * * *

"Basic model" means all units of a given type of covered product, or class thereof, manufactured by one manufacturer and:

* * * * *

(5) with respect to water heaters, which have the same primary energy source and which, with the exception of immersed heating elements, do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

* * * * *

"Immersed heating element" means an electrically powered heating device which is designed to operate while totally immersed in water in such a manner that the heat generated by the device is imparted directly to the water.

* * * * *

"Water heater" means an automatically controlled thermally insulated vessel designed for heating water and storing heated water, which utilizes either oil, gas, or electricity as the fuel or energy source for heating the water, which is designed to produce hot water at a temperature of less than 180°F., and which includes the following products:

(a) "Electric water heater" means a water heater which utilizes electricity as the energy source for heating the water, which has a manufacturer's specified energy input rating of 12 kilowatts or less at a voltage no greater than 250 volts, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 120 gallons.

(b) "Gas water heater" means a water heater which utilizes gas as the energy source for heating the water, which has a manufacturer's specified energy input rating of 75,000 Btu per hour or less, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 100 gallons.

(c) "Oil water heater" means a water heater which utilizes oil as the energy source for heating the water, which has a manufacturer's specified energy input rating of 103,875 Btu per hour or less, and which has a manufacturer's specified storage capacity of 50 gallons or less.

* * * * *

2. Section 430.22 is amended by adding a paragraph (e), to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(e) *Water Heaters.* (1) The estimated annual operating cost for water heaters shall be—

(i) For a gas or oil water heater, the product of the representative average use cycle of 365 days per year times the sum of (A) The product of the average daily auxiliary electrical energy consumption in kilowatt-hours per day, determined according to section 4.5.1 of Appendix E of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Administrator plus (B) The product of the average daily gas or oil energy consumption in Btu per day, determined according to section 4.5.2 of Appendix E of this subpart, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(ii) For an electric water heater, the product of the following three factors: (A) The representative average use cycle of 365 days per year, (B) The average daily energy consumption in kilowatt-hours per day, determined according to section 4.5.4 of Appendix E of this subpart, and (C) The representative average unit cost of electricity in dollars per kilowatt-hour as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(2) The energy factor for water heaters shall be—

(i) For a gas or oil water heater, the quotient of the daily water heating energy consumption determined according to section 4.3 of Appendix E of this subpart divided by the product of the average daily energy consumption as determined according to section 4.5.4 of Appendix E of this subpart times 3,412 Btu per kilowatt-hours, the resulting quotient then being rounded off to the nearest 0.01.

(ii) For an electric water heater, the quotient of the daily water heating energy consumption determined according to section 4.3 of Appendix E of this subpart divided by the product of the average daily energy consumption as determined according to section 4.5.4 of Appendix E of this subpart times 3,412 Btu per kilowatt-hours, the resulting quotient then being rounded off to the nearest 0.01.

(3) Other useful measures of energy consumption for water heaters shall be those measures of energy consumption for water heaters which the Administrator determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix E of this subpart.

* * * * *

3. Section 430.24 is amended by adding a paragraph (e), to read as follows:

§ 430.24 Representations regarding measures of energy consumption.

* * * * *

(e) *Water heaters.* (1) Except as provided in paragraph (e)(3) of this section, no manufacturer, distributor, retailer, or private labeler of water heaters may make any representation with respect to or based upon a measure or measures of energy consumption described in § 430.22(e) unless a sample of sufficient size of each basic model for which such representation is made has been tested in accordance with applicable provisions of this subpart such that, for each such measure of energy consumption, there is at least 90 percent confidence that the true mean of such measures of the basic model is within ±10 percent of the mean of such measures of the sample.

(2) The sample selection for paragraph (e)(1) of this section shall be comprised of units which are production units, or which are representative of production units, of the basic model being tested.

(3) Whenever a rule applicable to water heaters has been prescribed under section 324 of the Act, this paragraph shall not apply to any label covered by such rule, and all representations of any measure of energy consumption covered by such rule shall be identical to the measure of energy consumption on the label.

* * * * *

4. Subpart B of Part 430 is amended to add an Appendix E, to read as follows:

APPENDIX E—UNIFORM TEST METHOD FOR MEASURING THE ENERGY CONSUMPTION OF WATER HEATERS

1. *Definitions.*

1.1 "Cutout" means the moment in time when a water heater thermostat has acted to reduce the energy or fuel input to the heating elements or burners to a minimum.

1.2 "Design Power Rating" means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater heating element, expressed in kilowatts.

1.3 "Heat Trap" means a device which can be integrally connected, or independently attached, to the hot of cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to natural thermal convection between the water heater tank and its water supply pipes and thereby reduce the heat loss to the environment from the hot water stored in the water heater.

1.4 "Recovery Efficiency" means the ratio of the heat imparted to the water to—

(a) in the case of an electric water heater, the energy input to the heating elements during the period that the water temperature is raised from the inlet temperature to the final temperature with the tank filled to capacity.

(b) in the case of a gas or oil water heater, the heat content of the fuel consumed by the burners during the period that the water temperature is raised from the inlet temperature to the final temperature with the tank filled to capacity.

1.5 "Standby loss" means the ratio of the heat loss per hour to the heat content of the stored water above room temperature.

2. *Test conditions.*

2.1 *Installation.* Install the water heater according to the manufacturer's directions on a ¾-inch-thick plywood platform supported by three 2 x 4-inch runners. For water heaters without integral heat traps and with vertical inlet and outlet pipe connections, install the inlet and outlet piping with heat traps at the inlet and outlet ports. Such heat traps may be made using pipe fittings such as elbows connected in such a fashion that the inlet and outlet piping make vertically upward runs just before turning downward to connect to the inlet and outlet ports. For water heaters with integral heat traps or with horizontal inlet and outlet pipe connections, install the inlet and outlet piping in any convenient fashion.

Sufficient clearance shall be allowed between the water heater surface and the piping (including heat traps, if any) so that when the piping is insulated as specified below, the insulation does not contact any water heater surface except at the location where the pipe connections penetrate the water heater jacket. Insulate the water heater inlet and outlet piping (including heat traps, if any) for a length of four feet from the connection at the water heater with a material having a thermal resistance (R) value of not less than

$$4\ \frac{°F}{Btu/ft^2\text{-}hr}$$

2.2 *Flue requirements for gas and oil water heaters.*

2.2.1 *Flue requirements for gas water heaters.* For a gas water heater having a vertically discharging draft hood outlet, a 5 foot vertical flue pipe extension having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For a gas water heater having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5 foot length of flue pipe shall be connected to the elbow and oriented to discharge vertically upward. Perform all tests with the natural draft established by this length of flue pipe. Direct vent gas water heaters should be installed with venting equipment as specified in the manufacturer's instructions; however, the vertical length of the flue pipe shall be no greater than 5 feet.

2.2.2 *Flue requirements for oil water heaters.* For an oil fueled water heater, establish a draft at the flue collar equivalent to at least 0.02 inch of water column during periods of burner firing. For an oil water heater having a vertically discharging draft hood outlet, establish the draft by using a sufficient length of flue pipe connected to the water heater flue outlet and directed vertically upward. For an oil water heater having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of flue pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct vent oil water heaters should be installed with venting equipment as specified in the manufacturer's instructions. When ceiling height limits the use of a sufficient length of vertical flue pipe for an oil water heater, a mechanical draft inducer may be used during periods of burner firing to establish the specified draft at the flue collar.

2.3 *Water supply.* During the entire test maintain the water supply to the water heater inlet at a temperature of between 68 and 72° F., and at a gauge pressure of between 40 pounds per square inch and the maximum pressure specified by the manufacturer for the water heater under test. If the water supply pressure varies outside of these limits during testing, the heater shall be isolated by use of a shut-off valve in the supply line with an expansion tank installed in the supply line downstream of the shut-off valve. There shall be no shut-off means between the expansion tank and the water heater inlet.

2.4 *Energy Supply.*

2.4.1 *Electrical supply.* For an electric water heater and for the auxiliary electrical system, if any, of an oil or gas water heater, maintain the electrical supply voltage to within ±1 percent of the center of the voltage range specified by the water heater manufacturer on the water heater nameplate throughout the entire operating portion of each test.

2.4.2 *Gas supply.*

2.4.2.2 *Natural gas.* For a gas water heater utilizing natural gas, maintain the gas supply at a normal inlet test pressure immediately ahead of all controls at 7 to 10 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure at the normal test pressure shall be approximately that recommended by the manufacturer. All burners shall be adjusted to achieve an hourly Btu rating that is within ±2 percent of the hourly Btu rating specified by the manufacturer. Use natural gas with a higher heating value of approximately 1,025 Btu per standard cubic foot. Determine the actual higher heating value, H_n, in Btu per standard cubic foot, for the natural gas to be used in the test, with an error no greater than ±1 percent, and use that value for all calculations included herein. Alternatively, the test can be conducted using "bottled" natural gas of a higher heating value of approximately 1,025 Btu per standard cubic foot as long as the actual higher heating value of the bottled natural gas has been determined with an error no greater than ±1 percent as certified by the supplier.

2.4.2.2 *Propane gas.* For a gas water heater utilizing propane, maintain the gas supply at a normal inlet test pressure immediately ahead of all controls at 11 to 13 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure at normal test pressure shall be approximately that recommended by the manufacturer. All burners shall be adjusted to achieve an hourly Btu rating that is within ±2 percent of the hourly Btu rating specified by the manufacturer. Use propane with a higher heating value of approximately 2,500 Btu per standard cubic foot. Determine the actual higher heating value, H_p, in Btu per standard cubic foot, for the propane to be used in the test, with an error no greater than ±1 percent, and use that value for all calculations included herein. Alternatively, the test can be conducted using "bottled" propane of a higher heating value of approximately 2,500 Btu per standard cubic foot as long as the actual higher heating value of the bottled propane has been determined with an error no greater than ±1 percent as certified by the supplier.

2.4.3 *Oil supply.* For an oil water heater utilizing fuel oil, maintain an uninterrupted supply of fuel oil to the water heater during the entire operating portion of the test cycle. Use fuel oil with a heating value of approximately 138,500 Btu per gallon. Determine the actual heating value, H_o, in Btu per gallon for the fuel oil to be used in the test, with an error no greater than ±1 percent, and use that value for all calculations

included herein. Alternatively, the tests can be conducted using a tested fuel oil with a certified higher heating value of approximately 138,500 Btu per gallon as long as the actual higher heating value of the test fuel oil has been determined with an error of no greater than ±1 percent as certified by the supplier.

2.5 *Thermocouple installation.* Install six thermocouples inside the water heater tank. Position each thermocouple measuring junction along a vertical line at the level of the center horizontal plane of each of six nonoverlapping sections of approximately equal volume from the top to the bottom of the tank such that each thermocouple is surrounded by water and as far as possible from any heating element, anodic protective device, or a water tank or flue wall. The anodic protective device may be removed in order to install the thermocouples and all testing may be carried out with the device removed. Install thermocouples in both the cold-water inlet pipe and the hot-water outlet pipe not more than six inches from the connections to the water heater, or, where those connections are inaccessible, at the closest accessible point to those connections. Install in the test room a thermocouple with junction shielded against direct radiation from the water heater and positioned at the vertical mid-point of the heater at a perpendicular distance of approximately 24 inches from the surface of the water heater jacket. Provide an associated temperature measurement and indicator system to assure that the temperature indicated for the thermocouple location is within ±1° F. of the actual temperature at that location.

2.6 *Setting the tank thermostat.* Starting with a tank of unheated water, initiate normal operation of the water heater. After cutout, determine whether the maximum value of the mean tank temperature is within the range of 160° F. ±5° F. If not, turn off the water heater, adjust the thermostat, empty the tank and refill with unheated water, then initiate normal operation of the water heater, and once again determine the maximum mean tank temperature after cutout. Repeat this sequence until the maximum mean tank temperature after cutout is within the range of 160° F. ±5° F., at which time the thermostat is properly set. If a water heater has two thermostats, the thermostat which controls the upper heating element shall be set first to yield a maximum water temperature of 160° F. ±5° F. as measured by the topmost tank thermocouple after cutout. The thermostat which controls the lower heating element shall then be set to yield a maximum mean tank temperature of 160° F. ±5°F. after cutout.

2.7 *Fuel or energy consumption measurement.* Install one or more instruments which measure, as appropriate, and with an error no greater than ±1 percent, the quantity of electrical energy, natural gas, propane or fuel oil consumed by a water heater. Electrical energy consumption is to be expressed in units of kilowatt-hours. Natural gas and propane consumption shall be expressed in units of standard cubic feet, i.e., measured cubic feet corrected to standard conditions of 60° F. temperature and 30 inches of mercury column pressure. Fuel oil consumption is to be expressed in units of gallons. Also install one or more instruments which measure, as appropriate, and with an error no greater than ±1 percent, the rate of electrical energy, natural gas, propane or fuel oil consumption by a water heater. The rate of electrical energy consumption shall be expressed in units of kilowatts. The rate of natural gas and propane consumption shall be expressed in units of standard cubic feet per hour. The rate of fuel oil consumption shall be expressed in units of gallons per hour.

2.8 *Room ambient temperature.* Maintain the ambient air temperature of the test room between 65° F. and 85° F. at all times during the test, as measured according to section 3.5. The ambient air temperature during these tests shall not vary more than ±7° F. from the average ambient air temperature determined as the arithmetic average of the air temperatures measured periodically at intervals no greater than 15 minutes throughout the duration of the test.

3. *Test procedures and measurements.*

3.1 *Tank storage capacity.* Determine the storage capacity, V, of the water heater under test, in gallons, according to the method specified in section 2.26 of the American National Standard for Gas Water Heaters, Volume I, designated ANS Z21.10.1–1975.

3.2 *Power input determination.*

3.2.1 *Power input determination for gas and oil water heaters and electric water heaters with other than immersed heating elements.* Initiate normal operation of the water heater, and by using the appropriate instrumentation specified in section 2.7 and the appropriate fuel heating values of section 2.4, determine the power input, P, to the main burners (including pilot light power, if any) or heating elements of the water heater under test, in Btu per hour or kilowatts, as apropriate. In addition, determine the power input, p_r to any auxiliary electrical system of a gas or oil water heater when the main burners are in operation, in kilowatts; and the power input, p_s, to any auxiliary electrical system of a gas or oil water heater when the main burners are not in operation, in kilowatts.

3.2.2 *Power input determination for electric water heaters with immersed heating elements.* The power input, P, to the heating element of an electric water heater with one immersed heating element shall be taken to be the design power rating of the heating element. For an electric water heater with dual immersed heating elements, the power input, P, to the heating elements shall be taken to be the arithmetic mean of the design power ratings of the heating elements, if, in characteristic operation of the water heater, only one heating element will be energized at any time; otherwise, P shall be taken to be the sum of the design power ratings of the heating elements.

3.3 *Recovery efficiency.*

3.3.1 *Recovery efficiency for gas and oil water heaters and electric water heaters with other than immersed heating elements.* With the water heater turned off, fill the tank with water and eliminate any residual air remaining in the tank. If the mean tank temperature is constant and within 70° F.±2° F., record the mean tank temperature, initiate normal operation of the water heater, and begin measuring the fuel or energy flow to the burners (including pilot light fuel if any) or heating elements of the water heater using the appropriate instrumentation specified in section 2.7. After cutout determine the maximum mean tank temperature and record the total fuel flow, Q_r, for a gas or oil water heater, or the total electrical energy flow, Z_r, to the heating elements of an electric water heater, from initiation to cutout. Record the temperature difference, ΔT_r, obtained by subtracting the initial from the final maximum mean tank temperature.

3.3.2 *Recovery efficiency for electric water heaters with immersed heating elements.* The recovery efficiency for electric water heaters with immersed heating elements is derived from the results of the standby loss tests of section 3.4.2.

3.4 *Standby loss.*

3.4.1 *Standby loss for gas and oil water heaters and electric water heaters with other than immersed heating elements.* Establish normal water heater operation within the maximum mean tank temperature within the range specified in section 2.6 and with all air eliminated from the tank. Begin the standby loss test immediately after cutout. At the beginning of the standby loss test record the time, the mean tank temperature, the ambient air temperature, and begin measuring the fuel or energy flow to the burners (including pilot light fuel if any) or heating elements of the water heater using the appropriate instrumentation specified in section 2.7.

At the end of the first 15 minute interval and at the end of each subsequent 15 minute interval following the beginning of the test, record the mean tank temperature and the ambient air temperature. Continue these measurements until the end of a 48 hour period unless a main heating element or burner is on at that time, in which case, continue these measurements until the first subsequent cutout. When the test is terminated, record the total fuel flow, Q_s, for a or oil water heater, or the total electrical energy flow, Z_r, to the heating elements of an electric water heater, from the beginning to the end of the test period, the final mean tank temperature, the final ambient air temperature, and the time duration, t, of the standby loss test, in hours rounded off to the nearest tenth of an hour, which elapsed from the beginning to the end of the test period. Calculate the average of the recorded values of the mean tank temperatures and of the ambient air temperatures taken at the end of each time interval, including in each case the initial and final values. Determine the difference, ΔT_a, between these two averages by subtracting the latter from the former, and the difference, ΔT_s, between the final and initial mean tank temperatures by subtracting the latter from the former.

3.4.2 *Standby loss for electric water heaters with immersed heating elements.* All water heaters to be tested must be equipped with immersed heating elements that have a design power rating of 4,500 watts unless such a design power rating exceeds the maximum design power rating specified by the manufacturer for the water heater to be tested, in which case the standby loss test will be conducted with the water heater equipped with immersed heating elements of a design power rating equal to the manufacturer's specified maximum design power rating. All water heaters capable of operating with dual immersed heating elements will be equipped and tested with dual immersed heating elements of equal design power rating in accordance with the provisions specified above. Tests shall be conducted in accordance with the same procedures as those specified in section 3.4.1.

3.5 *Room temperature measurement.* Room temperature wherever specified shall be the temperature determined by using the test room thermocouple described in section 2.5.

3.6 *Mean tank temperature measurement.* Mean tank temperature, the average temperature of the water in a water heater tank, wherever specified shall be the mean of the temperatures determined by using the six water heater tank thermocouples described in section 2.5.

4. *Calculation of derived results from test measurements.*

4.1 *Recovery efficiency.*

4.1.1 *Recovery efficiency for gas and oil water heaters.* For a gas or oil water heater, calculate the recovery efficiency, E_r, expressed as a dimensionless quantity and defined as:

$$E_r = \frac{k \times V \times \Delta T_1}{Q_r \times H},$$

where

k=8.25 Btu per gallon °F., the nominal specific heat of water.
V=tank capacity, determined in accordance with section 3.1, expressed in gallons.
ΔT_1=difference between the initial and final mean tank temperatures, determined in accordance with section 3.3.1, expressed in °F.
Q_r=total fuel flow in the recovery test, determined in accordance with section 3.3.1, expressed in appropriate units.
H=higher heating value for the appropriate fuel type, H_n, H_p, or H_m, as determined in accordance with section 2.4, expressed in appropriate units.

4.1.2 *Recovery efficiency for electric water heaters with other than immersed heating elements.* For an electric water heater with other than immersed heating elements, calculate the recovery efficiency, E_r, expressed as a dimensionless quantity and defined as:

$$E_r = \frac{k \times V \times \Delta T_1}{Z_r \times 3{,}412 \text{ Btu/kWh}},$$

where k, V, and ΔT_1 are as defined in section 4.1.1.
Z_r=total electrical energy flow to the heating elements in the recovery test, determined in accordance with section 3.3.1, expressed in kilowatt-hours.

4.1.3 *Recovery efficiency for electric water heaters with immersed heating elements.* For an electric water heater with immersed heating elements, calculate the recovery efficiency, E_r, expressed as a dimensionless quantity and defined as:

$$E_r = 1 - \frac{S \times k \times V \times \Delta T_2}{P \times 3{,}412 \text{ Btu/kWh}},$$

where k and V are as defined in section 4.1.1
S=standby loss, as calculated in section 4.4.2.
ΔT_2=45° F., the nominal average difference between the mean tank temperature and the ambient air temperature during recovery.
P=water heater input power, determined in accordance with section 3.2.2, expressed in kilowatts.

4.2 Standby loss.

4.2.1 *Standby loss for gas and oil water heaters.* For a gas or oil water heater, calculate the standby loss, expressed in hour^{-1} and defined as:

$$S = \frac{Q_s \times H}{k \times V \times \Delta T_3 \times t} - \frac{\Delta T_4}{\Delta T_3 \times t \times E_r},$$

where k, V, and H are as defined in section 4.1.1
E_r is as calculated in section 4.1.1
Q_s=total fuel flow in the standby loss test, determined in accordance with section 3.4.1, expressed in appropriate units.
ΔT_3=difference between the average value of the mean tank temperature and the average value of the ambient air temperature during the standby loss test, determined in accordance with section 3.4.1, expressed in °F.
ΔT_4=difference between the initial and final mean tank temperatures, determined in accordance with section 3.4.1, expressed in °F.
t=duration of the standby loss test, determined in accordance with section 3.4.1, expressed in hours.

4.2.2 *Standby loss for electric water heaters.* For an electric water heater, calculate the standby loss, S, expressed in hour^{-1} and defined as:

$$S = \frac{Z_s \times 3{,}412 \text{ Btu/kWh}}{k \times V \times \Delta T_3 \times t} - \frac{\Delta T_4}{\Delta T_3 \times t \times E_r{}^*}$$

where k and V are as defined in section 4.1.1.
Z_s=total electrical energy flow to the heating elements in the standby loss test, determined in accordance with section 3.4.1 for electric water heaters with other than immersed heating elements, or section 3.4.2 for electric water heaters with immersed heating elements, expressed in kilowatt-hours.
ΔT_3=difference between the average value of the mean tank temperature and the average value of the ambient air temperature during the standby loss test, determined in accordance with section 3.4.1 for electric water heaters with other than immersed heating elements, or section 3.4.2 for electric water heaters with immersed heating elements, expressed in kilowatt-hours.
ΔT_4=difference between the initial and final mean tank temperatures, determined in accordance with section 3.4.1 for electric water heaters with other than immersed heating elements, or section 3.4.2 for electric water heaters with immersed heating elements, expressed in kilowatt-hours.
t=duration of the standby loss test, determined in accordance with section 3.4.1 for electric water heaters with other than immersed heating elements, or section 3.4.2 for electric water heaters with immersed heating elements, expressed in hours.
$E_r{}^*=E_r$ as calculated in section 4.1.2 for electric water heaters with other than immersed heating elements, or 0.98 for electric water heaters with immersed heating elements.

4.3 *Daily water heating energy consumption.* Calculate the daily water heating energy consumption, C_{wh}, the energy required to heat the nominal amount of hot water used daily, expressed in Btu per day and defined as:

$$C_{wh} = \frac{k \times U \times \Delta T_5}{E_r},$$

where k is as defined in section 4.1.1.
E_r is as calculated in section 4.1.1 for gas and oil water heaters, section 4.1.2 for electric water heaters with other than immersed heating elements, or section 4.1.3 for electric water heaters with immersed heating elements.
ΔT_5=90° F., the nominal difference between the water heater inlet and outlet water temperatures.
U=64.3 gallons per day, the nominal daily hot water usage.

4.4 *Average hourly hot water storage energy consumption.* Calculate the average hourly hot water storage energy consumption, c_{us}, the average energy required per hour to maintain stored water temperature, expressed in Btu per hour and defined as:

$$c_{us} = S \times k \times V \times \Delta T_6,$$

where k and V are as defined in section 4.1.1.
S is as calculated in section 4.2.1 for gas and oil water heaters, or section 4.2.2 for electric water heaters.
ΔT_6=90°F., the nominal difference between the mean tank temperature and the ambient air temperature.

4.5 *Average daily energy consumption.*

4.5.1. *Average daily auxiliary electric energy consumption for gas and oil water heaters.* For a gas or oil water heater, calculate the average daily auxiliary electrical energy consumption, C_{aux}, expressed kilowatt-hours per day and defined as:

$$C_{aux} = p_r \times \frac{C_{wh}}{P} + p_s \times \left(24 \frac{\text{hours}}{\text{day}} - \frac{C_{wh}}{P}\right),$$

where C_{wh} is as calculated in section 4.3.
P=power input to the burner, determined in accordance with section 3.2.1, expressed in Btu per hour.
p_r=power input to any auxiliary electrical system during periods of main burner operation, determined in accordance with section 3.2.1, expressed in kilowatts.
p_s=power input to any auxiliary electrical system during periods when the main burner is not in operation, determined in accordance with section 3.2.1, expressed in kilowatts.

4.5.2 *Average daily gas or oil energy consumption for gas and oil water heaters.* For a gas or oil water heater, calculate the average daily gas or oil energy consumption, C_f, as appropriate, expressed in Btu per day and defined as:

$$C_f = C_{wh} + c_{us} \times \left(24 \frac{\text{hours}}{\text{day}} - \frac{C_{wh}}{P}\right) - J_h - J_c,$$

C_{wh} is as calculated in section 4.3.
c_{us} is as calculated in section 4.4.
P is as defined in section 4.5.1.
J_h=daily energy credit for a heat trap installed in the outlet water connection of a water heater=1,311 Btu per day for water heaters that have such a heat trap as an integral part of the water heater, or zero for water heaters that do not.
J_c=daily energy credit for a heat trap installed in the inlet water connection of a water heater=983 Btu per day for water heaters that have such a heat trap as an integral part of the water heater, or zero for water heaters that do not.

4.5.3 *Average daily energy consumption for gas and oil water heaters.* For a gas or oil water heater, calculate the average daily energy consumption, C_x, expressed in Btu per day and defined as:

$$C_x = C_f + C_{aux} \times 3{,}412 \text{ Btu/kWh},$$

where
C_f is as calculated in section 4.5.2.
C_{aux} is as calculated in section 4.5.1.

4.5.4 *Average daily energy consumption for electric water heaters.* For an electric water heater, calculate the average daily energy consumption, C_y, expressed in kilowatt-hours per day and defined as:

$$C_y = \frac{1}{3{,}412 \text{ Btu/kWh}} \times \left[C_{wh} + c_{us} \times \left(24 \frac{\text{hours}}{\text{day}} - \frac{C_{wh}}{P \times 3{,}412 \text{ Btu/kWh}}\right) - J_h - J_c\right]$$

C_{wh} is as calculated in section 4.3.
c_{us} is as calculated in section 4.4.
J_h and J_c are as defined in section 4.5.2.
P=input power, determined in accordance with section 3.2.1 for electric water heaters with other than immersed heating elements or section 3.2.2 for electric water heaters with immersed heating elements, expressed in kilowatts.

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federal register

TUESDAY, OCTOBER 4, 1977

PART IV



DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

■

MAINTENANCE OF INDICIA OF OWNERSHIP OF PLAN ASSETS OUTSIDE THE JURISDICTION OF DISTRICT COURTS OF UNITED STATES

[4510-29]

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PROGRAMS, DEPARTMENT OF LABOR

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

Maintenance of Indicia of Ownership of Plan Assets Outside Jurisdiction of District Courts of the United States

AGENCY: Department of Labor.

ACTION: Final regulation.

SUMMARY: This regulation prescribes conditions which permit a fiduciary of an employee benefit plan to maintain the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States, a practice which is prohibited under section 404(b) of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1104) except as authorized by the Secretary of Labor. Under the regulation, if certain protective conditions are met, a plan may invest in foreign securities without incurring the costs which would be associated with the physical transfer of securities to and from the United States in order to satisfy the reqirements of section 404(b) of ERISA. The regulation affects participants and beneficiaries of employee benefit plans, their employers and fiduciaries of such plans.

EFFECTIVE DATE: January 1, 1975.

FOR FURTHER INFORMATION CONTACT:

Forrest Foss, Room C-4508, Plan Benefits Security Division, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 (202-523-6856—not a toll free number).

SUPPLEMENTARY INFORMATION: Section 404(b) of ERISA prohibits an employee benefit plan from maintaining the indicia of ownership of plan assets outside the jurisdiction of United States district courts. On December 17, 1976, the Department of Labor (Department), pursuant to specific statutory authority in section 404(b), published a proposed regulation (41 FR 55206) to permit the maintenance abroad of the indicia of ownership of plan assets if certain conditions are met. Public comments were received in response to the Department's proposed regulations which generally supported the proposal, although several suggestions for specific revisions were offered. The regulation, as adopted, states that the indicia of ownership of specified assets may be held abroad if such assets are under the management and control of certain banks, insurance companies or investment adviser fiduciaries, or if the indicia of the specified assets are in the physical possession of certain banks or brokers or dealers or if such banks or brokers or dealers maintain, under certain conditions, the indicia in the custody of entities which are designated by the Securities and Exchange Commission as "satisfactory control locations" pursuant to Rule 15c3-3 under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.). Additionally, the regulation provides broader relief from the statutory prohibition of section 404(b) to permit the maintenance in Canada of the indicia of ownership of plan assets, attributable to contributions on behalf of Canadian participants, if such maintenance is required by Canadian law as a condition to tax exempt status for the plan.

Discussion of Major Comments

Types Of Assets. The proposed regulation provided that only the indicia of ownership of securities issued by (1) a person not organized under the laws of the United States or a state and not having its principal place of business within the United States or (2) a government other than the government of the United States or a state or any political subdivision, agency or instrumentality of such a government could be maintained outside the jurisdiction of the district courts of the United States.

Several comments were received suggesting amendments that would expand the types of assets whose indicia of ownership a plan could maintain abroad. The Department was urged to delete the requirements which limited the securities whose indicia of ownership could be held abroad to those issued by a person not organized under the laws of the United States. As the comments noted, securities whose principal market is outside the jurisdiction of the district courts of the United States might be issued by a person who is organized under the laws of the United States. Because it generally would not be in the interest of plans to require that indicia of ownership be held in the United States in situations where the primary trading market for the securities in question is abroad, the Department has revised the regulation to permit a plan to maintain abroad the indicia of ownership of securities whose principal market is outside the United States, regardless of whether the issuer of the securities is organized under the laws of the United States.

A number of commentators questioned the effect of the proposed regulation on the investment by plans in American Depository Receipts (ADR). An ADR is a certificate which enables the owner to demand delivery of foreign securities which are deposited with a foreign depository and is considered to be a security issued in the United States which, generally, is subject to registration under the Securities Act of 1933 (15 U.S.C. 77a et seq.). For purposes of section 404(b) and the regulation adopted thereunder, the ADR will be deemed to be the indicium of ownership of the interest held by the plan.

Another comment stated that the proposal failed to address the question of a plan maintaining foreign currency abroad. Such currency might be transferred abroad in order to purchase foreign securities, or might be generated from the proceeds of a sale of foreign traded securities (or the payment of interest or dividends attributable to foreign securities) where the proceeds are held for reinvestment. Because the inability to maintain foreign currency abroad could seriously hamper a plan's ability to trade in foreign securities, the regulation, as adopted, permits plans, under specified circumstances, to maintain foreign currency outside the jurisdiction of the district courts of the United States.

One comment suggested that an insurance company (meeting the standard of section (a)(2)(i)(B) of the proposal) be permitted to maintain abroad the indicia of ownership of foreign real estate. Because real estate is generally not the subject of frequent trading, the Department has determined not to incorporate this comment. Accordingly, when the indicia of ownership of real estate are portable, they must be held within the jurisdiction of the district courts of the United States, and when they are not portable, such as in foreign jurisdictions where the only recognized evidence of ownership is recordation, then plans may not hold such assets.

Qualifying Fiduciaries. Paragraph (a)(2)(i) of the proposal provided that certain fiduciaries could maintain abroad the indicia of ownership of certain plan assets without being subject to the requirements of paragraph (a)(2)(ii) of the proposal. Several comments urged the Department to revise section (a)(2)(i)(C) of the proposal which pertained to investment advisers registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) to eliminate either the net worth requirement or the assets under management test contained therein. These standards were included to ensure that only financially responsible investment advisers could act as fiduciaries of plans choosing to maintain the indicia of ownership of plan assets abroad. The comments noted that the investment advisory business is not capital intensive, and, as a result, many financially sound investment advisers would be unable to meet the requirements of the regulation.

In order that plan investments in foreign securities not be unnecessarily restricted where adequate safeguards are present, the Department has determined to provide an alternative standard to that set forth in proposed section (a)(2)(i)(C) by which an investment adviser may qualify under the regulation. Section (a)(2)(i)(C) of the regulation, as adopted, requires that the investment adviser have $50,000,000 of client assets under its management and control and either shareholders' or partners' equity of more than $750,000, or all of its obligations and liabilities assumed or guaranteed by an insurance company, bank, investment adviser or broker or dealer that satisfies the requirements of paragraphs (a)(2)(i)(A), (B) or (C)(1) or (a)(2)(ii)(A)(2) of the regulation.

Comments were received urging the Department to clarify the effect of the regulation on so called "directed trustees"—person having physical possession of the indicia of ownership but subject to the directions of another fiduciary. The Department notes that if the fiduciary possessing management and control of the indicia of ownership satisfies the requirements of section (a)(2)(i) of the regulation, then such fiduciary may maintain the indicia of ownership of the plan assets in the physical possession of any person, including a "directed trustee," regardless of whether such other person satisfies any requirements of the regulation. Similarly, a fiduciary which does not meet the requirements of section (a)(2)(i) may maintain the indicia of ownership of plan assets abroad in the physical possession of a person, including a "directed trustee", if such person satisfies the requirements of section (a)(2)(ii)(A) of the regulation. Finally, a "directed trustee" which is a bank or broker of dealer meeting the requirements of paragraph (a)(2)(ii)(A) of the regulation may maintain, under certain circumstances, the indicia of ownership of certain plan assets in the custody of various entities designated by the Securities and Exchange Commission as "satisfactory control locations" pursuant to Rule 15c3–3 under the Securities Exchange Act of 1934. Accordingly, the Department does not believe that it is necessary to provide additional relief for "directed trustees."

Custodians. If fiduciaries did not meet the tests set forth in section (a)(2)(i), the proposed regulation required that the indicia of ownership be maintained in the physical possession of certain persons specified in paragraph (a)(2)(ii). One comment suggested that the Department permit a plan to maintain the indicia of ownership of plan assets in the custody of various foreign depositories, foreign clearing agencies, foreign custodian banks or other entities which the Securities and Exchange Commission had designated as "satisfactory control locations" pursuant to Rule 15c3–3 under the Securities Exchange Act of 1934. In order not to disrupt established procedures, particularly where a United States bank or broker or dealer will remain liable to the plan to the same extent it would be if it retained physical possession of the indicia of ownership, the Department has determined to modify the proposed regulation in response to this comment. Accordingly, paragraph (a)(2)(ii)(B) of the regulation, as adopted, now permits a bank or broker or dealer satisfying the conditions of paragraph (a)(2)(ii)(A) to maintain the indicia of ownership in the custody of an entity designated by the Securities Exchange Commission as a "satisfactory control location" pursuant to Rule 15c3–3 under the Securities Exchange Act of 1934, if such entity holds the indicia as agent for the bank or broker or dealer and the bank or broker or dealer is liable to the plan to the same extent it would be if it retained physical possession of the indicia of ownership pursuant to paragraph (a)(2)(ii)(A).

Other comments also urged the Department to expand the persons qualifying under the alternative standard of proposed paragraph (a)(2)(ii). However, these comments did not adequately describe the regulatory provisions to which these various persons would be subject with respect to their operations abroad nor demonstrate the existence of alternate safeguards that would ensure adequate protections to plant utilizing the services of such persons. Accordingly, these comments were not adopted.

One comment suggested that the Department permit the indicia of ownership of plan assets to be held abroad by a person other than a qualifying custodian, if such assets do not exceed one percent of the total assets of the plan. Because the Department does not believe it is appropriate that any portion of a plan's assets not be subject to protections deemed necessary under section 404(b) for the other assets of the plan, it has determined not to incorporate this suggestion.

The Department was also urged to amend section (a)(2)(ii)(B) of the proposal so that a broker or dealer would qualify as a custodian if its net worth was less than $750,000 but its liabilities and obligations were assumed or guaranteed by a person with a net worth in excess of $750,000. As in the case of investment advisers, the Department believes that an alternative standard for brokers or dealers can provide adequate protections to plans maintaining the indicia of ownership of plan assets abroad. Accordingly, the Department has created a new section (a)(2)(ii)(A)(3) which permits a broker or dealer registered under the Securities Exchange Act of 1934 to qualify as a custodian if a person meeting the requirements of the regulation under paragraphs (a)(2)(i)(A), (B) or (C)(1) or (a)(2)(ii)(A)(2) assumes or guarantees all the obligations and liabilities of the broker or dealer.

Canadian Plans. Paragraph (b) of the proposal provided that a fiduciary of a plan could maintain the indicia of ownership of plan assets in Canada, notwithstanding the requirements of paragraph (a), if certain conditions were met. One of these conditions was that the plan receive contributions on behalf of its participants from one or more employers which are organized under the laws of Canada or a Province of Canada or have their principal place of business in Canada. Several comments urged the Department to revise this provision to permit a plan fiduciary to maintain the indicia of ownership of plan assets in Canada if the plan receives contributions on behalf of one or more employers which maintain a place of business in Canada but which are neither organized under the laws of Canada nor have their principal place of business in Canada. The comments noted that the proposal would not permit an employer, whose principal place of business is in the United States and which is not organized under the laws of Canada but which has a branch operation in Canada and maintains one plan to cover all of its employees, to retain the assets of its plan derived from contribution on behalf of its Canadian employees in Canada as required by Canadian law. Because the Department does not intend this regulation to require a company to set up separate plans for United States and Canadian employees in order to comply with Canadian law, it has determined to delete from paragraph (b) of the regulation, as adopted, any requirement respecting the place of business of the contributing employer. Accordingly, the regulation now permits a plan fiduciary to maintain in Canada the indicia of ownership of plan assets attributable to a contribution on behalf of a Canadian participant if such indicia must remain in Canada in order for the plan to qualify for and maintain tax exempt status under the laws of Canada and to comply with other applicable laws of Canada or its provinces.

Other Foreign Jurisdictions. Pursuant to its request for comments respecting the interrelationship between the proposed regulation and the requirements of the laws of foreign jurisdictions other than Canada, the Department received one comment indicating that certain countries may tax or otherwise impede the removal of plan assets held in those countries. The comment further indicated that the laws of such countries may make it difficult or impossible for a United States bank to establish a branch office there that would be qualified under section (a)(2)(ii) of the regulation to retain in such country the physical possession of the indicia of ownership of plan assets. Although the regulation provides no specific relief for plans under these circumstances, the Department notes that pursuant to the provisions of section (a)(2)(i) of the regulation, the indicia of ownership of certain plan assets may be held in such a country provided that such indicia are under the management and control of an entity satisfying the requirements of section (a)(2)(i). Moreover, pursuant to section (a)(2)(ii)(B) of the regulation, a bank or broker or dealer satisfying the requirements of section (a)(2)(ii)(A) of the regulation may maintain, under certain conditions, the indicia of ownership of certain plan assets in the custody of entities designated by the Securities and Exchange Commission as "satisfactory control locations" pursuant to Rule 15e3–3 under the Securities Exchange Act of 1934.

Other Matters. In addition to the changes noted above which have been made in the regulation as adopted pursuant to suggestions made in the written comment letters, other minor changes intended to clarify the provisions of the regulation have been made.

The Department received one request for a public hearing. The Department believes that the subject of this regulation is susceptible to full and complete written comments and that all interested persons have had an opportunity to furnish such comments. Accordingly, the Department has determined not to hold

a public hearing with respect to this regulation.

The regulations set forth below are adopted pursuant to the authority contained in sections 404(b) and 505 (29 U.S.C. 1135) of ERISA.

Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

PARAGRAPH 1. Section 2550.404b-1 is inserted in the appropriate place to read as set forth below:

§ 2550.404b–1 Maintenance of the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States.

(a) Effective January 1, 1975, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States, unless:

(1) Such assets are (i) Securities issued by a person, as defined in section 3(9) of the Employee Retirement Income Security Act of 1974 (Act) (other than an individual), which is not organized under the laws of the United States or a State and does not have its principal place of business within the United States, (ii) securities issued by a government other than the government of the United States or of a State, or any political subdivision, agency or instrumentality of such a government, (iii) securities issued by a person, as defined in section 3(9) of the Act (other than an individual), the principal trading market for which securities is outside the jurisdiction of the district courts of the United States, or (iv) currency issued by a government other than the government of the United States if such currency is maintained outside the jurisdiction of the district courts of the United States solely as an incident to the purchase, sale or maintenance of securities described in paragraph (a)(1) of this section; and

(2)(i) Such assets are under the management and control of a fiduciary which is a corporation or partnership organized under the laws of the United States or a State, which fiduciary has its principal place of business within the United States and which is—

(A) A bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, equity capital in excess of $1,000,000;

(B) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any asset of a plan, which company has, as of the last day of its most recent fiscal year, net worth in excess of $1,000,000 and which is subject to supervision and examination by the State authority having supervision over insurance companies; or

(C) An investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess $50,000,000 and either (*1*) Shareholders' or partners' equity in excess of $750,000 or (*2*) all of its obligations and liabilities assumed or guaranteed by a person described in paragraph (a)(2)(i)(A), (B), or (C) (*1*) or (a)(2)(ii)(A)(*2*) of this section; or

(ii) Such indicia of ownership are either

(A) In the physical possession of, or, as a result of normal business operations, are in transit to the physical possession of, a person which is organized under the laws of the United States or a State, which person has its principal place of business in the United States and which is—

(*1*) A bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, equity capital in excess of $1,000,000;

(*2*) A broker or dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of $750,000; or

(*3*) A broker or dealer registered under the Securities Exchange Act of 1934 that has all of its obligations and liabilities assumed or guaranteed by a person described in paragraph (a)(2)(i)(A), (B), or (C) (*1*) or (a)(2)(ii)(A)(*2*) of this section; or

(B) Maintained by a bank or broker or dealer, described in paragraph (a)(2)(ii)(A) (*1*), (*2*) or (*3*), in the custody of an entity designated by the Securities and Exchange Commission as a "satisfactory control location" pursuant to Rule 15c3-3 under the Securities Exchange Act of 1934, provided that:

(*1*) Such entity holds the indicia of ownership as agent for the bank or broker or dealer, and

(*2*) Such bank or broker or dealer is liable to the plan to the same extent it would be if it retained the physical possession of the indicia of ownership pursuant to paragraph (a)(2)(ii)(A).

(b) Notwithstanding any requirement of paragraph (a) of this section, a fiduciary with respect to a plan may maintain in Canada the indicia of ownership of plan assets which are attributable to a contribution made on behalf of a plan participant who is a citizen or resident of Canada, if such indicia of ownership must remain in Canada in order for the plan to qualify for and maintain tax exempt status under the laws of Canada or to comply with other applicable laws of Canada or any Province of Canada.

(c) For purposes of this regulation the term "management and control" means the power to direct the acquisition or disposition through purchase, sale, pledging, or other means.

Signed at Washington, D.C. this 30th day of September 1977.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc.77-29187 Filed 9-30-77;10:50 am]

federal register

TUESDAY, OCTOBER 4, 1977
PART V



DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

■

CAPITAL AND OPERATING ASSISTANCE FUNDS

Fiscal Year 1978 Formula Apportionment

[4910-57]

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

FORMULA APPORTIONMENT OF CAPITAL AND OPERATING ASSISTANCE FUNDS

FY 1978 Formula Apportionment

A program of Federal assistance to urban mass transportation systems through grants on a formula basis for capital or operating assistance was enacted on November 26, 1974. The program was established pursuant to Section 5 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1604), as amended by Section 103(a) of Pub. L. 93-503 (88 Stat. 1565; November 26, 1974), the National Mass Transportation Assistance Act of 1974. An aggregate amount of $3.975 billion is authorized for this program for fiscal years 1975 through 1980.

The purpose of this Notice is to provide a formal list of amounts apportioned to urbanized areas in fiscal years 1976, Transition Quater (TQ), 1977 and 1978. In fiscal year 1975, $300 million was made available; in fiscal year 1976, an additional $500 million was made available. The Transition Quarter and fiscal year 1977 apportionments were $125 million and $650 million respectively. The fiscal year 1978 apportionment will be $775 million. These amounts are available for programming in the annual elements of Transportation Improvement Programs (TIP's) developed in accordance with 23 CFR Part 450 Subpart C and for subsequent filing of individual Section 5 project applications.

These apportioned funds remain available for obligation for two fiscal years following the year in which they are apportioned. Fiscal year 1975 funds will remain available only through September 30, 1977; therefore, those amounts have been removed from the following apportionment schedule.

For urbanized areas with a population of 200,000 persons or more, this Notice provides the formula factor weight and individual amounts for each apportionment. For urbanized areas with a population of under 200,000 persons, this Notice provides the formula factor weight but aggregates the amounts for each State.

The factor weight is computed in accordance with the Section 5 formula described in an attachment to this Notice. The attachment also describes the rounding procedures used to assure that all funds are apportioned; such procedures are consistent with those printed in the July 1, 1976 FEDERAL REGISTER. If changes to the basic formula data are reported to UMTA by the United States Bureau of the Census, appropriate changes are made to the factor weights with respect to all apportionments subsequent to the reporting of the changes.

Amounts to be made available in subsequent fiscal years will be made known through notification in the FEDERAL REGISTER.

RICHARD S. PAGE,
Urban Mass Transportation Administrator.

TECHNICAL APPENDIX: EXPLANATION OF APPORTIONMENT FORMULA AND DATA SOURCES

Section 5(b)(1) of the Urban Mass Transporation Act of 1964, as amended, directs the Secretary to apportion authorized funds on the basis of a formula under which urbanized areas would be entitled to receive an amount equal to the sum of:

"(A) One-half of the total amount so apportioned multiplied by the ratio which the population of such urbanized area or part thereof, * * *; bears to the total population of all urbanized areas * * *; and

"(B) One-half of the total amount so apportioned multiplied by a ratio for that urbanized area determined on the basis of population weighted by a factor of density, as determined by the Secretary."

The mathematical expression of the apportionment formula utilized to devise the attached allocation projects is as follows:

Factor Weight

$$= \left[\frac{\left(\frac{p_i}{\sum_{i=279}^{N} p_i} \right) + \left(\frac{p_i d_i}{\sum_{i=279}^{N} p_i d_i} \right)}{2} \right]$$

Where:
p = population of urbanized area.
d = population density of urbanized area.
i = i-th urbanized area case.
p = sum of the populations for 279 urbanized area is calculated to equal 121,808,623.
pd = sum of the population times density products for 279 urbanized areas is calculated to equal 486,685,712,680.

In cases wherein the urbanized area is divided by two or more State boundaries, an apportionment factor weight is calculated for the whole area. State allocation is made on the basis of the ratios of each State urbanized area component to the sum of all component population and population density values, and applying those ratios to the apportionment factors of the whole urbanized area.

The primary source of data was the Bureau of the Census Report of The County and City Data Book of 1972. Additional Bureau of the Census reports, PC(1) and HC(3) series, were consulted to verify data items and multi-state components.

Population densities are calculated by the Bureau of the Census on a land area to the nearest tenth of a square mile; land area is reported to the nearest whole square mile.

Due to significant number limitations in computation and printout, the various factor weight columns may not add to the printed totals. This also applies to the illustrational splits of the funds apportioned to multi-state urbanized areas over 200,000; the area total is the correct apportionment amount.

FY 1976 ROUNDING PROCEDURE

Though the factor weights have not been adjusted, the dollar apportionment of fiscal year 1976 funds has been adjusted so that the sum of fiscal year 1976 allocations to urbanized areas will add to $500 million exactly. In addition, the assignment of amounts to portions of multi-state urbanized areas of over 200,000 population has been adjusted so that the sum of the parts is equal to the urbanized area total.

It should be noted that the unadjusted apportionment of fiscal year 1976 funds falls $98 short of $500 million. Therefore, the following rounding procedure was used for FY 1976. One dollar was added to each of the 98 largest urbanized areas (by population). For multi-state urbanized areas over 200,000 population the required adjustment to the multi-state split (never more than $4) was spread equally among the state components except that all adjustments were in whole dollar increments with the first dollar of adjustment made to the first state cited.

TQ AND FY 1977 ROUNDING PROCEDURES

In the same manner the dollar apportionment of TQ and FY 1977 funds have been adjusted so that the sum of the allocations add exactly to $125 million and $650 million respectively. A similar rounding procedure to that described for FY 1976 rectified shortfalls in the unadjusted apportionments of $131 in the TQ and $159 in FY 1977.

FY 1978 ROUNDING PROCEDURES

In the same manner the dollar apportionment of FY 1978 funds has been adjusted so that the sum of the allocations add exactly to $775 million. A simiar rounding procedure to that described for FY 1976 rectified shortfalls in the unadjusted apportionment of $42 in FY 1978.

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
SECTION 5 APPORTIONMENTS TO URBANIZED AREAS OVER 200,000 POPULATION

STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
AKRON, OHIO	.003715166	1,857,583	.003714963	464,371	2,414,726	2,879,096
ALBANY-SCHENECTADY-TROY, NY	.003613054	1,806,528	.003612859	451,608	2,348,359	2,799,965
ALBUQUERQUE, N.MEX	.002015507	1,007,754	.00201539	251,925	1,310,008	1,561,927
ALLENTOWN-BETHLEHEM-EASTON, PA-NJ	.002870612	1,435,307	.002870458	358,808	1,865,799	2,224,604
(PART:NEW JERSEY)	.000202308	101,155	.000202297	25,288	131,494	156,780
(PART:PENNSYLVANIA)	.002668304	1,334,152	.002668161	333,520	1,734,305	2,067,824
ATLANTA, GA.	.008062327	4,031,164	.008061889	1,007,737	5,240,228	6,247,964
AURORA-ELGIN, ILL	.001681841	840,921	.001681750	210,219	1,093,138	1,303,356
AUSTIN, TEX	.001923474	961,738	.001923370	240,422	1,250,191	1,490,611
BALTIMORE, MD.	.014766851	7,383,426	.014766068	1,845,759	9,597,944	11,443,703
BATON ROUGE, LA	.001779788	889,894	.001779691	222,462	1,156,800	1,379,260
BIRMINGHAM, ALA.	.003715702	1,857,851	.003715499	464,438	2,415,075	2,879,511
BOSTON, MASS.	.021767057	10,883,529	.021765891	2,720,737	14,147,828	16,868,566
BRIDGEPORT, CONN	.002876531	1,438,266	.002876374	359,547	1,869,644	2,229,189
BUFFALO, N.Y.	.010136739	5,068,370	.010136201	1,267,026	6,588,531	7,855,556
CANTON, OHIO	.001796760	898,380	.001796662	224,583	1,167,831	1,392,413
CHARLESTON, S.C.	.001477690	738,846	.001477610	184,702	960,447	1,145,147
CHARLOTTE, NC.	.001906998	953,500	.001906895	238,362	1,239,482	1,477,843
CHATANOOGA, TENN-GA.	.001357850	678,925	.001357775	169,722	882,555	1,052,275
(PART:GEORGIA)	.000177769	88,885	.000177759	22,220	115,544	137,763
(PART:TENNESSEE)	.001180080	590,040	.001180016	147,502	767,010	914,512
CHICAGO, ILL., NORTHWESTERN INDIANA	.063826205	31,913,103	.063822825	7,977,854	41,484,830	49,462,690
(PART:ILLINOIS)	.060314300	30,157,152	.060311112	7,538,890	39,202,217	46,741,111
(PART:INDIANA)	.003511901	1,755,951	.003511709	438,964	2,282,611	2,721,574

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
SECTION 5 APPORTIONMENTS TO URBANIZED AREAS OVER 200,000 POPULATION

STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
CINCINNATI, OHIO - KY.	.008339362	4,169,682	.008338913	1,042,365	5,420,295	6,462,658
(PART:KENTUCKY)	.001395930	697,966	.001395854	174,482	907,306	1,081,786
(PART:OHIO)	.006943432	3,471,716	.006943058	867,883	4,512,988	5,380,869
CLEVELAND, OHIO	.014151851	7,075,926	.014151085	1,768,886	9,198,205	10,967,091
COLORADO SPRINGS, COLO.	.001319110	659,555	.001319038	164,880	857,375	1,022,254
COLUMBIA, SC.	.001573956	786,979	.001573870	196,734	1,023,016	1,219,749
COLUMBUS, GA.-ALA.	.001277258	638,628	.001277187	159,649	830,173	989,819
(PART:ALABAMA)	.000137954	68,977	.000137946	17,244	89,666	106,908
(PART:GEORGIA)	.001139304	569,651	.001139241	142,405	740,507	882,911
COLUMBUS, OHIO	.005977257	2,988,629	.005976935	747,117	3,885,009	4,632,125
CORPUS CHRISTI, TEX.	.001230626	615,313	.001230558	153,820	799,863	953,682
DALLAS, TEX.	.008226389	4,113,195	.008225937	1,028,243	5,346,860	6,375,102
DAVENPORT-ROCK ISLAND-MOLINE, IOWA-ILL	.001706967	853,484	.001706873	213,360	1,109,469	1,322,826
(PART:ILLINOIS)	.000948906	474,454	.000948855	118,607	616,756	735,362
(PART:IOWA)	.000758060	379,030	.000758018	94,753	492,712	587,463
DAYTON, OHIO	.004972060	2,486,030	.004971791	621,474	3,231,664	3,853,139
DENVER, COLO	.008147720	4,073,861	.008147282	1,018,411	5,295,734	6,314,144
DES MOINES, IOWA	.001666425	833,213	.001666334	208,292	1,083,118	1,291,408
DETROIT, MICH	.034871087	17,435,544	.034869230	4,358,654	22,664,997	27,023,654
EL PASO, TEX	.002365034	1,182,518	.002364906	295,614	1,537,189	1,832,802
FLINT, MICH	.002516730	1,258,366	.002516595	314,575	1,635,787	1,950,361
FORT LAUDERDALE-HOLLYWOOD, FLA.	.004343807	2,171,904	.004343572	542,947	2,823,322	3,366,269
FORT WAYNE, IND.	.001679443	839,722	.001679353	209,920	1,091,580	1,301,498
FORT WORTH, TEX.	.003966571	1,983,286	.003966352	495,794	2,578,129	3,073,923

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
SECTION 5 APPORTIONMENTS TO URBANIZED AREAS OVER 200,000 POPULATION

STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
FRESNO, CALIF	.001976999	988,500	.001976892	247,112	1,284,980	1,532,091
GRAND RAPIDS, MICH.	.002321768	1,160,885	.002321641	290,207	1,509,067	1,799,271
HARRISBURG, PA	.001747807	873,904	.001747713	218,465	1,136,014	1,354,477
HARTFORD, CONN	.003610860	1,805,431	.003610666	451,334	2,346,933	2,798,266
HONOLULU, HAWAII	.003564412	1,782,206	.003564221	445,528	2,316,743	2,762,271
HOUSTON, TEX.	.012256819	6,128,410	.012256156	1,532,020	7,966,502	9,498,521
INDIANAPOLIS, IND	.005180487	2,590,244	.005180203	647,526	3,367,132	4,014,658
JACKSONVILLE, FLA.	.002994303	1,497,152	.002994137	374,268	1,946,189	2,320,456
KANSAS CITY, MO. - KANS.	.007051344	3,525,673	.007050958	881,370	4,583,124	5,464,493
(PART:KANSAS)	.002361865	1,180,933	.002361737	295,218	1,535,129	1,830,346
(PART:MISSOURI)	.004689479	2,344,740	.004689221	586,152	3,047,994	3,634,166
LANSING, MICHIGAN	.001679463	839,732	.001679372	209,922	1,091,592	1,301,513
LAS VEGAS, NEV	.001446412	723,206	.001446332	180,792	940,116	1,120,907
LAWRENCE-HAVERHILL, MASS-N.H.	.001310376	655,187	.001310304	163,789	851,699	1,015,485
(PART:MASSACHUSETTS)	.001212134	606,067	.001212068	151,509	787,844	939,352
(PART:NEW HAMPSHIRE)	.000098242	49,120	.000098236	12,280	63,854	76,132
LITTLE ROCK-NORTH LITTLE-ROCK, ARK.	.001448052	724,025	.001447973	180,997	941,183	1,122,179
LOS ANGELES -- LONG BEACH	.079864399	39,932,200	.079860171	9,982,522	51,909,102	61,891,633
LOUISVILLE, KY.-IND.	.005704391	2,852,196	.005704084	713,011	3,707,655	4,420,666
(PART:INDIANA)	.000577053	288,527	.000577022	72,128	375,065	447,192
(PART:KENTUCKY)	.005127337	2,563,669	.005127062	640,883	3,332,590	3,973,473
MADISON, WIS.	.001473638	736,818	.001473558	184,195	957,813	1,142,007
MEMPHIS, TENN. - MISS.	.005042038	2,521,019	.005041766	630,221	3,277,149	3,907,369
(PART:MISSISSIPPI)	.000065919	32,959	.000065915	8,240	42,845	51,084
(PART:TENNESSEE)	.004976119	2,488,060	.004975851	621,981	3,234,303	3,856,284

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
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STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
MIAMI, FLA.	.010914489	5,457,245	.010913909	1,364,239	7,094,041	8,458,280
MILWAUKEE, WIS.	.008671847	4,335,924	.008671376	1,083,923	5,636,395	6,720,317
MINNEAPOLIS - ST. PAUL	.011134050	5,567,025	.011133441	1,391,681	7,236,737	8,628,417
MOBILE, ALA	.001463798	731,899	.001463717	182,965	951,416	1,134,380
NASHVILLE-DAVIDSON, TENN	.002442463	1,221,232	.002442327	305,291	1,587,513	1,892,803
NEW HAVEN, CONN	.002591518	1,295,760	.002591378	323,923	1,684,396	2,008,317
NEW ORLEANS, LA.	.009112177	4,556,089	.009111694	1,138,962	5,922,601	7,061,563
NEWPORT NEWS-HAMPTON, VA	.001617093	808,547	.001617004	202,126	1,051,053	1,253,178
NEW YORK, N.Y., NORTHEASTERN N.J.	.177799223	88,899,612	.177789895	22,223,737	115,563,412	137,787,169
(PART:NEW JERSEY)	.035558460	17,779,232	.035556538	4,444,568	23,111,747	27,556,316
(PART:NEW YORK)	.142240756	71,120,380	.142233349	17,779,169	92,451,660	110,230,845
NORFOLK - PORTSMOUTH, VA.	.004277488	2,138,745	.004277254	534,657	2,780,215	3,314,872
OKLAHOMA CITY, OKLA.	.003398474	1,699,238	.003398287	424,786	2,208,886	2,633,672
OMAHA, NEBR-IOWA	.003661649	1,830,825	.003661451	457,682	2,379,944	2,837,624
(PART:IOWA)	.000359415	179,708	.000359395	44,925	233,607	278,531
(PART:NEBRASKA)	.003302234	1,651,117	.003302056	412,757	2,146,336	2,559,093
ORLANDO, FLA	.001982030	991,015	.001981922	247,741	1,288,249	1,535,989
OXNARD-VENTURA-THOUSAND OAKS, CALIF	.001555705	777,853	.001555620	194,453	1,011,153	1,205,605
PEORIA, ILL	.001602372	801,186	.001602284	200,286	1,041,485	1,241,770
PHILADELPHIA, PA.--NEW JERSEY	.038602771	19,301,386	.038600728	4,825,091	25,090,471	29,915,565
(PART:NEW JERSEY)	.005480259	2,740,130	.005479962	684,996	3,561,975	4,246,970
(PART:PENNSYLVANIA)	.033122511	16,561,256	.033120764	4,140,095	21,528,494	25,668,592
PHOENIX, ARIZ	.005520090	2,760,046	.005519788	689,974	3,587,862	4,277,836
PITTSBURGH, PA.	.013447439	6,723,720	.013446711	1,680,839	8,740,362	10,421,202

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STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
PORTLAND, OREG. - WASH.	.006006607	3,003,304	.006006282	750,786	3,904,084	4,654,869
(PART:OREGON)	.005533679	2,766,842	.005533380	691,673	3,596,697	4,288,369
(PART:WASHINGTON)	.000472928	236,462	.000472902	59,113	307,387	366,499
PROVIDENCE-PAWTUCKET-WARWICK, R.I.-MASS.	.005926602	2,963,301	.005926282	740,786	3,852,084	4,592,869
(PART:MASSACHUSETTS)	.000404519	202,259	.000404497	50,563	262,923	313,485
(PART:RHODE ISLAND)	.005522083	2,761,042	.005521785	690,223	3,589,160	4,279,383
RICHMOND, VA.	.002942858	1,471,429	.002942698	367,838	1,912,754	2,280,590
ROCHESTER, N.Y.	.005018179	2,509,090	.005017911	627,239	3,261,642	3,888,882
ROCKFORD, ILL.	.001561130	780,565	.001561046	195,131	1,014,680	1,209,810
SACRAMENTO, CALIF.	.004290868	2,145,434	.004344134	543,017	2,823,687	3,366,704
SALT LAKE CITY, UTAH	.003248480	1,624,240	.003248303	406,038	2,111,397	2,517,434
SAN ANTONIO, TEX	.005921791	2,960,896	.005921472	740,185	3,848,958	4,589,141
SAN BERNADINO-RIVERSIDE, CALIF.	.003525125	1,762,563	.003524931	440,617	2,291,205	2,731,822
SAN DIEGO, CALIF.	.008794397	4,397,199	.008793922	1,099,241	5,716,050	6,815,290
SAN FRANCISCO - OAKLAND	.025730814	12,865,408	.025729442	3,216,181	16,724,135	19,940,318
SAN JOSE, CALIF. (INC)	.008104777	4,052,389	.008104342	1,013,043	5,267,823	6,280,866
SAN JUAN, P.R.	.010081345	5,040,673	.010080820	1,260,103	6,552,533	7,812,636
SCRANTON, PA.	.001273538	636,769	.001273468	159,184	827,755	986,937
SEATTLE-EVERETT, WASH	.008894300	4,447,151	.008893819	1,111,728	5,780,982	6,892,710
SHREVEPORT, LA	.001562158	781,080	.001562073	195,260	1,015,348	1,210,606
SOUTH BEND, IND-MICH	.002016712	1,008,356	.002016602	252,076	1,310,793	1,562,866
(PART:INDIANA)	.001876163	938,082	.001876061	234,508	1,219,440	1,453,947
(PART:MICHIGAN)	.000140549	70,274	.000140541	17,568	91,352	108,919
SPOKANE, WASH	.001638690	819,346	.001638601	204,826	1,065,091	1,269,915

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SPRINGFIELD-CHICOPEE-HOLYOKE, MASS.-CONN.	.003254013	1,627,007	.003253835	406,730	2,114,994	2,521,722
(PART:CONNECTICUT)	.000384623	192,312	.000384602	48,076	249,992	298,066
(PART:MASSACHUSETTS)	.002869390	1,434,695	.002869232	358,654	1,865,001	2,223,654
ST. LOUIS, MO. - ILL.	.015637165	7,818,583	.015636329	1,954,542	10,163,614	12,118,155
(PART:ILLINOIS)	.002070552	1,035,276	.002070439	258,806	1,345,786	1,604,590
(PART:MISSOURI)	.013566609	6,783,307	.013565885	1,695,736	8,817,825	10,513,560
ST. PETERSBURG, FLA	.003601884	1,800,943	.003601689	450,212	2,341,098	2,791,308
SYRACUSE, NY	.003055157	1,527,579	.003054993	381,875	1,985,746	2,367,619
TACOMA, WASH	.002247673	1,123,837	.002247550	280,944	1,460,908	1,741,851
TAMPA, FLA	.002584185	1,292,093	.002584045	323,006	1,679,629	2,002,634
TOLEDO, OHIO-MICH	.003479117	1,739,559	.003478928	434,867	2,261,304	2,696,169
(PART:MICHIGAN)	.000064281	32,140	.000064277	8,035	41,781	49,814
(PART:OHIO)	.003414836	1,707,419	.003414651	426,832	2,219,523	2,646,354
TRENTON, NJ-PA	.002305991	1,152,996	.002305868	288,234	1,498,815	1,787,047
(PART:NEW JERSEY)	.002081352	1,040,677	.002081241	260,156	1,352,807	1,612,961
(PART:PENNSYLVANIA)	.000224638	112,319	.000224626	28,078	146,008	174,085
TUCSON, ARIZ	.002056839	1,028,420	.002056727	257,091	1,336,873	1,593,963
TULSA, OKLA	.002312298	1,156,150	.002312171	289,022	1,502,912	1,791,932
WASHINGTON, D.C. - MARYLAND - VIRGINIA	.022978783	11,489,392	.022977563	2,872,196	14,935,418	17,807,612
(PART:MARYLAND)	.007373766	3,686,888	.007373368	921,671	4,792,690	5,714,360
(PART:DISTRICT OF COLUMBIA)	.010444258	5,222,128	.010443717	1,305,465	6,788,416	8,093,880
(PART:VIRGINIA)	.005160754	2,580,376	.005160474	645,060	3,354,308	3,999,367
WEST PALM BEACH, FLA	.001803142	901,572	.001803043	225,381	1,171,979	1,397,358
WICHITA, KANS	.002134631	1,067,316	.002134515	266,815	1,387,435	1,654,249
WILKES-BARRE, PA.	.001533002	766,501	.001532918	191,615	996,397	1,188,011
WILMINGTON, DEL-NJ	.002813571	1,406,786	.002813419	351,678	1,828,724	2,180,399
(PART:DELAWARE)	.002689636	1,344,818	.002689491	336,187	1,748,169	2,084,355
(PART:NEW JERSEY)	.000123935	61,968	.000123928	15,491	80,554	96,044

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STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
WORCESTOR, MASS	.001760608	880,305	.001760513	220,065	1,144,334	1,364,397
YOUNGSTOWN-WARREN, OHIO	.002873579	1,436,790	.002873423	359,178	1,867,725	2,226,902

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STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - ALABAMA						
HUNTSVILLE, ALA.	.000780954		.000780911			
MONTGOMERY, ALA	.000958873		.000958821			
TUSCALOOSA, ALA	.000525860		.000525832			
GADSEN, ALA.	.000363268		.000363247			
FLORENCE, ALA.	.000355141		.000355121			
ANNISTON, ALA.	.000336737		.000336719			
GOVERNORS APPORTIONMENT FOR ALABAMA	.003320833	1,660,414	.003320650	415,078	2,158,419	2,573,503
STATE - ALASKA						
ANCHORAGE, ALASKA	.000686119		.000686081			
GOVERNORS APPORTIONMENT FOR ALASKA	.000686119	343,059	.000686081	85,761	445,952	531,712
STATE - ARIZONA						
GOVERNORS APPORTIONMENT FOR ARIZONA	.0		.0			
STATE - ARKANSAS						
FORT SMITH, ARK-OKLA	.000396977		.000396955			
PINE BLUFF, ARK.	.000433225		.000433202			
TEXARKANA, TEX.-ARK.	.000138523		.000138515			
GOVERNORS APPORTIONMENT FOR ARKANSAS	.000968725	484,361	.000968672	121,084	629,635	750,720
STATE - CALIFORNIA						
BAKERSFIELD, CALIF.	.001280481		.001280412			
STOCKTON, CALIF.	.001222933		.001222867			
SANTA BARBARA, CALIF	.000999064		.000999011			
MODESTO, CALIF	.000772715		.000772673			
SEASIDE-MONTEREY, CALIF	.000753893		.000753853			
SANTA ROSA, CALIF	.000459852		.000459827			
SANTA CRUZ, CALIF	.000465225		.000465200			

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STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - CALIFORNIA						
SALINAS, CALIF.	.000523551		.000523523			
ANTIOCH-PITTSBURG, CALIF.	.000408151		.000408129			
SIMI VALLEY, CALIF.	.000368012		.000367992			
GOVERNORS · APPORTIONMENT FOR CALIFORNIA	.007253878	3,626,935	.007253486	906,683	4,714,759	5,621,451
STATE - COLORADO						
PUEBLO, COLO	.000772013		.000771971			
BOULDER, COLO.	.000624979		.000624946			
GOVERNORS APPORTIONMENT FOR COLORADO	.001396992	698,495	.001396918	174,615	907,995	1,082,611
STATE - CONNECTICUT						
STAMFORD, CONN.	.001263683		.001263614			
WATERBURY, CONN.	.001067113		.001067055			
NEW LONDON-NORWICH, CONN	.000834764		.000834718			
NEW BRITAIN, CONN	.000992433		.000992379			
NORWALK, CONN	.000719860		.000719821			
MERIDEN, CONN	.000545032		.000545002			
BRISTOL, CONN	.000436160		.000436136			
DANBURY, CONN.	.000356717		.000356697			
GOVERNORS APPORTIONMENT FOR CONNECTICUT	.006215761	3,107,877	.006215422	776,924	4,040,021	4,816,952
STATE - DELAWARE						
GOVERNORS APPORTIONMENT FOR DELAWARE	.0		.0			
STATE - DISTRICT OF COLUMBIA						
GOVERNORS APPORTIONMENT FOR DIST OF COLUMBIA	.0		.0			
STATE - FLORIDA						
MELBOURNE-COCOA, FLA.	.001042667		.001042610			

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STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - FLORIDA						
SARASOTA-BRADENTON, FLA.	.001000568		.001000513			
PENSACOLA, FLA.	.001113421		.001113361			
DAYTONA BEACH, FLA	.000633107		.000633072			
TALLAHASSEE, FLA	.000528473		.000528444			
GAINESVILLE, FLA.	.000454882		.000454857			
FORT MYERS, FLA.	.000396896		.000396874			
LAKELAND, FLA.	.000441591		.000441567			
GOVERNORS APPORTIONMENT FOR FLORIDA	.005611606	2,805,799	.005611298	701,411	3,647,339	4,348,755
STATE - GEORGIA						
SAVANNAH, GA.	.001102008		.001101948			
AUGUSTA, GA-S.C.	.000880823		.000880775			
MACON, GA	.000854076		.000854030			
ALBANY, GA	.000496902		.000496875			
GOVERNORS APPORTIONMENT FOR GEORGIA	.003333809	1,666,903	.003333628	416,702	2,166,856	2,583,561
STATE - HAWAII						
GOVERNORS APPORTIONMENT FOR HAWAII	.0		.0			
STATE - IDAHO						
BOISE, IDAHO	.000603301		.000603269			
GOVERNORS APPORTIONMENT FOR IDAHO	.000603301	301,650	.000603269	75,409	392,124	467,533
STATE - ILLINOIS						
JOLIET, ILL.	.001089921		.001089862			
SPRINGFIELD, ILL	.000943335		.000943284			
CHAMPAIGN-URBANA, ILL	.000978253		.000978201			
DECATUR, ILL	.000683706		.000683669			
ALTON, ILL	.000622170		.000622136			

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STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - ILLINOIS						
BLOOMINGTON-NORMAL, ILL.	.000533430		.000533401			
DUBUQUE, IOWA-ILL.	.000014397		.000014396			
GOVERNORS APPORTIONMENT FOR ILLINOIS	.004865212	2,432,603	.004864950	608,117	3,162,213	3,770,336
STATE - INDIANA						
EVANSVILLE, IND	.001099778		.001099719			
MUNCIE, IND	.000714082		.000714043			
TERRE HAUTE, IND	.000544902		.000544872			
ANDERSON, IND	.000485490		.000485463			
LAFAYETTE-WEST LAFAYETTE, IND	.000670531		.000670495			
GOVERNORS APPORTIONMENT FOR INDIANA	.003514782	1,757,388	.003514592	439,322	2,284,482	2,723,808
STATE - IOWA						
CEDAR RAPIDS, IOWA	.000830600		.000830554			
WATERLOO, IOWA	.000652036		.000652000			
SIOUX CITY, IOWA-NEBR.-S.DAK	.000498686		.000498658			
DUBUQUE, IOWA-ILL.	.000485795		.000485769			
GOVERNORS APPORTIONMENT FOR IOWA	.002467117	1,233,556	.002466981	308,372	1,603,535	1,911,910
STATE - KANSAS						
TOPEKA, KANS	.000881854		.000881806			
ST JOSEPH, MO-KANS	.000006371		.000006370			
GOVERNORS APPORTIONMENT FOR KANSAS	.000888224	444,111	.000888176	111,022	577,313	688,336
STATE - KENTUCKY						
HUNTINGTON-ASHLAND, W.VA-KY-OHIO	.000331897		.000331879			
LEXINGTON, KY.	.001310154		.001310084			
CLARKSVILLE, KY.-TENN.	.000085248		.000085244			
OWENSBORO, KY.	.000461829		.000461805			

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STATE - KENTUCKY						
GOVERNORS APPORTIONMENT FOR KENTUCKY	.002189129	1,094,562	.002189011	273,625	1,422,856	1,696,483
STATE - LOUISIANA						
MONROE, LA	.000581947		.000581915			
LAKE CHARLES, LA	.000601217		.000601184			
LAFAYETTE, LA	.000576912		.000576881			
ALEXANDRIA, LA	.000485369		.000485342			
GOVERNORS APPORTIONMENT FOR LOUISIANA	.002245446	1,122,721	.002245323	280,665	1,459,457	1,740,125
STATE - MAINE						
PORTLAND, MAINE	.000647180		.000647144			
LEWISTON-AUBURN, MAINE	.000331998		.000331980			
GOVERNORS APPORTIONMENT FOR MAINE	.000979178	489,588	.000979124	122,391	636,429	758,821
STATE - MARYLAND						
GOVERNORS APPORTIONMENT FOR MARYLAND	.0		.0			
STATE - MASSACHUSETTS						
LOWELL, MASS.	.001302563		.001302493			
BROCKTOWN, MASS.	.001044491		.001044435			
FALL RIVER, MASS.-R.I.	.000956134		.000956082			
NEW BEDFORD, MASS	.001093302		.001093244			
FITCHBURG-LEOMINSTER, MASS	.000423193		.000423170			
PITTSFIELD, MASS.	.000351219		.000351199			
GOVERNORS APPORTIONMENT FOR MASSACHUSETTS	.005170903	2,585,448	.005170623	646,326	3,360,902	4,007,232
STATE - MICHIGAN						
ANN ARBOR, MICH.	.001461414		.001461336			

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STATE - MICHIGAN						
KALAMAZOO, MICH.	.000948476		.000948424			
SAGINAW, MICH.	.001119860		.001119800			
MUSKEGON-MUSKEGON HEIGHTS, MICH	.000653440		.000653404			
JACKSON, MICH	.000498253		.000498226			
BAY CITY, MICH	.000559749		.000559718			
BATTLE CREEK, MICH	.000520469		.000520440			
GOVERNORS APPORTIONMENT FOR MICHIGAN	.005761660	2,880,825	.005761348	720,165	3,744,872	4,465,044
STATE - MINNESOTA						
DULUTH-SUPERIOR, MINN.-WIS	.000584467		.000584435			
FARGO-MOORHEAD, N. DAK.-MINN	.000241991		.000241978			
LA CROSSE, WIS.-MINN.	.000017405		.000017404			
ROCHESTER, MINN.	.000448908		.000448884			
ST. CLOUD, MINN.	.000361787		.000361767			
GOVERNORS APPORTIONMENT FOR MINNESOTA	.001654558	827,277	.001654468	206,807	1,075,401	1,282,212
STATE - MISSISSIPPI						
JACKSON, MISS.	.001294081		.001294011			
BOLOXI-GULFPORT	.000737635		.000737594			
GOVERNORS APPORTIONMENT FOR MISSISSIPPI	.002031716	1,015,857	.002031605	253,951	1,320,542	1,574,493
STATE - MISSOURI						
SPRINGFIELD, MO	.000737797		.000737756			
ST JOSEPH, MO-KANS	.000502686		.000502658			
COLUMBIA, MO.	.000328932		.000328914			
GOVERNORS APPORTIONMENT FOR MISSOURI	.001569414	784,705	.001569328	196,166	1,020,061	1,216,229
STATE - MONTANA						
BILLINGS, MONT	.000485864		.000485837			

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STATE - MONTANA						
GREAT FALLS, MONT	.000528015		.000527986			
GOVERNORS APPORTIONMENT FOR MONTANA	.001013878	506,938	.001013823	126,728	658,985	785,712
STATE - NEBRASKA						
LINCOLN, NEBR.	.001094105		.001094046			
SIOUX CITY, IOWA-NEBR.-S.DAK	.000047450		.000047448			
GOVERNORS APPORTIONMENT FOR NEBRASKA	.001141555	570,777	.001141493	142,686	741,969	884,657
STATE - NEVADA						
RENO, NEV	.000681412		.000681375			
GOVERNORS APPORTIONMENT FOR NEVADA	.000681412	340,705	.000681375	85,172	442,893	528,065
STATE - NEW HAMPSHIRE						
MANCHESTER, N.H.	.000628339		.000628304			
NASHUA, N.H.	.000364217		.000364197			
GOVERNORS APPORTIONMENT FOR NEW HAMPSHIRE	.000992556	496,277	.000992501	124,063	645,124	769,188
STATE - NEW JERSEY						
ATLANTIC CITY, N.J.	.000825060		.000825015			
VINELAND-MILLUILLE, N.J.	.000367263		.000367242			
GOVERNORS APPORTIONMENT FOR NEW JERSEY	.001192323	596,161	.001192257	149,031	774,966	923,999
STATE - NEW MEXICO						
GOVERNORS APPORTIONMENT FOR NEW MEXICO	.0		.0			
STATE - NEW YORK						
UTICA-ROME, N.Y.	.001188350		.001188285			

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STATE - NEW YORK						
BINGHAMTON, N.Y.	.001235662		.001235595			
POUGHKEEPSIE, N.Y	.000619297		.000619263			
ELMIRA, N.Y.	.000540552		.000540523			
GOVERNORS APPORTIONMENT FOR NEW YORK	.003583860	1,791,927	.003583665	447,956	2,329,380	2,777,340
STATE - NORTH CAROLINA						
FAYETTEVILLE, N.C.	.001027449		.001027393			
RALEIGH, N.C.	.000963059		.000963006			
GREENSBORO, N.C.	.001014130		.001014075			
WINSTON-SALEM, N.C.	.000901686		.000901636			
DURHAM, N.C	.000656165		.000656129			
GASTONIA, N.C.	.000546382		.000546352			
HIGH POINT, N.C.	.000556598		.000556568			
ASHEVILLE, N.C.	.000438596		.000438572			
BURLINGTON, N.C.	.000365884		.000365864			
WILMINGTON, N.C.	.000353111		.000353091			
GOVERNORS APPORTIONMENT FOR NORTH CAROLINA	.006823061	3,411,526	.006822687	852,832	4,434,739	5,287,582
STATE - NORTH DAKOTA						
FARGO-MOORHEAD, N. DAK.-MINN	.000427929		.000427906			
GOVERNORS APPORTIONMENT FOR NORTH DAKOTA	.000427929	213,964	.000427906	53,488	278,138	331,627
STATE - OHIO						
LORAIN-ELYRIA, OHIO	.001146137		.001146074			
HUNTINGTON-ASHLAND, W.VA-KY-OHIO	.000183772		.000183762			
SPRINGFIELD, OHIO	.000740615		.000740575			
WHEELING, W. VA.-OHIO	.000285642		.000285627			
HAMILTON, OHIO	.000595465		.000595433			
STEUBENVILLE-WEIRTON, OHIO-W. VA.	.000322132		.000322114			
MANSFIELD, OHIO	.000469761		.000469735			
LIMA, OHIO	.000473858		.000473833			
PARKERSBURG, W.VA.-OHIO	.000045825		.000045823			

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
SECTIION 5 APPORTIONENTS TO URBANIZED AREAS UNDER 200,000 POPULATION

STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - OHIO						
GOVERNORS APPORTIONMENT FOR OHIO	.004263207	2,131,600	.004262975	532,868	2,770,929	3,303,805
STATE - OKLAHOMA						
LAWTON, OKLA	.000606589		.000606556			
FORT SMITH, ARK-OKLA	.000010139		.000010139			
GOVERNORS APPORTIONMENT FOR OKLAHOMA	.000616728	308,363	.000616694	77,086	400,851	477,937
STATE - OREGON						
EUGENE, OREG	.000931851		.000931800			
SALEM, OREG	.000623557		.000623523			
GOVERNORS APPORTIONMENT FOR OREGON	.001555407	777,703	.001555323	194,414	1,010,958	1,205,375
STATE - PENNSYLVANIA						
ERIE, PA.	.001439830		.001439753			
READING, PA.	.001394269		.001394194			
YORK, PA	.000922689		.000922639			
LANCASTER, PA	.000844689		.000844643			
JOHNSTOWN, PA	.000733858		.000733818			
ALTOONA, PA	.000686420		.000686384			
WILLIAMSPORT, PA.	.000455422		.000455398			
GOVERNORS APPORTIONMENT FOR PENNSYLVANIA	.006477178	3,238,586	.006476830	809,600	4,209,935	5,019,543
STATE - PUERTO RICO						
PONCE, P.R.	.001520094		.001520014			
MAYAGUEZ, P.R.	.000633107		.000633074			
CHAUAS, P.R.	.000794257		.000794215			
GOVERNORS APPORTIONMENT FOR PUERTO RICO	.002947458	1,473,727	.002947304	368,411	1,915,745	2,284,160
STATE - RHODE ISLAND						
FALL RIVER, MASS.-R.I.	.000081317		.000081312			

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
SECTIION 5 APPORTIONENTS TO URBANIZED AREAS UNDER 200,000 POPULATION

STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - RHODE ISLAND						
GOVERNORS APPORTIONMENT FOR RHODE ISLAND	.000081317	40,658	.000081312	10,164	52,852	63,016
STATE - SOUTH CAROLINA						
GREENVILLE, S.C.	.001002188		.001002133			
AUGUSTA, GA-S.C.	.000123575		.000123568			
SPARTANBURG, S.C.	.000456600		.000456575			
GOVERNORS APPORTIONMENT FOR SOUTH CAROLINA	.001582363	791,180	.001582276	197,782	1,028,478	1,226,263
STATE - SOUTH DAKOTA						
SIOUX CITY, IOWA-NEBR.-S.DAK	.000004477		.000004477			
SIOUX FALLS, S. DAK	.000524161		.000524133			
GOVERNORS APPORTIONMENT FOR SOUTH DAKOTA	.000528638	264,318	.000528610	66,075	343,596	409,672
STATE - TENNESSEE						
KNOXVILLE, TENN.	.001215087		.001215020			
KINGSPORT, TENN.-VA.	.000368637		.000368616			
CLARKSVILLE, KY.-TENN.	.000241880		.000241867			
GOVERNORS APPORTIONMENT FOR TENNESSEE	.001825604	912,801	.001825503	228,187	1,186,575	1,414,764
STATE - TEXAS						
LUBBOCK, TEX.	.000917355		.000917305			
AMARILLO, TEX	.000794324		.000794281			
WACO, TEX	.000649235		.000649199			
PORT ARTHUR, TEX	.000669080		.000669043			
BEAUMONT, TEX	.000664304		.000664267			
WICHITA FALLS, TEX	.000632220		.000632185			
MCALLEN-PHARR-EDINBURG, TEX	.000635074		.000635040			
ABILENE, TEX	.000479247		.000479220			
TEXAS CITY-LA MARQUE, TEX	.000432760		.000432736			

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
SECTIION 5 APPORTIONENTS TO URBANIZED AREAS UNDER 200,000 POPULATION

STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - TEXAS						
ODESSA, TEX	.000607993		.000607961			
KILLEEN, TEX	.000440094		.000440070			
LAREDO, TEX.	.000517189		.000517162			
SAN ANGELO, TEX.	.000386669		.000386647			
GALVESTON, TEX	.000428148		.000428125			
MIDLAND, TEX.	.000364847		.000364827			
TYLER, TEX.	.000393464		.000393443			
TEXARKANA, TEX.-ARK.	.000216343		.000216331			
SHERMAN-DENISON, TEX.	.000318371		.000318353			
BROWNSVILLE, TEX.	.000403202		.000403181			
BRYAN-COLLEGE STATION, TEX.	.000292227		.000292211			
HARLIGEN-SAN BENITO, TEX.	.000284577		.000284561			
GOVERNORS APPORTIONMENT FOR TEXAS	.010526724	5,263,351	.010526146	1,315,760	6,841,983	8,157,763
STATE - UTAH						
OGDEN, UTAH.	.000992235		.000992181			
PROVO-OREM, UTAH	.000598698		.000598665			
GOVERNORSS APPORTIONMENT FOR UTAH	.001590933	795,465	.001590845	198,855	1,034,048	1,232,904
STATE - VIRGINIA						
ROANOKE, VA.	.001022474		.001022419			
PETERSBURG-COLONIAL HEIGHTS, VA	.000658309		.000658273			
LYNCHBURG, VA.	.000429365		.000429342			
KINGSPORT, TENN.-VA.	.000024456		.000024454			
GOVERNORS APPORTIONMENT FOR VIRGINIA	.002134604	1,067,300	.002134487	266,809	1,387,415	1,654,227
STATE - WASHINGTON						
RICHLAND-KENNEWICK, WASH	.000387599		.000387577			
YAKIMA, WASHINGTON	.000459620		.000459595			
GOVERNORS APPORTIONMENT FOR WASHINGTON	.000847219	423,609	.000847172	105,896	550,661	656,558
STATE - WEST VIRGINIA						
HUNTINGTON-ASHLAND, W.VA-KY-OHIO	.000692171		.000692134			

NATIONAL MASS TRANSPORTATION ASSISTANCE ACT OF 1974
SECTIION 5 APPORTIONENTS TO URBANIZED AREAS UNDER 200,000 POPULATION

STATE AND URBANIZED AREAS	FACTOR WEIGHT	FY 1976 ALLOC	FACTOR WEIGHT	TRANS QTR	FY 1977 ALLOC	FY 1978 ALLOC
STATE - WEST VIRGINIA						
CHARLESTON, W.VA.	.001060370		.001060312			
WHEELING, W. VA.-OHIO	.000415086		.000415064			
STEUBENVILLE-WEIRTON, OHIO-W. VA	.000221848		.000221836			
PARKERSBURG, W.VA.-OHIO	.000434885		.000434861			
GOVERNORS APPORTIONMENT FOR WEST VIRGINIA	.002824360	1,412,178	.002824207	353,022	1,835,732	2,188,760
STATE - WISCONSIN						
DULUTH-SUPERIOR, MINN.-WIS	.000160827		.000160818			
APPLETON, WIS	.000996270		.000996216			
GREEN BAY, WIS	.000750658		.000750617			
RACINE, WIS	.000985886		.000985834			
KENOSHA, WIS	.000762700		.000762659			
LA CROSSE, WIS.-MINN.	.000418321		.000418298			
OSHKOSH, WIS.	.000478695		.000478670			
GOVERNORS APPORTIONMENT FOR WISCONSIN	.004553357	2,276,675	.004553111	569,137	2,959,518	3,528,661

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federal register

TUESDAY, OCTOBER 4, 1977

PART VI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

IDENTIFICATION, CLASSIFICATION AND REGULATION OF TOXIC SUBSTANCES POSING A POTENTIAL OCCUPATIONAL CARCINOGENIC RISK

[4510-26]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1990]

IDENTIFICATION, CLASSIFICATION AND REGULATION OF TOXIC SUBSTANCES POSING A POTENTIAL OCCUPATIONAL CARCINOGENIC RISK

AGENCY: The Occupational Safety and Health Administration, Department of Labor.

ACTION: Proposed rule and notice of hearing.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposes a new general regulation concerning the identification, classification and regulation of toxic substances in American workplaces that may pose a carcinogenic risk to workers.[1] This proposal is necessary to allow OSHA to deal in a comprehensive way with the important problem of worker exposure to many toxic substances which may be potential or confirmed occupational carcinogens. This broad rulemaking proceeding is intended to establish: new procedures and a regulatory framework for regulating exposures to potential occupational carcinogens; OSHA's scientifically based policies concerning the identification and classification of potential occupational carcinogens; and three model standards for use in specific rulemakings involving such substances. The three proposed model standards incorporate OSHA's views concerning which protective provisions are generally the most appropriate to protect employees permanently against exposure to categories of toxic substances, as defined, and, in the model emergency temporary standard, which protective provisions are necessary to protect employees from the danger of cancer and which can be instituted immediately. Once promulgated in this rulemaking therefore, these proposed procedures, identification and classification criteria, and, as qualified above, the provisions of the model standards will be consistently applied and, as discussed in this proposal, foreclosed from reconsideration in future regulatory activity pursuant to these proposed regulations.

OSHA invites written comment on these proposed regulations and all of the issues raised or implicit therein. In that regard, OSHA has scheduled an informal public hearing for the receipt of oral testimony as well, as pointed out below.

DATES: Written comments concerning the proposed set of regulations and notices of intention to appear at the hearing must be postmarked on or before December 8, 1977; all materials and direct written testimony of witnesses which will be introduced into the hearing record by any party must be filed by no later than January 9, 1978; an informal hearing is scheduled to begin March 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. James Foster, Office of Public Affairs, OSHA, Third Street and Constitution Avenue NW., Room N3641, Washington, D.C. 20210 (202-523-8151).

SUPPLEMENTARY INFORMATION: Pursuant to sections 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), the Secretary of Labor's Order 8-76 (41 FR 25059) and Title 29 of the Code of Federal Regulations (CFR), Part 1911, it is proposed to amend Title 29 of the CFR by adding at this time a new Part 1990, a subpart A to Part 1990 to deal with the identification, classification and regulation of toxic substances, in general, and a subpart B to Part 1990 to deal with the identification, classification and regulation of toxic substances, as defined, for which there is reported to be evidence of carcinogenic potential to humans. These regulations would apply to all employments in all industries covered by the Act, including general industry, construction, maritime and agriculture. OSHA requests the submission of written comments, data and arguments from interested persons on the variety of scientific, technical and procedural issues addressed or implicit in this proposal. In addition, an informal hearing has been scheduled to provide an opportunity for presentation of evidence concerning the issues and to facilitate the conduct of this rulemaking.

This proposed set of regulations attempts to deal with one of the most important issues OSHA faces, namely the exposure of workers to toxic substances which may be potential or confirmed occupational carcinogens. At the outset, OSHA recognizes that some 1,500 to 2,000 agents have been identified by the National Institute for Occupational Safety and Health (NIOSH) as being "suspect carcinogens" (*Suspected Carcinogens*, HEW Publication No. (NIOSH) 77-149, December, 1976). By definition, this means that NIOSH has found some scientific evidence, of varying degrees of quality and quantity, identifying those substances as having potential carcinogenic activity, based on observations in human populations or on results from experimentation with laboratory test animals. Yet, OSHA has completed regulatory activity for only 17 of those substances since its creation on April 29, 1971. OSHA recognizes that in regulating occupational exposure to potential carcinogens, many gaps remain in our knowledge of cancer, its causes, prevention and cure. However, to wait for years to resolve these issues scientifically without some consistent and workable system for the regulation of toxic substances, for which there is evidence of a carcinogenic potential to humans, would be, we believe, inconsistent with OSHA's statutory obligations and unacceptable to all.

Thus, OSHA proposes an orderly and comprehensive set of regulations to identify, classify and regulate potential carcinogens in American workplaces. This action is based upon three basic propositions, namely:

1. That the term "carcinogen," although perhaps difficult to define as a matter of science, must be defined for purposes of overall regulatory activity.

2. That a toxic substance, determined as a carcinogen in a mammalian test animal system, as defined, is to be treated *as a policy matter* as posing a carcinogenic risk to humans.

3. That when OSHA is dealing with a toxic substance, identified as a carcinogen, as defined herein, the permissible exposure limits will be set as low as feasible. In cases where there are suitable substitutes that are found to be less hazardous to the worker, no occupational exposure to the toxic substance will be permitted. In other words, unless there is evidence submitted in this rulemaking sufficient to convince the Secretary of Labor that *this general policy* is incorrect namely, that there is presently no means to determine a safe exposure level to a carcinogen, the permissible exposure limits will be set as low as feasible or occupational exposure will not be permitted in certain cases, both determinations to be made in the individual rulemakings conducted pursuant to this subpart.

In short, utilizing best available and generally accepted scientific knowledge to establish the carcinogenicity of a substance, OSHA proposes, in general, to rely on evidence from human epidemiological studies, adequately designed and conducted animal studies, or both The degree of conclusiveness of such data may permit regulation of the toxic substance as a Category I toxic substance or a Category II toxic substance. This set of regulations also provides for the classification of toxic substances for which further development of data may be needed before any regulatory activity as to carcinogenicity is concerned (Category III Toxic Substances) or for toxic substances which OSHA believes are not found in American workplaces although the evidence shows that if they were, they would be classified pursuant to this subpart (Category IV Toxic Substances). The classifications of Category I and II toxic substances will require OSHA to initiate appropriate regulatory action, through the means of one or more of the three model standards, to control or eliminate exposure to the toxic substance, by way of engineering controls, work practices, respirators or simple housekeeping procedures. The content and format of these model standards, as pointed out below, are to be followed in subsequent rulemakings pursuant to this subpart, except where OSHA determines that unique properties of the toxic substance require deviations, additions or changes from the general requirements found in the model standards.

[1] Later additional subparts to this Part may be added to include other generic approaches to other toxic substances, such as, for example, those posing a potential occupational teratogenic or mutagenic risk.

OSHA recognizes that some of the scientific concepts underlying this rulemaking may still be subject to controversy. Most, however, are not new but have, in fact, been the basis for policy decisions made, after scientific debate, by OSHA and other governmental agencies in the past. For example, see the preambles to OSHA's carcinogen standard, applicable to 14 selected substances, 29 CFR 1910.1003–1910.1016 (39 FR 3758), *aff'd, Synthetic Organic Chemical Manufacturers Assn.* v. *Brennan* 503 F. 2d 1155 (3rd Cir., 1974); the vinyl chloride standard, 29 CFR 1910.1017 (39 FR 35892) *aff'd, The Society of the Plastic Industry* v. *OSHA*, 509 F. 2d 1301 (2nd Cir.) *cert. den.*, 421 U.S. 992 (1975); the inorganic arsenic proposal (40 FR 3392, 1975); the coke ovens emissions proposal (40 FR 32268, 1975) and final, 29 CFR 1910.1029 (41 FR 46742, 1976); the asbestos proposal (40 FR 47652, 1975); the beryllium proposal (40 FR 48814, 1975) and the benzene emergency temporary standard, 29 CFR 1910.1028 (42 FR 22516, 1977).

In addition to previous OSHA regulatory decisions, the United States Environmental Protection Agency (EPA), the Food and Drug Administration (FDA) of the Department of Health, Education, and Welfare, the United States Consumer Product Safety Commission (CPSC) and other governmental agencies and bodies have made, or recommended, regulatory decisions concluding that substances pose carcinogenic risks to man, based primarily or solely upon evidence derived from studies conducted in laboratory animal populations. In particular, decisions made by EPA regarding the cancellation or suspension of certain chlorinated hydrocarbon pesticides involved extensive consideration of carcinogenicity based on laboratory animal data. See, for example: *In Re Stevens Industries, et al.*, (37 FR 13369, June 30, 1972), *aff'd, Environmental Defense Fund (EDF)* v. *EPA*, 489 F. 2d 1247 (D.C. Cir. 1973); *In Re Shell et. al.*, (39 FR 37265, Oct. 18, 1974), *aff'd, EDF* v. *EPA*, 510 F. 2d 1292 (D.C. Cir. 1975); and *In Re Velsicol et al.*, (41 FR 7552, 1976) *aff'd, EDF* v. *EPA*, 548 F. 2d 998 (D.C. Cir. 1976). And FDA, in its decision to order the elimination of chloroform from human drug and cosmetic products, relied explicitly on data supplied by National Cancer Institute (NCI) experiments showing chloroform to be carcinogenic in test animals (41 FR 15026–29, April 9, 1976 and 41 FR 26842–46, June 29, 1976).

OSHA expects that some may question the policy decisions inherent in this proposal as going too far, while others may contend that they do not go far enough. OSHA believes, however, that all concerned should approach these issues in a spirit of co-operation and candor—and with the recognition that policy determinations in a legal framework cannot be based solely upon scientific fact where often factual data are incomplete. But, insofar as the central issue of whether exposure to carcinogens should be regulated, we believe that the time has come to say that at least this issue has been resolved. In that regard, we agree with the scientific blue ribbon Ad Hoc Committee on the Evaluation of Low Levels of Environmental Chemical Carcinogens of NCI, when it reported over seven (7) years ago in 1970 to the Surgeon General of the United States that:

> An effective program to protect man from the mass of environmental cancer hazards is within reach. No more time should be allowed to pass before the recommendations set forth in this report are applied to reality. (p. 8)

Thus, we propose today a system for regulatory action which will assure, we believe, an internal consistency in regulating carcinogens and a speedy approach which will limit the size and scope of OSHA's rulemakings which have grown far beyond the ability of OSHA's staff to handle by the present case-by-case approach.

In proposing these regulations, OSHA is relying upon leading scientific evidence and opinions believed to reflect the research conclusions of individual cancer specialists and expert national and international cancer committees and agencies, as well as "experience gained under * * * other health and safety laws" (section 6(b)(5) of the Act). In such a task we recognize that we are operating "on the frontiers of scientific knowledge" *Industrial Union Department* v. *Hodgson*, 499 F. 2d 467, 474 (D.C. Cir. 1974) but with a "command to act" *Ethyl Corp.* v. *EPA*, 541 F. 2d 1, 28 (D.C. Cir. 1976). In this proposal, OSHA relies therefore, upon what it believes to be the best available and prudent evidence, interpretations and theories. Once these regulations are promulgated, OSHA is prepared to modify the views therein if new evidence or future scientific advances show we are in error.[2] But if we are, we hope that the error was in being too careful and overly protective of the worker, for the alternative would appear to be unacceptable to all concerned.

The Regulatory Dilemma

Any decision to regulate carcinogens is obviously complex. As the cancer rate increases, the causes elude us. Chemical or physical agents known or suspected to pose a risk of carcinogenicity in humans pose certain problems unique to the regulation of toxic materials in the workplace which are discussed below. And with the increasing number of environmental chemicals, the number of carcinogens also increases, together with the size and complexity of OSHA's rulemakings. However, in its six year history, OSHA has concluded only 4 rulemaking proceedings in the health area, namely the asbestos standard in 1972, the carcinogen standard in January 1974 (regulating 14 substances), the vinyl chloride standard in October 1974 and the coke oven emissions standard in October 1976.

A. Nature of the Disease

Cancer is a particularly dreaded and costly disease. As pointed out below, the natural course of its development is generally irreversible and autonomous. It is a disease generally characterized in its advanced stages by the aggressive growth of abnormal (immature) populations of cells. The early cellular events of the disease and the causative factors leading to initiation of the disease are poorly understood, although much progress has been made as a result of intensive research for several decades. There also is evidence—though not definitive—that at least some cancers may originate from a single transformed cell.

In any case, once the initial carcinogenic events have been triggered, the resulting aberrant cells are capable of progressing to stages where normal tissue is invaded, and cancerous cells are capable of spreading throughout the body, even though the agent or agents responsible for inducing the disease may be no longer present. Most body structures are composed of many different kinds of tissues made up of many different types of cells, any of which may give rise to cancer. A specific type of cancer draws its name generally from the type of cell affected. For example:

> Cancer of connective tissue, including bones, are generally called sarcomas.
>
> Cancer of epithelial cells that line the body's internal surfaces and cover the external surfaces (lung, breast, skin) are generally called carcinomas.
>
> Cancer of cells that compose the blood-forming system are generally called leukemias or lymphomas.

In most cases of cancer, unrestrained cell growth leads to the buildup of tumors which compress, invade, and/or destroy normal tissues; if untreated, these tumors usually lead to death. Like cells, there are different types of tumors, each of which may be distinct in its behavior. However, induced malignant tumors generally share some common characteristics such as a long latent period between initial exposure and manifestation of the disease, as pointed out below. Some other characteristics may also include a higher rate of cell growth than in the normal, surrounding tissues, failure to maintain the boundaries of normal tissue and organs, a microscopic appearance which suggests immature rather than mature tissues, and a tendency in the human to spread to parts of the body distant from the original site of the cancer. Not all these features however accompany every malignant tumor.

It also appears that the effects of continuous or occasional exposure to different carcinogenic agents may be cumulative or synergistic, as pointed out below. The development of cancer can take as long as five to forty years before the

[2] OSHA will not, however, modify its policies in actions taken subsequent to the promulgation of, and pursuant to, these regulations. Efforts in that regard should be addressed to the amendment of these regulations, as is warranted from time to time, as advances in science are made. OSHA, at no time, intends or believes that these regulations are scientifically inflexible or fail to recognize future scientific advances that may occur. OSHA will encourage petitions for amendments to these regulations, including the model standards, as conditions so warrant.

disease progresses to the point where detection is possible. Thus, cancer seen today may be due to exposure occurring as little as five or as many as forty or more years ago as pointed out below.

B. THE INCREASE IN CANCER AND ITS MASSIVE ECONOMIC, SOCIAL AND EMOTIONAL IMPACT

Only a few generations ago, human life expectancy was less than 40 years. Today, however, human life expectancy and general health conditions prevailing in developed countries such as the United States reflect a striking—and comparatively recent—improvement over those that characterized most of man's long history.

Throughout the 19th century, the prime life limiting factor in this country was infectious disease. Since 1900 however, public health measures and medicine have made remarkable contributions to human longevity in the United States. A man born in Massachusetts in 1850 had a life expectancy of 38.3 years; a woman, of 40.5 years. As the decades passed, life expectancy at birth inched upward—by 1900 a man could expect to live to 46 years and a woman to nearly 50. (U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1957* (Washington, D.C.: Government Printing Office, (1960), Series B76–100.) Today, such expectancy is much greater with rates approaching 80 years of age.

A comparison of leading causes of death in 1900 with those in 1960 reveals a noteworthy shift in disease patterns. At the turn of the century, infectious diseases—pneumonia, influenza, tuberculosis, gastroenteritis and poliomyelitis—were the leading killers, accounting for over 31 percent of all deaths. Owing to such medical advances as the development of immunization techniques and antibiotics, tuberculosis and gastroenteritis are no longer significant causes of death in the United States; diphtheria, typhoid fever and poliomyelitis have been nearly eliminated, and even influenza and pneumonia have declined in significance to one-seventh of their previous level.

On the other hand, heart disease and cancer—the fourth and eighth leading causes of death, respectively, in 1900 now lead the nation's list of killers. In 1900, these two diseases were responsible for only 12 percent of deaths; today, they account for more than one-half of U.S. mortality. Annual crude death rates from heart disease rose from 137.4 per 100,000 population in 1900 to 362 in 1970, while deaths from cancer rose in that same period of time from 64 per 100,000 population to 162.8 and to 171.5 in 1975. (President's Science Advisory Committee Panel on Chemicals, *Chemicals and Health* (Washington, D.C.: Government Printing Office, 1973), p. 152; U.S. Department of Health, Education, and Welfare, Public Health Service, *Facts of Life and Death*, DHEW Pub. No. (HRA) 74–1222 (Washington, D.C.; Government Printing Office, 1974), p. 31.)

Some increase in the number of cancer deaths may have been predicted on the basis of demographic factors, such as general aging of the population, and hence on the success of medicine in reducing the significance of infectious diseases. Another unquantifiable portion is undoubtedly traceable to improved reporting methods, i.e., some deaths from cancer in earlier times were mistakenly ascribed to other causes. Even after these factors have been taken into account, however, the death rate for cancer sharply exceeds predictions.

Cancer killed a reported 358,400 U.S. citizens in 1974—over 1,000 persons per day. Over one million are under treatment for the disease, and each year over 900,000 new cases are diagnosed. Of these, about one-third are skin cancers: Troublesome, sometimes painful, usually treatable, with an impact on life expectancy for about 2,000 humans per year; the other 600,000, however, are more serious and more of them are potentially fatal. The American Cancer Society now estimates that 25 percent of the United States' population will ultimately develop some form of cancer. (U.S. Department of Health, Education and Welfare, *Monthly Vital Statistics Report: Annual Summary for the United States*, Vol. 21, No. 13 (1975); U.S. Department of Health, Education and Welfare, National Institutes of Health, *National Cancer Program: The Strategic Plan*, DHEW Pub. No. (NIH) 74–569 (Washington, D.C.: Government Printing Office, 1973); American Cancer Society, *Cancer Facts and Figures* (New York, 1974).)

The economic and social impacts of cancer in the United States are massive and yet hard to estimate. Certainly the human anguish is. Those impacts, however, are very real. An estimated $1.8 billion per year is spent solely for hospital care of cancer patients. Additional costs, doctor bills, outpatient therapy, and other treatment-related fees, raise the direct annual expenditures for cancer well into the tens of billions of dollars. To these direct expenditures must be added indirect costs, such as the estimated 1.8 million work years lost annually to the national economy and to family income by unemployed or underemployed cancer victims. (U.S. Public Health Service, *Cancer Rates and Risks*, Pub. No. (NIH) 75–619 (Washington, D.C.; Government Printing Office, 1975, p. 3). One estimate cited by the General Accounting Office of the United States Congress (GAO) is that the annual cost of cancer is $15 billion, of which $3–5 billion is attributable to direct care and treatment and the remainder attributed to the loss of earning power and productivity (GAO, "Federal Efforts to Protect the Public From Cancer Causing Chemicals Are Not Very Effective", June 16, 1976, p. 1). This estimate is supported by a study prepared by NCI with information on the economic costs of cancer to the United States, and to individual patients' families in particular. See "The National Cancer Program, the Strategic Plan," January 1973 ed.

Cancer rates vary significantly through the United States. In general, however, States with high rates are the more industrialized States. It has long been known that densely populated and industrialized areas have higher death rates from many causes than nearby rural areas. Although urbanization and industrialization have been associated with heart disease, cancer of the respiratory and digestive systems, and many other diseases, the reasons for this association are not fully understood. This excess disease risk may be related to lifestyle (urban dwellers use more tobacco, for example), to occupation (working with toxic substances), to the environment of cities (air pollution and water pollution), or to other factors as yet unidentified, as well as combinations thereof.

C. THE RECOGNITION THAT THE DEVELOPMENT OF CANCER IS INFLUENCED BY ENVIRONMENTAL AND OCCUPATIONAL FACTORS

Most of the details of how and why cancers develop still elude scientists and physicians, so that the exact causative mechanisms of observed malignancies cannot be well defined. But a number of factors appear to be implicated, both separately and in combination, for many observed cancers.

Among the causes of cancer, those most prominent are believed to be traceable to environmental factors acting singularly or in conjunction with genetic or other susceptibilities. It should be remembered that the extensive exposure to cancer-causing environmental factors is relatively new in the history of man. Today, there is growing acceptance that 60 to 90 percent of all cancer may be related to environmental factors. (See, for example: World Health Organization, *Prevention of Cancer*, Technical Report Series 276 (Geneva, 1974); E. Boyland, "The Correlation of Experimental Carcinogenesis and Cancer in Man," *Progress in Experimental Tumor Research*, Vol. 11 (1969), pp. 222–34; S. S. Epstein, "Environmental Determinants of Human Cancer," *Cancer Research* Vol. 34 (1974), pp. 2425–35). The basis for the estimates largely derives from large community studies over extended periods of time, which have revealed wide geographical variations in the incidence of cancer of various organs. Specific examples include, among others, diet, the large component of cancer attributable to cigarette smoking, those resulting from exposures to chemicals in the workplace, and cancers from physical agents such as solar and ionizing radiation and asbestos and those caused by aflatoxins (a class of naturally occurring chemicals secreted by some molds on certain foodstuffs, such as peanuts).

The extent to which the observed incidence and rise in incidence of cancers are attributable to manmade chemicals cannot be estimated with any precision. The tragic effects, however, are evident. Recognition by cancer specialists that many, if not most, human cancers are influenced by environmental factors is of extraordinary significance to OSHA—it means that occupational cancers may be preventable if the causative agents

can be identified and human exposure to them eliminated or minimized.

Only some of these manmade agents have been identified. Unfortunately, our nation's capacity in the past to develop new chemical substances far exceeded its ability to determine their carcinogenic potential and, as pointed out, OSHA's ability to promulgate standards in any speedy fashion solely by way of the case-by-case approach. In the past 10 years, the production of synthetic organic chemicals has expanded by 255 percent; relatively few of the new compounds have been studied for their cancer-causing potential. Because of the typical latency period of 5–40 years for cancer in humans, we must assume that any increase in cancer which may have been initiated by recent industrial development is not yet observable. (Wilhelm C. Hueper, "Medicolegal Considerations of Occupational and Nonoccupational Environmental Cancers", Chapter 7 in *Lawyers Medical Cyclopedia;* Irving J. Seilikoff and E. Cuyler Hammond, "Environmental Cancer in the Year 2000," presented at the Seventh National Cancer Conference, Los Angeles, Sept. 29, 1972).

D. MOST TOXIC MATERIALS APPEAR NOT TO BE CARCINOGENS EVEN AT HIGH DOSES

As additional studies are reported of the carcinogenicity of substances representing a wide range of chemical structures and used for a variety of purposes, there has been tendency for some to suspect that all chemicals are capable of causing cancer if administered to experimental animals at sufficiently high doses. This claim appears to be based on the belief that carcinogenesis is a nonspecific kind of biological process associated with any substance under the right conditions, namely that test animals, bred for their sensitivity to carcinogens, when fed maximum tolerated doses of a substance for their lifetime become very ill and may be more susceptible to carcinogenic effects. However, there is evidence that renders this suspicion very unlikely to be true.

A publication of the U.S. Department of Health, Education, and Welfare compiles and abstracts all substances tested for carcinogenic effects. ("Survey of Compounds Which Have Been Tested For Carinogenic Activity," Volumes I–*VII* (1947–1976)). Although these volumes are not intended to provide a critical evaluation of the data on each of the substances, only about 17 percent of over 6,000 were reported as showing tumorigenic effects and this in spite of the fact that most of the compounds were selected because of their suspicious nature.

In a study sponsored by NCI from 1965 to 1968 and performed by the Bionetics Research Laboratories under contracts PH 43–64–57 and PH 43–67–735, approximately 130 pesticide and industrial chemicals were tested for carcinogenic activity. Pesticide chemicals, of course, are known to possess high biological activity as demonstrated by their use as pesticides. In addition, the substances tested in the Bionetics study were selected on the basis of a number of criteria, among which were: (1) Published evidence of toxicity that suggested potential hazards to man and (2) the similarity between possible test substances and substances of known carcinogenic activity. Each substance was fed to both sexes of two strains of mice at a maximum tolerated dose determined at a young age [3] by continuous oral administration with both positive and negative controls for 18 months. Despite weighting in the choice of test substances, less than 10 percent of the substances tested definitely produced tumorigenic effects and most of the others gave no evidence of carcinogenicity. (J.R.M. Innes et al., "Bioassay of Pesticides and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note." J. Natl. Cancer Inst. 42, 1101–14, 1969).)

Furthermore, it has been recognized for many years that the negative findings of carcinogenic bioassays are often not published and are even rejected for publication (Report of the Panel on Carcinogenicity, Int. Union Against Cancer, "Carcinogenicity Testing," edited by I. Berenblum, IUAC Geneva, 1969). Thus, the percentage of substances tested for carcinogenic activity and found positive may be even lower than present data indicate.

During the hearings to consider the intent of the Administrator of the U.S. Environmental Protection Agency to cancel the registration of pesticides aldrin and dieldrin, testimony was presented concerning this proposition. The then Associate Director for Carcinogenesis of the Division of Cancer Cause and Prevention at NCI, Dr. Umberto Saffiotti, testified:

> Not all chemicals can cause cancers, contrary to some ill-informed belief; in fact, only a relatively small proportion of the chemical species that have been studied are capable of such activity. The activity is dependent on a number of specific chemical and physical properties of the molecules, which are gradually brought to light. It can be expected that, when thousands of new environmental chemicals will be tested, only a few hundred, or maybe just a few dozen, will be found to be carcinogenic, and it will be possible to concentrate our preventive measures on those. (Exhibit 40 of the EPA Public Hearings concerning the cancellation of the pesticide registrations of Aldrin and Dieldrin, 1973, pp. 7–8).

Thus, the available evidence provides strong indication indeed that not all chemicals are capable of causing cancer and that only a small number of the total is so capable. This apparent fact has also been recognized by two Administrators of EPA. In the DDT cancellation proceeding. *In Re Stevens Industries, et al.*, EPA IFR Docket No. 63 et al., 37 FR 13369 (1972), *aff'd, EDF* v. *EPA*, 489 F. 2d 1247 (D.C. Cir. 1973), Administrator William D. Ruckelshaus stated:

> The 'everything is cancerous' argument fails because it ignores the fact that not all chemicals fed to animals in equally concentrated doses have produced the same tumorigenic results. (37 FR 13371)

Likewise, in the Aldrin and Dieldrin suspension proceeding, *In Re Shell Chemcial Co. et al.*, EPA FIFRA Docket No. 145, 39 FR 37265 (1974) *aff'd, EDF* v. *EPA*, 510 F. 2d 1292 (D.C. Cir. 1975), Administrator Russell E. Train stated:

> Carcinogenicity is a relatively rare phenomenon exhibited by only a few of the many hundreds of thousands of chemicals. (39 FR 37268)

And in ordering the suspension of the pesticides Heptachlor and Chlordane in *In Re Velsicol Chemical Co. et al.*, EPA FIFRA Docket No. 384, 41 FR 7572 (1976), *aff'd, EDF* v. *EPA*, 548 F. 2d 998 (D.C. Cir. 1976), Administrator Train stated:

> Finally, I have noted some tendency, not entirely absent from the record, to assert that any chemical, if fed in sufficiently large amounts, will cause cancer in test animals. This is not true. A study sponsored by the National Cancer Institute tested 140 pesticides and industrial chemicals in two strains of mice, and less than ten percent of these were found to be carcinogenic. (41 FR 7575)

E. LATENCY AND IRREVERSIBILITY OF EFFECT

Another very troubling problem to the regulation of chemical carcinogens is posed by two biological characteristics of cancer that *are* well established and that distinguish it from other processes of chronic toxicity. These are the general irreversibility of effect and the generally long latent period between exposure to the carcinogen and manifestation of the effect, namely the tumor.

1. *Irreversibility.* The reasons underlying the irreversibility of effect are fundamental to the understanding of the mechanisms of chemical carcinogenesis. The effect under consideration is the induction of a critical change in the target cells which determines their subsequent growth as tumor cells. The specific molecular target of a carcinogen within a cell is not yet fully identified, although it is known that carcinogens can interact directly with the genetic material of the cells (DNA), as well as with other molecules that control cellular functions (RNA and proteins).[4]

Once a cell has been switched ("transformed") from its normal status to a neoplastic one, this cell can replicate and produce neoplastic daughter cells. Only a few initially transformed neoplastic cells may be sufficient to give rise to a growing tumor. There is experimental evidence that even a single cell can be transformed by chemicals to produce

[3] It should be noted that use of this maximum tolerated dosage was the basis for criticism by one member of the Mrak Commission's Technical Panel on Carcinogenicity as being less than the maximum tolerated dose once the animals reached maturity and therefore might mean that at higher dose levels, carcinogenic effects could have been observed for more substances. (Report of the Secretary's Commission on Pesticides and the Relationship to Environmental Health, U.S. Department of Health, Education, and Welfare, Nov. 1969, p. 483).

[4] For instance, see I. B. Weinstein, N. Yamaguchi, R. Gebert, and M. E. Kaighn, "Use of Epithelial Cell Cultures for Studies on the Mechanism of Transformation by Chemical Carcinogens," *In Vitro, 11*, 130–141 (1975).

a malignant tumor.[5] It is consistent with our knowledge of carcinogenesis that a relatively small number of molecules may be sufficient to initiate a neoplastic change in a target cell. Following such an initial event, exposure to the carcinogen is no longer required to maintain the initial alteration that leads ultimately to a cancer cell, which is then capable of autonomous growth. Thus a single biological event produced by a very small number of molecules of the carcinogen may be sufficient to initiate the irreversible development of a tumor. As the Ad Hoc NCI Committee's report to the Surgeon General stated in 1970:

> The effects of carcinogens on tissues appear irreversible. Exposure to small doses of a carcinogen over a period of time results in a summation or potentiation of effect. The fundamental characteristic which distinguishes the carcinogenic effect from other toxic effects is that the tissues affected do not seem to return to their normal condition. This summation of effects in time and the long interval (latent period) which passes after tumor induction before the tumor becomes clinically manifest demonstrate that cancer can develop in man and in animals long after the causative agent has been in contact and disappeared. (p. 2)

2. *Long latent period.* The other important characteristic of the carcinogenic effect is that it is a *delayed effect*, one where the manifestation (the appearance of a tumor) follows the causative exposure by a long period of time, called the latent period, during which the action of the carcinogen on the host, although already effected, cannot currently be detected. In man, as well as in experimental animals, the latent period of chemical carcinogens is often as long as a major portion of a lifetime. It has been found to be as long as 15, 20, 30 or more years in man, while it is usually from 1 to 2 years or even more in rodents, which live up to two or three years. In most cases the latent period for human carcinogenesis is 5 to 40 years. In case histories of human exposure to chemical carcinogens with such long latent periods, such as cigarette smoke or asbestos, conclusive epidemiological findings were not available until 20 or more years after the start of exposure, by which time large numbers of persons had been exposed and a substantial cancer epidemic had been caused. Thus, as pointed out below, the significance of the long latent period for chemical carcinogenesis is that *it is impractical and imprudent to wait for results of epidemiological studies in man;* prevention of chemical carcinogenesis in man requires identification of the carcinogens by experimentation in laboratory animals with a short lifetime and a correspondingly short latent period for tumor induction. As the Ad Hoc NCI Committee's report to the Surgeon General stated:

> It is, therefore, important to realize that incidences of cancer in man today reflect expcsure of 15 or more years ago; similarly, any increase of carcinogenic contaminants in man's environment today will reveal its carcinogenic effect some 15 or more years from now. For this reason, it is urgent that every effort be made to detect and control sources of carcinogenic contamination of the environment well before damaging effects become evident in man * * * Environmental cancer remains one of the major disease problems of modern man. (p. 2)

And, as Administrator Russell Train of EPA pointed out in *In Re Velsicol, supra:*

> * * * the latency periods for cancer inducing chemicals tend to be long (in the tens of years), so that what results there are from the study of human exposure are difficult to gather and may well appear too late to save people from an already widespread chemical to which they are unavoidably exposed. (41 FR 7575)

F. KNOWN HUMAN CARCINOGENS ARE ALSO CARCINOGENS IN ANIMALS

At least 28 chemical substances or mixtures are known to cause cancer in man; in most cases this knowledge is derived from epidemiological studies. With one or possibly two exceptions, all of these are known to cause cancer in experimental animals. In the text of a review published by Dr. U. Saffiotti:

> "Over one thousand chemical substances have been shown to be carcinogenic by tests in animals (although some of the 'positive' tests reported in the literature—particularly the older ones—are not quite satisfactory by present standards). Several individual chemicals or mixtures of chemicals have also been shown conclusively to be carcinogenic by direct observation in man (Table 1). With the exception of arsenic, still under experimental study, all the main products that were found to be carcinogenic by direct evidence in man have also been proven carcinogenic in animals. On the other hand, proof that a substance, which had been recognized as carcinogenic in animals, actually causes cancer in man would require in most cases extremely complex and lengthy epidemiologic studies. In many cases, it may be impossible to obtain such proof because of the complexity of controls that would be needed for a satisfactory demonstration. Therefore, the only prudent course of action at the present state of our knowledge is to assume that chemicals which are carcinogenic in animals could also be so in man, although the direct demonstration in man is lacking. (U. Saffiotti, "The laboratory approach to the identification of environmental carcinogens"; in Scholefield, P.G. (Ed.): *Proceedings of the Ninth Canadian Cancer Research Conference 1971, pp. 23–26; University of Toronto Press 1972.*)

In a report by a Committee of the National Research Council (Contemporary Pest Control Practices and Prospects, Vol. 1, 1975: "NRC Pest Control"), published data on 13 compounds known to also cause cancer in man are tabulated: 12 of them are known to also cause cancer in mice, rats, and/or hamsters (NRC Pest Control, pp. 67–73).

Notwithstanding the difficulty of identifying specific carcinogens affecting man, about a dozen agents are now recognized as human carcinogens. All of these but one are definitely carcinogenic in tests on laboratory animals, as indicated in Table 4. The only exception is arsenic, which is still under test on animals. It may be noted that the organs affected in man are not always the same as those that are found to develop tumors in laboratory animals, nor is the organ specifically the same in different species of rodents. Nevertheless, the evidence, based on a limited number of carcinogens, suggests that most agents that pose a carcinogenic threat to man will be carcinogenic in laboratory tests on animals. (NRC Pest Control, p. 66)

The NRC Committee also tabulated numerical data on the doses of these chemicals associated with increased cancer incidence (*ibid.*, pp. 75–81, Table 5). They found an approximate correspondence between the sensitivities of humans and rodents when they were compared on the basis of cumulative lifetime exposure:

> Thus, as a working hypothesis, in the absence of countervailing evidence for the specific agent in question, it appears reasonable to assume that the lifetime cancer incidence induced by chronic exposure in man can be approximated by the lifetime incidence induced by similar exposure in laboratory animals at the same total doses per body weight. (*Ibid.*, p. 82)

The reliance of EPA on animal test data, and other similar principles set forth herein, as indicating human carcinogenic potential has been judicially approved. For example, in referring, albeit, to an adjudicatory proceeding concerning the suspension of a pesticide, the United States Court of Appeals stated in *EDF* v. *EPA* (Velsicol) 548 F. 2d 998, 1006–07 (D.C. Cir. 1976):

> We start by rejecting Velsicol's argument that the 'cancer principles' EPA relied on in structuring its analysis of the mice and rat studies improperly biased the agency's open-minded consideration of the evidence. In brief form, the principles accept the use of animal test data to evaluate human cancer risks; consider a positive oncogenic effect in test animals as sufficient to characterize a pesticide as posing a cancer risk to man; recognize that negative results may be explained by the limited number and sensitivity of the test animals as compared to the general human population; note that there is no scientific basis for establishing a no-effect level for carcinogens; and view the finding of benign and malignant tumors as hazard to man given the increasing evidence that many 'benign' tumors can develop into cancer. The Agency's reliance on these principles did not come as a surprise to Velsicol; they were included in the Administrator's Notice of Intent to Suspend; and as recognized in *EDF* v. *EPA*, 167 U.S. App. D.C. at 77–78, 510 F. 2d at 1298–99, form part of the Agency's 'scientific expertise.' Velsicol was properly given an opportunity to put in evidence contesting those principles, but failed to demonstrate anything more than some scientific disagreement with respect to them. Velsicol's principal complaint—that mice are inappropriate test animals—was specifically rejected by the Administrator, citing statements by the National Academy of Sciences' Food Protection Committee, the World Health Organization, HEW's Commission on Pesticides and their Relationship Environmental Health, FDA Advisory Panel on Carcinogenesis, International Agency for Research on Cancer, and Director of the National Cancer Institute's Carcinogenesis Program. Unlike the failure to adduce critical methodology that we criticized in *International Harvester*, EPA's specific enunciation of its underlying analytic principles, derived from its experience in the area, yields meaningful notice and dialogue, enhances

[5] P. J. Fialkow, "The Origin and Development of Human Tumors Studied with Cell Markers", *New England Journal of Medicine* 291, 26–35 (1974); S. M. Gartler, "Utilization of Mosaic Systems in the Study of the Origin and Progression of Tumors," in: *J. German* (ed), Chromosomes and Cancer, pp. 317–352. (1973).

the administrative process and furthers reasoned agency decisionmaking" (omitting footnotes).

G. THE LEGAL MANDATE AND THE REGULATORY APPROACH

The primary purpose of the Act is to assure, so far as possible, safe and healthful working conditions for every American employee over the period of his or her working lifetime. One means prescribed by Congress to achieve this goal is the mandate given to, and the concomitant authority vested in, the Secretary of Labor to set mandatory safety and health standards. The Act provides specifically that:

The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. (Section 6(b)(5)).

In setting standards pursuant to the Act, the Secretary is expressly required to consider the feasibility of the proposed standards. Senate Committee on Labor and Public Welfare, S. Rep. No. 91–1282, 91st Cong., 2d Sess., p. 58 (1970). Nevertheless, considerations of technological feasibility are not limited to devices already developed and in use. Standards may require improvements in existing technologies or require the development of new technology. *The Society of the Plastics Industry* v. *OSHA, supra* at 1309.

Where appropriate, the standards are required to include provisions for labels or other forms of warning to apprise employees of hazards, suitable protective equipment, control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, appropriate medical examinations and training and education. Moreover, where a standard prescribes medical examinations or other tests, they must be made available at no cost to the employees (section 6(b)(7)). Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing information regarding occupational accidents and illnesses (section 8(c)).

Sections 2(b)(5), 2(b)(6), 6, 20, 21, 22, and 24 of the Act reflect Congress' recognition that conclusive medical or scientific evidence including causative factors, epidemiological studies or dose response data may not exist for many toxic materials or harmful physical agents. Nevertheless, Congress mandated that standards should not be postponed because definitive medical or scientific evidence is not currently available. Indeed, while final standards are based on the best available evidence, the legislative history makes it clear that "it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinion." House Comm. On Education and Labor, H.R. Rep. No. 91–1291, 91st Cong., 2d Sess. 18 (1970).

This congressional judgment is supported by the Courts which have reviewed standards promulgated under the Act. In *Industrial Union Department, AFL–CIO* v. *Hodgson*, 499 F. 2d 467 (D.C. Cir. 1974), the United States Court of Appeals considered the Secretary of Labor's delegated mandate and power under the Act to protect the health of workers from exposure to asbestos. It stated (499 F. 2d at 474):

From extensive and often conflicting evidence, the Secretary in this case made numerous factual determinations. With respect to some of those questions, the evidence was such that the task consisted primarily of evaluating the data and drawing conclusions from it. The court can review that data in the record and determine whether it reflects substantial support for the Secretary's findings. But some of the questions involved in the promulgation of these Standards are on the frontiers of scientific knowledge, and consequently as to them insufficient data is presently available to make a fully informed factual determination. Decision making must in that circumstance depend to a greater extent upon policy judgments and less upon purely factual analysis.[18]

This rationale was likewise applied in *The Society of the Plastics Industry, Inc.* v. *OSHA*, 509 F. 2d 1301 (2d Cir.), *cert. den.* 421 U.S. 992 (1975), where the Second Circuit reviewed regulations limiting worker exposure to vinyl chloride. The Court stated at 1308:

As in Industrial Union Department, *AFL–CIO* v. *Hodgson, supra*, the ultimate facts here in dispute are on the frontiers of scientific knowledge, and, though the factual finger points, it does not conclude. Under the command of OSHA, it remains the duty of the Secretary to act to protect the workingman, and to act even in circumstances where existing methodology or research is deficient. The Secretary, in extrapolating the MCA study's findings from mouse to man, has chosen to reduce the permissible level to the lowest detectable ones. We find no error in this respect.

And in *Ethyl Corp.* v. *EPA* 541 F. 2d 1 (D.C. Cir. 1976), the Court of Appeals affirmed the EPA Administrator's decision to limit lead in gasoline, based in large part upon the rationale of *IUD* v. *Hodgson, supra* and *SOCMA* v. *OSHA, supra*. The Court stated at pp. 24–28:

Questions involving the environment are particularly prone to uncertainty. Technological man has altered his world in ways never before experienced or anticipated. The health effects of such alterations are often unknown, sometimes unknowable. While a concerned Congress has passed legislation providing for protection of the public health against gross environmental modifications, the regulators entrusted with the enforcement of such laws have not thereby been endowed with a prescience that removes all doubt from their decisionmaking. Rather, speculation, conflicts in evidence, and theoretical extrapolation typify their every action. How else can they act, given a mandate to protect the public health but only a slight or nonexistent data base upon which to draw? Never before have massive quantities of asbestiform tailings been spewed into the water we drink. Never before have our industrial workers been occupationally exposed to vinyl chloride or to asbestos dust. Never before has the food we eat been permeated with DDT or the pesticides aldrin and dieldrin. And never before have hundreds of thousands of tons of lead emissions been disgorged annually into the air we breathe. Sometimes, of course, relatively certain proof of danger or harm from such modifications can be readily found. But, more commonly, "reasonable medical concerns" and theory long precede certainty. Yet the statutes—and common sense—demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable.

Undoubtedly, certainty is the scientific ideal—to the extent that even science can be certain of its truth. But certainty in the complexities of environmental medicine may be achievable only after the fact, when scientists have the leisurely and isolated scrutiny of an entire mechanism. Awaiting certainty will often allow for only reactive, not preventive, regulation. Petitioners suggest that anything less than certainty, that any speculation, is irresponsible. But when statutes seek to avoid environmental catastrophe, can preventive, albeit uncertain, decisions legitimately be so labeled? 541 F. 2d 1 at pp. 24–25, omitting footnotes.

* * * * *

That petitioners, and their scientists, find a basis to disagree is hardly surprising, since the results are still uncertain, and will be for some time. But if the statute accords the regulator flexibility to assess risks and make essentially legislative policy judgments, as we believe it does, preventive regulation based on conflicting and inconclusive evidence may be sustained. Recent cases have recognized this flexibility in similar situations [citing *IUD* v. *Hodgson*; *SOCMA* v. *OSHA*, supra; and *Reserve Mining Co.* v. *EPA* 514 F. 2d 492 (8th Cir. 1975) (*en banc*)] 541 F. 2d 1 at 26.

* * * * *

Where a statute is precautionary in nature,[57] the evidence difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge, the regulations designed to protect the public health, and the decision that of an expert administrator, we will not demand vigorous step-by-step proof of cause and effect. Such proof may be impossible to obtain if the precautionary purpose of the statute is to be served. 541 F. 2d 1 at 28.

And finally, in *Certified Color Manufacturers Ass'n* v. *Mathews* 543 F. 2d 284 (D.C. Cir. 1976), the Commissioner of FDA had terminated provisional approval of the color additive "Red Dye No. 2" because of evidence that it caused cancer in rats. In affirming that action, the Court stated at 297–98:

Courts have traditionally recognized a special judicial interest in protecting the pub-

[18] Where existing methodology or research in a new area of regulations is deficient, the agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information, Permian Basin Area Rate Cases, 390 US 747, 811, 88 S. Ct. 1344, 20 L. Ed. 2d 312 (1968).

[57] Or, as with OSHA, mandatory in its command to act. *See* note 56 *supra*.

lic health, particularly where 'the matter involved is as sensitive and frightladen as cancer'. Where the harm envisoned is cancer, courts have recognized the need for action based upon lower proof than otherwise applicable (footnotes omitted).

This proposal marks a departure from OSHA's usual pattern of a substance-by-substance approach in setting health standards concerning exposures to potential occupational carcinogens. One obvious result of OSHA's current case-by-case approach to the regulation of carcinogens has been the relitigation of certain issues in each and every rulemaking. This taxes witnesses who have in the past been willing to testify in prior rulemakings. In addition, the system hardly guarantees a continuity of approach in every case, whether it be within the Agency or within the Courts. And finally, the manpower resources of OSHA are exceeded using the present approach. See, for example, the affidavits of the chief legal advisor and the chief of the health standards division filed in an action brought to compel the issuance of a cotton dust standard (*Textile Workers Union of America, et. al.* v. *Wm. J. Usery, Jr., et. al.*, Civil Action No. 75–2157 (D.D.C. ——, 1975)). It is OSHA's belief that if this proposal or something similar is not promulgated, with present resources the output of standards to protect American workers from carcinogens will never be adequate and may collapse by means of the futility of the effort. Indeed, to follow the present system and procedure for each and every individual substance and hazard would be, we contend, beyond the abilities of any agency, no matter how large a staff it may have.

The vinyl chloride standard (29 CFR 1910.1017) provides a striking example of the effort which has been required for standard promulgation, under optimum circumstances, pursuant to the *de novo* case-by-case approach. That standard, developed on a top priority basis with resources borrowed from other ongoing projects, took the full statutory six months from the issuance of the emergency temporary standard, through the required hearings and the adequate review of the record, to publish a final rule. And that time does not include the time and manpower devoted to the earlier fact-finding hearing and the necessary preparation of the emergency temporary standard and preamble themselves Moreover, that time does not include the resources that were required to defend the final standard in the appellate courts. The ETS itself was not contested.

The vinyl chloride rulemaking proceedings concerned a substance which undisputedly was a human carcinogen. Yet, controversy raged during the hearing concerning the precise level of exposure which posed a hazard, whether a "safe" exposure level existed, whether animal data could be prudently extrapolated to man in quantitative terms and the appropriateness of the regulatory requirements. The comments and testimony concerning these issues were discussed in a significant part of the more than 600 written comments, 200 written and oral hearing submissions, the hearings, and the 4,000 page record.

Notwithstanding the bulk and comprehensiveness of the record, OSHA finally determined that the record did not provide definitive answers to these questions. The Agency declared, "[w]e cannot wait until indisputable answers to these questions are available, because lives of employees are at stake," (39 FR 35892).

Moreover, certain issues predictably and inevitably reoccur in other proceedings concerning highly toxic and carcinogenic substances, such as arsenic, coke oven emissions, benzene and beryllium. Yet, the determinations on these issues have been made by the Agency as a matter of "policy", not necessarily with complete factual certainty at the time of that determination. These determinations have been upheld as policy matters. For example, OSHA's determination in the preamble to the final standard regulating exposure to one of the 14 carcinogens, (ethyleneimine, EI), that carcinogencity in animals should be treated as posing a carcinogenic threat to humans, was characterized by the United States Court of Appeals for the Third Circuit as "not really a factual matter." Rather, the Court stated that, the determination "is in the nature of a recommendation for prudent legislative action," i.e., a policy decision. *SOCMA* v. *Brennan*, 503 F. 2d 1155, 1159 (3d Cir., 1974).

To dedicate substantial (and unavailable) resources to the rehearing, and record resubstantiation in each and every rulemaking, of these kinds of policy issues is truly nonproductive if we are honestly concerned about the health of workers and, possibly, the future of mankind.

OSHA therefore, like other administrative agencies in the past, has determined that it is necessary at this time, to the fulfillment of its statutory objectives, to reshape the size and content of its rulemaking proceedings at least insofar as potential carcinogens are concerned. This proposed set of regulations incorporates policy determinations concerning how and when chemical or physical substances should be identified, classified, and consequently regulated, as posing a carcinogenic risk to humans. It is OSHA's intention, once this proposal is duly promulgated, to foreclose, in the subsequent 6(b) rulemakings on individual substances, the rehearing of the validity of this classification system and most other policy determinations made in this proposal, including the procedural structure intended to be followed.

For example, one such foreclosed policy determination is whether employees shall be exposed to potential occupational carcinogens above the lowest level feasible. Accordingly, during the subsequent section 6(b) proceedings, interested parties would be foreclosed from the present endless debate concerning whether permissible exposure limits to humans can be related or extrapolated to those levels of exposure in test animals that indicated evidence of carcinogenesis.

OSHA intends and expects that these and the other issues raised by this proposal will be fully discussed, debated and aired in this rulemaking proceeding. At the conclusion of these proceedings, these policy decisions, including the regulatory framework embodied in this new Part 1990, will have been subjected to public proceedings, their scientific bases debated, and their consequences delineated. Based on the record fully developed in this proceeding, the scientific and related policy determinations will be made in the final regulations. Consequently, the Agency believes that this "generic" form of standard setting will not in any way shortcut "due process", the statutory procedural requirements set forth in section 6(b) of the Act or in 5 U.S.C. 553, *et seq.*, since every opportunity for notice, comment, and public participation in extensive hearings pursuant to those provisions will have been afforded.

It has long been recognized by the courts that regulatory agencies, such as OSHA, must and should use innovative rulemaking procedures to set policy, in order to comply with their statutory mandates, even at the expense of nominally depriving interested parties of a hearing on individual claims which may be contrary to the generally announced policy. Thus in 1956, the Supreme Court held that the Federal Communications Commission was not required to give a license applicant a statutorily required hearing, when the applicant did not qualify under the Commission's policy, adopted through rulemaking, that no person could own more than 5 broadcasting stations. (*United States* v. *Storer Broadcasting Co.*, 351 U.S. 192, 202 (1956). *See also, FPC* v. *Texaco*, 377 U.S. 33 (1964); *Airline Pilots Asso.* v. *Quesada*, 276 F. 2d 892 (2d Cir. 1960).

The overriding concern in these cases was whether parties had unreasonably been deprived of statutory procedural rights which were intended to assure that the agency would not act arbitrarily in denying claims. OSHA believes that no such deprivation will occur as the result of promulgation of these proposed regulations.

Rather, we believe that the combination of the broadly based rulemaking hearing and proceeding concerning this proposal and the subsequent section 6(b) proceedings on individual standards will provide all parties with ample opportunity to present their views and comments at the most relevant procedural stages. Certain policy determinations will be foreclosed from rehearing at the subsequent section 6(b) hearings. Those decisions based more on factual considerations, such as the applicability of the content of specific protective provisions as monitoring, respirator use and protective clothing, may be open in the section 6(b) proceeding depending on whether the unique properties of the substance are shown to warrant an exception to the general policy.

In addition, the following questions may also be at issue in the subsequent

proceedings relating to individual substances: (1) Whether the Secretary correctly classified the toxic material according to the appropriate criteria, (2) whether the Secretary correctly decided that the classification should not be rebutted, (3) the determination of the lowest feasible occupational exposure, or whether there are suitable substitutes found that are less hazardous to humans than the toxic materials, (4) the appropriateness and feasibility of the specific protective measures of the proposed standard and (5) the environmental impact arising from regulation of the toxic material.

Therefore, OSHA believes the flexibility and fairness of the individual substance-by-substance approach will be preserved by the procedures and policies incorporated in this proposal, for the feasibility and appropriateness of the protective provisions as applied to a given substance will be fully discussed at the rulemaking, concerning the specific substance, held pursuant to this Part and subpart. Yet OSHA's policy and factual judgments, based mainly "on the frontiers of scientific knowledge" with a "command to act", will be established after opportunity for full public participation in this rulemaking, and any future amendments thereto, and will not be allowed to be relitigated in "the standard-by-standard or substance-by-substance process".

II. Criteria for the Identification of Toxic Substances That Pose a Carcinogenic Risk to Man

For the reasons discussed below, there are currently two principal methods to identify the carcinogenic potential of any substance, namely, studies of human experience and tests on animals. In determing whether a toxic substance poses a carcinogenic risk to humans, OSHA intends, in general, to primarily rely upon evidence from these two methods, namely, human epidemiological studies, animal studies, or both. Two other possible methods to identify the carcinogenic potential of a substance—molecular structure (or similarity) and short-term tests—are also discussed, but OSHA will not, at this time, place sole reliance upon short term tests, and will not place any reliance on molecular structure or similarity for the reasons discussed below. OSHA invites public comment on all aspects of this specific part of this proposal.

While human studies are valuable, they cannot be the sole basis for regulatory decision making. Three overwhelming considerations generally require reliance upon laboratory animal testing insofar as carcinogenicity or other irreversible effects are concerned:

(1) As an ethical or moral matter, humans should never be used deliberately and prospectively as test subjects to determine the carcinogencity of a substance. This principle has been affirmed in *Ethyl Corp* v. *EPA, supra* at p. 26:

> Lastly, significant exposure * * * is toxic, so that considerations of decency and morality limit the flexibility of experiments on humans that would otherwise accelerate lead exposures from years to months, and measure these results.[55] *Cf. Environmental Defense Fund Inc.* v. *EPA* (shell), 167 U.S. App. D.C. 71, 78, 510 F. 2d 1292, 1299 (1975).

As FDA recently stated in issuing its final "Criteria and Procedures for Evaluating Assays for Carcinogenic Residues" in food producing animals (42 FR 10412, 10418; February 22, 1977):

> As a source of information, direct carcinogenesis testing of chemical compounds in man is and must remain beyond the ethical bounds placed by society on human experimentation. In the absence of this source of information, which incidentally would be the most relevant, alternate sources are human epidemiology studies and animal experimentation. Human epidemiology may provide post facto information about the carcinogenic effects of chemical compounds on man. However, while potentially useful in assessing the significance of new exposures or the risk posed by related compounds, such experience cannot be a central basis for * * * safety evaluations for several reasons, including the same ethical objections that make direct experimentation in man unacceptable.

(2) Moreover, even if such testing were condoned, an agency would have to wait for the linking of individual human cancers to exposure to the carcinogen pending the usual long latency period of 5 to 40 years before meaningful results could be obtained. This is, of course, not necessarily so in the case of lead, referred to by the Court of Appeals in *Ethyl Corp* v. *EPA*. As the Ad Hoc NIC Committee reported to the Surgeon General in 1970:

> Because the latent period in human carcinogenesis is so long, epidemiologic evidence develops only over periods of 15 to 20 years. Timely decisions to exclude materials from uses involving exposure to man, therefore, must be based solely on adequately conducted animal bioassays. Retrospective human evidence of risk must not be allowed to show itself before controlling action is taken. (p. 8)

(3) It is extremely difficult to construct a valid human study because humans are continually exposed to many toxic materials, most of which are not known either to be carcinogenic or not. See, *eq. EDF* v. *EPA*, 510 F. 2d 1292 (D.C. Cir. 1975).

A. Human Studies

Identification of carcinogens through human experience requires comparing cancer risk for selected groups of individuals exposed to known agents with the risk for a similar population that either has not been exposed to the same agents or has been exposed but at significantly lower levels. Such population, or epidemiological, studies have tended to focus upon occupational groups because of their relatively high or consistent exposures to substances often found in the workplace.

Several problems however exist in using human studies, although epidemiological studies can provide strong evidence of the causal relationship between exposure and disease, particularly when the findings are positive. Negative studies are difficult to interpret for the reasons discussed below. Although experiments on humans should never be used prospectively, as pointed out above, to wait for retrospective studies, based on *post hoc* investigation, clearly subjects workers to massive, involuntary human experiments with their attendant tragedies years later. Indeed:

> [e]xisting epidemiologic methods are adequate for demonstrating carcinogenic hazards in the work environment even when the excess risk is rather small and the disease in question is relatively common in the general population * * *. [But] * * * this capacity for recognition depends on the actual occurrence of disease and, by itself, has no preventive or control value. (Cole and Goldman, in Fraumeni, Persons at High Risk of Cancer, Natl. Cancer Inst., 1975, p. 177.)

Also acknowledged is that:

> * * * all public health approaches to the prevention of occupational cancer are to complement, not replace or make less stringent, the industrial hygiene practices that should be in effect. (*Ibid.*, p. 179.)

In addition, often severe reliability problems exist which limit the value of human studies. As Fraumeni pointed out:

> [i]t seems likely that existing epidemiologic methods will allow the identification of groups at high risk of cancer because of their occupational experience * * * [t]hese methods are imperfect, however, and limitations in study design and types of data should be borne in mind when occupational carcinogensis is studied. (*Ibid.*, p. 168.)

First, an important characteristic of carcinogenesis is the apparent variability in individual susceptibility. Since carcinogenesis results from the interaction of the toxic material with the biological target, the effect is qualified by the susceptibility of various cell types, various tissues or organs and various individuals as has been pointed out above. It has been found that individual variability in response to carcinogens is great. Factors such as age, sex, hormonal status, diet and nutritional conditions, genetic factors, individual variations in the metabolic handling of chemicals, or the combined effect of different chemicals, all contribute to determine the response of an individual to a chemical carcinogen; differneces in response in test animals as high as 100 fold or 1000 fold can be obtained by changing only one factor at a time. Thus, valid epidemiological studies are difficult to conduct because study population groups tend to be small and reactions to a single carcinogen may not appear in the study groups due to the varying degrees of susceptibility.

Second, these difficulties are further complicated by the latency period between exposure and cancer symptoms. It usually takes 5–40 years between exposure to a cancer-producing chemical and manifestation of the disease.

Generally, the greater the exposure, the shorter the latency period. In one study of bladder tumors among 78 aromatic amine workers, for instance, the length of exposure appears to correlate

[55] It is for these reasons that, although lead additives have been used for over 50 years, the danger posed by lead emissions is still a question "on the frontiers of scientific knowledge.' *Industrial Union Department, AFL-CIO* v. *Hodgson, supra* ** *".

inversely with the length of the latency period—the greater the exposure, the shorter the latency. Because so many factors influence latency, however, it is impossible to define the extent to which the length and degree of exposure may be important.

Latency poses troublesome medical, social, and economic implications for identifying hazardous contaminants in the environment. Chemicals may appear safe for human exposure after they have been used for 10 to 15 years without obvious harm. With carcinogens, however, the lack of demonstrated damage to health even after this comparatively long period presents a false sense of security. Thirty or 40 years may be required before enough individuals have been exposed to a carcinogen to produce detectable cancers. The long delay between exposure and symptoms and the irreversibility of the disease often makes it medically and scientifically impossible to identify carcinogens in the environment.

Detection difficulties posed by the latency period are compounded by the mobility of our society. People in this country change jobs, residences, and, consequently, doctors and hospitals relatively frequently, so that even large-scale adverse health effects from latent diseases may be undetected. Moreover, people are exposed to carcinogens in great variety and concentration not only on the job but in their diets and surrounding environments; this multiplicity of exposure further complicates identification of the causes for any given cancer.

And third, epidemiological studies are difficult to conduct because seldom is it possible to isolate a single variable for study because of the complex mix of chemical agents to which humans are exposed in their work and other environments. In the real world, obviously, workers are exposed to a combination of substances, rather than just one chemical. Often exposure levels are difficult to define. Individual resistance to participation in tests and an investigator's inability to obtain medical histories and records may also hamper a study. Some chemicals are virtually everywhere in the environment, but at low concentrations—a combination of circumstances which presents formidable problems of safety assessment for investigators. It will be extremely difficult, for example, to assess the carcinogenic impact of the pesticide dieldrin because residues are found in 99 percent of the U.S. population. More important, perhaps, is the possible synergistic effects of that substance in workers who are exposed to other cancer causing agents. The Ad Hoc NCI Committee recognized this posibility in 1970 when it stated:

> It has become increasingly obvious that the hazard from a single chemical carcinogen cannot be evaluated out of a context of the total environmental exposure. Estimation of the "cumulative carcinogenic dose" resulting from all possible chemical carcinogens or even from all sources of a single type or class of chemical carcinogens is presently impossible. (P. 3)

The same state of science exist today although the theory is perhaps confirmed. As the Administrator of EPA stated in 1975, in denying the use of the pesticide DDT in Louisiana:

> In addition, evidence reviewed by me in September 1974 that had been introduced in the Aldrin/Dieldrin suspension hearing revealed the apparent synergistic effects on the development of tumors in mice fed DDT and Dieldrin in combination. (39 FR at 37268) While such a possibility had long been feared, this was the first evidence actually demonstrating such effects. (40 FR 15940, April 8, 1975)

Thus, even if the effects of a carcinogen can be unequivocally demonstrated as soon as those first exposed manifest symptoms of cancer (rarely the case because their first exposure occurred 5–40 years earlier) and even if exposure can be immediately eliminated and we could solve the problem of synergism, mankind still faces several decades of cancer in individuals who have already been exposed but who have not yet manifested symptoms. In those circumstances, there is nothing any regulatory agency can do to prevent the disease. Thus, what is true of carcinogenesis for an individual or a working population is also true for society, namely that an epidemic of cancer may be in the making while exposure to the unknown carcinogenic agent continues for decades, multiplying its potential effects.

B. ANIMAL STUDIES

Because we have been unable to identify with sufficient precision the causes of cancer in humans already affected and because it is unacceptable to wait for additional cases of human cancer to provide the scientific evidence needed, investigators have long relied upon laboratory tests with animals to study the carcinogenic potential of chemicals. We discuss the general propositions herein, although we recognize that some of the opinions of the distinguished bodies discussed go father than, or not quite as far as, some of the positions taken in these proposed regulations.

For all practical purposes, the detection of carcinogenic activity of chemicals is based on animal experimentation. All chemical substances or mixtures that have been proven carcinogenic by direct observation in man have also been shown to be carcinogenic in experimental animals (with the possible exception of arsenic and benzene, still under experimental study). Because of the difficulties of epidemiological studies on humans exposed to potential carcinogens stated above, there are usually no data which provide us with any evidence—one way or another—whether cancer is caused in man by a chemical that has been shown to be carcinogenic in animal studies. However, not to at least qualitatively assume that such a chemical does pose a carcinogenic threat to man seems imprudent and could lead to disaster. As the Ad Hoc NCI Committee's report to the Surgeon General stated in 1970:

> Any substance which is shown conclusively to cause tumors in animals should be considered carcinogenic and therefore a potential cancer hazard for man. (P. 1)

Indeed, OSHA has long ago accepted this principle. In the preamble to the standards for the 14 carcinogens, OSHA stated:

> A major question of occupational carcinogenesis relates to the extrapolation of results of animal experimentation to humans. The basis of numerous objections to the proposals is that, even assuming the validity of animal experiments, such do not furnish sufficient evidence that the substances involved are carcinogenic to humans. Extrapolation of results obtained by animal experimentation is alleged to be vitiated by several considerations: (a) That certain cancers are specific only to some species; (b) that the conditions of animal experiments are out of proportion to, and not consistent with conditions prevailing in industrial exposure; and (c) that no cancers have yet been detected in humans exposed to the substances. For those substances whose metabolism is understood, and is similar in both animals and man, the fact that they induce cancers in animals warrants the expectation that they will induce cancers in men. This applies to the substances which cause urinary bladder cancers in animals acting, not directly, but indirectly through the mediation of metabolites formed both in experimental animals and in exposed workers. This is also true of those substances which apparently require no metabolic alteration but attack a particular biologic system (e.g., respiratory tract, alimentary canal) which is similar in both animals and humans.
>
> The objections raise the much broader issue of human exposure to a chemical which is only known to have caused cancers in experimental animals. It is important to note that some opponents of the regulation of such chemicals do not advocate treating them as if they were harmless with respect to carcinogenic potential. Several employers, for instance insist that such substances must be treated with "care" or "respect," while also insisting that they call for significantly less protection than those substances known to be human carcinogens.
>
> We think it improper to afford less protection to workers when exposed to substances found to be carcinogenic only in experimental animals. Once the carcinogenicity of a substance has been demonstrated in animal experiments, the practical regulatory alternatives are to consider them either noncarcinogenic or carcinogenic to humans, until evidence to the contrary is produced. The first alternative would logically require, not relaxed controls on exposure, but exclusion from regulation. The other alternative logically leads to the treatment of a substance as if it was known to be carcinogenic to man.
>
> We agree with the Director of NIOSH, and the report of the Ad Hoc Committee on the Evaluation of Low Levels of Environmental Chemical Carcinogens to the Surgeon General, U.S. Public Health Service, April 22, 1970, that the second alternative is the responsible and correct one. This decision accords with the work practices of some who object to the proposed regulation. (39 FR 3756 at 3757–58)

Moreover, in regulating ethyleneimine (EI) in 1974 as a carcinogen, OSHA stated:

> The carcinogenic potential of ethyleneimine (EI) has been confirmed by a study conducted by Walpole in 1954 involving rats and one sponsored by the National Cancer Institute involving mice. In the first study, animals developed injection site sarcomas

which the investigators attributed to the direct action of Ethyleneimine, and in the second study 80 percent of the animals developed tumors, including more than one-half with hepatomas (which the investigators stated had "malginant potentiality") and almost three-quarters with pulmonary tumors. Although high doses of EI were administered, the investigators stated there was no way to predict whether man would be more or less susceptible to tumor induction by EI.

The case for the carcinogenicity of EI, then, rests on the extrapolation to humans of the findings in two separate, controlled animal studies. The position is compatible with that of NIOSH concerning the prior demonstration of carcinogenicity in at least two animal studies. (39 FR 3756 at 3757)

This position was affirmed by the Third Circuit which held in *Synthetic Organic Chemical Manufacturers Association* v. *Brennan*, 503 F. 2d 1155, 1160 (3d Cir. 1974) that: "There does exist substantial evidence in the record as a whole to support the Secretary's finding that EI is carcinogenic in rats and mice and, in the absence of evidence of carcinogenicity in humans, the Secretary properly weighed the only available alternatives."

In *In Re Shell supra*, The EPA Administrator agreed:

The ultimate issue in this suspension proceeding is whether Aldrin-Dieldrin is carcinogenic in man. Because man's response to carcinogens is similar to that of rodents, the finding that a substance is carcinogenic in experimental animals indicates that it poses a similar risk to man.

In affirming that decision, the Court of Appeals for the District of Columbia stated at 510 F. 2d at 1299:

The validity of extrapolation to humans from data derived from tests on animals is also a matter within the agency's expertise. There was testimony before the Administrator to support such extrapolation and this court has acknowledged the significance of test animal data when cancer is involved. Use of animal data is particularly appropriate where, as here, accurate epidemiological studies cannot be conducted because the virtually universal contamination of humans by residues of aldrin/dieldrin make it impossible to establish an uncontaminated human control group. The long latency period of carcinogens further hinders epidemiological research, and the ethical problems of conducting cancer experiments on human beings are too obvious to require discussion. Although extrapolation of data from mice to men may be quantitatively imprecise, it is sufficient to establish a "substantial likelihood" that harm will result. Cf. *Society of Plastics Industry, Inc.* v. *OSHA*, 509 F. 2d 1301, at 1308 (2d Cir. 1975).

And in proposing to ban the use of chloroform in drug and cosmetic products, FDA stated (41 FR 15027):

Although he is not aware of any direct evidence that chloroform induces cancer in man, the Commissioner recognizes that the positive finding of cancer in test animals in the National Cancer Institute report indicates cholorform may pose a risk of cancer for humans. Experience has indicated that, with one or two possible exceptions, compounds that are carcinogenic in humans are also carcinogenic in one or more experimental animal bioassay systems. In addition, several compounds first detected as a carcinogen in experimental animals were later found to cause human cancer. The clear demonstration that a compound is carcinogenic in experimental animals must, therefore, be taken as evidence that it has a potential for carcinogenesis in humans unless there is strong evidence to the contrary.

In finalizing that decision some two months later, FDA stated (41 FR 26844):

The Commissioner considers the fact that a substance has been shown to be an animal carcinogen must be taken as evidence that it has a potential for carcinogenisis in humans unless there is strong evidence to the contrary.

And, in banning "TRIS", the Consumer Product Safety Commission stated:

The Commission has no conclusive data that establish that TRIS has caused cancer in humans. Since cancers develop over many years and cannot be easily linked to particular causes, this is not unexpected. The Commission's Office of the Medical Director (OMD) believes that once a substance is established as an animal carcinogen it can never be assured as a safe substance for human exposure. In addition, OMD believes that all known human carcinogens have been shown to be carcinogenic in laboratory animals. (Footnotes omitted). (42 FR 28060 at 28061, June 1, 1977)

Animal studies are most often conducted on small mammalian rodents such as mice, hamsters, and rats. Although as mammals, rodents are biologically closer to humans than fish, birds, or invertebrates, the choice of rodents as test species is not based solely upon their similarity to man. In large part, they are chosen for scientific convenience; they are small, easy to breed, relatively inexpensive to maintain, and have gestation periods of only a few weeks, so that an investigator can study many generations of rodents in a single year. Most important, cancers with a latency period of 5–40 years in humans will show up in rodents in only 1 to 2 years.

Animal studies typically use either a heterogeneous group of animals—one exhibiting a wide variety of physical and physiological traits, as humans do—or a carefully inbred strain that continues to exhibit the same well-defined characteristics generation after generation. Inbred strains offer experimental advantages and disadvantages; in studies of the carcinogenic potential of ultraviolet radiation on the skin. for example, hairless strains eliminate the need for removing the test animal's hair so that radiation can reach the skin. On the other hand, an inbred strain may have either an atypical sensitivity or resistance to the carcinogenic effects of a chemical. Repeated results can often be obtained with smaller numbers when animals of an inbred strain are used because of less variation due to genetic variation.

The chemical being tested may be administered to the animal in any one of several ways, for example: By ingestion through food or water, inhalation, injection under the skin or through the skin into the peritoneum, application to the skin, or directly to the stomach by means of a throat tube (gavage). Ingestion, inhalation, and skin application correlate with the normal modes of human exposure. Injection and a tube to the stomach are the favored methods when the amount of exposure must be measured precisely.

The validity of extrapolating animal test results to man is firmly based upon empirical evidence as we point out below. Not only have mammalian experiments given positive carcinogenic test results for every compound known to cause cancer in man, except arsenic and perhaps benzene; although there may be wide variations in the susceptibility of various species to cancer, evidence indicates that a chemical that causes cancer in one animal species is likely to do so in most other species tested. The preponderance of scientific data indicates, in sum, that laboratory animals are suitable test models for determining the cancer causing potential of a toxic substance to humans.

In "General Criteria for Assessing the Evidence for Carcinogenicity of Chemical Substances", recently proposed for NCI by the Subcommittee on Environmental Carcinogenesis of its National Cancer Advisory Board (NCAB Report), 58 JNCI 461 (Feb. 1977) the expert subcommittee stated that studies with animal populations represent "a major source of data on carcinogenicity". Although present knowledge is not sufficiently advanced to allow a precise determination of whether a carinogen identified solely by means of a bioassay in animals will or will not be carcinogenic in man and because it is not ethically nor practically feasible to undertake to study the effects on man of substances identified as carcinogens through animal studies, it is necessary to rely on the correlation between substances studied in animals and those known to induce cancer in man. The NCAB Report states that:

[e]xperience has indicated that, with one or two possible exceptions, compounds that are carcinogenic in humans are also carcinogenic in one or more experimental animal bioassay systems. In addition, several compounds first detected as carcinogens in experimental animals were later found to cause human cancer. Demonstration that a compound is carcinogenic in animals should therefore, be considered evidence that is likely to be carcinogenic in humans, unless there is strong evidence in humans to the contrary.

The validity of using animal data as a qualitative indication of potential human effects has long been recognized by scientific advisory committees, and other governmental bodies; portions of the extensive discussion by expert committees, of the general criteria and principles applied to the design and interpretation of studies in animals will be traced to illustrate the varying conditions accepted for testing for carcinogenicity in animals (including length of the exposure period, number of animals to be employed, kinds of controls to be used, etc.) and the necessity for reliance on such data despite considerable uncertainties. As far back as 1959, a report of the National Research Council's Food Protection Committee provided one of the earliest reviews of the problems of identifying carcinogens. In the case of food additives, it was noted that epidemiological studies were even more difficult to conduct than for occu-

pational exposures, and a series of general considerations and principles underlying evaluations of carinogenicity from animal studies were outlined. The report stated with regard to substances studied by administration to experimental animals that:

[t]here is general agreement as to the carcinogenicity of these substances and, although the carcinogenicity of all of them for man has not been demonstrated, it is unlikely that anyone would defend the addition of any of them to the human diet. (NRC, 1959, p. 6)

In 1961, a joint committee of the Food and Agricultural Organization (FAO) and the World Health Organization (WHO) issued a report entitled: "Evaluation of the Carcinogenic Hazards of Food Additives" (WHO Tech. Rept. 220). The committee, in its report, noted the "* * * difficulty of carrying out and interpreting epidemiological studies" and recognized that tests in animals are necessary to identify carcinogens. The committee stated that:

* * * tests on experimental animals cannot provide irrefutable proof of the safety or carcinogenicity of a substance for the human species. However, it is at least reassuring that the known carcinogenic activities of certain chemicals in man are similar in many ways to those found in experimental animals. (WHO Tech. Rept. 220. p. 6)

As a minimum safeguard, the committee said an "* * * investigation of the tumor incidence in a chronic toxicity test * * *" should be performed, which "* * * should involve the study of an adequate number of animals of two species (*e.g.*, rats and mice) and subjected to the feeding of a suitable dose range of the substance under question for the lifetime of the animals." (*Ibid.*, p. 7)

The committee also noted its view of the need to use sensitive animals and stated:

Both sexes of each of at least two species of animals should be used in the tests throughout their lifespan. In most cases these species would be rats and mice. Hamsters or dogs might be suitable, but guineapigs, for example, appear to be resistant to some known carcinogens. The use of dogs in carcinogenicity tests has disadvantages. Because of the expense of maintenance, it is difficult to use a sufficient number to detect a low incidence of cancer, and the life span of the animal is 12–15 years. (*Ibid.*, p. 8)

The committee report further stated that to establish valid negative results requires either the "unrealistic" use of large numbers of animals or dose levels "* * * far in excess of those recommended for human consumption." (*Ibid.*, p. 9) Thus, to reduce the possibility that studies in animals will be too insensitive to detect the carcinogenic action of a substance, large doses of the substance are administered to the animals, despite the fact that in some cases large doses of many substances may cause nonlethal, non-carcinogenic but toxic effects in animals.

A report published in 1969 by the International Union Against Cancer (UIAC, 1969) discussed the results of a study of "* * * those aspects of experimental carcinogenesis in animals which have a direct bearing on the problems of environmental cancer in man * * *" with particular emphasis on "* * * methods of testing substances suspected of being carcinogenic in man, and to problems related to testing procedures." (UIAC, 1969, p. 1). The report states:

The need to formulate minimal requirements for satisfactory testing of substances suspected of being carcinogenic for man, has been recognized for a long time, and a number of international and regional bodies had already discussed it in some detail and published specific recommendations * * *. These earlier recommendations differed one from another in several respects, due in part to conflicting views among the various experts in the field, though some of the divergencies of opinion were more concerned with differences between minimal and optimal requirements. (*Ibid.*, p. 11)

The report then discussed the minimal, and to some extent desirable, procedures to be employed in animal bioassays for carcinogenicity, the presentation of data, their interpretation, and other points, including priorities for testing. In the report it was also stated that positive findings should outweigh negative results:

It is generally recognized that negative results of biological testing are less significant than positive results, in relation to human application. This is all the more true when testing procedures are inadequate. (*Ibid.*, p. 18)

In the United States, a review of concepts to be applied in carcinogenicity testing was also published in 1969 by the Commission on Pesticides and Their Relationship to Environmental Health, appointed by the Secretary of the Department of Health, Education, and Welfare (Mrak Commission). The Technical Panel on Carcinogenicity recommended that food additives and contaminants be tested for possible carcinogenic effects by means of adequate long-term bioassays.

The minimum requirements for such bioassays should include: Adequate numbers of animals of at least two species and both sexes with adequate positive and negative controls, subjected for their lifetime to the feeding of a suitable dose range of the test material, including doses considerably higher than would be present in food * * * any substance which is shown conclusively to cause cancers in animals when tested under these conditions should be considered potentially carcinogenic for man * * *. (Mark Commission, p. 467)

* * * * *

* * * the number of animals in each test group should be sufficient throughout the tests to yield statistically significant results. It is important to stress that the detection of positive results in these bioassays depends on the development of tumor incidences significantly above the threshold of detectability for a given number of animals. Any carcinogenic effect below these levels will not be detected by the bioassays used. (*Ibid.*, p. 465)

* * * * *

The species most practical for testing are rats, mice, and—as more recently shown—hamsters. Strains and colonies should be selected to provide adequate sensitivity to tumor induction, as revealed by positive control tests with known carcinogens. (*Ibid.*, p. 465)

The Technical Panel noted (footnote 2 on p. 465) that:

[t]he use of nonrodent species, recommended in the earlier reports, has now been substantially dropped. A suitable, practical nonrodent species would be useful but it is not available at this time * * *. While dogs have been employed for tests of carcinogenicity, with noteworthy success in selected cases (bladder carcinogenicity of aromatic amines), the requirement of lifetime feeding makes this species too expensive, in terms of time and funds, to be employed routinely.

The Technical Panel also noted the:

[g]eneral principles and criteria for evaluation of carcinogenic hazards * * * laid down by several expert committees conceived in the last fifteen years by scientific and public health agencies * * *.

and stated that:

Recommendations made in these reports express a remarkably unanimous view on the general principles and criteria to be followed for carcinogenesis safety evaluations, widely accepted in principle by the scientific community (references omitted). (*Ibid.*, p. 464)

In the report, the Technical Panel discussed the uncertainties as to the relevance and extrapolation of animal data to man, which it was stated:

* * * are a cause for concern and caution in interpretation of results. It should be noted, however, that a remarkable degree of concurrence has been found to exist between chemical carcinogenesis in animals and that in man where it has been studied closely. (*Ibid.*, p. 482)

Thus, in recommending that human exposure to those pesticides considered to present a potential health hazard to man should be reduced, the Mrak Commission cautioned that:

* * * it is of utmost importance that the results of screening tests be scientifically and rationally considered. The correct interpretation of hazards to human health is sometimes extraordinarily difficult. It must involve the transfer of the results of animal experiments to prediction of human effects. In addition, the screening process frequently involves preliminary examination of the effects of massive dosages, possible contamination of test samples, and other factors which affect proper interpretation * * * [but] * * * [t]he health and welfare of the public must be effectively protected. (*Ibid.*, p. 10)

Also in 1969, a Panel on Carcinogenesis of FDA's Advisory Committee on Protocols for Safety Evaluation prepared a report (FDA Panel Report) and later published it ("Panel on Carcinogenesis Report on Cancer Testing in the Safety Evaluation of Food Additives and Pesticides," *Toxic and Appl. Pharmacol.*, 20, 419 (1971)). The FDA Panel concerned itself "* * * with an evaluation of the present status of testing for carcinogenic action of food additives and other chemicals, which come into contact with man principally through his diet * * * and * * * consideration of recommended test procedures for carcinogen-

sis (p. 425). A number of issues involved in the reliance on tests in animals under controlled conditions were discussed. Of the species of animals that might be used, the Panel said:

There is general recognition that new species in addition to the commonly used rodents are needed for carcinogenicity testing. Increasing the number of species used would greatly increase the margin of confidence with which safety can be predicted * * *. The most discussed additional species are primates. Recent studies show certain primates to be highly susceptible to some carcinogens; however, much more work is needed to justify the additional expense and time that would be necessitated by the introduction of these animals in routine test procedures. (FDA Panel Report, p. 426)

And in a discussion of the use of dogs, the Panel said:

There is general agreement that the dog is not a practical test animal because of its size and relatively long life span. (*Ibid.*, p. 426)

The FDA Panel also delineated the responses in experimental animals as compared with a series of untreated (control) animals that "* * * may suggest the presence of a carcinogenic hazard * * *." They are:

* * * (1) an increased incidence of tumors of a type seen commonly in the control animals, (2) an occurrence of a type of tumor not seen at all in the control animals or (3) a combination of the occurrence of a different type of tumor and an increased incidence of one or several types of tumors seen in the controls. In some experiments the only manifestation of an effect consists of (4) an earlier occurence of tumors in the treated animals than in the controls, the incidence being the same in both. In yet another variation the only effect seen may consist of (5) an increase in the number of tumors per animal, the number of tumor bearing animals being the same. (*Ibid.*, 419–420)

In 1969, the NRC Food Protection Committee prepared another report, "Evaluating the Safety of Food Chemicals," which was published in 1970 (NRC, 1970). The Committee noted that the previous reports of the Food Protection Committee, the Joint FAO/WHO Expert Committee, and the FDA contained:

* * * complementary statements of the principles underlying evaluation of the safety of food chemicals and * * * set forth proposed procedures for accomplishing the evaluation * * *. (NRC), 1970, p. 1)

The Committee stated that it was:

* * * not the purpose of this report to present another set of principles and procedures, but rather to review the purposes and value of what have become conventional procedures * * *. (*Ibid.*, p. 1)

The Committee discussed the difficulty in carrying out controlled epidemiological studies and stated that:

[c]ontrolled experimental studies in man, though desirable, have limited predictive value * * *. (*Ibid.*, p. 44)

and therefore:

[i]t is clear that appropriate and well-executed animal studies are more likely to provide a substantial background of biological data from which to judge safety than are studies in man alone. (*Ibid.*, p. 45)

In a discussion of the evaluation of the carcinogenic hazards of chemicals for man, the Committee stated that:

[o]n both ethical and practical grounds, the possible carcinogenic effects of chemicals to which man might be exposed must be determined in experimental animals, generally in short-lived species. The extrapolation of the results of these determinations to man rests on two basic findings:

1. Despite a great variety of studies, no significant aspect of the natural occurrence, induction, and properties of cancer has been shown to differ fundamentally between man and experimental animals.

2. Considerable assurance of the general applicability of the tests can be derived from the fact that the chemicals generally known to be carcinogenic in man also induce neoplasia (tumors) in experimental animals.

Many clear differences in the activities of chemical carcinogens in various species exist, however, and the unpredictable nature of species differences is the principal limitation to the extrapolation of results from studies with experimental animals to man. (*Ibid.*, p. 47)

In 1970, the report, prepared for the Surgeon General by the Ad Hoc Committee of NIC, dealt with problems of exposure to chemical agents from all sources and "* * * the scientific criteria for evaluation of carcinogenic hazards." (NCI, 1970, p. 1). In emphasizing the broader scope of their report, the Committee said:

[M]any previous recommendations on the criteria to be used for evaluating environmental chemical carcinogenic hazards have been made for specific sources of exposure or for specific groups of substances (e.g. food additives, pesticides, certain occupational carcinogens). In some cases this approach has led to an uneven assessment of risks from different sources and to an uneven approach to preventive measures. (*Ibid.*, p. 1)

The Committee acknowledged that:

[t]he present state of the art requires long-term bioassays in mammalian species for the experimental identification of carcinogenic activity * * *. A body of knowledge has developed over the years on the response of experimental animals to chemical carcinogens. Several committees of experts in the field of carcinogenesis convened by national and international bodies over the past 15 years have formulated general principles for performance and evaluation of carcinogenesis studies in animals. The recommendations put forth by these committees have shown remarkable unanimity (specifically cited were WHO Tech Repts 276 and 220, FDA Panel Report, Mrak Commission Report) and are widely accepted in principle by the scientific community[6] (*Ibid.*, p. 1)

Among the Committee's recommendations were:

Any substance which is shown conclusively to cause tumors in animals should be considered carcinogenic and therefore a potential cancer hazard for man. Exceptions should be considered only where the carcinogenic effect is clearly shown to result from physical, rather than chemical, induction, or where the route of administration is shown to be grossly inappropriate in terms of conceivable human exposure.

Data on carcinogenic effects in man are only acceptable when they represent critically evaluated results of adequately conducted epidemiological studies.

* * * Evidence of negative results, under the conditions of the test used, should be considered superseded by positive findings in other tests. Evidence of positive results should remain definitive, unless and until new evidence conclusively proves that the prior results were not causally related to the exposure.

* * * A basic distinction should be made between intentional and unintentional exposures.

* * * No substance developed primarily for uses involving exposure to man should be allowed for wide-spread human intake without having been properly tested for carcinogenicity and found negative.

* * * Any substance developed for use not primarily involving exposure in man but nevertheless resulting in such exposure, if found to be carcinogenic, should be either prevented from entering the environment or, if it already exists in the environment, progressively eliminated. (*Ibid.*, pp. 1, 2)

The Committee also stated:

Any substance which is [validly] shown conclusively to produce tumors in animals * * * should be considered potentially carcinogenic for man. (*Ibid.*, p. 7)

More recent reports further confirm the widely recognized validity of animal experiments for establishing the carcinogenic potential of substances. An ongoing series of monographs published by the International Agency for Research on Cancer of WHO (IARC) beginning in 1972 lists animal data and any epidemiological evidence of cancer in man when discussing the carcinogenic potential of individual substances or of classes of substances. The monographs were initiated as a result of a recommendation in 1970 of the IARC Advisory Committee on Environmental Carcinogenesis:

* * * that a compendium on carcinogenic chemicals be prepared by experts. The biological activity and evaluation of practical importance to public health should be referenced and documented. (IARC Monographs, Vol. 1, p. 8)

The stated objective of the monographs is:

* * * to achieve a balanced evaluation of data through the deliberations of an international group of experts in chemical carcinogenesis and to put into perspective the present state of knowledge with the final aim of evaluating the data in terms of possible human risk, as well as to indicate the need of research efforts. (IARC Monographs, Vol. 1, p. 8)

[6] The committee cited the following references: P. Shubik and J. Sice, "Chemical carcinogenesis as a chronic toxicity test: A Review," *Cancer Res. 61*, 728 (1956). D. B. Clayson, "Chemical Carcinogenesis," Boston, Massachusetts, Little Brown and Co., 1962. W. C. Hueper, W. D. Conway, "Chemical Carcinogenesis and Cancers," Springfield, Illinois, C. C. Thomas, 1964. J. H. Weisburger and E. K. Weisburger, "Tests for Chemical Carcinogens, *In* Methods in Cancer Research, Volume I. (H. Busch, ed.), New York, New York, Academic Press Inc., 1967, pp. 307–387. J. G. Arcos, M. G. Argus, G. Wolf, "Testing Procedures," In "Chemical Induction of Cancer," Volume I (J. G. Arcos, M. G. Argus, and G. Wolf, eds.), New York, New York, Academic Press Inc., 6968, pp. 340–463.

The monographs emphasized that the response to a carcinogen in animals may be observed in several forms:

(a) as a significant increase in the frequency of one or several types of neoplasm, as compared with other than zero frequency in control animals;
(b) as the occurrence of neoplasms not observed in control animals;
(c) as a decreased latent period as compared with control animals;
(d) as a combination of (a) and (c). (IARC Monographs, Vol. 1, p. 10)

In 1975, the National Research Council published two reports that addressed the question of carcinogenicity testing in animals. In a report on present and alternative technologies for pest control (NRC Pest Control), it is concluded:

* * * the carcinogenic risks, and other health hazards, of pesticides require continuing evaluation by testing with laboratory mammals; and that despite the problems involved in translating the results from such experiments to human risk, the present techniques are sufficiently reliable to justify registration actions based upon such data alone, on an interim basis, until evidence convincingly demonstrates that there is no human risk. (NRC Pest Control, Vol. 1, p. 5)

In a report on principles for evaluating chemicals in the environment (NRC Principles for Evaluating Chemicals), a section is devoted to chemical carcinogenesis which discussed aspects of experimental design for carcinogenicity testing. The report states:

[r]odents are the animals of choice for carcinogenesis tests because of their convenience, comparatively short life span and proven susceptibility to a broad range of carcinogenic agents. (NRC Principles for Evaluating Chemicals, p. 150)

In 1976 the Subcommittee on Environmental Carcinogenesis of the National Cancer Advisory Board, National Cancer Institute, issued a report entitled "General Criteria for Assessing the Evidence for Carcinogenicity of Chemical Substances" (NCAB Report), June 2, 1976. The report stated:

* * * Demonstration that a compound is carcinogenic in animals should, therefore, be considered evidence that it is likely to be carcinogenic in humans, unless there is strong evidence in humans to the contrary. (NCAB Report, p. 2)

The report also stated:

Because of the limitations inherent in animal bioassays, a negative result obtained in a particular animal bioassay does not exclude the potential carcinogenicity of a compound in humans. The inappropriate experimental species may have been chosen; the number of animals tested may have been too small; or the duration of observation may have been too short. Alternatively, test conditions may have been inappropriate in terms of their predictive value for the response of humans. The extrapolation of experimental carcinogenicity data to the human situation is strengthened by obtaining results in more than one species. Negative results obtained in one species do not, however, detract from the significance of clearly positive results obtained in another species. (NCAB Report, p. 9)

It would seem, therefore, that opinions of scientific experts generally are substantially in agreement on (1) the practical and ethical difficulties in relying on epidemiological studies in man as the basis for establishing the lack of a carcinogenic potental of substances; (2) the validity of studies in experimental animals to establish the carcinogenic potential of a substance; (3) the minimal and optimal experimental conditions for testing for carcinogenicity; and (4) the kinds of statistically significant changes in tumor incidents that may be observed in experimental animals and used to characterize carcinogenic potential.

In particular, there appears to be general agreement on some of the following major issues and OSHA relies upon these concepts in proposing these regulations:

1. *Mammalian Species.* Mammalian species are those species of test animals generally considered directly relevant to mon insofar as carcinogenicity testing is concerned. Other species, such as reptiles have not been shown to have any such similarity to humans, insofar as carcinogenity is concerned. Thus, OSHA relies, in general, only upon results found in testing of mammalism species. In that regard, the rat and mouse (and to a lesser extent the hamster) have traditionally been the species of choice for carcinogenicity testing, other mammalian species being useful for certain purposes but being generally impractical for use in full-scale bioassays (WHO Tech. Rept. 220, p. 8; Mrak Commission, p. 465; FDA Panel Report, p. 426; NRC Principles for Evaluating Chemicals, p. 150). The choice of the rat and mouse is not only dictated by considerations of convenience, but because of their known susceptibility to agents known to be carcinogenic in humans as well as the similarity in the mechanisms of tumor induction (NRC, 1970, p. 47).

In *In Re Shell, supra*, the EPA Administrator stated:

Most of what we know about cancer is derived from tests with experimental animals, usually mice. The response of mice to carcinogens is similar pathologically to that of man; and research laboratories, such as those of the National Cancer Institute and Shell Chemical Company, use mice extensively in their research. (Footnotes omitted)

In affirming the EPA action, the United States Court of Appeals for the District of Columbia stated, 510 F. 2d 1292 at 1299:

Shell claims that tests based on mouse data are not substantial evidence, because mouse livers are unusually susceptible to cancer. Still, Shell's data—of statistically significant incidence of malignant liver tumors—were in strains of mice that were, as was noted by the Administrator, unusually resistant to such tumors. In any event, Shell's objections are outweighed by the substantial evidence supporting EPA's determination that mice are not uniquely susceptible to carcinogens, but are, in fact, good predictors of carcinogenic hazard to man. The Administrator found that rodents are particularly useful experimental animals, in part because of the similarity of their response to carcinogens to the response of man, their short lifespan, and our relatively well-developed understanding of the pathological development of tumors in mice and rates. Respected research institutions such as the National Cancer Institute have used mice extensively because they have found mice to be an accurate predictor of cancer in other species. (omitting footnotes).

And, in *In Re Velsicol*, the EPA Administrator stated:

For these reasons, pesticides and other chemicals are tested for carcinogenicity in laboratory animals, particularly mice (the first choice) and rats, which are broadly accepted by the scientific community as appropriate test animals for these purposes.

The mouse develops almost every kind of cancer that occurs in man and, with few, if any, exceptions, is subject to cancer from any source which is known to be a carcinogen in man. In both mouse and man, genes are involved in the control of processes through which cancer is induced. They control reactions to physical and chemical carcinogens. The genetic characteristics of mouse and man are sufficiently similar to permit the assumption that if a chemical or other agent such as radiation causes cancer in a particular organ of mice, then it will also cause cancer in the same organ, or possibly some other organ, of man.

In fact, the difficulty with using laboratory animals to test for carcinogencity lies in the other direction. The failure of a chemical to induce cancers in a particular strain (or even several strains) of laboratory animals is not an assurance that the chemical is not a carcinogen in man, since that particular strain may be genetically resistant to cancer from that source, where, by contrast, the genetic susceptibility of people to cancer varies a great deal from person to person.

In the final determination to prohibit the use of chloroform in drug and cosmetic products, FDA was also faced with a study based on mice and rats. In discussing the issues raised concerning the mouse, FDA stated:

1. One comment from the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), which also submitted safety data to FDA on studies involving the use of chloroform, questions the relevancy, design, execution, and interpretation of the National Cancer Institute (NCI) studies, and expressed the opinion that it is scientifically unjustified to disregard CTFA's studies in favor of the NCI studies. The specific points raised by the comment in opposing the Commissioner's determination that chloroform is a carcinogen or is otherwise a deleterious substance are as follows:

a. The comment contends that the NCI studies in no way consider the differences in metabolism between rodents and man. In support of this contention regarding differences in metabolism, the comment cites an article by Hill et al., "Genetic Control of Chloroform Toxicity in Mice," *Science*, 190.159, 1975; a recent review by Charlesworth in BIBRA (British Industrial Biological Research Association) *Information Bulletin*, 14:225, 1975, which cites Taylor et al. in Xenobiotica, 4:165, 1974; and a paper entitled "Covalent Binding of Haloalkanes to Liver Constituents, but Absence of Mutagenicity on Bacteria in Metabolizing Test System" by Uehleke, Greim, Kramer and Werner, presented at the fifth meeting of the European Environmental Mutagen Society, Florence, October 19–22, 1975. The comment states that (1) Hill et al. demonstrated that there are genetic factors in mice that affect susceptibility to chlorofrom lethality and induction of organ pathology and that these are associated with a metabolite whose formation is regulated by genetic factors; (2) Charlesworth reported distinct species differences to show that the metabolic fate of chloroform in mice and most likely in rats,

is not the same as in man, that there are sex-linked differences in metabolism that are peculiar to the mouse, and that man appears to eliminate more of the chloroform unchanged in the exhaled air; (3) Taylor et al. concluded that the mouse is an unsuitable species for evaluating the toxic effects of chloroform; and (4) Uehleke found in the "Ames study" that chloroform is not mutagenic and unlikely to be carcinogenic.

The comment further states that a "recognized international expert in oncology" concluded that in consideration of the findings in the NCI report and those obtained by himself, "there is obviously wide species, strain, and sex variation both in the incidence of spontaneous tumor of the liver and kidney and in the response of these organs to chloroform." The comment claims that such a conclusion is supported by an opinion expressed by Dr. Grasso in a talk entitled "Evaluation of the Hepatoma in the Rodent in Carcinogensis Bioassay" summarized in BIBRA, 1975 ("The Value of the Mouse in Carcinogenesis Bioassay" summarized i- ed that there is considerable disagreement on the diagnosis of hepatic nodular lesions.

The Commissioner views the conclusions expressed in the comment as relying on the finding that, in studies of three mouse strains, male and female mice showed a sex-linked difference in ability to metabolize chloroform. The Commissioner does not agree that this forms an adequate basis for rejecting the mouse as a useful experimental animal, especially since the work of Hill *et al* indicates that this variability exists not only between sexes but also within the same sex among different strains of the same species. Since these authors cite findings in humans of large interindividual difference in the dis position of commonly used drugs—differences which they attribute to genetic variability—it is not surprising that chloroform toxicity would be variable in the same species as well.

The Commissioner points out that the NCI report observes the variation in species and sex in the incidence of spontaneous tumor of the liver and kidney, and the response of these organs to chloroform. The report notes that the Osborne-Mendel strain was selected by NCI because it was reported to be sensitive to the carcinogenic effects of carbon tetrachloride (CC14). The question of genetic drift within a strain might also be a factor since the positive control (CC14) produced a relatively low response (less than 5 percent with hepatocellular carcinomas). Thus, if anything, the Osborne-Mendel rats used in the NCI studies appear to be less sensitive to the hepatocarcinogen than those reported in the literature.

The Commissioner recognizes that there is disagreement among pathologists on diagnosis of lesions, including hepatic nodular lesions. However, proliferative changes and neoplastic lesions are discussed in considerable detail on pages 32–37 and 40 of the NCI report. The critique submitted by the comment provides no new information that would negate the effects discussed in the pathology section of the NCI report. (41 FR 26842)

2. *Positive Versus Negative Results.* Testing of chemicals for valid negative results may be used to evaluate the evidence only if they are derived from tests which used both sexes of each species tested, exposed for their lifetime to a suitable dose range of the test material, with appropriate controls (WHO Tech. Rept. 220, p. 8; Mrak Commission, p. 486–87). As the Ad Hoc NCI Committee report recommended to the Surgeon General of the United States:

4. No chemical substance should be assumed safe for human consumption without *proper negative lifetime biological assays of adequate size.* The minimum requirements for carcinogenesis bioassays should provide for: adequate numbers of animals of at least two species and both sexes with adequate controls, subjected for their lifetime to the administration of a suitable dose range, including the highest tolerated dose, of the test material by routes of administration that include those by which man is exposed. Adequate documentation of the test conditions and pathologic standards employed are essential. (Emphasis supplied) (P. 1)

However, as the following discussions make clear, OSHA is concerned not about negative test results in species other than the species in which the substance created positive carcinogenic activity, but rather additional negative test results in the species that has been reported as positive in other tests. This is so because, as pointed out, known carcinogens in humans are not necessarily so in all species of test animals or even consistently so.

Likewise, positive results in tests with experimental animals, if obtained under sound experimental conditions and with proper statistical confirmation, should generally supersede negative results, both because of the aforementioned insensitivity of laboratory bioassays conducted with limited numbers of animals, which may frequently lead to false negative results, and also because of interspecies differences in susceptibility. For example, in 1970, the Ad Hoc NCI Committee's report to the Surgeon General recommended that:

5. Evidence of negative results, under the conditions of the test used, should be considered superceded by positive findings in other tests. Evidence of positive results should remain definitive, unless and until new evidence conclusively proves that the prior results were not causally related to the exposure. (P. 1)

FDA appears to accept this view. In banning the use of chloroform, FDA stated:

E. The comment contends that FDA has never made a determination that a substance is carcinogenic on the bases of a single unreplicated study where there are contradictory data, and it refers to saccharin, where the studies produced conflicting test results, as an example.

The Commissioner advises that the reference to saccharin is neither analogous nor applicable to the chloroform toxicity and carcinogencity bioassays relied upon in this action. Thus far, the results of studies using saccharin have been inconclusive; additional studies are ongoing. The results of the NCI studies are conclusive. In addition, the studies submitted by CTFA were conducted at lower dosages than those reported by NCI. The lack of sensitivity of the current carcinogenesis bioassays in rodents is well recognized. Thus the positive finding with chloroform should be given greater weight than studies at lower dosages using smaller numbers of animals.

Moreover, FDA stated:

* * * negative evidence in experimental animals, such as reported in some of the studies submitted by CTFA, does not exclude the potential human carcinogenicity of a substance. The Commissioner is of the opinion that the risk to humans through frequent and long-term exposure to a substance in human drugs and cosmetics that has been shown to be an animal carcinogen is contrary to the public health unless the benefit of such exposure clearly outweighs the risk. (41 FR 26844)

And, it should be noted that certain chemicals may be carcinogenic in certain species, including man, but not in others. For example, betanaphthylamine, a known carcinogen in man, monkeys and dogs, is not apparently carcinogenic in rats or rabbits. Hence, positive studies in any mammalian species will, as a general rule, always supersede negative findings in another species. (UICC 1969, p. 18; NCI, 1970, p. 2; NCAB, report, p. 9)

Thus, OSHA believes that, as a practical rather than a theoretical matter, positive animal data should supersede negative human data, in general, because of the inherent defects in such human studies, as pointed out above. Moreover, in the case of DES, OSHA is unaware of any data indicating that women who took DES during pregnancy (with the possible exception of those with gonadal dysgenesis) have any greater risk of contracting cancer than women who have never been exposed to the chemical. Yet, DES is unquestionably a human carcinogen in terms of at least the exposed female offspring. Thus, humans may be exposing themselves to potential carcinogens that may affect, and appear in, only future generations, at that point a matter which is irreversible even in terms of reduction of exposure. But, as in the case of all known human carcinogens (with the possible exception of arsenic and benzene), DES had been regarded for years as positive, for carcinogenic activity, by all routes of administration, in test animals, including the mouse, rat, hamster and the squirrel monkey.

3. *Testing at High Doses.* The testing of chemicals at constant high exposure levels, at or approaching the maximum tolerated dose level, is not inappropriate and is indeed required to overcome the statistical insensitivity of laboratory bioassays conducted with the limited numbers of animals that can be handled in practical laboratory conditions (WHO Tech. Rept. 220, p. 9; Mrak Commission, p. 487; UIAC 1969, p. 17). As the NCI Ad Hoc Committee's report to the Surgeon General stated:

* * * bioassay methods have remained tools of low sensitivity, capable only of detecting the highest peaks of carcinogenic activity. The factor which limits bioassay sensitivity is usually the small number of test animals used. If the bioassay design has a low probability of detecting carcinogenic effects produced by hazards at levels comparable to those present in environmental samples, then tests at such levels are wastes of time, effort and money. The need to test levels higher than those found in the environment is thus founded. (P. 7)

Regulatory agencies have agreed. The Administrator of EPA stated in *In Re Shell, supra:*

High doses are administered in animal tests, not because the researchers seek to correlate animal response levels to humans, but because with a limited number of animals

this methodology is necessary to determine gross effect. Consequently, a substance that will induce cancer in experimental animals at *any* dose level, no matter how high or low, should be treated with great caution. (Footnotes omitted) (39 FR 37268)

Again, in *In Re Velsicol*, EPA addressed this issue and stated:

Some interest has focused on the high dose levels given to laboratory animals as opposed to the much lower levels encountered by man in the environment, the supposition being that the lower doses naturally encountered may not be dangerous. However, there is not any evidence to indicate that there is a minimum dosage of any known carcinogen below which it does not have a carcinogenic effect. There does not appear to be a relationship between the dose level of a carcinogen on the one hand and, on the other both the percentage of the total of persons or animals exposed who get cancer and the latency period of the disease. High doses in animal experiments are thus justified, and indeed necessary, because the comparatively small numbers of animals necessarily involved in the experiments make it very difficult at least to test for positive results at lower doses.

Testing at * * * relatively high doses is now generally regarded as essential to the attempt to reduce the gross insensitivity imposed on tests by the small size of animal groups routinely tested, such as 50 or so rats or mice per dose level per chemical, compared with the millions of humans at presumptive risk * * *.

To illustrate the insensitivity of conventional animal test systems, assume that man is as sensitive to a particular carcinogen as the rat or mouse. Assume further that this particular agent carries a risk of producing cancer in 1 of 10,000 humans exposed; this would result in approximately 20,000 cancers in the United States population. Then the chances of detecting this in groups of 50 rats or mice, tested at ambient human exposure levels, are very low. Indeed, samples of 10,000 rats or mice would be required to yield 1 cancer over and above any spontaneous occurrences; for statistical significance, perhaps 30,000 rodents would be needed.

Moreover, there exists the problem that for particular chemicals, human beings may be far more sensitive than laboratory animals. For example, thalidomide produces teratogenic effects in man at a dose level that is 1/60 of that needed to produce that effect in mice, 1/100 of that for rats, 1/200 of that for dogs, and 1/700 of that for hamsters. (41 FR 7575)

And again, FDA in eliminating chloroform from drugs and cosmetics stated:

b. The comment also argues that the dosage in the NCI studies was excessive and thus does not support the contention of risk to humans. Noting that the NCI report states that the methodology used in their studies differs from that which is currently used by NCI, the comment states that the most serious defects in the methodology used are the inadequacy of the subchronic toxicity study to determine the maximal tolerated dose (MTD) and one-half MTD, and the failure to employ a meaningful definition of MTD. The comment further states that had a proper and reliable subchronic study been conducted, employing liver and renal function measurements as well as histological assessment of the effects of chloroform upon the liver and kidney, it would have been found that the dose levels used were too toxic. In support, the comment notes that in the NCI rat study, the dose levels had to be reduced after 22 weeks of treatment because the lethal consequences were too great. The comment also cites in support a short term study conducted at Bio/dynamics Inc. at dosage levels of 60, 120, 240, and 480 milligrams/kilogram and with the same strain of mice as that used in the NCI study. In the Bio/dynamic Inc. study both males and females had poor tolerance to the chloroform and at the 480 and 240 milligrams/kilogram levels most of the mice died.

It is the Commissioner's opinion that the growth and survival curves as plotted for the mice in the NCI report reveal no significant effect on growth from the dosages administered, and only in the high-dose level female mice is there an effect seen on survival. However, this effect was observed late in the study, when the death rate showed a sudden increase after the 70th week. The Commissioner therefore concludes that the dosages in the NCI mouse study conform to the standard generally accepted for an MTD to be used in carcinogenicity studies.

In the NCI rat study, it is true that the survival rate for chloroform-treated rats was lower than that for control rats.

However, in the Commissioner's view the high dosage level for male rats appears to conform to standards for MTD when the first 90 days of the growth curves are examined. The comment's objection regarding excessive dosage (greater than MTD) would apply only to female rats. In this regard the Commissioner notes that the statement in the comment that dosage levels employed had to be reduced after 22 weeks because of lethality applies only to the female rats. Despite the reduction in dosage, the survival curves show a consistently lower survival rate. However, the Commissioner emphasizes that there was no increase in tumors reported for these animals. Rather, it was only in the male rats that an increased incidence of renal tumors was reported.

The comment also points out that the ratio of tumor-bearing animals to animals involved in all chloroform treatment groups is less than that found in both male and female matched control groups. This observation, however, is noted and described by NCI in their report as not significant. Moreover, the Commissioner believes the distribution of other than kidney tumors to be normal. Aside from this, the comment disregards the dose-related time of tumor onset. The CTFA analysis further states that "* * * data for the female groups indicate that chloroform treatment may have actually exerted beneficial effects." Obviously, the lethal effects cannot be viewed as beneficial. Finally, the Commissioner notes that in the case of male rats where dosage would appear to conform to the generally accepted standard for carcinogenicity studies, definite evidence of kidney carcinogenicity appeared. (41 FR 26842)

4. *Species or Organ-Specificity.* In experimental carcinogenesis, the type of cancer seen is often the same as that recorded in human epidemiological studies (e.g., bladder cancer in man, monkeys, dogs, and hamsters with beta-naphthylamine). In other instances, however, a chemical will induce neoplasms at different sites in different animal species (e.g., benzidine, which induces hepatic carcinoma in the rat, but bladder carcinoma in man; or chloroform, which induces hepatic carcinoma in the mouse, but kidney carcinoma in the rat) (IARC Monographs, Vol. 1, p. 10; 41 FR 15026; NRC Pest Control, Vol. 1, pp. 74–82). Thus there can be no presumption that the organ affected in animal experiments would necessarily be that at risk in man. And, in *In re Shell* the EPA Administrator further stated:

Most carcinogens are also not organ-specific. In a survey by Dr. Tomatis of 58 compounds known to produce liver tumors in mice, 40 also induced tumors in a variety of other organs. Furthermore, chemically induced tumors in one species need not appear in the same organ in other species. Thus, a carcinogen which induces liver tumors in mice might, for example, produce mammary cancers in rats and lung tumors in men. (39 FR 37268)

5. *Statistical significance.* For adequate demonstration of carcinogenicity of a substance in test animals, it is generally necessary that the increased incidence of neoplasms in one or more of the experimental groups should be evaluated statistically for significance (NCAB Report, p. 5; Mrak Commission Report, p. 465). This requires that the size of the experimental groups be adequately large to permit statistical evaluation (Mrak Commission Report, p. 465; UICC 1969, p. 17).

In contrast to the five (5) points discussed above, on six (6) other issues discussed below (6-11), the opinions of scientific experts appear to be less fully in agreement, and OSHA takes cognizance of the areas of scientific debate in determining the weight to be placed on different types of evidence. However, for the reasons stated in the following discussions, OSHA believes that responsible public rulemaking and prudence concerned with protecting the health of American workers mandate the decisions reached therein.

6. *How much weight should be placed upon the incidence of benign tumors in animals as an indication of potential carcinogenic hazard in man?* There are well-established morphological and histological criteria for distinguishing between benign and malignant tumors, and there is substantial agreement among scientific experts that the occurrence of tumors in advanced stages of cancer—invasion of adjoining tissue and metastasis to other organs—is an unequivocal predictor of carcinogenic hazard to man. Malignant tumors are those that display these characteristics of invasion and metastasis, or have the capacity to do so, whereas benign tumors are those which are judged by experts to lack this capacity (NCAB Report, p. 3). Scientific opinion has varied on the issues of whether substances which induce benign tumors only should be characterized as carcinogenic, and whether they should be regarded as posing a potential carcinogenic hazard to man. Historically, a distinction was drawn. For example, the FDA Panel on Carcinogenicity in 1969 stated:

* * * a carcinogen is a substance that when administered by an appropriate route, causes an increased incidence of malignant tumors in experimental animals as compared with a control series of untreated animals * * *. The occurrence of benign tumors only would not classify an agent as a carcinogen. (FDA Panel Report, pp. 419–420)

The Panel pointed out that:

The occurrence of metatases provides an unequivocal demonstration of malignancy. There are however, many tumors induced experimentally that are invasive and are classified as malignant, that metastasize only rarely during the average experiment. The absence of metastasis, in view of most pathologists, does not rule out the diagnosis of malignancy. (FDA Panel Report, p. 420)

This position was also supported in the 1959 report of the NRC Food Protection Committee:

The general term "cancer" refers to the development of all kinds of malignant tumors. This term is not applied to nonmalignant tumors * * *. It is recognized, however, that progression from benignancy to malignancy may occur. (NRC, 1959, p. 5)

The FDA Panel did, however, note that:

* * * benign tumors may cause death in man and animals without ever undergoing malignant transformation. The induction of a benign tumor is, itself, therefore, an indication of a serious adverse reaction. There can be no doubt from a survey of experimental studies that benign neoplasms are often precursors of malignancies * * * (and) it would be wise to take serious note of the occurrence of benign neoplasms in experimental studies * * *. (FDA Panel Report, p. 420)

However, in more recent times, the considerations that benign tumors are hazardous without progressing to malignant stages and that benign tumors are often precursors to malignant tumors have led other expert agencies and committees to be more cautious in terms of exposing man to potential carcinogens. For example, the Technical Panel on Carcinogenicity of the Mrak Commission stated:

* * * the majority of the Panel recognizes that benign tumors may become malignant. The Panel is unaware of the existence of any chemical which is capable of inducing benign tumors only, which is to say, in the light of present knowledge, all tumorigens must be regarded as potential carcinogens. Thus, the majority of the Panel accepts tumorigenicity as an index of potential carcinogenicity. (Mrak Commission Report, p. 466)

In a discussion of the Litton-Bionetics study sponsored by NCI, the Technical Panel stated:

The end point employed in the study was tumors. This term was used to include the benign and the malignant neoplasms and those neoplasms whose malignancy could not be ascertained on the basis of histomorphology alone * * *. This use of the term "tumor," in the opinion of the panel, is both useful and admissible for the purposes of quantiating chemical carcinogenicity in animals. Its admissibility is based upon two facts: (a) No adequately tested chemical has been found to produce only benign neoplasms and, (b) a substantial percentage of benign-appearing tumors in mice, has been demonstrated ultimately to eventuate in cancer. (Mrak Commission Report, p. 482)

Other reports as well support the position of considering the occurrence of benign tumors to be evidence of carcinogenicity. The World Health Organization Report in 1961 stated:

In the assessment of the carcinogenic risk it is not considered relevant whether the tumor is benign or malignant since the conversion of the first to the second must be regarded as possible. (WHO Tech. Rept. 220, p. 16)

The Ad Hoc Committee that reported to the Surgeon General in 1970 recommended that:

* * * The implication of potential carcinogenicity should be drawn both from tests resulting in the induction of benign tumors and those resulting in tumors which are more obviously malignant. (NCI, 1970, p. 1)

In the report of the Ad Hoc Committee, the earlier definition of the FDA Panel was specifically discussed, and the Ad Hoc Committee stated:

The assessment of the carcinogenic activity of a chemical depends on a variety of parameters. These include not only the total numbers of tumors induced but also their multiplicity, latent period, morphologic type, and degree of malignancy. The induction of tumors diagnosed as benign as a result of treatments has been interpreted by certain groups in the past as not sufficient to demonstrate a "carcinogenic" effect. This is a dangerous position since few, if any, substances have produced only benign tumors and no malignant ones when properly and repeatedly tested. (NCI, 1970, p. 6)

In the report of the WHO Expert Committee in 1964 on "Prevention of Cancer" precancerous lesions in animals were discussed:

In the thinking of most experimentalists the induction of a benign tumour represents the production of neoplasia. Most would feel that this is an indication of carcinogenicity although it is usual to continue studies until morphologically malignant tumours have appeared. There are few studies on record in which only benign tumors are recorded (the neurofibromas induced by ergot appear to be such an instance). In the majority of experimental studies with epithelial tissues, the induction of a benign tumor is merely a stage in the subsequent occurrence of a malignancy. (WHO Tech. Rept. 276, p. 12)

A World Health Organization report on "Principles for the Testing and Evaluation of Drugs for Carcinogenicity" ("WHO Tech. Rept. 426"), published in 1969, stated:

The response of test animals to carcinogens may take one of several forms: (1) an increased incidence of one or more of the tumor types noted in the controls; (2) the occurrence of tumors earlier than in the controls, without increased incidence; (3) the development of types or tumor not seen in the controls (this may or may not be associated with an overall increase in the number of tumors seen in the controls; and (4) a multiplicity of tumors in individual animals, the incidence in terms of tumor-bearing animals being the same. Furthermore, the tumors seen may be benign or malignant, or tumors of both categories may be present. (WHO Tech. Rept. 426, p. 19)

The International Agency for Research on Cancer (IARC) took a similar position:

The qualitative nature of neoplasia has been much discussed. Many instances of carcinogenesis involve the indication of both benign and malignant tumors. There are few, if any, recorded instances in which only benign tumors are induced; their occurrence in experimental systems is usually indicative of eventual malignancy. (IARC Monographs. Vol. 1, p. 10)

And a decision of the Administrator of EPA in suspending two pesticides in *In Re Shell, supra*, is noteworthy. He stated, citing the above mentioned report of the IARC:

The once significant distinction between tumors and cancers, or between tumorigenic and carcinogenic substances has lost much of its validity with the increasing evidence that many tumors can develop into cancers. Thus, for purposes of carcinogenicity testing, they should be considered synonymous. Similarly, the distinction between benign and malignant tumors, while important to the individual host animal, is not a reliable indicator of carcinogenicity, for in the thinking of most experimentalists, the induction of a benign tumor is merely a stage in a subsequent occurrence of a malignancy. (39 FR 27267)

In addition, one recent committee reports the following position:

The carcinogenicity of a substance is established when the administration to groups of animals in adequately designed and conducted experiments results in increases in the incidence of one or more types of malignant neoplasms (or a combination of benign and malignant neoplasms) in the treated groups as compared to control groups maintained under identical conditions but not given the test compound * * *

The occurrence of benign neoplasms raises the strong possibility that the agent in question is also carcinogenic since compounds that induce benign neoplasms frequently induce malignant neoplasms. In addition, benign neoplasms may be an early stage in a multi-step carcinogenic process and they may progress to malignant neoplasms; also, benign neoplasms may themselves jeopardize the health and life of the host. For these reasons, if a substance is found to induce benign neoplasms in experimental animals it should be considered a potential human health hazard which requires further evaluation. In experiments where the increased incidence of malignant neoplasms in the treated group is of questionable significance, a parallel increase in incidence of benign tumors in the same tissue adds weight to the evidence for carcinogenicity of the test substance. (NCAB Report, p. 5)

It is plain from the above quotations that the scientific discussion is not concerned with the significance of benign tumors, but rather with the precise degree of weight that should be placed upon the results of an experiment in which a substance induces only tumors that are authoritatively classified as benign in the test animals. Since such instances are acknowledged to be rare (IARC Monographs, Vol. 1, p. 10; WHO Tech Rept. 276, p. 12; NCI, 1970, p. 6; Mrak Commission Report, pp. 466, 482), the issue may be somewhat academic. However, if such a case should arise before OSHA in regulatory decision-making, the Agency proposes to place as much weight on an experiment in which only benign tumors are observed, as upon experi-

ments in which both malignant and benign tumors are induced.

7. *How much weight should be placed on the induction of a type of tumor which occurs spontaneously in untreated animals?* There has been some debate in recent years as to the amount of weight that should be placed on experiments in which administration of a compound merely increases the frequency of a type of tumor which occurs spontaneously in untreated control animals of the species and strain involved in the test. Some would argue that such compounds should not be classified as carcinogenic, but merely as "augmenting" or "enhancing" agents. However, such a view is not supported by the expert committees which have reviewed this problem:

> For present practical purposes, no distinction is made between the induction of tumors and the enhancement of tumor incidence, although it is noted that there may be fundamental differences in mechanisms that will eventually be elucidated' (IARC Monographs, Vol. 1, p. 10)

and:

> * * * it is not possible to differentiate clearly between initiating agents, promoting agents, and certain modifying factors. Any factor or combination of factors which increases the risk of cancer in humans is of concern regardless of its mechanism of action. (NCAB Report, p. 2)

Ineed, if a species of animals has a very low or zero spontaneous incidence of tumors at various sites, this may indicate that it is resistant to the induction of tumors at these sites by carcinogens, and hence would be unsuitable as an experimental subject. It is for this reason that the use of positive controls in carcinogenesis bioassays is recommended by some expert committees (Mrak Commission Report, p. 467).

A more substantial argument that has been raised is that certain animal strains may be inappropriate for testing because of high and variable spontaneous incidence of tumors in one or more organs. This argument has been made with particular reference to liver tumors in certain strains of mice but has also been made in reference to lympho-sarcomas in mice, and certain other tumors. The NCAB Report cautions against unequivocal reliance on:

> [b]ioassays employing inbred strains of animals which develop high incidences of particular tumors in the untreated state. In some of the studies the particular characteristics of the animals and the results obtained may require additional evaluation—in other instances, such well controlled test systems may be quite satisfactory for the establishment of carcinogenicity of an agent. (NCAB Report, p. 6)

The other expert committee reports cited above, however, expressed no such reservations, merely emphasizing that the spontaneous incidence of tumors be carefully recorded (Mrak Commission Report, p. 465; UICC 1969, p. 17), and in some cases recommending the use of genetically inbred strains with known spontaneous tumor incidence for specific bioassay purposes (UICC 19, p. 16; NAS Principles for Evaluating Chemicals, p. 135; FDA Panel, p. 422). Where the spontaneous incidence of tumors is high or even 100 percent, reliable inferences of carcinogenicity can be drawn from a decrease in the latency periods or an increase in the number of tumors per animal (IARC Monographs, p. 10; FDA Panel, p. 420). In such cases, the emphasis that the study be "well controlled" (NCAB Report, p. 6) is important since the incidence of spontaneous tumors may depend on age or other factors, which therefore must be maintained the same in control and treated groups.

Indeed, recent studies of the mechanisms of cancer induction and their implications for dose-response relationships have suggested that animals with relatively high spontaneous tumor incidence may in fact be *more* appropriate for assaying potential carcinogens than animals with low or zero spontaneous incidence:

> One practical implication of the fact that different carcinogens share many mechanistic steps is that enhancement of certain carcinogenic processes may have a more readily detectable effect on cancer incidence in animals with high background levels of all other carcinogenic processes. Therefore carcinogenicity tests of various substances should possibly include tests on high-spontaneous incidence strains or experiments to see whether the test substance enhances the carcinogenic effect of a standard carcinogen. (K. S. Crump, D. G. Hoel, C. H. Langley, and R. Peto, *Cancer Research*, 36:2977, 1976)

Accordingly, OSHA proposes to interpret the results of experiments showing increased incidence of tumors in treated animals as positive evidence of carcinogenicity, regardless of the spontaneous tumor incidence, provided that the experiments are sufficiently well controlled and the increase in incidence is statistically significant. However, it may be appropriate to place less weight on an experiment conducted with an animal strain in which the spontaneous tumor incidence is relatively high. For example, an increase in tumor incidence from 1% to 21% would appear more biologically significant than an increase from 50% to 70%, even if both were equally significant in the statistical sense. It should be remembered that if only very resistant strains are used, some substances that may be carcinogenic in susceptible humans may be missed.

8. *Which routes of exposure of experimental animals are to be considered appropriate for extrapolation to man?* The NCI Ad Hoc Committee recognized that exceptions to the validity of qualitative extrapolation from data on carcinogenic effects on animals to predict potential hazard for man might be considered "where the route of administration is grossly inappropriate in terms of conceivable human exposure." (NCI, 1970, p. 1). The National Cancer Advisory Board Subcommittee similarly expressed reservations about the unequivocal interpretation of:

> [b]ioassays in which the test compound is given by unusual routes of administration [such as bladder implantation] and there is reason to believe that the tumors that occurred may not be due to a specific effect of the test compound. (NCAB Report, pp. 6–7)

However, the Subcommittee continued:

> This does not mean, however, that substances should only be tested in animals by the same route of administration as pertains to human exposure (*ibid.*).

In cases where the test compound is absorbed by the experimental animals and is circulated systemically, giving rise to tumors at sites other than the point of application, it seems reasonable to regard the route of administration as irrelevant to weighing the potential risks to man. This principle was specifically enunciated by the National Cancer Institute in its report in the "Carcinogenesis Bioassay of Trichloroethylene" (NCI Carcinogenesis Tech. Rept. Series No. 2, May 31, 1976):

> Trichloroethylene was administered by gavage in this study while the main human exposures are by inhalation of vapors and by ingestion through contaminated water and food products. The selected route of exposure is considered relevant to all modes of human exposure because trichloroethylene is readily absorbed and distributed to all organs following ingestion or inhalation. This has been shown in several species, including the rabbit (Gasq, 1936), the dog (Barrett and Johnston, 1939), and the guinea pig (Fabre and Truhaut, 1952). The fact that in this study tumor induction occurred in the liver indicates that trichloroethylene was absorbed and that systemic exposure of tissues occurred. (NCI Tech. Rept. Series 2, p. 41)

In cases where tumors are induced in experimental animals only at the site of administration of the substance, it becomes important to evaluate the appropriateness of the route of exposure to that likely to occur in occupational situations. OSHA intends to consider each such case on its merits, subject to the following guiding principles:

(1) oncogenic effect resulting from dermal, inhalation, injection (with tumors at distant sites) and oral exposure (including gavage or intratracheal instillation), shall be regarded as directly relevant to occupational exposure, except in special circumstances;

(2) carcinogenesis resulting from injections or implantations, in which the tumors are induced only at the site of application, shall generally be regarded as irrelevant to occupational exposure, except where the substance is distributed systemically or in other special circumstances.

OSHA draws attention to this specific part of the proposal and invites public comment on its proposed conclusions.

9. *How much confirmation of positive results is necessary?* For the reasons stated above, positive results in tests with experimental animals, if obtained under sound experimental conditions and with proper statistical confirmation, should in general, supersede negative results, including those in humans, as pointed out. In particular, positive findings of carcinogenicity in one animal species should generally outweigh negative reports in another, in relation to human application (UICC, 1969, p. 18; NCI, 1970, p. 2, NCAB Report, p. 9).

Nevertheless, OSHA recognizes that "false positive" results may arise occasionally, both through statistical ac-

cidents and honest errors in the conduct of single experiments. Accordingly, OSHA recognizes that much greater weight should be attached to positive results that have been replicated in another study than in a single unconfirmed result. As the National Cancer Advisory Board expressed the situation:

Such increases [in neoplasms in experimental animals] may be regarded with greater confidence if positive results are observed in more than one group of animals or in different laboratories. The demonstration that the occurrence of neoplasms follows a dose-dependent relationship provides additional evidence of a positive result. (NCAB Report, p. 5)

While recognizing the importance of a single positive result as a warning flag, the Agency believes that it would not serve the interest of responsible public rulemaking to impose major, cost intensive regulatory requirements on the basis of unconfirmed, and possibly unreproducible, results. Following the guidance of the NCAB Subcommittee, which emphasized in the above-quoted passage and elsewhere that varying degrees of confidence can be attached to positive results, OSHA proposes to establish a three-tier system of classification for those toxic substances that are found in the American workplace. In general, as is more fully discussed below, Category I toxic substances are those whose carcinogenicity, as defined, has been determined in humans or in two or more mammalian species of test animals or in one species if the results of that study have been replicated. Category II toxic substances are those whose carcinogenicity has been reported but the evidence for some reason is only suggestive, as defined, or positive in one species, but not yet replicated. Category III toxic substances are those for which the evidence is inadequate to raise any concern regarding carcinogenicity or where the evidence consists of animal data in a single species that is less than suggestive. As pointed out, OSHA is also proposing a classification for those substances that might be classified as one of the 3 categories except for the fact that they are not found in American workplaces (Category IV toxic substances).

OSHA recognizes that there are other factors involved in carcinogenicity tests which affect the degree of confidence in the results (e.g., choice of strain, spontaneous tumor incidence, duration of experiment, survival, intensiveness and competence of pathological examination, etc.). In addition, OSHA may require detailed review of each experiment, including, where necessary, independent pathological diagnoses, before classifying each toxic substance. Comments on this aspect of the proposed classification scheme are specifically invited.

These principles appear to be closely aligned with past actions of FDA and EPA. For example, in *In Re Shell supra*, the Administrator of EPA stated:

Some witnesses also suggested that carcinogens can be species-specific—that is, a chemical substance might affect mice but not any other species, including man. This is theoretically possible. But of the thousands of compounds tested the record indicates that this effect has been suggested for only one of them, and even this single exception has been seriously challenged. I therefore will rely on the conclusion of such organizations as the International Association for Research on Cancer, which have rejected species-specificity as unsubstantiated.

If carcinogens are not species-specific, it logically follows that the demonstration of carcinogenic effect in more than one species is not absolutely necessary for a finding of carcinogenicity.

* * * * *

This evidence of carcinogenicity [in the mouse] is supported by additional, although not definitive, evidence that Aldrin-Dieldrin has increased the incidence of tumors in rats. Dr. Upton, a recognized cancer expert, has testified:

In safety testing of carcinogens today we are concerned with one question: Does exposure to the test agent result in a significant induction of tumors in exposed populations as compared to controls? If so then the test agent has elicited a carcinogenic response and must therefore be considered potentially hazardous to human health. Whether the agent actually is a *sine qua non* of the observed response or merely enhances a virus or some other factor found in the host animal is irrelevant unless and until we know that similar factors are not also found in man. Until we have such knowledge, we have no basis on which to make distinctions between "carcinogens" and "co-carcinogens" and "causative agents" versus "enhancing agents".

Given this lack of knowledge concerning mechanisms, I believe that a carcinogenic reaction in any species of test animal must be considered sufficient to describe the test compound as a carcinogen and so a threat to human health. I consider that a similar reaction in a second mammalian species is a confirmation of the carcinogenicity of the test agent but it is not necessary before a finding of carcinogenicity and threat to human health can be made; and negative results in a second or even third species of test animal do not in my mind establish that the test agent is not a threat for human beings. Given the variation in human susceptibility to carcinogens, I believe it unreasonable to ignore a finding of carcinogenicity in any mammalian test species when considering possible effects on human health. (Emphasis added) (39 FR at 37269–70)

10. *Can "safe" or "no-effect" levels be set for exposure to chemical carcinogens?* Toxic effects, and biological effects in general, are assumed on the basis of much experience to occur above a certain "threshold" or "no-effect" level of exposure to the causative agent or agents. For many such effects, thresholds may theoretically occur for specific individuals as well as for defined populations at risk, even though thresholds for specific individuals may vary substantially within a population. The relationship between dose and response and knowledge of the underlying biological stages leading to the effect in question provide the basis for estimating such thresholds for defined populations. Safety factors are then applied to give additional assurance that the estimated threshold is not too high.

For many chemical carcinogens, identified either by means of studies in man or animals, a relationship between dose and response has been found to exist. The nature of the relationship is generally for the response to increase with increasing dose, although in some carefully studied cases this relationship has been found either not to exist or to be opposite to that usually found (the response is greater at lower doses). In comparable test systems, chemical carcinogens can vary in the responses they elicit by as much as a factor of 10^7 (WHO Tech. Rept. 546, p. 11).

The incidence of tumors and the period of latency can be related to dose, and because any individual has a finite lifetime an individual threshold may exist by virtue of the fact that the latency of the disease may be so long that it exceeds the individual's lifetime. Also, in light of increasing evidence that cancer originates from a single cell a threshold may exist for the particular affected cell; however, a large number of factors—age, sex, nutritional status, and health, to name a few—can affect individual susceptibility, and there is a large number of types of cells that can give rise to cancer. Thus, there is no means of predicting an individual threshold, even if they do indeed exist.

It might be thought that on the basis of general experience with other toxic effects, no-effect levels for a defined population could be set for chemical carcinogens by means of extrapolation from observed dose-response relationships. However, the variation among individual susceptibilities to cancer is extremely large, making it very difficult to place any confidence in observed no-effect levels in animals or in defined human populations for which individual variations are small in comparison. Furthermore, the underlying biological events by which cancer is initated and progresses are not well understood, and on the basis of what is known the existence of thresholds for chemical carcinogens has been questioned because of:

(1) the self-replicating nature of the cancer cell.

(2) * * * work * * * which has been interpreted to indicate summation of irreversible effects in carcinogenesis * * *.

(3) evidence from experiments on tumor initiation and promotion in skin carcinogenesis indicating lasting change induced by one tumor-initiating event.

(4) the fact that cancer can occur in response to chemicals, even after single doses, long after their disappearance from the body.

(5) the possibility that cancer may result from mutation in a somatic cell (that is, a cell that contains all the necessary genetic materials to life, as opposed to a germ or reproductive cell which contains only half the necessary genetic material. (WHO Tech. Rept. 546, pp. 9, 10)

The nature of the dose-response relationship and the existence of thresholds has been discussed by many expert committees and they are substantially in agreement that dose-response data cannot be used to set no-effect levels for exposure to chemical carcinogens. As early as 1959 the NRC Food Protection Committee stated:

* * * the possibility exists that doses at "no-effect levels" [observed in experimental studies] do in fact exert carcinogenic

effects but that the effects are too weak to detect with the numbers of animals feasible for routine testing. Such a possible effect, though extremely weak, might become evident in a large population such as, for example, the population potentially exposed to * * * [the substance].

The foregoing * * * supports the view that there is a level of exposure to a carcinogen below which cancer will not be induced in the exposed animal. The practical establishment of this threshold level is, however, complicated by a number of factors affecting, or related to, the carcinogenic process * * *. (NRC, 1959, p. 15)

The Committee also stated:

Information obtainable from dose-response curves prepared from data obtained in animal experiments appears of limited practical use in evaluating carcinogenic hazard for man. The apparent lack of quantitative correspondence in the carcinogenicity of a substance for different mammalian species and the other complicating factors that have been discussed make meaningful extrapolation from the "no-effect" level on the dose-response curve to a "safe level" of use by man currently impossible. * * *. (*Ibid.*, pp. 31, 32)

This view was reiterated by the Joint FAO/WHO Expert Committee in 1961, the WHO Expert Committee in 1964, and in 1969 the Technical Panel on Carcinogenicity of the Mrak Commission, which stated:

The evaluation of carcinogenic hazards for man is based on a judgment of all available information: on bioassay, on toxicologic, metabolic, and pharmacologic studies, on the extent and route of exposure of man, and on epidemiologic studies * * *. The position of this Panel is that the different qualitative and quantitative response of various animal species, including man, to carcinogens make meaningful extrapolation from "no-effect" levels in dose-response studies in animals to man currently impossible * * *. (Mrak Commission Report, pp. 466, 467)

The FDA Panel discussed the quantitative methods available at that time for estimating a "virtually safe dose," particularly the methods proposed by Mantel and Bryan and by Druckrey (N. Mantel, "The concept of threshold in carcinogenesis," *Clin. Pharmacol. Therap.*, *4*, 104–109 (1963); N. Mantel and W. R. Bryan, " 'Safety' testing of carcinogenic agents," J. Nat. Cancer Insti., *27*, 455–470 (1961); H. Druckrey, "Quantitative aspects in chemical carcinogenesis," U.I.C.C. Monograph No. 7, "Potential Carcinogenic Hazards from Drugs," 60–77 (1967); H. Druckrey, R. Preussman, S. Ivankovic, D. Schmaehl, "Organotrope carcinogene Wirkungen bei 65 verschiedenen N-Nitroso-Verbindungen an BD-Ratten," *Z. Krebsforsch 69*, 103–201 (1967). The Panel said:

* * * the only practicable basis for estimating a safe dose is by extrapolation downward from results obtained at some level well above the actual use level. But this extrapolation introduces serious uncertainties, which must be recognized if rational methods of safety evaluations are to be developed. The basic problem is that extrapolation outside the range of observation must be based on generally unverifiable assumptions about the mathematical nature of the dose-response relationship near zero dosage * * *. (FDA Panel Report, p. 432)

And the Panel concluded:

Although it is possible in principle to estimate "safe" levels of a carcinogen, uncertainties involved in downward extrapolation from test levels will usually result in permissible levels that are the practical equivalent of zero. (*Ibid.*, p. 435)

One committee that has been interpreted as differing to an extent on this point from others is the NRC Food Protection Committee of 1969 and 1970. The Committee stated with respect to the evaluation of carcinogenic hazards:

Although there are probably noncarcinogenic dosage levels for an experimental species in which a given compound is carcinogenic, there is as yet no generally accepted way of quantitatively extrapolating dose-response data in predicting a noncarcinogenic level for man. This fact is the principal basis for urging that such compounds be permitted for use in foods only if an explicit judgment has been made that demonstable benefit greatly exceeds the risk. (NRC, 1970, pp. 47, 48)

Despite this situation with respect to cancer, the Committee introduced criteria for toxicologically insignificant levels of exposure to apply generally to substances found in the diet. The Committee stated that:

[t]o provide optimum assurance of public safety within the limitations of capabilities available, toxicological facilities for evaluating safety must be concentrated on environmental situations in which there is a reasonable expectation that exposure to chemicals may cause real hazards. The definition of a "toxicologically insignificant" level simply as one well below an established safe level is too indefinite and too limiting to be of practical value, since it requires in every case the establishment of a safe level by experiment. To insist that nothing can be assumed to be safe without direct experimental toxicological evidence implies that safety must be proved experimentally before the proof of safety can be considered unnecessary. This denies the value of establishing criteria for insignificance. Thus, there is urgent need to arrive at more specific guidelines for estimating dietary levels that can be considered toxicologically insignificant. (NRC, 1970, p. 51)

However, the Ad Hoc Surgeon General's Committee discounted the application of this concept to evaluations of carcinogenic risks. The scientific blue-ribbon Committee recommended to the Surgeon General that:

2. No level of exposure to a chemical carcinogen should be considered toxicologically insignificant for man. For carcinogenic agents a "safe level for man" cannot be established by application of our present knowledge. (NCI, 1970, p. 1)

In addition, the Committee recommended that:

3. The statment made in 1969 by the Food Protection Committee * * * that natural or synthetic substances can be considered safe without undergoing biological assay should be recognized as scientifically unacceptable * * *.

The Committee further stated:

It is impossible to establish any absolutely safe level of exposure to a carcinogen for man. The concept of "toxicologically insignificant" levels (as advanced by the Food Protection Committee of the NAS/NRC in 1969; see Appendix II), of dubious merit in any life science, has absolutely no validity in the field of carcinogenesis. (P. 7)

Thus, once a qualitative presumption of carcinogenicity has been established for a substance, any exposure to the substance must be considered to be attended by risk when considering any given population. No exception to this point has yet been demonstrated. OSHA proposes to adopt this principle to establish qualitatively the existence of risk posed by exposure to carcinogens, and hence to justify the classification of substances shown to be carcinogenic in animals at Category I or Category II toxic substances as proposed in the rulemaking. OSHA does, however, recognize that obviously not all individuals contract cancer because of exposure to a carcinogen. Thus, it appears that there may be individual effect levels. However, we have attempted to point out, we do not know who in any exposed population is susceptible and at what levels.

The regulatory decision to treat a carcinogen as having no "safe" or "no-effect" levels is supported by logic and decisions made by OSHA and other regulatory agencies.

First, as pointed out, is our inability, at present, to determine whether humans are more or less sensitive than the test animal in question. In the case of thalidomide, admittedly not a carcinogen but a tetratogen, human were 60 times more sensitive than mice, 100 times more sensitive than rats, 200 times more sensitive than dogs and 700 times more sensitive than hamsters. In the case of inorganic arsenic, a known human carcinogen, no positive results have been reported in any mammalian test animal, including the mouse and rat, although negative results have been. And in the case of beta-naphthylamine, a known bladder carcinogen in man, monkeys and dogs, negative reports have been reported in rats and rabbits. Hence, today it does not appear feasible to predict a quantitative finite "safe" level for a carcinogen to an individual human, let alone for a population, comprised as we are of aggregates of genetically heterogeneous individuals with widely varying predispositions and susceptibilities.

Second, other bodies and regulatory agencies have taken the same position in the past, in addition to OSHA. In 1958, Congress expressed its policy by enacting the "Delaney Clause" which, in general, imposes a zero tolerance for carcinogenic food additives. The clause states:

* * * no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animals * * *.

These conclusion were further emphasized, as pointed out, by the expert committee of the World Health Organization in 1961:

* * * It is agreed that no assuredly safe level for carcinogens in human food can be determined from experimental findings at the present time. (P. 5)

In 1960, Secretary Arthur Flemming of the Department of Health, Education, and Welfare testified at the Hearings on Color Additives, Committee on Interstate and Foreign Commerce, House of Representatives that:

Scientifically, there is no way to determine a safe level for a substance known to produce cancer in animals.

This scientific principle was re-affirmed over fourteen years later by Secretary Caspar Weinberger of the same Department, in a letter dated June 14, 1974 to the Congress objecting to proposed legislation amending the "anti-cancer" or Delaney clause of the Food, Drug and Cosmetics Act. He said.:

At present the Department of Health, Education and Welfare lacks the Scientific information necessary to establish no-effect levels for carcinogenic substances in animals in general and in man in particular. In the absence of such information, we do not believe that detectable residues of carcinogenic animal drugs should be allowed in the food supply.

* * * * *

* * * It may someday be possible for the Department to establish levels at which residues of carcinogens can safely be tolerated in human food without risk of cancer to humans. Until the necessary scientific data base exists to establish such levels, however, we oppose enactment of legislation such as H.R. 922 or H.R. 1171 to amend or even repeal one or all of the anticancer clauses of the Act. Enactment of such legislation would have no effect on current Department policies since, under the present state of scientific knowledge, the general safety provisions of the Act would not permit this Department to allow detectable residues of carcinogenic animal drugs in human food.

And finally, in the revised NIOSH Arsenic Criteria Document (1975), the Director of NIOSH also stated:

* * * it is not possible at present to determine a safe exposure level for carcinogens. (p. iv)

The proposal therefore makes clear, as pointed out below, that in regulating a toxic substance that meets the criteria of a Category I toxic substance, the level of exposure set by the standard is not a "healthful", "safe", or "no-effect" level but a feasibility level. The proposal further provides that the Secretary shall determine what levels of employee exposure can feasibly be met.

11. *Quantification.* While OSHA is of the view that "threshold" or "no-effect" levels cannot be set for chemical carcinogens, some have said that it may be desirable to attempt to quantify risk for the purpose of evaluating the expense and level of control considered feasible in view of the risk posed by any given substance. However, because of the previous discussion, it appears that such consideration should apply, if at all, only at the point of considering the feasibility of the regulatory provisions of any given standard—not the risk as determined pursuant to this proposed regulatory framework. Work by Mantel and coworkers (N. Mantel, N. Bohidar, C. Brown, J. Ciminera, and J. Tukey, "An Improved 'Mantel-Bryan' Procedure for 'Safety' Testing of Carcinogens," Cancer Res., *35*, 865–872 (1975) and by N. Mantel and M. Schneiderman, "Estimating 'safe' Levels, a Hazardous Undertaking," Cancer Res., *35*, 1379–1386 (1075) highlight the need to be cautious in estimating the nature of the dose-response relationship for chemical carcinogens. More recent work by Crump *et al.* (K. Crump, D. Hoel, C. Langley, and R. Peto, "Fundamental Carcinogenic Processes and Their Implications for Low Dose Risk Assessment," *Cancer Res., 36*, 2973–2979 (1976)) indicates that on the basis of increasing evidence that exposure to carcinogens is additive and that since a large number of carcinogenic substances are known to be present in the environment at low levels, any low dose exposure can be seen as affecting an ongoing process in which progressive stages are shared by chemical carcinogens in general. Thus a mathematical model that incorporates a number of very different biological models of cancer causation shows that the response in terms of the number of individuals at risk within a population will be linear with dose. With respect to the method employed by Mantel to predict risk at low doses the authors state:

* * * [it] may be valid for a few very special 'indirect' carcinogenic processes, but our arguments suggest that in general it is not correct * * *. (Crump, *et al.*, p. 2978)

and the authors recommend that:

* * * linear dose-response relationships are likely to be approximately correct for many environmental carcinogens, and this should be publicly agreed for such substances, as it was for radiation 20 years ago. (*Ibid.*, p. 2979)

OSHA invites comments on whether such an estimation should be attempted and, if so, the methods to be employed for a quantitative estimation of risk to be used in the rulemaking process triggered by classification of a toxic substance as a Category I toxic substance. Such a classification will establish required control techniques and also require that permissible levels of exposure be reduced to as low as feasible.

C. SHORT-TERM OR IN VITRO TESTS FOR CARCINOGENS

OSHA is aware that short term and *in vitro* tests for carcinogens are being developed rapidly, take a few weeks at most to complete and yet examine the capacity of a substance to cause mutagenicity, other genetic alterations or neoplastic transformation. Reliance upon the short-term mutagenic tests is based upon the assumption that cancer can be related to genetic alterations and that, therefore, detection of such changes is indicative that such a substance may have cancingenic potential. Mutagenisis tests are very useful as screening tests because they can be conducted quickly and inexpensively. In addition, short term tests have been developed to test the ability of a substance to induce neoplastic transformation of cells that are cultured *in vitro*.

Short term tests use a variety of biological systems, such as bacteria yeast and mammalian cells. These methods are in various stages of development and some of these methods have been more extensively utilized than other ones. To date, the most widely used method appears to be the Salmonella, or Ames, test. This method utilizes several specially constructed strains of Salmonella bacteria to detect mutagenic changes. Rat (or human) liver extracts are used to activate the mutagenic form of the substance being tested. However, although the correlation between positive short term test and animal carcinogenity may be good, the number of validation studies is still small. Therefore, OSHA agrees with the following judgment as to these tests, at the time, set further in the NCAB report:

A major practical limitation in the bioassay of potential carcinogens is the large number of test animals and the long duration required to obtain results. A number of short-term or in vitro tests are currently under development and appear promising. These include assays for: the induction of DNA damage and repair; mutagenesis in bacteria, yeast, Drosophila melanogaster, or in mammalian somatic cell cultures; and neoplastic transformation of mammalian cells in culture. Other assays that have been employed include the dominant lethal test and studies of chromosonal damage. The latter two tests suffer from the fact that they are frequently non-specific and/or difficult to quantify. Of the various short-term tests, the Ames Salmonella mutagenesis system has been studied the most extensively. Tests based on other in vitro approaches are also being developed.

The intelligent application and interpretation of the in vitro tests must also take into account species variations in factors related to the pharmacologic distribution and metabolism of the parent compound as well as possible species differences in macromolecular repair and host defense mechanisms. A number of approaches addressed to the metabolic aspects are now available, including "host-mediated" mutagenesis assays; the assay of urine and other biologic fluids taken from animals or humans receiving the test compound; the addition of microsomal enzymes and co-factors to the assay system; and the inclusion of specific cells in the assay.

At present, none of the short-time tests can be used to establish whether a compound will or will not be carcinogenic. Positive results obtained in these systems suggest extensive testing of the agent in long-term animal bioassays, particularly if there are other reasons for testing. Negative results in a short-term test, however, do not establish the safety of the agent.

This Subcommittee is enthusiastic about the possible future use of in vitro tests as part of a screening system for potential carcinogens and believes that their further development and validation deserve high priority.

Thus, while these short-term tests appear very promising for the identification of carcinogens, OSHA does not regard them as sufficiently well developed for use as a sole basis for identification of carcinogenic potential. However, OSHA does believe that it is appropriate to give serious regard to a combination of positive results when found both in adequate short-term tests and in experimental animal models. In particular OSHA proposes that the combination of positive results in short-term tests and a positive result for carcinogenesis in a single bi-

oassay in a mammalian test species would provide sufficient evidence for classifying a substance as a Category I toxic material. In this regard, FDA, in banning chloroform stated:

> Regarding the reported findings of Uehleke in the "Ames study," which use a bacterial system, the Commissioner recognizes that rapid progress is being made in the development of mutagenicity test systems. He is aware of a number of reports indicating a mutagenicity carcinogenicity correlation using these test systems. However, a number of "false positives" as well as "false negatives" have been observed in these test systems. Such tests using nonmammalian systems have not been validated for establishing correlations and are not considered an appropriate basis for regulatory actions. (41 FR 26842)

D. MOLECULAR STRUCTURE OR SIMILARITY

Whether chemical similarities between know carcinogens and other untested substances should be used to qualitatively predict the carcinogenic effects of those untested substances, as a matter of regulation, rather than of research, has been debated in recent time.

OSHA is aware that, for many years, priorities for scientific research in testing individual substances for carcinogenic activity have sometimes been set, to a certain extent, by the structural similarity of those substances to be tested to the structural similarities of other substances that have been tested and found positive for carcinogenic activity. This concept has often been referred to as the "structure/function" theory. Many have recognized the distinction between using a structural similarity to predict carcinogenic activity of an untested substance as a basis for setting priorities when actually testing substances on the one hand and using such structural similarity to regulate untested substances that may have a great deal of structural similarity to substances that have been tested and found positive on the other hand. OSHA agrees, at this time, with the Ad Hoc NCI Committee's Report to the Surgeon General that:

> The carcinogenic activity of materials can only be detected by long-term biological tests. At the present time the chemical structure or physico-chemical properties of a compound do not provide a reliable basis for prediction of freedom from carcinogenic activity. Several structure-activity correlations are valuable indicators of the possible carcinogenicity of a compound, but none can be used to classify the compound as noncarcinogenic. Short-term bioassays that determine the effect of certain chemicals on selected biologic targets have not been reliable for prediction of carcinogenic activity. (Pp. 5–6)

Chemicals of many classes and vastly different structures have produced cancer of virtually all organ sites in experimental animals. For some of these chemicals, there are data showing cancer induction in man. OSHA is not aware of any single molecular configuration, structural characteristic, or physical property of chemical carcinogens that can be pinpointed as the crucial cancer inducing element or site. One explanation may be that a substance may be metabolized to a different form when exposed to the test model or man and that metabolite be the carcinogen, rather than the substance itself. However, gross similarities in chemical reactivity and metabolic fate in the host can be identified for many chemical carcinogens. This followed the discovery by the Millers that metabolic conversion of environmental chemical carcinogens can occur in the host with the ultimate formation of the "proximate" or "active" form of the chemical carcinogen.

The history of attempts to identify structure/activity correlations useful for the prediction of carcinogenic capability on the basis of chemical structure is as old as the scientific study of carcinogenesis. Cook, Kennaway, and their coworkers[7] in 1932 were the first to isolate and characterize the carcinogenic polycyclic aromatic hydrocarbons (PAH) in soot. They were unable to identify any unique distinction between carcinogenic and noncarcinogenic PAH. Years later a major step forward in the knowledge of the metabolism of PAH was achieved in 1964 by Boyland and Sims,[8] who demonstrated the formation of epoxidic metabolites of carcinogenic PAH. They, too, were unable to identify the locus responsible for carcinogenic properties. The epochal observation of the Millers[9] in 1968 that all chemical carcinogens that are not themselves chemically reactive must be converted metabolically into a reactive form, and that this reactive form is an electrophylic reagent, provides some hope that a unifying thread for carcinogenesis exists and may someday be found.

The limitations in our current knowledge of carcinogen metabolism which fail to provide a basis for prediction are reinforced, however, by several other categories of data which further cast doubt that structure/activity correlations are a useful tool for regulatory purposes at the present time. These include variations within major classes of chemicals, such as PAH, aromatic amines and amides, and chlorinated hydrocarbons.

In addition, it appears that single substituents can markedly affect carcinogenic potential. As shown by the Millers in 1961, the substitution of a fluorine atom in the 6 position of the K region of 7 methyl-BA had little effect on carcinogenicity, while a fluorine substitution in the 5 position appears to have completely obliterated the carcinogenicity of this compound. The literature on chemical carcinogenesis is replete with myriad instances where a single atom or molecule substituent markedly affects carcinogenic potential.

Finally, it appears that isomers of carcinogenic chemicals may frequently exhibit non-carcinogenic effects. Stearic properties of chemical compounds appear to be of major importance in the ultimate carcinogenic potency of the compound. Non-carcinogenic isomers of chemical carcinogens are common, as for example perylene (non-carcinogenic) and benzo-a-pyrene (carcinogenic). An array of non-carcinogenic isomers exist for the carcinogenic aromatic amine 3'DAB.

That someday structure/activity correlations would be of predictive value for regulation is something that all would appear to hope for. However, in addition to the obstacles listed above, there are the compounding factors of dose dependent variations in metabolic fate, species differences in anatomic and metabolic fate, and the influence of related compounds (summation, synergism or inhibition) upon chemical carcinogens when present simultaneously either in the environment or in the host. Thus, at least at this time, OSHA does not propose to rely upon structural similarities between known carcinogens and other substances to regulate those other toxic substances as carcinogens. Public comment as to this specific part of the proposal is invited. In that regard, such comment may also address whether implementation of the Toxic Substance Control Act might in effect, "moot" this problem by requiring testing based on such molecular or structural similarities.

III. Classification and Regulation: The Proposal

The previous discussions have set forth the necessity of and the rationale for OSHA's proposal to identify, classify and regulate potential occupational carcinogens. It is not intended to duplicate those discussions here. The following sections attempt to explain: (1) the procedural mechanisms which will be utilized to accomplish these goals and (2) the additional rationale and policy considerations, not been already discussed above, regarding the specific requirements that will be mandated by the three individual model standards that are part of these proposed regulations.

The individual model standards include an emergency temporary standard (ETS) to be issued, in general, if the toxic substance meets the criteria for a Category I toxic substance; a proposed permanent standard for such a Category I toxic substance; and a proposed permanent standard for those toxic substances that meet only the criteria for a Category II toxic substance, as defined. The three proposed model standards incorporate OSHA's views concerning which protective provisions are generally the most appropriate to permanently protect employees against exposure to Category I and Category II toxic substances, as defined, and, in the model emergency temporary standard, which protective provisions should be instituted immediately. As a result of this rulemaking, OSHA will promulgate, in final form, models for an emergency temporary standard and for permanent standards for Category I and Category II toxic substances. Except where the unique properties of such a substance

[7] Cook, J. W., Hieger J., Kennaway E. L., and Mayneord W. V. Proc. Roy. Soc. B111 455–484, 1932.

[8] Boyland, E. Sims, P. Biochem. J.; 91 493–506.

[9] Miller, E. C., Miller J. A.; in Molec. Biology of Cancer (H. Busch Edit.) 377–402 Academic Press N.Y. 1974.

warrant departure from any given provision, the model ETS will be issued as the actual ETS when a substance is classified as a Category I toxic substance. Similarly, the model Category I and Category II permanent standards will be issued as the proposal in the subsequent section 6(b) proceedings except where unique properties of the substance under consideration warrant departure from any given provisions. It is OSHA's intention that apart from the unique substance-specific aspects of these standards, the appropriateness of the model permanent standards, resolved in this proceeding, will not be at issue in the subsequent rulemaking proceedings. Once promulgated in this rulemaking therefore, these proposed procedures, identification and classification criteria, and the provisions of the model standards will be consistently applied in future regulatory activity. Of course, the Secretary's decision in the particular final standard will reflect the adequacy of the evidence in the rulemaking record in support of any such deviation, addition or change from the model standard.

This regulatory framework permits OSHA to retain the flexibility necessary for regulating substances of differing toxicological properties while speeding the process of standards development in the important area of control of exposures to potential or proven cancer causing substances.

This proposed set of regulations also provides for a third and fourth category of toxic substances. The third category of toxic substances (Category III), includes those toxic substances for which OSHA had determined that the evidence is insufficient to warrant taking regulatory action insofar as carcinogenicity is concerned. In other words, the proposal requires that OSHA, as a responsible public agency, will affirmatively review the evidence, concerning any substance that meets the definition of a toxic substance, seek public comment and then classify these substances as Category III toxic substances, if warranted. In addition, this action will notify the public, industry and labor of OSHA's position so that attention can be drawn to the important task of reducing employee exposures to those other substances that are or have been identified as Category I or Category II toxic substances.

Finally, the fourth category of toxic substances (Category IV) includes those substances that might meet the definition of a toxic substance except that they are not found in American workplaces. OSHA intends to list these substances in the FEDERAL REGISTER and the Code of Federal Regulations for the convenience of the concerned public. However, OSHA does not intend to review the evidence concerning carcinogenicity at that time. And, as pointed out below, OSHA intends to enter into an agreement with EPA with respect to implementation of the Toxic Substances Control Act so that when or if such substances are permitted to be introduced into the American workplace, OSHA will have ample time to develop a standard regulating exposure to the substance as is warranted by the proposed regulatory program herein.

A. GENERAL

Section 1990.102 sets forth the general definitions for both a "toxic substance" and a "potential occupational carcinogen". OSHA is aware of the difficulties that experts have had in reaching a scientific consensus as to the precise definition of a carcinogen. However, as pointed out above, the definitions herein are viewed, for the purposes of regulation, as reflecting policy decisions, and not solely as decisions of science.

The definition of a toxic substance is intended to include any scientific report of carcinogenicity as pointed out below, and merely meeting the definition would not require by itself that the Secretary initiate standard setting activity. In other words, the term "toxic substance" is intentionally defined to include more substances than the definition of a "potential occupational carcinogen", i.e. any information that is "reported" to meet the definition of a potential occupational carcinogen is sufficient to categorize that substance as a toxic substance. The purpose of this preliminary designation as a toxic substance is to require the Secretary to affirmatively classify the substance, after receiving public comment and reviewing the available information. As described below, the classification category would either require the initiation of standard setting activity or an announcement that the evidence appears insufficient to require regulation of the substance as posing a carcinogenic risk to man.

For purposes of this regulation, a toxic substance will be classified qualitatively as a "potential occupational carcinogen" if it has been found in the American workplace and OSHA believes that it has been shown: (a) to cause, at any level of exposure or dose, as the result of any oral, respiratory or dermal exposure, or any other exposure which results in systemic distribution of the substance under consideration, in the organism tested, an increased incidence of malignant or benign neoplasms, or a combination thereof, in any experimental mammalian species or in humans, or, (b) in a statistically significant manner decreases the latency period between exposure and onset of neoplasm formation in any experimental mammalian species or in humans. In addition, the definition is intended to cover leukemogens and particulate substances such as asbestos. However, it is not intended *per se* to include non-systemic substances which are reported to cause injection site sarcomas.

OSHA is of the impression that a certain number of the "suspect carcinogens" reported by NIOSH are not found in American workplaces. Naturally, therefore, no standard for such a substance will be required and no classification will be made for such substances at this time. Thus, the definition of a "foreign toxic substance" has been provided to set out the parameters for Category IV toxic substances. As pointed out, OSHA intends to initiate with EPA discussions leading to an agreement so that information submitted to EPA under the Toxic Substances Control Act concerning these substances, when and if the substance is introduced into American workplaces, will be reported to OSHA without requiring duplicative reporting on the part of the public. Public comment on this specific aspect of this proposal is invited.

Section 1990.103 permits "any interested person" to notify the Secretary, or designee, in writing, of the existence of information concerning any toxic substance. The Secretary shall publish a notice of receipt of this information in the FEDERAL REGISTER, together with a short statement identifying the contents and source of such information. Where relevant data is presently being generated but which is then unavailable to the Secretary, he may delay the publication of the receipt of the information up to, but no longer than, 180 days. In most cases a comment period of at least thirty (30) days but no longer than sixty (60) days shall be provided. However, where the Secretary finds that extraordinary circumstances warrant less or no time for comment, he may issue an ETS without such an opportunity for any comments. After the comment period, the Secretary of required to classify within thirty (30) days the toxic substance into one of three possible categories (discussed further below) and publish in the FEDERAL REGISTER a notice and an explanation of his decision.

While § 1990.103 enables any interested party to present information to the Secretary for the classification of any toxic substance, as defined, it does not preclude OSHA from devising its own system for the orderly, systematic classification of the large number of potential carcinogens already identified by NIOSH. In fact, OSHA recognizes the backlog of substances that will confront it at the outset of a regulatory program such as proposed. OSHA therefore intends to develop a separate schedule, if such is warranted, even while implementing this proposal as to other toxic substances, to permit the orderly handling of the hundreds of compounds with allegedly some degree of evidence of tumorigenicity or carcinogenicity, as identified by NIOSH. For example, where the evidence is sufficient to classify a toxic substance on the NIOSH list as a Category I toxic substance but where the evidence is not relatively recent, one option available to OSHA in implementing this separate schedule might be to commence the regulatory process by a notice of proposed rulemaking pursuant to § 1990.160 herein and section 6(b) of the Act, rather than by the issuance of an ETS pursuant to § 1990.150 herein and section 6(c) of the Act. Another option would be to decide how many years should be taken to handle the NIOSH list, such as 3 years, and then take the NIOSH identified substances on an alphabetical basis. OSHA solicits public comment as to the best way to imple-

ment these regulations insofar as those substances identified as "suspect carcinogens" by NIOSH are concerned.

Sections 1990.110, 1990.120, and 1990.130 define three categories for the classification of toxic substances, namely: Category I toxic substances, Category II toxic substances and Category III toxic substances. The classification is determined by the kind and degree of evidence indicating that a substance may, or may not, pose a carcinogenic risk to workers and thereafter governs the type of responsive protective action which OSHA will appropriately take. In addition, and notwithstanding the other provisions of these proposed regulations, section 1990.140 provides for Category IV toxic substances, namely, those foreign toxic substances, as defined, for which no standards will be issued during the duration of that classification.

1. *Category I Toxic Substances.* Section 1990.110 establishes a presumption that a substance shall be classified by the Secretary as a "Category I Toxic Substance" if the evidence concerning such substance meets the definition of a potential occupational carcinogen and the evidence was developed: (a) in humans; (b) in two mammalian test species; (c) in a single mammalian species, if those results have been replicated in the same species in another experiment or supported by short-term tests, as defined; or (d) upon the basis of any other scientific evidence that the Secretary finds sufficient. A result is considered to have been replicated if a similar significant increase in tumor incidence is induced in the same or different strain of the particular species so long as the experiments were carried out independently (i.e. at the least, with independent sets of control animals). If the evidence satisfies any of these criteria, the presumption exists that the Secretary shall classify the substance as a "Category I Toxic Substance."

The basis for these criteria initiating a Category I classification are predicated upon the discussions above and here. First, despite the inherent limitations of epidemiological studies in humans, where such studies indicate positive results, even where there is a small cohort of workers, OSHA believes that exposure to such a substance gives rise to great concern. Thus, the proposed set of regulations provides that such evidence in humans at least presumptively initiates a Category I classification, unless the evidence is "only suggestive" in which case the evidence initiates the Category II classification. It is only where the human evidence is "totally inadequate" that OSHA will classify the toxic substance as a Category III toxic substance. OSHA believes that responsible public regulation in matters concerning human health requires no less action or caution.

Second, as pointed out above, OSHA intends to qualitatively treat a toxic substance that produces cancer in at least two species of test animals as posing a potential carcinogenic risk to humans. This is so because positive results in at least two species of test animals generally replicate the results of each test and thus gives rise to a higher degree of confidence in those results than might exist in the case of results arising from a single unreplicated study, so long as the grounds for rebutting the presumption are not found appropriate, as discussed below. The risk of cancer is "sensitive and fright-laden" (*EDF* v. *EPA*, 465 F. 2d 528, 538 (1972)). Although the Delaney Clause is not applicable to the statutory mandate of the Act, it has been stated that it:

> * * * does, however, indicate the magnitude of Congressional concern about the hazards created by carcinogenic chemicals, and places a heavy burden on any administrative officer to explain the basis for his decision to permit the continued use of a chemical known to produce cancer in experimental animals. *EDF* v. *Ruckelshaus*, 439 F. 2d 543 at 596, n. 41.

Third, OSHA recognizes that the results from a single study in a single species can be in error. OSHA therefore believes that before it regulates a toxic substance as a Category I toxic substance, that positive animal test results be replicated either by similar results in another species, as pointed out above, a replicated study in the same animal species or supported by short-term tests, as defined. Insofar as the validity of short-term testing is concerned, at the present time OSHA relies upon the National Cancer Advisory Board of NCI, and the discussion above. It should be noted that reliance upon replicated experiments in a single species of test animals is not new and has been accepted by other Federal agencies. FDA, in banning chloroform, as discussed above, relied almost exclusively on mouse data. And, in his aldrin and dieldrin suspension decision, EPA Administrator Russell E. Train stated:

> Some witnesses also suggested that carcinogens can be species-specific—that is, a chemical substance might affect mice but not any other species, including man. This is theoretically possible. But of the thousands of compounds tested, the record indicates that this effect has been suggested for only one of them, and even this single exception has been seriously challenged. I therefore will rely on the conclusion of such organizations as the International Association for Research on Cancer, which have rejected species-specificity as unsubstantiated.
>
> If carcinogens are not species-specific, it logically follows that the demonstration of carcinogenic effect in more than one species is not absolutely necessary for a finding of carcinogenicity.[4]
>
> Most carcinogens are also not organ-specific. In a survey by Dr. Thomatis of 58 compounds known to produce liver tumors in mice, 40 also induced tumors in a variety of other organs. Furthermore, chemically-induced tumors in one species need not appear in the same organ in another species. Thus, a carcinogen which induces liver tumors in mice might, for example, produce mammary cancers in rats and lung tumors in men.

[4] An HEW Advisory Panel has recommended that a finding of carcinogenicity be made when a substance is "judged positive for tumor induction in *one* or more species * * *." (EPA Ex. 40F, p. 468)

And, in that same proceeding, Dr. Arthur C. Upton, then Dean of the School of Basic Health Sciences at the State University of New York at Stony Brook, New York and now Director of the National Cancer Institute, testified:

> Given this lack of knowledge concerning mechanisms, I believe that a carcinogenic reaction in any species of test animal must be considered sufficient to describe the test compound as a carcinogen and so a threat to human health. I consider that a similar reaction in a second mammalian species is a confirmation of the carcinogenicity of the test agent but it is not necessary before a finding of carcinogenicity and threat to human health can be made; any negative results in a second or even third species of test animal do not in my mind establish that the test agent is not a threat for human beings. Given the variation in human susceptibility to carcinogens, I believe it unreasonable to ignore a finding of carcinogenicity in any mammalian test species when considering possible effects on human health. (*EPA* Ex. S–19 at pp. 4–5)

Likewise, three other emminent scientists testified to the some effect in that same proceeding. Doctor Melvin D. Reuber, then Associate Professor of Pathology at the University of Maryland School of Medicine and formerly a staff pathologist at NCI, testified:

> Sufficient documentation is available on qualitative extrapolation of animal data that one must conclude that a finding of carcinogenicity in one mammalian species should be deemed to have relevance for other mammalian species—including man. (EPA Ex. 42, p. 47)

A similar conclusion was drawn by Dr. Walter E. Heston, then Chief of the Laboratory of Biology at NCI, a position that he had held since 1961. Dr. Heston testified:

> If a chemical causes a neoplastic change in the liver of a mouse or rat, we would expect that through a comparable mechanism it could cause a neoplastic change in the liver of man if given in adequate doses to genetically susceptible individuals. If an agent causes the neoplastic transformation in cells of any organ of the mouse, one would expect that in some human beings, cells either in the same organ or possibly in some other organ that were exposed to the same agent would also become neoplastic. (EPA Ex. 46, p. 9; see also EPA Ex. S–11, p. 7)

Moreover, Dr. Heston further testified:

> Knowing this, and knowing the general biological similarity of mice and other mammalian species, including man, we can reasonably expect that in a population of human beings exposed to Aldrin-Dieldrin, cancer of some kind will occur in some individuals, and these individuals will not have been afflicted in the absence of these compounds * * *. The human population is so much more genetically diverse than any laboratory animals, that if a chemical has been shown to be carcinogenic by a significant induction in *any* laboratory strain of mammal, we can reasonably expect that at least certain human beings would also respond to the chemical by developing some kind of neoplasm. (EPA ex. S–11, 5–7)

And, finally, as unequivocal as the testimony of Dr. Upton was the testimony of Dr. Emmanuel Farber, then Professor of Pathology and Biochemistry and Director of the Fels Research Institute of the

Temple University School of Medicine, Philadelphia, who testified:

> * * * any compound shown clearly to be a carcinogen in any animal species, especially a mammal, must be considered as a possible or even probable carcinogen for man. (EPA Ex. 45, p. 4)

Finally, the proposed set of regulations for any other evidence to initiate a Category I classification, if the Secretary so determines. This basis is meant to include evidence, for example, of those substances that might possess a unique property, e.g., a substance that generates nonstatistically significant but extremely rare or unusual tumors, such as brain tumors, that might not otherwise, standing alone, meet the other criteria for a Category I classification. This might also include evidence from a single, exceptionally well conducted, test in one animal species, as well.

Section 1990.111 sets forth the circumstances under which the Secretary determines that the evidence rebuts the presumption of a Category I classification. This section is one of the key sections of this proposed set of regulations. The Secretary may find that a Category I classification of a substance is not warranted if he scientifically determines on the basis of the evidence: (a) that the alleged carcinogenic effect based on animal data clearly resulted from nonspecific physical, rather than chemical induction; (b) that the route of exposure was grossly inappropriate relative to the potential occupational routes of human exposure; (c) that the animal or human studies submitted for review were only suggestive; (d) that the human or animal studies are totally inadequate to establish any conclusion with respect to the carcinogenicity or noncarcinogenicity of the toxic substances; or (e) that for some other scientific reason, the positive results in experimental mammals are not relevant to man. Any such determination by the Secretary shall be after consultation with the Director of NIOSH and published in the FEDERAL REGISTER. In the event that the Secretary finds that a Category I classification has been rebutted, he shall classify the substance as either a Category II or III toxic substance.

The first two bases for rebutting the presumption of a Category I classification reflect the advice of the Ad Hoc Committee to the Surgeon General in 1970, as cited above. There, the Committee stated:

> 1. a. Any substance which is shown conclusively to cause tumors in animals should be considered carcinogenic and therefore a potential cancer hazard for man. Exceptions should be considered only where the carcinogenic effect is clearly shown to result from physical, rather than chemical, induction, or where the route of administration is shown to be grossly inappropriate in terms of conceivable human exposure. (p. 1)

The third basis for rebutting the presumption that a toxic substance should be classified as a Category I toxic substance has been provided because OSHA believes that some suggestive evidence of carcinogenicity, where perhaps not conclusive and therefore not sufficient to support a full blown regulation of the substance as a carcinogen, raises, nevertheless, a yellow flag of caution. OSHA believes in such a case that responsible public policy dictates that some regulation of the toxic substance should occur even if the evidence is "only suggestive" of carcinogenicity. Therefore, provisions such as medical surveillance of employees, exposure monitoring, and the other requirements of the model standard found in section 1990.160 are considered appropriate. However, as pointed out below, OSHA recognizes that in general, the most cost intensive items found in the Category I model standard are the requirements that the permissible exposure limits be set as low as feasible and be achieved by way of equipment or work practice controls. Thus, because of the lower qualitative and quantitative evidence required for a Category II classification, OSHA has not required that permissible exposure limits be reduced to as low as feasible, as in the case of a Category I toxic substance.

The fourth rebuttal criterion is implicit in the Ad Hoc Surgeon General's Committee's Report, namely that if the studies are scientifically totally inadequate, for example in methodology or conduct, then OSHA will not rely upon such studies at all.

Finally, because of possible legal necessity or the needed flexibility in the field of scientific research, the proposed set of regulations provides that OSHA will rebut the presumption of a Category I classification if it can be shown that "for some other" scientific reason, the results in experimental animals "are not scientifically relevant to man." OSHA is reluctant to add this fifth option, for OSHA does not intend to reopen discussion and litigation on the scientific issues foreclosed by these regulations, such as whether a tumorogen should be regulated as a carcinogen. OSHA specifically invites public comment on this issue and its scientific and legal necessity and relevance.

Section 1990.112 sets forth the regulatory consequences of a Category I classification, which include, among other things, the issuance of an emergency temporary standard, in accordance with section 6(c) of the Act, and a proposed permanent standard, in accordance with section 6(b) of the Act. The permissible exposure limits in both model standards must be set as low as feasible. The model permanent standard also provides that when it is determined by the Secretary that there are suitable substitutes for certain uses or classes of uses that are less hazardous to humans, on the basis of the best available evidence, the proposal shall permit no occupational exposure. These requirements concerning the setting of permissible exposure limits, namely, as low as feasible, is one of those requirements that may not be deviated from in the standard setting process in the subsequent rulemakings.

Section 1990.113 provides for a public hearing pursuant to section 6(b) of the Act, if requested or upon the Secretary's own initiative. In addition, § 1990.113 describes the issues to which the scope of such a hearing is limited. They are: (1) whether the Secretary correctly classified the toxic material as a Category I Toxic Substance; (2) whether the Secretary was correct in the determination that the Category I classification should not be rebutted; (3) whether the Secretary correctly determined the lowest feasible occupational exposure, and whether there are suitable substitutes that are less hazardous to humans; (4) whether the toxic substance has unique properties or uses that make any of the specific protective measures of the model standard inappropriate or infeasible; and (5) the environmental impact arising from regulation of the toxic substance.

Section 1990.114 provides that at the conclusion of the rulemaking as to the specific substance, the Secretary has three options. First, if he determines, based on the record, that he was correct in his initial classification of the toxic substance as Category I, he is required to issue a standard that shall follow the content and format of the model standard set forth in § 1990.160. This is the "full-blown" OSHA carcinogen standard. The permissible exposure limits shall, as pointed out, reflect the lowest feasible levels and, where it is determined by the Secretary that there are suitable substitutes that are less hazardous to humans, no occupational exposure shall be permitted. As we point out below in discussing this specific requirement, "no occupational exposure" does not mean a ban of the use of the substance; for example, a substance might be used where it can be used in a truly closed system.

Second, if the Secretary determines, based on the record, that the toxic substance should have been classified as a Category II toxic substance, he is required to issue a standard following the content and format of the model permanent standard set forth in § 1990.170.

Finally, if the Secretary determines, based on the record, that the toxic substance should be classified as a Category III toxic substance, he is required to follow the procedures provided by section 1990.131, *et. seq.* These procedures however, as pointed out, do not require regulatory action.

2. *Category II Toxic Substances.* Section 1990.120 establishes that certain evidence mandates a Category II classification while other evidence only triggers a presumption that a substance shall be classified as a "Category II Toxic Substance". If the substance meets the definition of a potential occupational carcinogen (as was the case with a Category I toxic substance) but the evidence was scientifically found to be "only suggestive" by the Secretary in determining not to classify the substances as Category I, the Secretary is required to classify the toxic substance as a Category II toxic substance. This classification is not discretionary on the part of the Secretary and may not be deviated from. This is so because any evidence in humans or in

more than one mammalian test animal species or in one such species that is replicated, as defined, that is not totally inadequate obviously forms the basis for some degree of concern. In addition, if the evidence meets the definition of a "potential occupational carcinogen" in an unreplicated experiment in only one mammalian species or the Secretary finds that any other evidence is sufficiently convincing that the toxic substance should be classified, as posing some carcinogenic risk, a presumption exists that the toxic substance shall be classified as a "Category II Toxic Substance".

Section 1990.121 sets forth the circumstances under which the Secretary may rebut the presumption of a Category II classification. First, it should be pointed out, as it was above, that if the evidence would have supported a Category I classification but for the finding that the evidence was "only suggestive", the classification of Category II is not presumptive but mandatory. Thus the presumptive nature of the Category II classification exists only for evidence based on unreplicated animal data in one mammalian animal species or other evidence that the Secretary finds sufficient. The grounds to rebut that limited presumption are exactly the same as those used to rebut the Category I presumption, with the exception of the finding that the evidence is "only suggestive". Because OSHA believes that this evidence will generally consist of one study in a single mammalian species, OSHA believes that if the evidence is "less than suggestive" but not totally inadequate, regulatory activity may be unjustified. Thus, the proposal provides that the Secretary may rebut the presumption that a toxic material be classified as a Category II toxic substance where the evidence in the unreplicated experiment in a single mammalian test species is less than suggestive, as defined (but by definition not totally inadequate). As with the rebuttal of a presumptive classification of a Category I toxic substances, any such rebuttal by the Secretary shall be after consultation with the Director of NIOSH, and published in the FEDERAL REGISTER. In the event that the Secretary finds that a presumptive Category II classification has been rebutted, he shall classify the material as a Category III toxic substance.

Section 1990.122 sets forth the regulatory consequences of a Category II classification, which includes, among other things, the issuance of a proposed permanent standard in accordance with section 6(b) of the Act. As will be pointed out, the permissible exposure limits found in the proposed model standard will not be changed from those If no OSHA standard exists or the presin a present OSHA standard if one exists. ent OSHA standard is inadequate, based on evidence of acute or chronic effects other then carcinogenicity, the exposure limits shall be set at levels found appropriate by the Secretary to protect against such acute or chronic effects. OSHA is concerned that this requirement may result in rulemakings under this subpart for such a Category II toxic substance that will be consumed by issues concerning toxic effects other than carcinogenicity. One obvious alternative to the proposal would be to keep the present OSHA standard or, where there is none, not to attempt to set permissible exposure limits in that rulemaking. The limits might be set in a subsequent rulemaking devoted entirely to that issue. This alternative, of course, could provide that in cases, where good evidence is in hand as to other toxic effects, the Secretary would set a level or lower the present OSHA standard, where appropriate. Because one of the essential reasons for this proposal is to speed up regulatory activity as to occupational exposure to potential carcinogens, OSHA seeks and invites the widest public comments and views as to how to handle the problems posed by an inadequate, or nonexistant OSHA standard for Category II toxic substances. It should be pointed out, as we have above, that the Category II classification exists for those substances for which the evidence raises concern about possible carcinogenic effects of exposure but not as high degree of confidence. Thus, OSHA believes that some regulation of such a substance should occur, where perhaps none occurred in the past. However, OSHA believes that, in general, the most cost intensive items found in the "full-blown" carcinogen standard are the requirements that the mandated permissible limits be set as low as feasible and be achieved by way of equipment or work practice control. Thus, with respect to the potential cancer hazard of a Category II toxic substance OSHA does not believe it appropriate to impose the requirement that permissible exposure limits be reduced to the lowest feasible levels.

Section 1990.122 also gives notice that if, pursuant to the rulemaking, the Secretary determines that the substance should have been classified as a Category I toxic substance, the final standard will be that required for a Category I toxic substance, as required by § 1990.160. The regulation also specifically requires that the Secretary give explicit notice of this possibility in the notice of proposed rulemaking for a Category II substance. This provision exists because OSHA believes that it would serve no purpose to have multiple rulemakings on the same substance, particularly where adequate notice of the possibility of such events is given in advance to the concerned public.

Section 1990.123 describes the issues to which the scope of such a hearing is limited. Those issues are exactly the same as those to which hearings and comments are limited as to Category I toxic substances.

Finally, § 1990.124, as did § 1990.114, provides that, at the conclusion of the public rulemaking, the Secretary has three options. First, if he determines that he was correct in his initial classification of the toxic substance as a Category II toxic substance, he is required to issue a standard that shall follow the content and format of the model standard set forth in § 1990.170.

Second, if the Secretary determines that the toxic substance should have been classified as a Category I toxic substance, he is required to issue a standard that shall follow the content and format of the model standard set forth in § 1990.160.

Third, if the Secretary determines that the toxic substance should have been classified as a Category III toxic substance, he is required to follow the procedures provided by § 1990.131, *et seq.*

3. *Category III Toxic Substances.* Section 1990.130 provides that any toxic substance, as defined, not classified by the Secretary as a Category I or II toxic substance shall be classified as a Category III toxic substance. Naturally, this does not include Category IV toxic substances. Basically the Category III classification includes substances for which there is meager or no valid scientific evidence indicating that the substance has a carcinogenic potential to humans. Moreover, it may also include substances for which there is some evidence of a lack of carcinogenic activity. This is not to say however that OSHA has determined by such classification that the toxic substance does not pose a carcinogenic risk—it is merely to say that on the basis of the present evidence, one cannot say that it does. No regulation of this category of toxic substance is provided, insofar as carcinogenicity is concerned. Regulation will occur through OSHA's present standard setting activity or in the future concerning other acute or chronic effects of exposure.

Section 1990.131 provides that when the Secretary determines that a toxic substance should be classified as a Category III toxic substance, he will publish his determination in the FEDERAL REGISTER and add that substance to the list provided for by § 1990.133, in order to approximately inform the public as to the status of any toxic substance for which there is no Category I or Category II standard. The Secretary is also required to transmit his findings to EPA, NIOSH, NCI and CPSC with a request that each agency determine if there is additional information, unavailable to, or unreviewed by, the Secretary that might be relevant to the classification of that toxic substance.

4. *Category IV Toxic Substances.* OSHA does not believe that prudent government regulation should control substances that are not found in American workplace for several reasons. First, it would be a waste of precious manpower that is needed to regulate substances already found in the workplace. Second, it would be difficult if not impossible to foresee the possible problems concomitant with regulation of substance not yet found in the workplace. For example, uses for a substance might not now exist. When they do, what substitutes for that substance that might exist could not be known with any degree of certainty. And finally, to conduct such a rulemaking would perhaps deprive the public—and thus OSHA—of any meaningful input into such process because of the probable lack of any present in-

terest in participating in such a process for a substance that nobody uses.

Thus OSHA intends to list such substances in section 1990.141. The regulations provide, however, that the Secretary will first publish a notice of intent to list those toxic substances as Category IV toxic substances which he believes are not found in American workplaces, in order to provide an opportunity for public comment. Thereafter, the Secretary will publish and update a list of these substances in the FEDERAL REGISTER and the Code of Federal Regulations. OSHA intends to add or delete from that list but without the formality of rulemaking, *per se*. In addition, OSHA intends to develop a procedure with EPA to coordinate this part of the proposal with EPA's implementation of the Toxic Substances Control Act.

B. THE BASIS AND RATIONALE FOR THE EMERGENCY TEMPORARY STANDARD FOR A CATEGORY I TOXIC SUBSTANCE (1990.150)

The Secretary believes, upon the basis of the preceding discussion of cancer, that when evidence exists that meets the definition of a potential occupational carcinogen and the criteria found in § 1990.110, (a) continued exposure constitutes "a grave danger" within the meaning of section 6(c)(1)(A) of the Act and (b) that an emergency temporary standard as proposed in § 1990.150 is necessary and proper to protect employees from such danger. The proposition that cancer, and substance that cause cancer, pose a grave danger to man does not need lengthy discussion. As pointed out, the nature of a cancer hazard differs from other types of toxicity. Employees exposed to carcinogens risk incurable, irreversible and, in most cases, fatal consequences. These consequences may be irreversibly set in time. No symptomatic evidence of the development of he cancer may be apparent to the employee during a long latency period. A singlee xposure episode may be sufficient to cause cancer. These factors, which establish the grave danger posed by exposure to carcinogens, also lead inexorably to the conclusion that it is necessary to provide protection for employees as soon as possible through the issuance of an emergency temporary standard, within the meaning of section 6(c)(1)(B) of the Act.

Further, another basis for immediate action arises from the nature of the disease itself. If cancer were a reversible, generally curable disease, there might be some justification for pursuing a standard by some other procedure than an ETS. For example, a worker contracting the disease during the time required to complete full rulemaking proceedings might possibly be cured at some subsequent time. However, cancer is not generally reversible. The Court of Appeals in *Florida Peach Growers* v. *Brennan* 489 F. 2d 120 (5th Cir. 1974) emphasized the importance of irreversibility in its interpretation of some of the criteria that might be necessary to sustain an emergency temporary standard. The Court stated:

> We reject any suggestion that deaths must occur before health and safety standards may be adopted. Nevertheless, the danger of incurable, permanent, or fatal consequences to workers as opposed to readily curable and fleeting effects on their health, become important in the consideration of the necessity for emergency measures to meet a grave danger. 489 F. 2d at 132.

The model emergency temporary standard contains those provisions deemed necessary and possible to immediately provide employee protection pending completion of the 6(b) permanent rulemaking proceedings to commence shortly thereafter. OSHA firmly believes that when a toxic substance meets all of the criteria and definitions herein, it would be unconscionable not to require those actions that can be done immediately to reduce human exposure. Simply put, the model emergency temporary standard, in general, would require the employer to identify exposed employees, measure their exposures, inform them of the hazards associated with exposure to the toxic substance, provide medical examinations, and reduce their exposures to the lowest level possible that, in OSHA's judgment, can be complied with immediately through any practicable combination of engineering, work practice, and appropriate personal protective equipment control. It would not require that the reduction of employee exposures to the permissible exposure limits be achieved solely by way of equipment or work practice controls, as described more fully below.

Additionally, the ETS would require employers to notify OSHA of the location of workplaces in which employees are exposed to the Category I toxic substance and to describe the conditions of use and exposure and protective measures in effect. Such information will facilitate OSHA's decisions in the subsequent rulemaking proceedings by providing information concerning the extent of use, number of exposed employees, other facts relevant to determination of feasible exposure limits and the appropriateness of specific regulatory provisions.

C. THE BASIS AND RATIONALE FOR THE REQUIREMENTS OF THE THREE MODEL PROPOSED STANDARDS: 1. THE CATEGORY I TOXIC SUBSTANCE ETS (1990.150); 2. THE CATEGORY I TOXIC SUBSTANCE PERMANENT STANDARD (1990.160); AND 3. THE CATEGORY II TOXIC SUBSTANCE PERMANENT STANDARD (1990.170)

The following discussion summarizes the significant provisions of the three model standards and the rationale and policy considerations underlying those provisions. As pointed out, these three model standards are intended to be proposed and promulgated in their entirety, in form and content, in each of the substance-by-substance rulemakings, except where deviations, additions or changes are shown to be appropriate. However, certain provisions of the model standards, which represent basic policy decisions of OSHA, such as the requirement that the lowest feasible levels of exposure to be achieved for Category I toxic substances, will not be permitted to be changed in the subsequent substance-by-substance rulemakings. Other requirements, such as the content of medical tests and procedures, may properly vary according to the unique properties or uses of the substance to be regulated and the appropriateness of such requirements will be obviously issues in the subsequent 6(b) rulemaking. Therefore, §§ 1990.113 and 1990.123 permit the rulemaking proceedings on specific substances to consider whether the unique properties or uses of the substance make any of the specific protective measures of the model standards inappropriate or infeasible. For example, in the recent proposal to regulate occupational exposure to benzene (42 FR 27452), no provision was made for change rooms or showers. This omission from usual OSHA requirements for occupational exposure to a carcinogen occurred because the high volatility of benzene made such requirements unnecessary as to the regulation of that toxic substance.

In format, OSHA has identically lettered those provisions appearing in the model ETS and the model permanent standards for Category I and Category II toxic substances, which cover the same subject headings, for the convenience of the public. For example, paragraph (n) in all three model standards will always contain the requirements for medical surveillance, whether it be the model ETS or the model standards for Category I or Category II toxic substances. Where inappropriate provisions are deleted, for example the regulated area requirement is omitted from the ETS, the lettered paragraph will nonetheless appear with the notation "deleted" to maintain consistency throughout the three model standards.

For the convenience of the public, OSHA attempts here to graphically illustrate, in general, as Table I, the requirements of, and differences in, the three model standards. This table does not, however replace the discussion of the individual requirements, as Table I can only generalize. In addition, attached to this proposed set of regulations, as Appendix A, is a three column display of the three model proposed standards side by side. OSHA believes that Table I and Appendix A will greatly facilitate public understanding and response to this rulemaking.

TABLE I

Description of the 3 model standards, as proposed	Category I: Toxic substances emergency temporary standard	Category I: Toxic substances standard	Category II: Toxic substances standard
1. Sec. (a): Scope and application.	As provided	As provided	As provided.
2. Sec. (b): Definitions	do	do	Do.
3. Sec. (c): Permissible exposure limits.	Levels are to reflect the lowest levels feasible that can be achieved within the shortest possible time.	Levels are to reflect the lowest levels feasible or, in certain cases, the levels shall permit no occupational exposures.	Levels are to retain the present OSHA standard (29 CFR 1910.1000) or if none or inadequate, the appropriate levels based on acute or chronic non-carcinogenic effects.
4. Sec. (d): Notification of use and emergencies.	Provides for notification of use.	Provides for notification of use and emergencies.	Provides for notification of use and emergencies.
5. Sec. (e): Exposure monitoring and measurements.	Monthly if above limits set by sec. (c); quarterly otherwise.	Monthly if above limits set by sec. (c); quarterly otherwise.	Monthly if above limits set by sec. (c); quarterly otherwise.
6. Sec. (f): Regulated areas	Omits this requirement	Required	Omits this requirement.
7. Sec. (g): Methods of compliance.	Any combination of equipment controls, and personal protective equipment.	By way of engineering and work practice controls only, except in certain circumstances.	By way of engineering and work practice controls only, except in certain circumstances.
8. Sec. (h): Respiratory protection.	Required	Required	Required.
9. Sec. (i): Emergency situations.	Omits this requirement	do	Do.
10. Sec. (j): Protective clothing and equipment.	Some of the requirements	All of the requirements	All of the requirements.
11. Sec. (k): Housekeeping	Required	Required	Required.
12. Sec. (l): Waste disposal	do	do	Do.
13. Sec. (m): Hygiene facilities.	Some of the requirements	All of the requirements	Some of the requirements.
14. Sec. (n): Medical surveillance.	Required	Required	Required.
15. Sec. (o): Employee training and education.	do	do	Do.
16. Sec. (p): Precautionary signs and labels.	do	do	Do.
17. Sec. (q): Recordkeeping	do	do	Do.
18. Sec. (r): Observation of monitoring.	do	do	Do.
19. Sec. (s): Effective dates	Immediately	As determined in the proposed or final standard.	As determined in the proposed or final standard.
20. Sec. (t): Appendices	Will be provided	Will be provided	Will be provided.

1. *Paragraph (a): Scope and Application.* The three proposed model standards would apply to all workplaces in all industries, including the general, construction, maritime, and agriculture industries, wherever occupational exposure to the toxic substance, as defined, occurs. The three model standards also provide for instances where the standard will be determined by OSHA not to apply, if applicable. The wordings of the three model standards, as proposed, are identical in this regard, although in their application they will obviously be different. See for example, the differences between the final Coke Oven Emissions Standard (29 CFR 1910.1029), the final Vinyl Chloride standard (29 CFR 1910.1017) and the recent Benzene proposal (42 FR 47452).

2. *Paragraph (b): Definitions.* The three proposed model standards contain definitions in order to establish a consistent working vocabulary. OSHA considers these definitions to be minimal insofar as the model standards are concerned. There are some differences, however, even as proposed, in the three model standards because of deleted or additional requirements found in the body of each standard, as discussed. However, there are no differences in the definitions common to the standards.

3. *Paragraph (c): Permissible Exposure Limits.* The proposed ETS and the model permanent standard for a Category I toxic substance would require that employee exposure to a Category I toxic substance be reduced to the lowest levels feasible. In practice, it may be that the permissible exposure limits for the ETS might be higher or lower than those proposed or promulgated in the permanent model standard because of the opportunity for a better assessment of feasibility during the comment period and possible hearing. Additionally, where, on the basis of facts set forth in the proposal or on the record of the public rulemaking, suitable substitutes in certain applications or uses are found to exist which are less hazardous to workers, the Secretary shall prohibit, in the permanent standard, occupational exposure for such specific applications or uses. This prohibition against occupational exposure is not *per se* a ban upon the use of the toxic substance, unless otherwise noted. Any such use of the toxic substance might, for example, be safely contained in a system that would not create any occupational exposure even when the toxic substance were still being used.

The policy decision to reduce exposures to as low as feasible, or to prohibit occupational exposure where suitable substitutes exist, is not made without sound support. As has been discussed above, a no-effect or threshold level may theoretically exist for any specific carcinogen. As yet, however, there is no satisfactory scientific basis for determining such levels for any given population. Thus, as has been proposed, any human exposure to a carcinogen, even at levels below those which induced positive effects in man or in test animals, would be considered by OSHA to present a potential cancer risk as a policy matter. We do not know whether "safe" or "no-effect" levels exist for a carcinogen and, if so what they may be. Therefore, attempts to set finite exposure limits are not directed at determining "safe" levels of exposure but rather are attempts to determine the lowest feasible levels.

OSHA intends to permit no deviation from the general policy, that the employee exposure limits in the ETS and permanent Category I standard shall always be "the lowest feasible level". OSHA does not believe that it should deviate, in the substance by substance rulemakings themselves, from the position proposed to be established in this rulemaking, namely, that when dealing with human carcinogens it is appropriate to set a level which assures the lowest feasible risk to workers. If and when substantial evidence is available to show that "safe" or "no-effect" levels can be predicted for exposure of human beings to carcinogens, OSHA will act to amend this basic policy decision reflected in this set of regulations proposed today.

The two model permanent standards for Category I and Category II toxic substances provide for permissible exposure limits for inhalation over a time weighted average for an 8 hour day and a ceiling level for any prescribed appropriate interval during that day. They also provide that no employee shall be exposed to eye contact or repeated skin contact. The only difference is that insofar as the model permanent standard for a Category I toxic substance is concerned, the ceiling level shall not be over five (5) times the time weighted average for the inhalation permissible exposure limit. This is provided because statistically, an employer can not generally assure that his employees' exposures are below the time weighted average limit unless the ceiling exposures are less than 5 times that limit.

Finally, the proposed permanent standard for a Category II toxic substance differs markedly from the requirements for Category I toxic substances concerning the permissible exposure limits. This is so because of the lower quantity or quality of the evidence being relied upon. Thus, the model standard for a Category II toxic substance: (a) retains the present OSHA standard found in 29 CFR 1910.1000 or (b) where none exists, sets an appropriate level based upon acute or chronic effects of exposure other than carcinogenicity to the toxic substance, or (c) where acute or chronic effects of exposure other than carcinogenicity indicate that the present OSHA standard is inadequate, lowers the exposure level from the present OSHA standard to the level found appropriate by the Secretary, in the record, to protect against such effects. As has been pointed out above, OSHA is concerned about this specific provision of the Category II model permanent standard and invites the widest public comment as to whether the lowering or setting of permissible exposure levels for such a substance should await a subsequent rulemaking, except where the Secretary determines that he has sufficient evidence in hand at the time.

4. *Paragraph (d): Notification of Use and Emergencies.* The three model standards all provide that within a certain time after the effective date of each

standard, the employer shall notify the applicable OSHA area office as to the address and location of each workplace in which employee exposure to the toxic substance occurs, a brief description of the work operations and the number of employees that may be exposed.

In addition, the Category I and II proposed permanent standards provide that the employer must also notify the OSHA area office when emergencies, as defined, have occurred. If the OSHA area office requests additional information relevant to the emergency, the employer will be required to furnish such information, together with a description of measures taken to prevent future emergencies of a similar nature. The model ETS does not include this requirement because it does not require written plans for emergency situations, for the reasons set forth in paragraph 9 below. Moreover, because previous employee exposures may be at levels much higher than the ceiling limits and compliance with the lower levels set by the ETS is most likely to be achieved by respirators, OSHA deems such requirement to be unnecessary or even infeasible for the ETS. Finally, in light of the other requirements mandated of employers by the ETS, OSHA believes that such a further requirement might be overburdensome in the case of most employers because of the short effective period of the ETS (6 months).

These reports of use, and in the case of the two model permanent standards, the report of emergencies, are considered necessary and proper in order to aid enforcement activities. In addition, such information is helpful, in the case of the rulemaking concerning the permanent standard for Category I toxic substances, in determining what level of exposure can feasibly be attained by way of engineering and work practice controls. Finally, such reports are necessary in order to monitor the effectiveness of standards in protecting employees against occupational cancer and in order to obtain information, on a continuing basis, concerning the hazards found in the use of these toxic substances.

OSHA recognizes that the reporting of use may be a requirement of the United States Environmental Protection Agency pursuant to the Toxic Substances Control Act of 1976. OSHA does not desire duplication of reporting to more than one Federal agency and therefore directs the attention of the public to this issue and requests comments on ways to achieve notification of use without duplicating reports concerning the use of any given toxic substance. It is OSHA's intention to enter into an agreement with EPA reducing, to the maximum extent possible, any such duplication in reporting requirements.

5. *Paragraph (e): Exposure Monitoring and Measurement.* The three model standards require each employer who has a place of employment where the toxic substance is present to monitor employees to measure their exposure to the toxic substance over an eight (8) hour period, without regard to the use of respiratory protection. Section 6(b)(7) of the Act (29 U.S.C. 655) mandates that any standard promulgated under the Act shall, where appropriate, provide for monitoring or measuring of employee exposure and in such manner as may be necessary for the protection of employees. In addition, section 8(c)(3) of the Act (29 U.S.C. 657) requires employers to promptly notify any employee who has been or is being exposed to toxic substances or harmful physical agents at levels which exceed those prescribed by an applicable occupational safety and health standard and to inform such employee of the corrective action being taken to reduce such exposures. Exposure monitoring is necessary, therefore, in order to determine whether employees are being exposed to the toxic substance at levels exceeding those prescribed by the standard and therefore should be notified as required by the Act.

In addition to the statutory requirements, there are various other reasons which make it appropriate for employers to measure employee exposure to the toxic substance.

First, employers would have a legal obligation imposed by the individual standard to assure that their employees are not exposed above the permissible exposure limits. Exposure monitoring informs the employer whether that obligation is being met.

Second, if the employer determines that employee exposures exceed the permissible exposure limits, then there would be an obligation in the case of a permanent standard for Category I or II toxic substances to institute engineering and work practice controls in order to reduce exposures to the permissible exposure levels. Hence, exposure monitoring aids the evaluation of the effectiveness of the installation of engineering and work practice controls and informs the employer whether additional controls need be instituted. For the same reasons, the ETS requires the use of respiratory protection whenever the permissible exposure limits are exceeded.

Third, if the permissible exposure limits are exceeded, either before all feasible engineering and work practice controls have been instituted, or after, then there is an obligation to use respiratory protection to reduce exposures. The selection of a particular respirator depends largely on the level at which employees are being exposed. Therefore, exposure monitoring is necessary in order to determine whether respiratory protection is required at all, and if so, which respirator is to be selected.

Finally, the results of exposure monitoring are a necessary part of the information which is required to be supplied to the physician to enable him to perform his stated functions under the standard.

The three model standards require that the measurements be made by monitoring which is representative of each employee's exposure to the toxic substance over an eight-hour (8) period without regard to the use of respiratory protection. In order to use the results of exposure monitoring to evaluate the effectiveness of the required engineering and work practice controls, to determine whether additional controls must be instituted, and to ascertain which, if any, respirator must be used, it is necessary to know employee exposure levels without regard to the use of respiratory protection. Exposure measurements of each individual employee would, of course, be the best indication of that employee's exposure. However, OSHA believes that this may be too burdensome and monitoring which is truly representative of an employee's exposure would provide the necessary information with, in many instances, fewer samples. It should be noted that individual exposure measurements would certainly be considered to be representative and are not precluded by this requirement.

All three model standards require that whenever there has been a production, process, control or personnel change which may result in new or additional exposures to the toxic substance or whenever the employer has any other reason to suspect an increase in employee exposure, the employer shall repeat the required monitoring and measurements for those employees affected by such change or increase. This is necessary so that the employer may take the appropriate actions required, such as providing the appropriate respirator protection or instituting engineering controls.

The three model standards require an employer to notify each employee in writing of that employee's representative exposure measurement within five working days after receipt of the results of any required measurement. Section 8(c)(3) of the Act (49 U.S.C. 667) requires employers to promptly notify an employee who is exposed in excess of the permissible exposure limit. The standard extends that right to employees exposed at or below the permissible exposure limits and establishes the time period involved. OSHA believes that informing employees of their exposure measurement, at or below the permissible exposure limits, contributes to their understanding of their work and its attendant hazards, particularly where no level of exposure is "safe" and the level that is set solely a feasibility level. The success of a control strategy that so intimately involves worker cooperation is highly dependent on such understanding. A period of five (5) working days is believed to be a reasonable time in which to notify the employees. The five day limit fulfills the statutory requirement of promptness, yet accommodates the need to allow time for the written notification to be completed.

Section 8(c)(3) of the Act (29 U.S.C. 657) also provides that whenever measurement results indicate that an employee is exposed in excess of the permissible exposure limits, the employer must also notify the employee of the corrective action being taken to reduce exposure to or below the permissible exposure limits. The three model standards all incorporate this statutory obligation.

The employer is also required to use a method of monitoring and measurement with an accuracy (at a confidence level of 95%) of not more than plus or minus an appropriate level to be determined in each specific rulemaking pursuant to this subpart.

6. *Paragraph (f): Regulated Areas.* The model permanent standard for a Category I toxic substance provides that when employee exposure is in excess of the permissible exposure limits, without regard to respiratory protection, the employer must establish a regulated area and limit access to those areas to authorized persons. The purpose of these requirements is to limit the risk of exposure to as few employees as possible. OSHA believes these requirements will allow operation to continue without undue interference, considering the dangerous hazard to which the workers are exposed.

The model ETS does not include a requirement for the designation of regulated areas. As has been explained, the ETS requirements are those that OSHA has determined and believes can generally be instituted immediately or fairly quickly. Yet, before a regulated area is required, employers would be required to monitor to determine which, if any, employees are exposed to the toxic substance over the permissible exposure limits. OSHA believes that with the present requirements of the model ETS, it would not be feasible in many cases to add this additional requirement to the model ETS.

The model permanent standard for a Category II toxic substance also does not include the requirement for regulated areas. OSHA believes, as has been pointed out, that Category II substances are those substances with substantially less quantitative and qualitative proof of carcinogencity than the Category I toxic substances. In other words, these substances probably have not been regulated in the past by any federal agency insofar as carcinogenicity is concerned. Thus, OSHA believes that requiring regulated areas in the model proposed permanent standard for Category II toxic substances would be too burdensome a requirement based on the quality or quantity of evidence required to trigger a Category II classification.

7. *Paragraph (g): Methods of Compliance.* (a) *The model permanent standards.* The model permanent standards simply restate OSHA's current policy that feasible engineering and work practice controls must be used as the primary methods to reduce employee exposure to or below the permissible exposure limits. They would require the employer to immediately institute feasible engineering and work practice controls to reduce employee exposures to or below the permissible limits, except in situations where the employer proves that such controls are infeasible. Further, in situations where feasible engineering and work practice controls are insufficient to reduce exposure to the permissible limits, they must nonetheless be used to reduce exposures to the lowest achievable level, and then be supplemented by the use of respiratory protection. In addition, a program must be established and implemented to reduce exposures to within the permissible exposure limits or to the greatest extent feasible, solely by means of engineering and work practice controls. Written plans for this program must be developed and be furnished upon request for examination and copying to representatives of the Assistant Secretary and the Director. These plans must be reviewed and updated periodically to reflect the current status of exposure control.

As has been pointed out time and time again in OSHA rulemaking proceedings, respirators are the least satisfactory means of control because of difficulties inherent in their design and use. Respirators are capable of providing good protection only if they are properly selected for the types and concentrations of airborne contaminants present, properly fitted and refitted to the employee, worn by the employee, and replaced when they have ceased to provide protection. While it is theoretically possible for all of these conditions to be met, it is more often the case that they are not. Consequently, the protection of employees by respirators is not always effective and is therefore permitted only in certain specified circumstances. For example, proper facial fit is essential, but due to variations in individual facial dimensions, and the limited range of facepiece configurations, such fit is difficult to achieve. Often the work involved is strenuous and the increased breathing resistance of the respirator reduces their acceptability to employees. Safety problems presented by respirators must also be considered. Respirators limit vision. Speech is also limited. Voice transmission through a respirator can be difficult, annoying and fatiguing. Movement of the jaw in speaking also causes leakage. Communication may make the difference between a safe, efficient operation, on the one hand, and confusion and panic, especially in difficult and dangerous jobs, on the other hand. Also skin irritation can result from wearing a respirator in hot, humid conditions and such irritation can cause considerable distress and disrupt work schedules. The extent of this problem is even greater where the toxic substance is a skin irritant and becomes trapped between the respirator facepiece and the skin.

It is clear therefore that respirators cannot be considered as the primary means of employee health protection. Nevertheless, they do provide some protection and OSHA has concluded therefore that under certain circumstances, the employees must use the respirators provided.

(b) *The Model ETS.* OSHA has indicated herein that the provisions of the model ETS are intended to require only those things which are possible to achieve immediately or within a very short period of time. While the model ETS therefore states that OSHA prefers the reduction of employee exposure by way of engineering and work practice controls, it also states that OSHA recognizes, as a very practical matter, that in many instances, the immediate reduction of exposure will be primarily through the use of respiratory protection, with all of the inadequacies stated above, and the institution of good housekeeping practices such as the prohibitions against the blowing of dust containing the toxic substance or the permitting of open containers and vessels of liquids containing the toxic substances. The methods of compliance, therefore, are a major difference between the model ETS and the model 6(b) proposed and final standards. One other major and distinctive feature of the model ETS is the requirement that during the effective period of the ETS (6 months), the affected employers must look down the road to the model permanent standard for the Category I toxic substance and start planning how to reduce exposures to the lowest feasible levels solely by way of engineering and work practice controls. Thus, OSHA anticipates that by such requirements, delayed effective dates of the permanent standard can be limited or perhaps avoided altogether, hastening the reduction of employee exposure to the toxic substance. Because of the general irreversibility of cancer as pointed out above, OSHA considers the early reduction of employee exposures the most significant provision in decreasing the gravity of the risk of contracting cancer.

8. *Paragraph (h): Respiratory Protection.* The model ETS provides that, whenever the permissible exposure limits are exceeded, the employer shall assure that the employees use respirators. The two model proposed and final standards, however, require that respirators be used to achieve compliance with the permissible exposure limits only during the time period necessary to install or implement feasible engineering and work practice controls, in work operations in which such controls are not technically feasible or are not yet sufficient to reduce exposure to the permissible limit, or in emergencies.

The three model standards require that the employee be properly trained to wear the respirator, to know why the respirator is needed and to understand the limitations of the respirator. An unstanding of the hazards involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform to the program set forth in 29 CFR 1910.134. This section contains basic requirements for proper selection, use, cleaning, and maintenance of respirators.

The three proposed model standards also contain a respirator selection table (Table I) so the employer will be informed of and provide the type of respirator which affords the proper degree of protection based on the airborne concentrations of the toxic substance.

To prevent skin irritation and to minimize the discomfort of respirator use, the three model standards require that

employees must be allowed to periodically wash their faces and respirator facepieces in order to remove any accumulation of the toxic substance or to reduce the chance of irritation from the wearing of the facepiece itself, such as a heat rash.

9. *Paragraph (i): Emergency Situations.* The two model permanent standards provide that written plans for emergency situations be developed. They further require that some type of alarm or warning system be devised to adequately alert employees of the emergency. Finally, the two model standards provide for evacuation of all employees from the area except those engaged in correcting the emergency.

The model ETS does not provide such a requirement. As has been pointed out under methods of compliance, OSHA recognizes that respirators may be the primary method used to reduce employee exposure in the short term under the ETS. Thus, the requirements concerning emergencies provided for by the two model proposed and final standards would not appear to be necessary or in some cases attainable for the ETS.

10. *Paragraph (j): Protective Clothing and Equipment.* The three model standards require the employer to provide and assure that employees, who are subject to skin or any eye contact, use protective clothing or equipment such as goggles in order to minimize these hazards.

Basically, the requirements of the three model standards are the same. The three model standards also require that the employer clean, launder, or dispose of the required protective clothing to eliminate any potential exposure that might result were the clothing to be laundered by the employee at home or in a commercial laundry.

The three model standards also require that protective clothing be provided in a clean and dry condition at appropriate times. Since repeated skin contact with many toxic substances, as proposed to be regulated herein, creates a potential for skin cancer, OSHA believes that the regular cleaning of contaminated work clothing plays an important role in the prevention of this hazard. More important, this requirement prevents increased exposure to airborne concentrations of the toxic substance released from the contaminated clothing. The three model standards also require that protective clothing and equipment be maintained and replaced as needed in order to ensure effectiveness.

The two model permanent standards provide that the employer assure that all protective clothing is removed at the end of each work shift, only in change rooms, and that the clothing that is to be laundered, cleaned, or disposed of be placed in a closable container in the change room. The purpose in requiring such a container is to prevent the contaminants on the clothing from coming into contact with an individual handling the container or being released in the change room. Since the container is to be located in the change room, it is appropriate to limit the removal of contaminated clothing to that area.

Finally the three model standards require employers to inform those who handle the contaminated articles of the potentially harmful effects of exposure to the toxic substance. This provision is designed to make clear the need to use proper care in handling of the contaminated articles.

11. *Paragraph (k): Housekeeping.* Removal and prevention of accumulations of the toxic substance dust and liquid deposits on all surfaces in the workplace are important aspects in minimizing employee exposure, particularly in the case of a Category II toxic substance where there may not be a mandatory reduction in the present permissible exposure limits, *per se.* To assure that the toxic substance is not reintroduced into the workplace air, all three model standards prohibit dry sweeping or the use of compressed air for cleaning of floors and other surfaces where the toxic substance dust or liquid deposits are found.

As important, all three model standards require that when the toxic substance is present in a liquid form, or as a resultant vapor, that all containers or vessels shall be enclosed to the maximum extent feasible and tightly covered when not in use.

12. *Paragraph (l): Waste Disposal.* For disposal of waste, scrap, equipment or debris containing the toxic substance, the three model standards require that such substance be collected and disposed in sealed bags or other closed containers which will prevent dispersion of the toxic substance outside of the container.

13. *Paragraph (m): Hygiene Facilities and Practices.* As to the three model standards, there are, generally, the same provisions for hygiene facilities and practices as are provided by present OSHA standards, as mandated by 29 CFR 1910.141.

The two model permanent standards also add other requirements. For example, the model proposed and final standard for a Category I toxic substance also requires that positive pressured, filtered air lunchrooms be provided and readily accessible for employees whenever food or beverages are consumed in the workplace. These lunchrooms must be provided and readily accessible to encourage employees to make use of them. Positive pressure filtered air is required to create a lunchroom with a relatively emission free air supply and to minimize the amount of air from outside the lunchroom blowing inside whenever the door is opened. The air supply is also required to be temperature controlled so that the lunchroom does not become unbearably hot in the summer or cold in the winter, making employees reluctant to use it. In addition, a lunchroom with a temperature controlled air supply will encourage employees not to leave the door open in order to lower the temperature in hot weather, thus minimizing the opportunities for air contaminated with the toxic substance to blow into the lunchroom.

Second, the model permanent standards for Category I and Caegory II toxic substances require the use of hygiene practices and facilities which are intended to remove the toxic substance collected on employees. The standards do this by requiring that the employer assure that employees wash their hands and faces prior to eating. Since washing is required, the model standards also repeat the existing obligation to provide washing facilities and lavatories in accordance with 29 CFR 1910.141(d) (1) and (2).

The two model permanent standards for Category I and Category II toxic substances require the employer to provide change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment as is presently provided by 29 CFR 1910.141. The purpose of this requirement is to reduce the possibility of an employee having skin contact with the toxic substances which collect on the employee's street clothes as a result of those clothes having been in the same storage facility as the employee's contaminated protective clothing and equipment. It should again be noted that this requirement repeats the existing obligation to provide change rooms in § 1910.-141(e) of this Part.

In addition to requiring shower facilities, the model proposed and final standards require showering at the end of each work shift. This action can, in certain cases prevent skin cancer among workers. In addition, and as importantly, it reduces the employee's overall exposure to the toxic substance. OSHA believes that, although some allege that workers currently engage in this practice, it is usually not the case. Thus, OSHA believes that it is necessary to create a legal obligation to do so, in order to assure that this practice is continued or created. The model standards also require shower facilities which comply with 29 CFR Part 1910.141(d) (3).

The model standards also require that employers assure that employees do not apply cosmetics in the regulated area. This is intended to prevent employees from sealing the toxic substance onto their skin.

OSHA invites comments on these paragraphs of the model standards. Basically, as pointed out, the additional Category I requirements to those already imposed by 29 CFR 1910.141 for hygiene facilities are capital intensive. In regulating Category II substances, OSHA is relying upon evidence insufficient to justify treating the substance as a full-blown carcinogen. Thus, the lower standard of regulation, but with what OSHA believes is an adequate margin of health and safety commensurate with the quality and quantity of evidence.

14. *Paragraph (n): Medical Surveillance.* The three model standards require that each employer institute a medical surveillance program for all employees who are, or will be, exposed to the toxic substance. OSHA believes that a medical surveillance program is appropriate in dealing with the problem of employee exposure to Category I or II toxic substances; hence, pursuant to the Act, this

standard has prescribed it. The authority, indeed the requirement, to include medical surveillance in an OSHA standard is found in subsection 6(b)(7) of the Act:

> * * * where appropriate, any such standard promulgated under subsection 6(b) shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such employment related hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure.

The three model standards require that the medical surveillance program provide each covered employee with an opportunity for medical examination. As noted above, the authority and requirement for this provision is found in section 6(b)(7) of the Act.

All examinations and procedures are required to be performed by or under the supervision of a licensed physician and provided without cost to the employee. While the physician will usually be selected by the employer, the standard does not so mandate, leaving the employer free to institute alternative procedures such as joint selection with the employee or selection by the employee. Clearly, a licensed physician is the appropriate person to be conducting a medical examination. However, certain parts of the required examination (e.g. taking of a history) do not necessarily require a physician's expertise and may be conducted by another person under the supervision of the physician. As noted above, the Congress has mandated, by reason of section 6(b)(7) of the Act, that medical examinations and procedures required by OSHA standards be provided at no cost to the employee.

The three model standards provide that a work history, medical history and medical examination be performed. The purpose of this requirement is to establish a baseline health condition against which changes in an employee's health may be compared in the detection of changes in physical condition.

The model standards leave blank the specific medical protocols for the examination. The various tests that comprise the medical examination to be prescribed in the individual rulemakings are determined by the specific toxicology and effects of each substance. The tests are designed to be used in an initial assessment of an employee's health and to detect changes in health which may occur are to be required as appropriate. Of course, if additional tests and procedures are appropriate for a given substance, they may be added in the specific rulemaking covering that substance.

The three model standards require that the employer provide the physician with certain specified information. This information includes a copy of the regulation, a description of the affected employee's duties as they relate to the employee's exposure, the results of the employee's exposure measurement, if any personal protective equipment is used or is to be used, and information from previous medical examinations of the affected employee to the extent that they are not readily available to the physician. The purpose in making this information available to the physician is to aid in the evaluation of the employee's fitness to wear personal protective equipment when required. It should be noted that the three model standards do not require that a copy of the regulation be given to the physician for each employee. One copy would be sufficient, provided the employer assures that the physician is aware of which employees are covered by this standard. Items that relate to individual employees or categories of employees (such as the description of job duties) need be transmitted to the physician only once, unless, for example, the duties change. Exposure measurements will be cumulative so that the results of each monitoring are to be sent to the physician. However, since sampling will be done on a representative basis, the language of the three model standards require the physician to be given either the employee's actual exposure measurements, if available, or the estimated level of the employee's exposure based on the relevant representative measurements.

The employer is required to obtain a written opinion from the examining physician containing: the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to the toxic substance; the results of the medical tests performed; any recommended limitations upon the employee's exposure to the toxic substance and upon the use of protective clothing and equipment such as respirators; and a statement that the employee has been orally informed by the physician of any medical conditions which require further examination or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure, and a copy of the opinion must be provided to the affected employee. The purpose in requiring the examining physician to supply the employer with a written opinion containing the abovementioned analyses is to provide the employer with a medical basis to aid in his determination of the employee's initial placement and continuing capability to use protective clothing and equipment of employees. Requiring that the opinion be in written form will serve as an objective check that employers have actually had the benefit of the information in making these determinations. Likewise, the requirement that the employee be provided with a copy of the physician's written opinion will assure that the employee is informed of the results of the medical examination and may take any appropriate action. The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure not be included in the written opinion is to encourage employees to submit to medical examination by removing the fear that employers may find out information about their physical condition that has no relation to occupational exposures.

15. *Paragraph (o): Employee Information and Training.* The three model standards uniformly require the employer to provide a training program for employees exposed to the toxic substance. OSHA believes that an information and training program is essential for the protection of employees because an employee can do much to protect himself if he is informed of the nature of the hazards in his workplace. To be effective, an employee education system must, at the minimum, apprise the employee of the specific hazards associated with his work environment. For this reason, the employer would be required to inform each employee exposed to the toxic substance of the nature of the toxic substance's related health problems; the necessity for exposure control and the medical and industrial hygiene monitoring programs.

The three model standards also require that the training program be provided at least annually. The content of the training program is intended to apprise the employees of: (1) the hazards to which they are exposed; (2) the necessary steps to protect themselves, including avoiding unnecessary exposures, respiratory protection and medical surveillance; (3) their role in reducing exposures to the toxic substance and (4) their rights under the standard. Section 6(b)(7) of the Act makes it clear that these are appropriate goals of an employee training program, and the model standards, therefore, include them.

The employer is required to make a copy of the model ETS and proposed and final standards, as applicable, as well as the appendices available to the affected employees. This requirement, in combination with the review provided for as part of the training program, is intended to assure that employees understand hazards and the requirements of the applicable standard.

The employer is also required to provide, upon request, all materials relating to the training program to the Secretary and the Director. This is intended to provide an objective check of compliance with the content requirements of the applicable standard.

16. *Paragraph (p). Signs and Labels.* The three model standards require the use of signs and labels, with the two model standards for a Category I toxic substance requiring the warning of "Cancer Hazard." The model proposed and final standard for a Category II toxic substance requires the warning of "Potential Cancer Hazard." OSHA believes that it is important, and indeed section 6(b)(7) of the Act requires, that appropriate forms of warning, as necessary, be used to apprise employees of the hazards to which they are exposed in the course of their employment. OSHA believes, as a matter of policy, that employees should be given the opportunity to make informed decisions as to whether to work at a job under the particular working conditions extant. Furthermore, OSHA believes that when the control of potential safety and health problems involves the cooperation of employees, the success of such a program is highly dependent

upon the employee's understanding of the hazards attendant to that job.

In light of the serious nature of the hazard of exposure to carcinogens, OSHA does not believe that periodic training alone will adequately apprise employees of the carcinogenic hazard. However, coupled with the training requirements, OSHA believes that the requirement to post signs will adequately do so. Additionally, the appearance of the phrase "cancer hazard" or "potential cancer hazard" on the warning sign assure that employees are actually being informed of this hazard.

Since even persons who are exposed to a carcinogen only occasionally may face an increased risk of cancer, OSHA does not believe that the hazard to these people is overstated by the required signs. Also, as is the case with a regular employee, the warning signs would serve as an added impetus to occasionally visiting employees to utilize any protective equipment which has been provided.

Finally, given the evidence of the carcinogenicity of substance, OSHA believes that signs will not cause undue alarm. This is especially so when balanced against the positive results anticipated, as described above. For all of the reasons set forth, OSHA believes that it is appropriate to use precautionary signs which warn of a cancer hazard. Additionally, the phrase "authorized personnel only" relates directly to requirements in the Category I permanent standard which limit access and activities within regulated areas. (See discussions of Regulated Areas and of Hygiene Facilities and Practices.)

The words "danger" or "caution" are used for three reasons: (1) To attract the attention of workers; (2) to alert workers to the fact that they are in a dangerous area, i.e., an area where they are exposed to a potential carcinogen; and (3) to emphasize the importance of the message to follow.

The use of labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs required by this standard is permitted. OSHA recognizes that employers may be subject to various legal requirements to use warning signs and labels. The purpose of this provision of the standard is to allow the employer to comply with these various requirements in an administratively convenient manner.

The standards require that no statement which contradicts or detracts from the effect of any sign required by this paragraph shall appear on or near any such required sign. They also require that the legend on the signs be kept visible to employees by illuminating and cleaning the signs when necessary. These two requirements are designed to ensure the effectiveness of the warning signs.

Statements which contradict or detract from the intended effect of the sign are clearly counterproductive to using signs to convey information. Similarly, if the legend on the sign cannot be read because of either darkness or an unclean condition, then there is no purpose in requiring signs to be posted.

The use of precautionary labels on containers of protective clothing contaminated with the toxic substance is required. We are mindful that no evidence may presently exist that laundry workers who handle contaminated clothing containing any specific carcinogen exhibit an excess of cancer. However, no evidence exists to the contrary, and in light of our experience with other carcinogens (e.g. asbestos) and the preventative nature of the Act, we have decided to include a requirement for precautionary labels for contaminated clothing. Moreover, OSHA believes it is as appropriate that individuals who are engaged in handling and laundering the contaminated clothing be apprised of the hazard and practices to be avoided when handling the clothing as it is to inform the other primary employees.

As to labels, due to the hazardous nature of exposure to a potential carcinogen, OSHA believes that emphasis should be placed on warning employees and other persons about the danger of exposure. For this reason, the model standards include a requirement that caution labels be affixed to all containers containing the Category I and Category II toxic substance and of the products containing it, not only because of the hazardous nature of this exposure, but because of the related necessity for both the employer and employee to know whether the product contains any of the carcinogen. The labeling provisions for the model standards for the Category I and Category II toxic substance also require the employer to assure that caution labels are affixed to any product containing the toxic substance when such product leaves the employer's workplace. This proposed requirement is designed to protect any other employees who will be handling, transporting, or using this product. Thus manufacturers and suppliers would be required to affix caution labels. The rationale for this requirement is that the manufacturer or supplier is in the best position to know whether the product does contain the Category I and Category II toxic substance and should therefore be required to inform employees of even other employers of the hazards to which they are being exposed.

17. *Paragraph (g): Recordkeeping.* Section 8(c)(3) of the Act mandates the promulgation of regulations requiring employers to maintain accurate records of employee exposure to potentially toxic substances or harmful physical materials which are required to be monitored or measured. Accordingly, the three model standards contain identical provisions for recordkeeping except that the model ETS has a shorter time requirement for retention due to its short effective date and does not require a transfer of records to the Director of NIOSH if the employer ceases to do business. OSHA believes that such a requirement is not necessary for the ETS because of its short effective life (6 months).

The three model standards provide that records must be kept which include information which is intended to identify the employee and to accurately reflect the employee's exposure. Specifically, it must include: (a) the names, social security numbers and job classification of each employee covered by the monitoring, (b) the dates, number, duration and results of each of the samples taken, including a description of the representative sampling procedure used to determine employee exposure where applicable, (c) the type of respiratory protective devices worn by the employee, if any, (d) the environmental variables that could affect the measurement of employee exposure and (e) a description of the sampling and analytical methods used, and evidence of their accuracy.

The model permanent standards for both a Category I and II toxic substance require that this record be maintained for at least 40 years, or for the duration of employment plus 20 years, whichever is longer. OSHA believes that this retention period is necessary and appropriate for the development of information regarding the causes and prevention of occupational cancer related to exposure to a toxic substance. To be useful for this purpose, an exposure monitoring record must be retained long enough to allow health effects related to employee exposure to become manifest. Some of the health effects related to the development of cancer, do not become manifest for at least 20 or 30 years. Therefore, a retention period which encompasses both the period of exposure and the period of latency has been selected. Since the latency period may exceed 20 or 30 years, a minimum retention period of 40 years has been established to cover employees who have experienced shorter periods of exposure, i.e. less than 20 years.

The three model standards also require that the employer keep an accurate medical record for each employee who is subject to surveillance. Section 8(c)(1) of the Act authorizes the promulgation of regulations requiring an employer to keep such records as are necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational illnesses. OSHA believes that medical records (like exposure monitoring records) are both necessary and appropriate to both the enforcement of the standards and the development of information regarding the causes and prevention of illness related to exposure to potential occupational carcinogens.

Like all records, medical records serve as an objective check that an employer has actually performed the substantive requirements of the standard. More importantly, as explained above, it is necessary to relate employee's medical effects with their exposures in order to develop information regarding cause and prevention. Medical records are necessary and appropriate for this purpose. In addition, medical records are necessary for the proper evaluation of an individual employee's health. For all of these reasons, medical records have been required in the three model standards.

The three model standards provide that the medical records must include information which is intended to identify the employee, to accurately reflect the employee's health, and to establish that the employee has had an opportunity to participate in a medical examination. The reasons for requiring the various aspects of the medical surveillance program have been explained. It is basically these requirements which dictate the content of the medical records.

The two model permanent standards require that medical records be maintained for at least 40 years or for the duration of employment plus 20 years, whichever is greater. OSHA believes that the same justification applies to the retention period for medical records as applies to the retention of exposure monitoring records.

The three model standards require that all records required to be maintained by the recordkeeping section be made available upon request to the Assistant Secretary and Director for examination and copying. The purpose of this section is to insure compliance with the recordkeeping regulations and to provide data necessary for development of information regarding the cause and prevention of occupational cancer.

The three model standards require that employees or their designated representatives be provided access to examine and copy records of required monitoring and measuring. The purpose of this provision is to inform current employees of their exposure levels. An additional purpose for this requirement is to protect the former employee's health over his entire lifespan by permitting him access to records indicating this exposure to potentially carcinogenic substances. Section 8(c)(3) of the Act states that regulations shall provide: "employees or their representatives with an opportunity to observe * * * monitoring or measuring * * * and to have access to the records thereof." Because the final standard permits monitoring which is "representative" of an employee's exposure, not monitoring of each individual employee's exposure, the former employee can also have the right to access to all those measurements from which his exposure was determined to gain assurance that his exposure measurement was properly calculated.

The three model standards require that required employee medical records be made available upon request for examination and copying to the affected employee or former employer or to a physician designated by the affected employee or former employee. The purpose of this provision is to protect the employee's health by authorizing his designated physician to have access to medical records useful in the diagnosis of illness.

The two model permanent standards require, with regard to the transfer of records, that in the event the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained under the recordkeeping section. The purpose of this section is to assure that the records will be protected and preserved for the required retention period.

The two model permanent standards also require that in the event an employer ceases to do business and there is no successor to receive and retain the records for the prescribed period, the records are to be transmitted by registered mail to the Director of NIOSH. The purpose of this provision is to assure that records are preserved for the requisite retention period.

18. *Paragraph (r): Observation of Monitoring.* Section 8(c)(3) of the Act requires that employers provide employees or their representatives with the opportunity to observe monitoring of employee exposures to toxic substances or harmful physical agents. In accordance with this section, all three proposed model standards contain identical provisions for such observation. To assure that the right to observe is meaningful, observers would be entitled to receive an explanation of the measurement procedure, to observe all steps related to the measurement procedure and to record the results obtained.

The observer, whether an employee or designated representative, must be provided with, and is required to use, any personal protective devices required to be worn by employees working in the area that is being monitored, and must comply with all other applicable safety and health procedures.

19. *Paragraph (s): Effective Date.* The model ETS states that it becomes effective upon publication, as provided by section 6(c) of the Act. However, certain paragraphs do contain minimally longer periods in recognition of the difficulty in requiring "instant" compliance requirements for those respective paragraphs. The two model permanent standards provide that the Agency insert the appropriate effective date during each substance-by-substance rulemaking.

20. *Paragraph (t): Appendices.* All three model standards provide for three appendices: Appendix A entitled "Substance Safety Data Sheet," Appendix B entitled "Substance Technical Guidelines" and Appendix C entitled "Medical Surveillance Guidelines". It should be noted that the appendices will be included for informational purposes only and will vary because of the differing toxicological properties of each substance. None of the statements contained therein should be construed as imposing a mandatory requirement which is not otherwise imposed or as negating any requirement which is imposed by the standard.

The information contained in Appendices A and B is intended to aid the employer in complying with requirements of the standard. This information is also to be provided to employees as part of the annual training and education program. Appendix C gives the employer a means of providing the examining physician with an explanation of the potential health effects of exposure to the toxic material and provides information needed by the physician to evaluate the results of the medical examination. Appendix C also lists other types of examinations, not required by the individual standard, which may help the physician in making an accurate determination of whether an employee should be exposed or should continue to be exposed to the toxic material.

IV. Environmental and Economic Impact Assessment

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), requires, among other things, that Federal agencies assess their proposed major actions, including proposed rulemaking, to determine whether a significant impact on the quality of the human environment may result. Furthermore, 29 CFR Part 1999.3(d) requires that where OSHA determines that an environmental impact statement should be prepared, the determination to do so must be published in the Federal Register.

At the outset, it should be pointed out that OSHA intends to issue a draft and final environmental impact statement, where warranted, in connection with each and every individual rulemaking proceeding held pursuant to this proposed Part and subpart. In addition, OSHA intends to do so within a reasonable time after the issuance of the Category I toxic substance ETS (at the time of the issuance of the proposed 6(b) model permanent standard).[10] Evaluation of the potential environmental impact of this set of regulations at this time appears to be of questionable legal

[10] OSHA does not intend to issue a draft EIS at the time a Category I ETS is promulgated but only at the time that the Category I or Category II model permanent standard is proposed. As the Court observed in Dry Color Manufacturers' Assn., Inc. v. Department of Labor, 486 F. 2d 98 (3rd Cir. 1973) at 107-08: "* * * while the NEPA requirement of an environmental impact statement applies to ordinary standards promulgated under the Occupational Safety and Health Act, an exception should be made for the Emergency Temporary Standard involved in this case. The process by which NEPA statements are produced and circulated is a lengthy one. To require its completion before the promulgation of an emergency temporary standard would impair the purpose of subsection 6(c) to provide speedy protection from grave dangers to the health of employees. No doubt any exemption of emergency temporary standards under this Act from the requirement of an environmental impact statement involves some sacrifice of the policy behind NEPA. However, that sacrifice is mitigated somewhat by the fact that an emergency temporary standard must be replaced within six months by a permanent standard, for which a completed impact statement is required, and it is, in any case, justified by the need to accommodate the provisions of NEPA with those of the Occupational Safety and Health Act. We therefore have concluded that where, as here, OSHA begins the process contemplated by NEPA by issuing a draft environmental impact statement within a reasonable time after issuing an emergency temporary standard, the requirements of NEPA are sufficiently satisfied." OSHA intends in the future, and has in the past, followed exactly that procedure.

necessity and value. This is so because until the proposal is implemented on a substance-by-substance basis, there can be little, if any, precise quantitative assessment of environmental impact. Such an attempt at this time must necessarily be highly speculative because of unknown substances and unidentified industries. Nevertheless, OSHA has attempted to evaluate the elements of environment impact to the limited extent possible at this time. OSHA intends that the preceding description of the proposed standard, together with its supporting rationale, which relate primarily to the workplace environment, as well as the following section on external environmental impact, do constitute a draft environmental impact statement on this proposed set of regulations concerning the identification, classification, and regulation of potential carcinogens.

This statement has been prepared in accordance with the provisions of NEPA as well as the guidelines of the Council on Environmental Quality (40 CFR Part 1500). The purpose of this draft environmental impact statement, however, is to aid in OSHA's decision making on proposed actions which may have the potential for significantly affecting the quality of the human environment, and, hopefully, for the better. Written comments and information on the projected impacts of this proposed set of regulations, as well as the desirability of preparing an environmental impact statement at this time, are solicited from any interested persons or groups during the period for written comment submissions listed below in this Notice. In issuing the final set of regulations pursuant to this subpart, OSHA will determine whether a final environmental impact statement is required. In addition, prior to the hearing, OSHA will determine if it has facts not before it at present to amend or revise this draft environmental impact statement.

In addition to this general request for comment, copies of this proposal and draft environmental impact statement will be sent to numerous Federal and State agencies, industry representatives, employee unions, and public interest groups with requests for their comments. A copy of this listing is available in the OSHA Technical Data Center, Room S-6212, Department of Labor, Third Street and Constitution Avenue NW., Washington, D.C. 20210.

Testimony, data, arguments, and related submissions on environmental impact will be received at the public hearing to be held on this proposed set of regulations on March 14, 1978, provided prehearing submission requirements, also outlined below, are complied with.

Additional copies of this draft environmental impact statement are available for review and copying in the OSHA Technical Data Center.

A. ALTERNATIVES

There appear to be at least three major areas of regulatory decision making which will affect the impact of this proposed Part and subpart on the external environment. These are: (1) the scope and application of the applicable model standard, (2) the airborne permissible exposure limits, and (3) the methods by which compliance is mandated. The purpose of this section is to present the alternatives available. The discussion of the impact of each of these alternatives will be in the following section. At the outset however, it should be noted that the impacts on the workplace environment will be beneficial ones, with fewer cases of cancer in the years to come. This preamble details some of the studies and reports on which OSHA bases its belief that this beneficial impact will occur. Further, it is anticipated that more information concerning the proposal's potential for impacting the workplace environment will be introduced during the course of the public comment and hearing period of this rulemaking proceeding.

(1) *Scope and Application.* The three model standards apply to those industries or classes of operations that OSHA determines, in the individual rulemakings conducted pursuant to this proposal Part and subpart, should be regulated. Likewise, this proposal provides an exemption for those industries or classes of operations that OSHA has decided not to include, for the reasons stated in the respective preambles, in those subsequent rulemakings concerning individual toxic substances. As pointed out below, OSHA presently has no data which would quantify the impacts of those subsequent rulemakings as to regulation of toxic substances that will be classified as Category I or Category II toxic substances. Some alternatives would be to provide for no exemption on the one hand or limit application only to industries of major exposure on the other.

(2) *Permissible exposure limits.* The proposed Part and subpart propose that for Category I toxic substances, the permissible exposure limits shall be reduced to the lowest levels feasible, except in cases where suitable, less hazardous substances are available, in which case no occupational exposure is permitted. The model ETS and permanent standard for a Category I toxic substance also prohibit eye contact and skin contact to the toxic substance. The model permanent standard for a Category I toxic substance also prohibits a ceiling level of more than 5 times the airborne 8 hour time-weighted average.

The permissible exposure limits for Category I toxic substances are not chosen as "safe" or "no-effect" levels, but on the basis of OSHA's belief as to the lowest feasible levels. OSHA is mandated by the Act to consider feasibility in setting regulations. However, it is possible that after each such rulemaking contemplated by this proposed Part and Subpart, that a level lower than that set in the ETS or the proposed model standard could be shown to be feasibly attained either by existing controls or by the development of new controls. In that case, OSHA has the option to regulate to whatever level is determined to be appropriate. Likewise, where the proposed level in the model permanent standard is shown to be infeasible to achieve, a higher figure may appear in the final standard.

As has been pointed out, in the case of the Category II toxic substances, present permissible exposure levels are retained where OSHA presently has a standard, sets permissible exposure limits where no OSHA standard presently exists or lowers the exposure limits found in a present OSHA standard where it can be shown that such levels do not protect against acute and chronic effects other than carcinogenicity.

Another regulatory alternative is to adopt differing standards for different industries, moderating the degree of regulation as deemed necessary for adequate and feasible protection of workers in the various industries where exposure to the Category I and Category II toxic substance exists.

In any event, regardless of the alternative chosen, the impacts of an OSHA regulation for a carcinogen can be summarized as follows: the more of the toxic substances emitted from the workplace into the air or into water systems, the greater the potential for adverse impacts on air and/or water quality. Depending upon the levels of the toxic substance present in the ambient air and water of communities surrounding regulated workplaces, however, better control of exposures in the workplace may have the potential for benefiting the general human environment of nearby areas as a result of limiting fugitive emissions and controlling point source emissions. In any event, in the case of Category I toxic substances, reduction of employee exposure to levels lower than that presently required under the current standard (29 CFR 1910.1000) or lower than present levels where no such standard exists at all should, have a beneficial impact upon the external environment as well. The same can be said for the regulation of Category II toxic substances where the permissible exposure limits can remain the same or be reduced.

(3) *Methods of Compliance.* OSHA's present regulation in 29 CFR 1910.1000, under which exposure levels for certain toxic materials have been set, provide that compliance be achieved first through administrative or engineering controls, where feasible, and, when such controls are not feasible, through the use of supplementary protective equipment.

The two model permanent standards (as distinct from the ETS) require the institution of engineering and work practice controls to reduce exposure to or below the permissible exposure limits. In addition, the proposal requires that a program be established and implemented to reduce exposures to or below the permissible exposure limits, solely by means of engineering and work practice controls. Protective clothing and equipment are also required where necessary to prevent eye contact or repeated skin contact.

Engineering controls may include the installation of local exhaust ventilation, modification of a process so as to reduce

emission, or substitution of a less hazardous substance.

Alternatives involved in the compliance section of the regulation are primarily concerned with establishing a particular priority among the types of controls (engineering, work practice, and respiratory protective equipment). Sole reliance on engineering controls or on use of engineering and work practices equally could be required. Another alternative would allow the employer complete freedom in choosing the method of control without any required priority systems.

Additionally, there are other areas in which alternative actions might variously have impact upon what is considered the external environment. One of these areas is medical surveillance. The proposed ETS provides, in general, for the minimum tests considered necessary over the short life of that standard. The two model permanent standards require, in general, a more comprehensive evaluation and perhaps a more sensitive means of detecting changes which may indicate effects of exposure to the individual toxic substances.

The possible impacts of these approaches will be discussed in the following chapter.

B. PROJECTED IMPACTS

The primary effect of this Part and subpart, as implemented in the subsequent substance-by-substance rulemakings that follow, is expected to impact on the workplace by reducing worker exposure to Category I and Category II toxic substances. A second potential impact may occur to the environment external to the workplace.

The impacts on workers and the work environment of this proposed set of regulations has already been treated above. This section attempts, to the best possible extent, to delineate the impacts of this Part and subpart on the external environment and will also consider the potential impacts of alternative regulatory measures and various compliance methods. It should be remembered that, where required, OSHA intends to develop an environmental impact statement where Category I and Category II toxic substances are classified in the individual rulemakings.

A standard for control of occupational exposure to a carcinogen has the potential for affecting the external air quality, water quality, waste disposal (a function of land use, air quality and water quality), energy consumption, and human resources. Economic costs of implementing an occupational health standard also has been determined to have the potential for impacting the general human environment.

The specifics of potential impacts, expected as a result of the promulgation of this proposed Part and subpart, cannot, as pointed out, be foreseen and is somewhat speculative. An overview however gives a general idea of some of the types of impacts which may result, and the ways in which they depend on the various alternatives involved in the regulatory decisionmaking and subsequent choice of compliance methods.

The first area of alternatives is in the scope and application of the subsequent rulemakings pursuant to this proposed Part and subpart. If, for some explained reason, a substantial industry or use were excluded from the scope of the standard, there might be little if any impact upon the external environment. The basic direction of the impacts would appear to be improvement of the ambient air quality by reduction of contamination of the employees' breathing air. It would also appear easier to control contamination of the external environment by converting non-point source emissions into point sources.

To the extent that monitoring and medical surveillance of employees is required, there will be an impact on medical resources and the supply of industrial hygienists. The full extent of this impact cannot be readily quantified although the incidence of cancer avoidance may ultimately lead to less demand upon such resources.

The second area of alternative is in setting the permissible exposure limits. This area is integrally related to the methods of compliance (the third area of alternatives) used to achieve control of exposure to or below the permissible exposure limits. The choice of alternative levels of exposure compliance is expected to have impact in some way every category of the external environment.

In a general sense, reduction of exposure to liquid toxic substances will involve enginering control to prevent emissions at the source, work practices to prevent accidental spills and contacts and good housekeeping procedures to cope with spills when they do occur.

In the case of dust, if control of employee exposures are achieved, for example, by methods which collect the exhausted fumes, dust, vapors, etc. of the toxic substance, logically, air quality in the neighborhood surrounding workplaces containing the toxic substance may be improved. Similarly, the method of dust collection and disposal could impact water quality, solid waste and land use categories.

Respirators may also be used in some cases to prevent worker exposure to dust, vapor, etc. An additional method of compliance might be the substitution of some other substance.

The extent of engineering control required is to some extent relative to the level of exposure which must be met. If exposure is to be controlled by preventing leaks and evaporation, then the controls would have to be tighter and perhaps more extensive to meet lower exposure limits. This would result in less workplace contamination and, thereby, lower ambient emissions. On the other hand, if control is achieved by ventilation, the amount of contamination by the toxic substance would remain constant but the rate of exhaust outside the plant would increase. This increased flow rate may not affect the ambient air quality, but might result in an insignificant increase in energy consumption.

Likewise, tighter engineering controls to achieve lower levels of exposure escape of the toxic substance into the effluent discharge, represent a positive impact on water quality. Conversely, other means of control and their degree of effectiveness may result in increased contamination of water and increased sludge production, representing a potential negative impact on both water quality and the amount of solid waste. The exposure levels and compliance methods chosen should have no effect on the amount of monitoring and medical surveillance required. However, the degree of impact on human resources will depend on the contents of monitoring and medical surveillance provisions.

In sum, as pointed out, OSHA has little data which quantify these potential impacts but will issue an EIS, where required, in the case of each individual rulemakings held pursuant to this proposed Part and subpart. Submissions and public comment into the record of this proceeding concerning this issue are encouraged. Likewise, OSHA believes that potential impacts upon human resources, energy, land use and other economic aspects posed by the proposed set of regulations cannot readily be quantified, except in the individual environmental impact statements prepared and issued at the time of the substance-by-substance rulemakings pursuant to this proposed part and subpart.

C. RELATIONSHIP WITH OTHER FEDERAL ACTIONS

Workers exposed to a toxic material during industrial operations constitute that portion of the general population most exposed to its health hazards. Any OSHA standard to limit occupational exposure to that toxic material is written for their protection. However, since workers are exposed in a variety of industries and because many toxic materials may be released to the general environment and have impacts on the consumer and the environment external to the workplace this rulemaking is also a matter of concern to EPA, CPSC and FDA. OSHA intends to coordinate its activities with these and other agencies in this and the subsequent rulemakings.

D. ECONOMIC IMPACT ASSESSMENT

The Assistant Secretary of Labor for Occupational Safety and Health has determined that economic impact assessments, as applicable, will be performed pursuant to Executive Orders 11821 (39 FR 41501) and 11949 (42 FR 1017) in the individual rulemakings to be conducted pursuant to this Part and subpart, where it is possible to consider such impacts.

V. PUBLIC PARTICIPATION; NOTICE OF HEARING

On January 20, 1977, the Assistant Secretary of Labor for OSHA transmitted for review and comment a draft of this proposed set of regulations, and preamble, to the National Advisory Com-

mittee on Safety and Health (NACOSH), a standing advisory committee provided for by section 7(a) of the Act.

After several subcommittee meetings, which were duly announced in the FEDERAL REGISTER, to discuss the draft preamble and regulations, the two relevant NACOSH subcommittees, one the subcommittee on Standards and the other on Policy and Budget, on April 5, 1977, adopted their position which was received and adopted by the full NACOSH committee on May 5, 1977. The resolution stated:

RECOMMENDATIONS ON PROPOSED REGULATION OF CERTAIN TOXIC MATERIALS

Having reviewed the draft document "Regulation of Certain Toxic Materials", we endorse OSHA's general attempt to deal with this difficult problem. In order to develop in the public forum the various factors, including certain legal and scientific issues, for a regulatory carcinogen policy to govern OSHA's administrative approach and to proproposal should be published in the FEDERAL REGISTER solely for the purpose of information gathering and that neither the document nor the process be engaged for a rulemaking purpose at this time. This recommendation is proposed since:

1. The document can be adopted by OSHA as an administrative policy, and there should be such flexibility.

2. The document, even if adopted as a policy through the rulemaking process, would not deprive due process challenges when subsequent standards are promulgated.

3. The document identifies those issues upon which much debate has evolved and should continue, including the concept that some substances, although not always scientifically definable as carcinogens, must be addressed because of a regulatory obligation.

ISSUES WHICH NEED TO BE EXPANDED

1. Address adequacy of classification system.

2. Address carcinogenicity of impurities and mixtures.

3. Expand discussion on "other than animal testing" routes.

4. Anatomic and metabolic fate.

5. Decision on rate retention issue.

OSHA has carefully reviewed NACOSH's recommendations. Because of importance of the issues raised herein and in order to assure participation in resolution of these issues and maximum usefulness of the cancer policy once adopted, OSHA believes that it should commence this rulemaking at this time with the full procedures provided for in section 6(b) of the Act. The alternative could well be an internal pronouncement of policy which might effect substantive rights of interested parties and therefore not be sustainable in the Courts, thus, in actuality delaying its effective date in this important area by years.

Interested persons are invited to submit written data, views and arguments on this proposed Part, subpart and all issues raised or involved herein. These comments must be postmarked on or before December 8, 1977 and must be submitted in quadruplicate to the Docket Officer, Docket No. H-090, Room S-6212, U.S. Department of Labor, 3rd Street and Constitution Avenue NW., Washington, D.C. 20210. Written submissions must clearly identify the provisions of the proposal addressed and the position taken with respect to each such provision. The data, views, and arguments will be available for public inspection and copying at the above address. All written submissions received will be made a part of the record of this proceeding.

In order to expedite this rulemaking proceeding and in anticipation of requests for a hearing, OSHA is scheduling an informal public hearing, pursuant to section 6(b)(3) of the Act and 29 CFR Part 1911, to begin on March 14, 1978 in the Department of Labor Auditorium, 3rd Street and Constitution Avenue NW., Washington, D.C.

All issues raised in this notice and all aspects of the proposed set of regulations including OSHA's views on its economic and environmental impacts, will be at issue in the hearing.

NOTICES OF INTENTION TO APPEAR

All persons who desire to participate at the hearing must file a notice of intention to appear, postmarked on or before December 8, 1977 with the OSHA Office of Consumer Affairs, Room N3633, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, D.C. 20210 (Telephone: 202-523-8023). The notices of intention to appear, which will be available for inspection and copying at the above address, must contain the following information:

(1) The name, address and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The aproximate amount of time required for the presentation;

(4) The specific issue raised by the proposal that will be addressed;

(5) A detailed statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

FILING OF TESTIMONY AND EVIDENCE BEFORE HEARING

Any party requesting more than 15 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be received by January 9, 1978, and will be available for inspection and copying at the Technical Data Center—Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 15 minute presentation, and may be requested to return for questioning at a later time.

Testimony of witnesses to be called by OSHA will be filed and made available to the public on or before February 28, 1978.

CONDUCT OF THE HEARING

The hearing will commence at 9:30 a.m. on March 14, 1978 and will be conducted in accordance with 29 CFR Part 1911. The oral proceedings will be reported verbatim and a transcript will be made available for inspection and copying to interested persons.

The Administrative Law Judge, who will be designated to preside at the hearing, shall have all the powers necessary or appropriate to conduct a fair and full informal hearing, including the powers;

(1) To regulate the course of the proceedings;

(2) To dispose of precedural requests, objections, and comparable matters;

(3) To confine presentations to matters pertinent to the proposed standard;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In his discretion, to question and permit questioning of any witness; and

(6) In his discretion, to keep the record open to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge shall certify the record thereof to the Assistant Secretary of Labor for Occupational Safety and Health. The proposal will be reviewed in light of all the oral and written submissions received as part of the record in this proceeding and appropriate action will be taken.

VI. AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 4(b), 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), the Secretary of Labor's Order 8-76 (41 FR 25059) and 29 CFR Part 1911, it is hereby proposed to amend Title 29, of the Code of Federal Regulations, by adding a new Part 1990, to identify, classify, and regulate certain toxic substances, as set forth below.

Signed at Washington, D.C., this 28th day of September 1977.

EULA BINGHAM,
Assistant Secretary of Labor.

A new Part 1990, and certain subparts thereto, are proposed to be added to Title 29 of the Code of Federal Regulations, reading as follows:

PART 1990—IDENTIFICATION, CLASSIFICATION AND REGULATION OF CERTAIN TOXIC SUBSTANCES

Subpart A—General

Sec.
1990.1 Scope.
1990.2 Purpose.

Subpart B—Identification, Classification and Regulation of Toxic Substances Posing a Potential Carcinogenic Risk

GENERAL

1990.101 Scope.
1990.102 Definitions.
1990.103 Classification of substances.
1990.104 Advisory committees.

CATEGORY I TOXIC SUBSTANCES

1990.110 Category I Toxic substances.
1990.111 Rebuttal of a Category I classification to a category II or III classification.
1990.112 Consequences of a category I classification.
1990.113 Limitation of issues in the rulemaking.
1990.114 Final action after a category I rulemaking.

CATEGORY II TOXIC SUBSTANCES

1990.120 Category II Toxic substances.
1990.121 Rebuttal of a category II classification to a category III classification.
1990.122 Consequences of a category II classification.
1990.123 Limitation of issues in the rulemaking.
1990.124 Final action after a category II rulemaking.

CATEGORY III TOXIC SUBSTANCES

1990.130 Category III toxic substances.
1990.131 Consequences of a category III classification.
1990.132 Reconsideration of a category III classification.
1990.133 The category III toxic substances list.

CATEGORY IV TOXIC SUBSTANCES

1990.140 Category IV toxic substances.
1990.141 The category IV toxic substances list.

MODEL STANDARDS

1990.150 Section 6(c) model standard for a category I toxic substance.
1990.160 Section 6(b) model standard for a category I toxic substance.
1990.170 Section 6(b) model standard for a category II toxic substance.

Subpart C—Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational Teratogenic Risk [Reserved]

Subpart A—General

§ 1990.1 Scope.

This Part provides for the identification, classification and regulation of certain toxic materials, pursuant to the Occupational Safety and Health Act of 1970 (the Act), as set forth in the various subparts below.

§ 1990.2 Purpose.

The Act provides, among other things, that "the Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired". (Section 6(b)(5).) It is the purpose of the regulations of this Part to carry out the intent of the Act.

Subpart B—Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational Carcinogenic Risk General

§ 1990.101 Scope.

This subpart provides for the identification, classification and regulation of toxic substances which pose an occupational carcinogenic risk to workers.

§ 1990.102 Definitions.

Terms used in this subpart shall have the meanings set forth in the Act. In addition, as used in this subpart, the following terms shall have the meanings set forth below:

"Act" means the Occupational Safety and Health Act of 1970 (Pub. L. 91–596, 84 Stat. 1590 *et seq.*).

"Administrator of EPA" means the Administrator of the United States Environmental Protection Agency, or designee.

"Chairman of CPSC" means the Chairman of the United States Consumer Product Safety Commission.

"Commissioner of FDA" means the Commissioner of the Food and Drug Administration, United States Department of Health, Education, and Welfare or designee.

"Director of NCI" means the Director of the National Cancer Institute, United States Department of Health, Education, and Welfare, or designee.

"Director of NIOSH" means the Director of the National Institute for Occupational Safety and Health, United States Department of Health, Education, and Welfare, or designee.

"Foreign toxic substance" means any toxic material that would meet the definition of a toxic substance, except that it is not found in the American workplace.

"Mutagenesis" means the property of a toxic material to induce changes in the genetic material of either somatic or germinal cells or tissues in subsequent generations.

"Potential occupational carcinogen" means any toxic substance which (1) Causes, at any level of exposure or dose, as the result of any oral, respiratory or dermal exposure, or any other exposure which results in the systemic distribution of the substance under consideration, in the organism tested, an increased incidence of benign or malignant neoplasms, or a combination thereof, in (i) humans or (ii) in one or more experimental mammalian species, or (2) in a statistically significant manner decreases the latency period between exposure and onset of neoplasm in (i) humans or (ii) in one or more experimental mammalian species.

"Secretary" means the Secretary of Labor, or designee.

"Short-term tests" includes, but is not limited to positive results in more than one of the following assays for: (1) the induction of DNA damage and repair; (2) mutagenesis in bacteria, yeast, or *Drosophila melanogaster*; (3) mutagenesis in mammalian somatic cells; (4) mutagenesis in mammalian germinal cells; or (5) positive results in tests for neoplastic transformation of mammalian cells in culture.

"Suggestive" means that degree of confidence in test animal or human data which is less than persuasive or not statistically significant but which, nonetheless, raises scientific concerns that the toxic substance may pose a carcinogenic risk to the exposed animals or humans.

"Toxic substance", for the purposes of this subpart, means any toxic material, found in the American workplace, either a single chemical substance or combination of substances, or any other agent, which has been reported by scientific study, at any level of exposure or dose, as the result of any exposure, to (1) Cause neoplasms, benign or malignant, in (i) humans or (ii) in one or more experimental mammalian species, or (2) In a statistically significant manner decreases the latency period between exposure and onset of neoplasms, in (i) humans or (ii) in one or more experimental mammalian species.

§ 1990.103 Classification of substances.

(a) *General.* (1) Whenever the Secretary receives information, submitted to him in writing by any interested person, concerning any toxic substance, or upon his own cognizance has any such information, he shall, to assist him in developing information relevant to the classification of a toxic substance: (i) Within thirty (30) days publish a notice of receipt in the FEDERAL REGISTER, together with a short statement identifying the contents and sources of such information, and shall provide a period for public comment, except as provided by (a)(2) herein, or (ii) Where the Secretary certifies in writing to the interested party that information exists that additional scientific data or study that may be relevant to the classification of a toxic substance is not immediately available or does not yet exist but will be available within a short period of time, the Secretary may delay the publication date of receipt of the original

information in the FEDERAL REGISTER referred to but in no case shall the publication date be extended to more than one hundred and eighty (180) days after the receipt of the original information.

(2) The period for public comment provided for by § 1990.103(a)(1) shall be at least thirty (30) days but not more than sixty (60) days unless the Secretary determines issued that extraordinary circumstances warrant less or no time for such public comment.

(b) *Classification.* Within thirty (30) days from the close of the comment period, or from the receipt of the report of an Advisory Committee as provided by § 1990.104, the Secretary shall classify or reclassify the toxic substance in accordance with the criteria set forth in this subpart and publish in the FEDERAL REGISTER a notice of his decision as to the classification of that substance, together with the other consequences and actions required by this subpart.

(c) *Reclassification.* As to toxic substances previously classified pursuant to this subpart, the term "information" as used by § 1990.103(a) is limited to additional evidence, not reviewed at the time of the issuance of the final standard, or to a new scientific review of the then existing evidence.

§ 1990.104 Advisory committees.

At any time the Secretary decides to appoint an advisory committee, pursuant to sections 6(b) and 7 of the Act, to assist him in his standard-setting function concerning any toxic substance, he shall require that the advisory committee submit to him its recommendations regarding the rule to be promulgated no later than ninety (90) days from the date of its appointment.

CATEGORY I TOXIC SUBSTANCES

§ 1990.110 Category I toxic substances.

A presumption exists that a toxic substance shall be classified by the Secretary as a "Category I Toxic Substance" if: (a) the toxic substance meets the definition of a "potential occupational carcinogen" in (1) humans, or (2) two mammalian test species, or (3) a single mammalian species, if those results have been replicated in the same species in another experiment or (4) a single mammalian species if those results are supported by short-term tests, or (b) the Secretary finds that any other evidence is sufficient to convince him that the toxic substance should be classified as a Category I Toxic Substance.

§ 1990.111 Rebuttal of a category I classification to a Category II or III classification.

(a) The presumption that a toxic substance be classified as a Category I toxic substance shall be rebutted if the Secretary determines, after consultation with the Director of NIOSH, that scientifically:

(1) The carcinogenic evidence based on animal data clearly resulted from physical, rather than chemical induction; or

(2) The route of exposure in animals is grossly inappropriate relative to the potential occupational routes of human exposure, or

(3) The human or animal data relied upon are only suggestive, or

(4) The human or animal data relied upon are totally inadequate to establish any conclusion with respect to the carcinogenicity or non-carcinogenicity of the toxic substance; or

(5) For some other reason, the positive results in the experimental animal species are not scientifically relevant to man insofar as the toxic substance in question is concerned.

(b) Such determinations and reasons shall be in writing and published in the FEDERAL REGISTER, pursuant to section 1990.103, and shall classify the substance as a Category II toxic substance if the determination was based on § 1990.111(a)(3) in that the Secretary has determined that the human or animal studies relied upon are only suggestive. All other toxic substances for which the Secretary has determined that a Category I classification is inappropriate shall be classified as a Category III toxic substance.

§ 1990.112 Consequences of a category I classification.

In the event the Secretary determines that a toxic substance shall be classified as a Category I Toxic Substance, he shall require the initiation of the following actions:

(a) He shall, at the time he classifies the toxic substance as Category I, issue an Emergency Temporary Standard, pursuant to section 6(c) of the Act, which shall follow the format and content of the model emergency temporary standard set forth in § 1990.150. Any deviation, addition or change from that format or content shall be explained, together with the reasons therefor.

(b) He shall, within sixty (60) days from such classification, issue a notice of proposed rulemaking, pursuant to section 6(b) of the Act, which shall follow the format and content of the model standard set forth in § 1990.150. Any deviation, addition or change from that format or content shall be explained, together with the reasons therefor. The permissible exposure limits, insofar as the proposed standard is concerned, shall be set as low as feasible. When it is determined by the Secretary that there are suitable substitutes for certain uses or classes of uses that are less hazardous to humans, on the basis of the best available evidence, the proposal shall permit no occupational exposure for such uses or classes of uses.

§ 1990.113 Limitation of issues in the rulemaking.

At any time after a request for a public hearing is made or upon his initiative, subsequent to the publication of the documents referred to in § 1990.112, the Secretary shall provide for such a hearing in accordance with Section 6(b) of the Act, the regulations thereunder and 29 CFR Part 1911. The issues in the hearing or in comment shall be limited to the following: (a) Whether the Secretary correctly classified the toxic substance according to the Category I criteria (§ 1990.110); (b) whether the Secretary was correct in his determination that the Category I classification should not be rebutted (§ 1990.111); (c) the determination of the lowest feasible occupational exposure, or whether there are suitable substitutes that are found to be less hazardous to humans than the toxic substance; (d) whether the toxic substance has unique properties or uses that make the specific protective measures of the proposed standard inappropriate or infeasible; and (e) the environmental impact arising from regulation of the toxic substance.

§ 1990.114 Final action after a category I rulemaking.

(a) *Affirmance.* At the conclusion of the Category I rulemaking, if the Secretary determines, based on the record, that his classification of the toxic substance as Category I was correct and that his decision not to rebut the presumption was also correct, he shall issue a standard which shall follow the format and content of the model standard contained in § 1990.160. Any deviation, addition or change from that format and content shall be explained, together with the reasons and evidence therefor. However, the permissible exposure level shall be set as low as feasible or, when it is determined by the Secretary that there are suitable substitutes that are less hazardous to humans, on the best available evidence, no occupational exposure shall be permitted for that use or class of use.

(b) *Change in classification.* At the conclusion of the Category I rulemaking, if the Secretary determines, based on the record, that his classification of the toxic substance as a Category I Toxic Substance was incorrect, or that his decision not to rebut the presumption was incorrect, he shall classify the toxic substance as a Category II or III Toxic Substance, as follows:

(1) If the Secretary determines that the toxic substance should have been classified as a Category II Toxic Substance, he shall issue a final standard which shall follow the format and content of the model standard contained in § 1990.170. Any deviation, addition or change from that format and content shall be explained, together with the reasons therefor.

(2) If the Secretary determines that the toxic substance should have been classified as a Category III Toxic Substance, he shall follow the procedures provided by § 1990.131.

CATEGORY II TOXIC SUBSTANCES

§ 1990.120 Category II toxic substances.

A toxic substance shall be classified by the Secretary as a "Category II Toxic Substance" if the toxic substance meets the definition of a "potential occupational carcinogen" in studies in test animals or humans, the results of which, however, were found by the Secretary,

pursuant to § 1990.111(a)(3), to be only suggestive. This classification is required and is not presumptive. In addition, a presumption exists that a toxic substance shall be classified by the Secretary as a "Category II Toxic Substance" if: (a) The toxic substance meets the definition of a "potential occupational carcinogen" in an unreplicated experiment in a single mammalian test species or (b) the Secretary finds that any other evidence is sufficient to convince him that the toxic substance should be classified as a Category II Toxic Substance.

§ 1990.121 Rebuttal of a category II classification to a category III classification.

(a) The presumption that a toxic substance be classified as a Category II toxic substance shall be rebutted if the Secretary determines, after consultation with the Director of NIOSH, that scientifically:

(1) The carcinogenic evidence based on the animal data clearly resulted from physical, rather than chemical induction, or

(2) The route of exposure in animals is grossly inappropriate relative to the potential occupational routes of human exposure, or

(3) The animal data in a single mammalian test species is less than suggestive; or

(4) For some other reason, the positive results in the experimental animal species are not scientifically relevant to man insofar as the toxic substance in question is concerned.

(b) Such determinations and reasons shall be in writing and published in the FEDERAL REGISTER, pursuant to § 1990.103, and shall classify the substance as a Category III toxic material.

§ 1990.122 Consequences of a category II classification.

In the event the Secretary determines that a toxic substance shall be classified as a Category II Toxic Substance, he shall require the initiation of the following actions:

(a) He shall, within sixty (60) days from the announcement of his intent to classify the toxic substance as a Category II toxic substance, issue a notice of proposed rulemaking, pursuant to section 6(b) of the Act, which shall follow the format and content of the model standard set forth in section 1990.170. Any deviation, addition or change from that format or content shall be explained, together with the reasons therefor. The permissible exposure limits, insofar as the proposal is concerned, shall be: (1) the present OSHA standard or (2) where none exists, an appropriate level based upon acute or chronic effects of exposure to the toxic substance other than carcinogenicity or (3) where acute or chronic effects indicate that the present OSHA standard is inadequate, the exposure level shall be lowered to the level found appropriate by the Secretary. He shall also give notice that if, pursuant to the rulemaking, it is determined that the toxic substance should be classified as a Category I toxic substance, the final standard will be that required by 1990.160 herein.

(b) He shall notify the applicable federal and state agencies, including the Administrator of EPA, the Director of NCI, the Director of NIOSH, Commissioner of FDA and the Chairman of CPSC of the determination that the evidence is "only suggestive" or that the evidence consists of only positive results in one mammalian species and request that the applicable agencies engage in, or stimulate, further research pursuant to their legislative authority, to develop new and additional scientific data.

§ 1990.123 Limitation of issues in the rulemaking.

At any time after a request for a public hearing is made or upon his initiative, subsequent to the publication of the documents referred to in § 1990.122, the Secretary shall provide for such a hearing in accordance with section 6(b) of the Act, the regulations thereunder and 29 CFR Part 1911. The issues in the hearing or in comment shall be limited to the following: (a) Whether the Secretary correctly classified the toxic substance according to the Category II criteria (§ 1990.120); (b) Whether the Secretary was correct in his determination that the Category II classification should not be rebutted (§ 1990.121); (c) If OSHA presently has no standard, or it is inadequate based on considerations of acute or chronic effects other than carcinogenicity, the appropriate level of exposures; (d) Whether the toxic substance has unique properties or uses that make the specific protective measures of the proposed standard inappropriate or infeasible; and (e) the environmental impact arising from regulation of the toxic substance.

§ 1990.124 Final action after a category II rulemaking.

(a) *Affirmance.* At the conclusion of the Category II rulemaking, if the Secretary determines, based on the record, that his classification of the toxic material as Catetgory II was correct and that his decision not to rebut the presumption was also correct, he shall issue a standard which shall follow the format and content of the model standard contained in § 1990.170. Any deviation, addition or change from that format and content shall be explained, together with the reasons and evidence therefor.

(b) *Change in classification.* At the conclusion of the Category II rulemaking, if the Secretary determines, based on the record, that his classification of the toxic substance as a Category II Toxic Substance was incorrect, or that his decision not to rebut the presumption was incorrect, he shall classify the toxic substance as a Category I or Category III Toxic Substance, as follows:

(1) If the Secretary determines that the toxic substance should have been classified as a Category I Toxic Substance, he shall issue a standard which shall follow the format and content of the model standard contained in § 1990.160. Any deviation, addition or change from that format and content shall be explained, together with the reasons therefor.

(2) If the Secretary determines that the Toxic Substance, should have been classified as a Category III Toxic Substance, he shall follow the procedure provided by § 1990.131.

CATEGORY III TOXIC SUBSTANCES

§ 1990.130 Category III toxic substances.

Any toxic substance not classified by the Secretary as a Category I or a Category II toxic substance, pursuant to this subpart, shall be classified as a Category III Toxic Substance.

§ 1990.131 Consequences of a category III classification.

(a) At the time a toxic substance is classified as Category III, the Secretary shall transmit his findings to the Director of NCI, the Director of NIOSH, the Administrator of EPA, the Commissioner of FDA, and the Chairman of CPSC with a request that each determine whether there is additional information, previously unavailable to, or unreviewed by, the Secretary, which could have a bearing on reconsideration of the Category III classification of the toxic substance.

(b) The determination that a Toxic Substance is classified by the Secretary as a Category III Toxic Substance shall be published and appropriately updated in the FEDERAL REGISTER and the Code of Federal Regulations.

§ 1990.132 Reconsideration of a category III classification.

If, at any time, any of the agencies, referred to in Section 1990.131, provide additional information having a bearing on the initial determination of classification, the Secretary shall, within thirty (30) days after the receipt of such a response, publish in the FEDERAL REGISTER the response and reconsider his decision to classify the toxic substance as Category III.

§ 1990.133 The category III toxic substance list.

The following substances have been determined by the Secretary to be Category III toxic substances for the purposes of this subpart. They are:

Name:	*Federal Register date of final publication*
1. Water	Aug. 26, 1977

CATEGORY IV TOXIC SUBSTANCES

§ 1990.140 Category IV toxic substances.

(a) Notwithstanding any other provision of this subpart, whenever the Secretary determines after consultation with the Administrator of EPA, the Director of NIOSH, the Director of NCI, the Commissioner of FDA and the Chairman of CPSC that a toxic material would meet the definition of a toxic substance except that it is not found in the American workplace and therefore meets the definition of a foreign toxic

substance, he shall publish in the FEDERAL REGISTER a notice of his intent to classify the foreign toxic substance as a Category IV Toxic Substance and shall provide a period of at least thirty (30) days but not more than sixty (60) days for public comment.

(b) Within thirty (30) days from the close of the comment period, or from the receipt of the report of an Advisory Committee as provided by § 1990.104, the Secretary shall classify the foreign toxic substance as a Category IV Toxic Substance and list such foreign toxic substance in § 1990.141 hereof or, if he determines that his original intent was in error, the Secretary shall initiate the procedures required by § 1990.103(a) *et seq.* hereof.

(c) The determination that such toxic substance is not found in the American workplace shall be published and appropriately updated in the FEDERAL REGISTER and Code of Federal Regulations.

(d) Whenever the Secretary receives information, submitted to him in writing by any interested person, or upon his own cognizance has any information, that such toxic substance previously classified as a Category IV toxic substance is, has been, or will be found in an American workplace, the Secretary shall, within thirty (30) days, initiate the procedures required by § 1990.103(a) *et seq.* hereof.

§ 1990.141 The category IV toxic substance list.

The following substances are foreign toxic substances that the Secretary has determined are not found in any American workplace. They are:

Name:	*Federal Register date of final publication*
1. French water	Aug. 25, 1977

MODEL STANDARDS

§ 1990.150 Section 6(c) Model Standard for a Category I Toxic Substance.

OCCUPATIONAL EXPOSURE TO *XXXXX*

EMERGENCY TEMPORARY STANDARD

Section 1910.0000 *xxxx*

(a) *Scope and application.* This section applies to all occupational exposures to *xxxxx*, (Chemical Abstracts Service Registry Number *00000*), except that this section does not apply to: (*to be filled in as applicable.*)

(b) *Definitions.* "*xxxxx*" means (*definition of substance to be regulated*).

"Authorized person" means any person specifically authorized by the employer and whose duties require the person to be present in areas where *xxxxx* is present; and any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education, and Welfare, or designee.

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) *Permissible exposure limits.* (1) *Inhalation.* (i) *Time-weighted average limit (TWA).* Within (*insert appropriate time*) from the effective date of this emergency temporary standard, the employer shall assure that no employee is exposed to an airborne concentration of *xxxxx* in excess of: (*insert appropriate exposure limit representing the lowest feasible level that can be compiled with immediately*) as an eight (8)-hour time-weighted average.

(ii) *Ceiling limit. (If appropriate.)* The employer shall assure that no employee is exposed to an airborne concentration of *xxxxx* in excess of: (*insert appropriate exposure limit representing the lowest feasible level that can be complied with immediately*) as averaged over any: (*insert appropriate time period*) during the working day.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to eye contact or skin contact with *xxxxx*.

(d) *Notification of Use.* Within (*insert appropriate time*) of the effective date of this section, or within fifteen (15) days following the introduction of *xxxxx* into the workplace, every employer shall report the following information to the nearest OSHA Area Office for each such workplace:

(1) The address and location of each workplace in which *xxxxx* is present;

(2) A brief description of each process or operation which may result in employee exposure to *xxxxx*;

(3) The number of employees engaged in each process or operation who may be exposed to *xxxxx* and an estimate of the frequency and degree of exposure that occurs; and

(4) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to *xxxxx*;

(e) *Exposure monitoring.* (1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to *xxxxx* over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial monitoring.* Each employer who has a place of employment in which *xxxxx* is present shall monitor, within thirty (30) days of the effective date of this standard, each such workplace and work operation to accurately determine the airborne concentrations of *xxxxx* to which employees may be exposed.

(3) *Frequency.*

(i) If the monitoring, required by this section, reveals employee exposure to be below the permissible exposure limits, the employer shall repeat such monitoring at least quarterly.

(ii) If the monitoring, required by this section, reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employee at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) *Additional monitoring.* Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to *xxxxx*, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to *xxxxx*, additional monitoring which complies with this paragraph shall be conducted.

(5) *Employee notification.*

(i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) *Accuracy of measurement.* The method of measurement shall be accurate, to a confidence level of 95 percent, to within plus or minus (*insert appropriate value*) for concentrations of *xxxxx* at or above the permissible exposure limits.

(7) *Type of monitoring.* (*Where applicable, specific mandatory monitoring, devices and techniques may be required.*)

(f) *Regulated areas.* (Deleted.)

(g) *Methods of compliance.* (1) *General policy.* OSHA's general policy as to methods of compliance for permanent standards has traditionally required that employee exposures to a substance be reduced to the permissible exposure limits solely by use of engineering and work practice controls. OSHA has permitted reduction of employee exposures by use of respiratory protection only where the employer proves that engineering and work practice controls are not feasible to reduce such exposures to the permissible exposure limits. This general policy is inherent in the model standards found in 29 CFR 1990.160 and 1990.170. However, during the effective period of this emergency temporary standard, OSHA recognizes the need to permit employee exposures to airborne concentrations of *xxxxx* to be controlled by any practicable combination of engineering controls, work practices and personal protective devices and equipment as follows. OSHA recognizes that the immediate reduction of exposure to *xxxxx* may generally be achieved primarily through the use of respiratory protection and the institution of good work practices during the effective period of this emergency temporary standard, such as the prohibitions against the blowing of dust containing *xxxxx* or the permitting of open containers and vessels of liquids containing *xxxxx*. On the other hand, OSHA believes that where engineering or work practice controls can reduce exposure, they should be used, even where such controls by themselves do not reduce the exposures to the permissible exposure limits. Thus, engineering controls to reduce the airborne concentration of *xxxxx* shall be instituted, if practicable, as soon as possible. Examples of such controls include substitution of a less hazardous material, enclosure of the process, and use of local exhaust ventilation systems. The employer should also examine each work area in which *xxxxx* is present and institute, as soon as possible, work practices to reduce employee exposures to *xxxxx* to or below the permissible exposure limits. Examples of such work practices include, among other things, limiting access to work areas where *xxxxx* is present to authorized personnel only; written procedures and work practices for each operation which may result in employee exposure to *xxxxx*; prohibiting smoking and the consumption of food and beverages in work areas where *xxxxx* is present; requiring the use of appropriate personal protective clothing and equipment to minimize eye and skin contact with *xxxxx*; use of signs, labels, or other means to clearly designate all work areas where *xxxxx* may be present; and institution of good housekeeping practices as set forth in paragraph (k) of this section. Finally, as pointed out, when-

ever the engineering and work practice controls described are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer should supplement them by the use of respiratory protection which complies with the requirements of the emergency temporary standard.

(2) *Engineering and work practice control plan.* (i) Within ninety (90) days of the effective date of this emergency temporary standard, the employer shall develop a written plan describing proposed means to reduce employee exposures to the lowest feasible level solely by means of engineering and work practice controls (which will be eventually required by a permanent standard for occupational exposure to *xxxxx*, issued pursuant to section 1990.160(g) of this subpart).

(ii) Written plans required by this paragraph shall be submitted, upon request, to the Assistant Secretary and the Director and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, and any affected employee or designated representative.

(h) *Respiratory protection.* (1) *Required use.* The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposures to within the permissible exposure limits and in emergencies.

(2) *Respirator selection* (i) Where respiratory protection is required or permitted under this section, the employer shall select and provide at no cost to the employee, the appropriate respirator from Table 1 below and shall assure that the employee wears the respirator provided.

TABLE 1

RESPIRATORY PROTECTION FOR XXXXX

* * * * *

(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to *xxxxx*.)

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator face piece to prevent potential skin irritation associated with respirator use.

(i) *Emergency situations.* (Deleted.)

(j) *Protective clothing and equipment.*

(1) *Provision and use.* Where eye or skin contact with *xxxxx* may occur, the employer shall provide, at no cost to the employee, and assure that employees wear, appropriate protective clothing or other equipment in accordance with 29 CFR 1910.132 and .133 to protect the area of the body which may come in contact with *xxxxx*.

(2) *Cleaning and replacement.*

(i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this paragraph, as needed, to maintain their effectiveness. In addition the employer shall provide clean protective clothing and equipment at least (*insert appropriate time*) to each affected employee.

(ii) The employer shall assure that the employee removes all protective clothing and equipment at the completion of a workshift.

(iii) The employer shall assure that *xxxxx*-contaminated protective clothing and equipment is placed and stored in closed containers which prevent dispersion of *xxxxx* outside the container.

(iv) The employer shall inform any person who launders or cleans *xxxxx* contaminated protective clothing or equipment of the potentially harmful effects of exposure to *xxxxx*.

(v) The employer shall assure that the containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with paragraph (p)(3) of this section.

(vi) The employer shall prohibit the removal of *xxxxx* from protective clothing or equipment by blowing or shaking.

(k) *Housekeeping.* (1) *Surfaces.* (i) All surfaces shall be maintained free of accumulations of *xxxxx*.

(ii) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces where *xxxxx* dust or liquids are found is prohibited.

(iii) Where vacuuming methods are selected, either portable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that *xxxxx* is not reintroduced into the work place air; and

(B) Portable vacuum units used to collect *xxxxx*, may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (p)(3) of this section.

(iv) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) *Liquids.* Where *xxxxx* is present in a liquid form, or as a resultant vapor, all containers or vessels containing *xxxxx* shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(l) *Waste disposal. xxxxx* waste, scrap, debris, bags, containers, or equipment shall be disposed of in sealed bags or other closed containers which prevent dispersion of *xxxxx* outside the container.

(m) *Hygiene facilities and practices.* Where employees are exposed to airborne concentrations of *xxxxx*, or where employees are required to wear protective clothing or equipment pursuant to paragraph (j) of this section, or where otherwise found to be appropriate, the facilities required by 29 CFR 1910.141 shall be provided by the employer for the use of those employees, and the employer shall assure that the employees use the facilities provided.

(n) *Medical surveillance.* (1) *General.* (i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to *xxxxx*. The employee shall provide each such employer with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(2) *Initial examinations.* Within thirty (30) days of the effective date of this section, or thereafter at the time of initial assignment, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history, a medical history, and a physical examination with direct emphasis towards the pulmonary, renal, and hepatic systems, and shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors. Additionally, such factors as the current systems review, pregnancy, current treatment with steroids or cytotoxic agents, and smoking habits should be considered.

(ii) The medical examination shall also include the following: (*insert appropriate medical protocol*).

(3) *Periodic examinations.* (*Insert appropriate medical protocol and time.*)

(4) *Interim examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to *xxxxx*, the employer shall provide appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this emergency temporary standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level; and

(iv) A description of any personal protective equipment used or to be used.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed:

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to *xxxxx*;

(C) Any recommended limitations upon the employee's exposure to *xxxxx* or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to *xxxxx*;

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee information and training.* (1) *Training program.* (i) Within thirty (30) days from the effective date of this standard, the employer shall institute a training program for all employees where there is occupational exposure to *xxxxx* and shall assure their participation in the training program.

(ii) The employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B, and C;

(B) The quantity, location, manner of use, release, or storage of *xxxxx* and the specific nature of operations which could result in exposure to *xxxxx*, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators;

(D) The purpose and description of the medical surveillance program required by paragraph (n) of this section; and

(E) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and labels.* (1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from such effects of the required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all workplaces where *xxxxx* may be present. The signs shall bear the following legend:

DANGER

XXXXX

(Insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONS ONLY

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(iii) Where airborne concentrations of *xxxx* exceed the permissible exposure limits, the signs shall bear the additional legend: "Respirators Required."

(3) *Labels.* (i) The employer shall assure that precautionary labels are affixed to all containers of *xxxx* and of products containing *xxxx*, and that the labels remain affixed when the *xxxx* or products containing *xxxx* are sold, distributed, or otherwise leave the employer's workplace.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER

CONTAINS *XXXXX*

CANCER HAZARD

(q) *Recordkeeping.* (1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for the effective period of this emergency temporary standard, and for any additional period required by the permanent standard.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physicians' written opinions;

(B) Any employee medical complaints related to exposure to *xxxx*;

(C) A copy of the information provided to the physician as required by paragraph (n) (6) of this section; and

(D) A copy of the employee's work history.

(iii) The employer shall assure that this record be maintained for the effective period of this emergency temporary standard, and for any additional period required by the permanent standard.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall assure that employee exposure measurement records, as required by this section, be made available, upon request, for examination and copying to the affected employee, former employee, or designated representative.

(iii) The employer shall assure that employee medical records required to be maintained by this section, be made available, upon request, for examination and copying to the affected employee or former employee, or to a physician designated by the affected employee, former employee, or designated representative.

(r) *Observation of monitoring.* (1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to *xxxx* conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to *xxxx* requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of *xxxx* performed at the place of exposure; and

(C) Record the results obtained.

(s) *Effective date.* This section shall become effective *(insert date of publication)*.

(t) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

APPENDIX A

SUBSTANCE SAFETY DATA SHEET

XXXXX

APPENDIX B

SUBSTANCE TECHNICAL GUIDELINES

XXXXX

APPENDIX C

MEDICAL SURVEILLANCE GUIDELINES

XXXXX

§ 1990.160 Section 6(b) Model Standard for a Category I Toxic Substance.

Occupational Exposure to *xxxx*

Notice of Proposed or Final Rulemaking

§ 1910.0000 *xxxxx.*

(a) *Scope and application.* This section applies to all occupational exposures to *xxxx* (Chemical Abstracts Service Registry Number *00000*), except that this section does not apply to: *(to be filled in as applicable)*.

(b) *Definitions.* "*xxxx*" means *(definition of substance to be regulated)*.

"Authorized person" means any person specifically authorized by the employer whose duties require the person to enter a regulated area or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education, and Welfare, or designee.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which is likely to, or does, result in unexpected exposure of *xxxx* in excess of the ceiling limit.

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) *Permissible exposure limits.* (1) *Inhalation.* (i) *Time-weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of *xxxx* in excess of: *(insert appropriate exposure limit representing: (a) the lowest feasible level, except as modified by paragraph (c) (3) of this section or (b) when it is determined by the Secretary that there are available substitutes for all uses or classes of uses that are less hazardous to humans, the proposal shall permit no occupational exposure)* as an eight (8) hour time-weighted average.

(ii) *Ceiling limit. (If appropriate.)* The employer shall assure that no employee is exposed to an airborne concentration of *xxxx* in excess of: *(insert appropriate exposure limit representing the lowest feasible level, which shall however, not be more than five (5) times the TWA)* as averaged over any: *(insert apporpriate time period)* during the working day.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to eye contact or skin contact with *xxxx*.

(3) *Other restrictions.* The employer shall assure that there is no occupational exposure to *xxxx* from the following uses or classes of uses: *(Where the Secretary determines, in the proposal or upon the record of the public rulemaking, that there are materials less hazardous to employees and that those materials are suitable substitutes in certain applications where* xxxx *might otherwise be used, the Secretary here shall specify that no occupational exposure to* xxxx *be permitted* in those circumstances and uses, listing those *circumstances or uses.)*.

(d) *Notification of use and emergencies.* (1) *Use.* Within *(insert appropriate time)*, or within fifteen (15) days following the introduction of *xxxx* into the workplace, every employer shall report, unless he has done so pursuant the emergency temporary standard issued pursuant to 29 CFR 1990.150(d) herein, the following information to the OSHA Area Office for each such workplace:

(i) The address and location of each workplace in which *xxxx* is present;

(ii) A brief description of each process or operation which may result in employee exposure to *xxxx;*

(iii) The number of employees engaged in each process or operation who may be exposed to *xxxx* and an estimate of the frequency and degree of exposure that occurs;

(iv) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to *xxxx;* and

(v) Whenever there has been a significant change in the information required by this paragraph or 29 CFR 1990.150(d), the employer shall promptly amend such information previously provided to the OSHA area office.

(2) *Emergencies and remedial action.* Emergencies, and the facts obtainable at that time, shall be reported within twenty-four (24) hours of the initial occurrence to the OSHA Area Office. Upon request of the OSHA Area Office, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of a similar nature.

(e) *Exposure monitoring.* (1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to *xxxx* over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial monitoring.* Each employer who has a place of employment in which *xxxx* is present shall monitor each such workplace and work operation to accurately determine the airborne concentrations of *xxxx* to which employees may be exposed.

(3) *Frequency.* (i) If the monitoring, required by this section, reveals employee exposure to be below the permissible exposure limits, the employer shall repeat such monitoring at least quarterly.

(ii) If the monitoring, required by this section, reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employee at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) *Additional monitoring.* Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to *xxxx*, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to *xxxx*, additional monitoring which complies with this paragraph shall be conducted.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) *Accuracy of measurement.* The method of measurement shall be accurate, to a confidence level of 95 percent, to within plus or minus (*insert appropriate value*) for concentrations of *xxxx* at or above the permissible exposure limits.

(7) *Type of monitoring.* (*Where applicable, specific mandatory monitoring devices and techniques may be required.*)

(f) *Reyulated areas.* (1) The employer shall establish regulated areas where *xxxx* concentrations are in excess of the permissible exposure limits.

(2) Regulated areas shall be demarcated and segregated from the rest of the workplace, in any manner that minimizes the number of persons who will be exposed to *xxxx*.

(3) Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the Act or regulations issued pursuant thereto.

(4) The employer shall assure that in the regulated area, food or beverages are not present or consumed, smoking products are not present or used, and cosmetics are not applied (except that these activities may be conducted in the lunchroom, change rooms and showers required under paragraphs (m)(1)–(m)(3) of this section.)

(g) *Methods of compliance.* (1) *Engineering and work practice controls.* (i) The employer shall institute engineering or work practice controls to reduce and maintain employee exposures to *xxxx* to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (h) of this section.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limits solely by means of engineering and work practice controls, as required by paragraph (g)(1) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to *xxxx*;

(B) Engineering plans and other studies used to determine the controls for each process;

(C) A report of the technology considered in meeting the permissible exposure limits;

(D) A detailed schedule for the implementation of engineering or work practice controls; and

(E) Other relevant information.

(iii) Written plans for such a program shall be submitted, upon request, to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, or any affected employee or representative.

(iv) The plans required by this paragraph shall be revised and updated at least every six (6) months to reflect the current status of the program.

(h) *Respiratory protection.* (1) *General.* The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposures to within the permissible exposure limits and in emergencies. Compliance with the permissible exposure limits may not be achieved by the use of respirators except:

(i) During the time period necessary to install or implement feasible engineering and work practice controls; or

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respiratory protection is required under this section, the employer shall select and provide at no cost to the employee, the appropriate type of respirator from Table 1 below and shall assure that the employee wears the respirator provided.

TABLE 1

RESPIRATORY PROTECTION FOR XXXXX

* * * * *

(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to *xxxx*).

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator facepiece to prevent potential skin irritation associated with respirator use.

(i) *Emergency situations.* (1) *Written plans.* (i) A written plan for emergency situations shall be developed for each workplace where *xxxx* is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped as required in paragraph (h) of this section until the emergency is abated.

(2) *Alerting employees.* (i) *Alarms.* Where there is the possibility of employee exposure to *xxxx* in excess of the ceiling limit due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(ii) *Evacuation.* Employees not engaged in correcting the emergency shall be restricted from the area and shall not be permitted to return until the emergency is abated.

(j) *Protective clothing and equipment.* (1) *Provision and use.* Where eye or skin contact with *xxxx* may occur, the employer shall provide at no cost to employee, and assure that employees wear, appropriate protective clothing or other equipment in accordance with 29 CFR 1910.132 and .133 to protect the area of the body which may come in contact with *xxxx*.

(2) *Cleaning and replacement.* (i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this paragraph, as needed, to maintain their effectiveness. In addition, the employer shall provide clean protective clothing and equipment at least (*insert appropriate time*) to each affected employee.

(ii) The employer shall assure that the employee removes all protective clothing and equipment at the completion of a work shift and only in change rooms as required by paragraph (m)(1) of this section.

(iii) The employer shall assure that *xxxx*-contaminated protective clothing and equipment is placed and stored in closed containers which prevent dispersion of *xxxx* outside the container.

(iv) The employer shall assure that no employee removes *xxxx*-contaminated protective equipment or clothing from the change room, except for those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(v) The employer shall inform any person who launders or cleans *xxxx* contaminated protective clothing or equipment of the potentially harmful effects of exposure to *xxxx*.

(vi) The employer shall assure that the containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with paragraph (p)(3)(ii) of this section.

(viii) The employer shall prohibit the removal of *xxxx* from protective clothing or equipment by blowing or shaking.

(k) *Housekeeping.* (1) *Surfaces.* (i) All surfaces shall be maintained free of accumulations of *xxxx*.

(ii) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces where *xxxx* dust or liquids are found is prohibited.

(iii) Where vacuuming methods are selected, either protable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that *xxxx* is not reintroduced into the work place air; and

(B) Portable vacuum units used to collect *xxxxx*, may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (p)(3) of this section.

(iv) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) *Liquids.* Where *xxxxx* is present in a liquid form, or as a resultant vapor, all containers or vessels containing *xxxxx* shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(3) *Dust collection systems.* Periodic cleaning of dust collection systems; i.e., ducts and filters, shall be performed to reduce *xxxxx* dust buildups and to maintain the effectiveness of the system.

(l) *Waste disposal, xxxxx* waste, scrap, debris, bags, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of *xxxxx* outside the container.

(m) *Hygiene facilities and practices.* Where employees are exposed to airborne concentrations of *xxxxx*, or where employees are required to wear protective clothing or equipment pursuant to paragraph (j) of this section, or where otherwise found to be appropriate, the facilities required by 29 CFR 1910.141 shall be provided by the employer for the use of those employees and the employer shall assure that the employees use the facilities provided. In addition, the following additional facilities or requirements are mandated.

(1) *Change rooms.* The employer shall provide clean change rooms in accordance with 29 CFR 1910.141(e).

(2) *Showers.* (i) The employer shall provide shower facilities in accordance with 29 CFR 1910.141(d)(3).

(ii) In addition, the employer shall also assure that employees exposed to *xxxxx* shower at the end of the work shift.

(3) *Lunchrooms.* (i) Whenever food or beverages are consumed in the workplace, the employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees exposed to *xxxxx*.

(ii) In addition the employer shall also assure that employees exposed to *xxxxx* wash their hands and face prior to eating.

(n) *Medical Surveillance.* (1) *General.* (i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to *xxxxx*. The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervison of a licensed physician, and shall be provided without cost to the employee.

(2) *Initial examinations.* At the time of initial assignment, or upon institution of the medical surveillance program, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history, a medical history, and a physical examination with direct emphasis towards the pulmonary, renal and hepatic systems, and shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors. Additionally, such factors as the current systems review, pregnancy, current treatment with steroids or cytotoxic agents, and smoking habits should be considered.

(ii) The medical examination shall also include the following: (*insert appropriate medical protocol*).

(3) *Periodic examinations.* (i) The employer shall provide examinations specified in this paragraph at least (*insert appropriate time*) for all employees specified in paragraph (n)(1) of this section.

(ii) If an employee has not had the examinations prescribed in paragraph (n)(2) of this section within 6 months of termination of employment, the employer shall make such examination available to the employee upon such termination.

(4) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to *xxxxx*, the employer shall provide appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) Information from previous medical examinations of the affected employee, which is not otherwise available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to *xxxxx*;

(C) Any recommended limitations upon the employee's exposure to *xxxxx* or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to *xxxxx*;

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee Information and Training.* (1) *Training Program.* (i) The employer shall institute a training program for all employees where there is occupational exposure to *xxxxx* and shall assure their participation in the training program.

(ii) The training program shall be provided at the time of initial assignment, or upon institution of the training program, and at least annually thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B and C;

(B) The quantity, location, manner of use, release or storage of *xxxxx* and the specific nature of operations which could result in exposure to *xxxxx*, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of the respirators;

(D) The purpose and a description of the medical surveillance program required by paragraph (n) of this section;

(E) The emergency procedures developed, as required by paragraph (i) of this section; and

(F) The engineering and work practice controls, their function and the employee's relationship thereto; and

(G) A review of this standard.

(2) *Access to Training Materials.* (i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and Labels.* (1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from such effects of the required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all workplaces where *xxxxx* may be present. The signs shall bear the following legend:

DANGER

XXXXX

(*insert appropriate trade or common names*)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(iii) Where airborne concentrations of *xxxxx* exceed the permissible exposure limits, the signs shall bear the additional legend: "Respirator Required"

(3) *Labels.* (i) The employer shall assure that precautionary labels are affixed to all containers of *xxxxx* and of products containing *xxxxx*, and that the labels remain affixed when the *xxxxx* or products containing *xxxxx* are sold, distributed or otherwise leave the employer's workplace.

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER

CONTAINS *XXXXX*

CANCER HAZARD

(q) *Recordkeeping.* (1) *Exposure Monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(2) *Medical Surveillance.* (i) The employer shall establish and maintain an accurate

record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physicians' written opinions;

(B) Any employee medical complaints related to exposure to *xxxxx;*

(C) A copy of the information provided to the physician as required by paragraph (n) (6) of this section; and

(D) A copy of the employee's work history.

(iii) The employer shall assure that this record be maintained for at least forty (40) years, or for the duration of employment plus twenty (20) years, whichever is longer.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall assure that employee exposure measurement records, as required by this section, be made available, upon request, for examination and copying to the affected employee, former employee, or designated representative.

(iii) The employer shall assure that employee medical records required to be maintained by this section, be made available, upon request, for examination and copying, to the affected employee or former employee, or to a physician designated by the affected employee, former employee, or designated representative.

(4) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall transmit these records to the Director.

(r) *Observation of Monitoring.* (1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to *xxxxx* conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to *xxxxx* requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of *xxxxx* performed at the place of exposure; and

(C) Record the results obtained.

(s) *Effective date.* This section shall become effective (*insert appropriate period*) following publication.

(t) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

APPENDIX A

SUBSTANCE SAFETY DATA SHEET

XXXXX

APPENDIX B

SUBSTANCE TECHNICAL GUIDELINES

XXXXX

APPENDIX C

MEDICAL SURVEILLANCE GUIDELINES

XXXXX

§ 1990.170 Section 6(b) Model Standard for a Category II Toxic Substance.

OCCUPATIONAL EXPOSURE TO XXXXX

NOTICE OF PROPOSED OR FINAL RULEMAKING

§ 1910.0000 *xxxxx.*

(a) *Scope and application.* This section applies to all occupational exposures to *xxxxx* (Chemical Abstracts Service Registry Number *00000*), except that this section does not apply to: (*to be filled in as applicable.*)

(b) *Definitions.* "*xxxxx*" means (*definition of substance to be regulated*).

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education, and Welfare, or designee.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which is likely to, or does, result in unexpected exposure, of *xxxxx* in excess of the ceiling limit.

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) *Permissible exposure limits.* (1) *Inhalation.* (i) *Time-weighted average limit (TWA).* The employer shall assure that no employee is exposed to an airborne concentration of *xxxxx* in excess of: (*insert appropriate exposure limit representing (a) the present OSHA standard found in 29 CFR 1910.1000 or (b) where none exists, an appropriate level based upon acute or chronic effects of exposure to xxxxx other than carcinogenicity or (c) where acute or chronic effects other than carcinogenicity indicate that the present OSHA standard is inadequate, the exposure level shall be lowered from the present OSHA standard to the level found appropriate by the Secretary to protect against such effects*) as an eight (8)-hour time-weighted average.

(ii) *Ceiling limit.* (*If appropriate.*) The employer shall assure that no employee is exposed to an airborne concentration of *xxxxx* in excess of: (*insert the appropriate exposure limit*) as averaged over any: (*insert appropriate time period*) during the working day.

(2) *Dermal and eye exposure.* The employer shall assure that no employee is exposed to eye contact or skin contact with *xxxxx.*

(d) *Notification of use and emergencies.* (1) *Use.* Within (*insert appropriate time*), or within fifteen (15) days the introduction of *xxxxx* into the workplace, every employer shall report the following information to the OSHA Area Office for each such workplace:

(i) The address and location of each workplace in which *xxxxx* is present;

(ii) A brief description of each process or operation, which may result in employee exposure to *xxxxx;*

(iii) The number of employees engaged in each process or operation who may be exposed to *xxxxx* and an estimate of the frequency and degree of exposure that occurs;

(iv) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to *xxxxx;* and

(v) Whenever there has been a significant change in the information required by this paragraph, the employer shall promptly amend such information previously provided to the OSHA area office.

(2) *Emergencies and Remedial Action.* Emergencies, and the facts obtainable at that time, shall be reported within twenty-four (24) hours of the initial occurence to the OSHA Area Office. Upon request of the OSHA Area Office, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of a similar nature.

(e) *Exposure monitoring.* (1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to *xxxxx* over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) *Initial monitoring.* Each employer who has a place of employment in which *xxxxx* is present shall monitor each such workplace and work operation to accurately determine the airborne concentration of *xxxxx* to which employees may be exposed.

(3) *Frequency.* (i) If the monitoring, required by this section, reveals employee exposure to be below the permissible exposure limits, the employer shall repeat such monitoring at least quarterly.

(ii) If the monitoring, required by this section, reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat the determinations for each such employees at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) *Additional monitoring.* Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to *xxxxx,* or whenever the employer has any other reason to suspect a change which may result in new or additional exposure to *xxxxx,* additional monitoring which complies with this paragraph shall be conducted.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever such results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice

a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) *Accuracy of measurement.* The method of measurement shall be accurate, to a confidence level of 95 percent, to within plus or minus (*insert appropriate value*) for concentrations of *xxxxx* at or above the permissible exposure limit.

(7) *Type of monitoring.* (*Where applicable, specific mandatory monitoring and techniques may be required.*)

(f) *Regulated areas.* (Deleted.)

(g) *Methods of compliance.* (1) *Engineering and work practice controls.* (i) The employer shall institute engineering or work practice controls to reduce and maintain employee exposures to *xxxxx* to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest levels achievable by those controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (h) of this section.

(2) *Compliance program.* (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limits solely by means of engineering and work practice controls, as required by paragraph (g)(1) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to *xxxxx;*

(B) Engineering plans and other studies used to determine the controls for each process;

(C) A report of the technology considered in meeting the permissible exposure limits;

(D) A detailed schedule for the implementation of engineering or work practice controls; and

(E) Other relevant information.

(iii) Written plans for such a program shall be submitted, upon request, to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, or any affected employee or representative.

(iv) The plans required by this paragraph shall be revised and updated at least every six (6) months to reflect the current status of the program.

(h) *Respiratory protection.* (1) *General.* The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposure to within the permissible exposure limits and in emergencies. Compliance with the permissible exposure limits may not be achieved by the use of respirators except:

(i) During the time period necessary to install or implement feasible engineering and work practice controls; or

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respiratory protection is required under this section, the employer shall select and provide at no cost to the employee, the appropriate type of respirator from Table 1 below and shall assure that the employee uses the respirator provided.

TABLE 1

RESPIRATORY PROTECTION FOR *xxxxx*

* * * * *

(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to *xxxxx*).

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator facepiece to prevent potential skin irritation associated with respirator use.

(i) *Emergency situations.* (1) *Written plans.* (i) A written plan for emergency situations shall be developed for each workplace where *xxxxx* is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped as required in paragraph (h) of this section until the emergency is abated.

(2) *Alerting employees.* (i) *Alarms.* Where there is the possibility of employee exposure to *xxxxx* in excess of the ceiling limit due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(ii) *Evacuation.* Employees not engaged in correcting the emergency shall be restricted from the area and shall not be permitted to return until the emergency is abated.

(j) *Protective clothing and equipment.* (1) *Provision and use.* Where eye or skin contact with *xxxxx* may occur, the employer shall provide at no cost to the employee, and assure that employees wear, appropriate protective clothing or equipment in accordance with 29 CFR 1910.132 and .133 to protect the area of the body which may come in contact with *xxxxx.*

(2) *Cleaning and replacement.* (i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this paragraph, as needed, to maintain their effectiveness. In addition the employer shall provide clean protective clothing and equipment at least (*insert appropriate time*) to each affected employee.

(ii) The employer shall assure that the employee removes all protective clothing and equipment at the completion of a work shift and only in change roms as required by paragraph (m)(1) of this section.

(iii) The employer shall assure that *xxxxx*-contaminated protective clothing and equipment is placed and stored in closed containers which prevent dispersion of *xxxxx* outside the container.

(iv) The employer shall assure that no employee removes contaminated protective equipment or clothing from the change room except for those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(v) The employer shall inform any person who launders or cleans *xxxxx* contaminated protective clothing or equipment of the potentially harmful effects of exposure to *xxxxx.*

(vi) The employer shall assure that the containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with paragraph (p)(3)(ii) of this section.

(vii) The employer shall prohibit the removal of *xxxxx* from protective clothing or equipment by blowing or shaking of work clothing.

(k) *Housekeeping.* (1) *Surfaces.* (i) All surfaces shall be maintained free of accumulations of *xxxxx.*

(ii) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces where *xxxxx* dust or liquids are found is prohibited.

(iii) Where vacuuming methods are selected, either portable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters, or other appropriate means of contaminant removal, so that *xxxxx* is not reintroduced into the work place air; and

(B) Portable vacuum units used to collect *xxxxx*, may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (p)(3) of this section.

(iv) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) *Liquids.* Where *xxxxx* is present in a liquid form, or as a resultant vapor, all containers or vessels containing *xxxxx* shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(3) *Dust collection systems.* Periodic cleaning of dust collection systems, i.e. ducts and filters, shall be performed to reduce *xxxxx* dust buildups and to maintain the effectiveness of the system.

(l) *Waste disposal. xxxxx* waste, scrap, debris, bags, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of *xxxxx* outside the container.

(m) *Hygiene facilities and practices.* Where employees are required to wear protective clothing or equipment pursuant to paragraph (j) of this section, or where otherwise found to be appropriate, the facilities required by 29 CFR 1910.141 or in this paragraph shall be provided by the employer for the use of those employees and the employer shall assure that the employees use the facilities provided. In addition, the following additional facilities or requirements are mandated.

(1) *Change rooms.* The employer shall provide clean change rooms in accordance with 29 CFR 1910.141(e).

(2) *Showers.* (i) The employer shall provide shower facilities in accordance with 29 CFR 1910.141(d)(3).

(ii) In addition, the employer shall also assure that employees exposed to *xxxxx* shower at the end of the work shift.

(3) *Lunchrooms.* (i) The employer shall provide appropriate facilities for eating and drinking in accordance with 29 CFR 1910.141 (g) and (h).

(ii) The employer shall assure that employees exposed to *xxxxx* wash their hands and face prior to eating.

(n) *Medical Surveillance.* (1) *General.* (i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to *xxxxx.* The employer shall provide each employee with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a

licensed physician, and shall be provided without cost to the employee.

(2) *Initial examinations.* At the time of initial assignment, or upon institution of the medical surveillance program, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements.

(i) A work history, a medical history, and a physical examination with direct emphasis towards the pulmonary, renal and hepatic systems, and shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors. Additionally, such factors as the current systems review, pregnancy, current treatment with steroids or cytotoxic agents, and smoking habits should be considered.

(ii) The medical examination shall also include the following: (*insert appropriate medical protocol*).

(3) *Periodic examinations.* (i) The employer shall provide examinations specified in this paragraph at least (*insert appropriate time*) for all employees specified in paragraph (n)(1) of this section.

(ii) If an employee has not had the examinations prescribed in paragraph (n)(2) of this section within 6 months of termination of employment, the employer shall make such examination available to the employee upon such termination.

(4) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to *xxxxx*, the employer shall provide appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) Information from previous medical examinations of the affected employee, which is not otherwise available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to *xxxxx*;

(C) Any recommended limitations upon the employee's exposure to *xxxxx* or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to *xxxxx*.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee information and training.* (1) *Training program.* (i) The employer shall institute a training program for all employees where there is occupational exposure to *xxxxx* and shall assure their participation in the training program.

(ii) The training program shall be provided at the time of initial assignment, or upon institution of the training program, and at least annually thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B, and C;

(B) The quantity, location, manner of use, release or storage of *xxxxx* and the specific nature of operations which could result in exposure to *xxxxx*, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators;

(D) The purpose and a description of the medical surveillance program required by paragraph (n) of this section;

(E) The emergency procedures developed, as required by paragraph (i) of this section;

(F) The engineering and work practice controls, their function and the employee's relationship thereto; and

(G) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and labels.* (1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from the effects of such required sign or label.

(2) *Signs.* (i) The employer shall post signs to clearly indicate all work areas where *xxxxx* may be present. The signs shall bear the following legend:

CAUTION

XXXXX

(*insert appropriate trade or common names*)

POTENTIAL CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readibly visible.

(iii) Where airborne concentrations of *xxxxx* exceed the permissible exposure limits, the signs shall bear the additional legend:

RESPIRATOR REQUIRED

(3) *Labels.* The employer shall assure that precautionary labels are affixed to all containers of *xxxxx* and of products containing *xxxxx* and that the labels remain affixed when the *xxxxx* or products containing *xxxxx* are sold, distributed or otherwise leave the employer's workplace. The label shall bear the following legend:

CAUTION

CONTAINS *XXXXX*

POTENTIAL CANCER HAZARD

(q) *Recordkeeping.* (1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physicians' written opinions;

(B) Any employee medical complaints related to exposure to *xxxxx*;

(C) A copy of the information provided to the physician as required by paragraph (n)(6) of this section; and

(D) A copy of the employee's work history.

(iii) The employer shall assure that this record be maintained for at least forty (40) years, or for the duration of employment plus twenty (20) years, whichever is longer.

(3) *Availability.* (i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall assure that employee exposure measurement records, as required by this section, be made available, upon request, for examination and copying, to the affected employee, former employee, or designated representative.

(iii) The employer shall assure that employee medical records required to be maintained by this section, be made available, upon request, for examination and copying to the affected employee or former employee, or to a physician designated by the affected employee, former employee, or designated representative.

(4) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall transmit these records to the Director.

(r) *Observation of monitoring.* (1) *Employee observation.* The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to *xxxxx* conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to *xxxxx* requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of *xxxx* performed at the place of exposure; and

(C) Record the results obtained.

(s) *Effective dates.* This section shall become effective (*insert appropriate period*) following publication.

(t) *Appendices.* The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations.

APPENDIX A

SUBSTANCE SAFETY DATA SHEET

XXXXX

APPENDIX B

SUBSTANCE TECHNICAL GUIDELINES

XXXXX

APPENDIX C

MEDICAL SURVEILLANCE GUIDELINES

XXXXX

Subpart C—Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational Teratogenic Risk [Reserved]

(Secs. 4, 6, 8, 84 Stat. 1593, 1599 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 8–76 (41 FR 25059); 29 FR Part 1911.)

Section 1990.150. Section 6(c) Model Standard for a Category I Toxic Substance

Emergency Temporary Standard

Section 1910.0000 xxxxx

(a) Scope and application. This section applies to all occupational exposures to xxxxx, (Chemical Abstracts Service Registry Number (0000), except that this section does not apply to: (to be filled in as applicable.)

Section 1990.160. Section 6(b) Model Standard for a Category I Toxic Substance

Notice of Proposed or Final Rulemaking

Section 1910.0000 xxxxx

(a) Scope and application. This section applies to all occupational exposures to xxxxx, (Chemical Abstracts Service Registry Number (0000), except that this section does not apply to: (to be filled in as applicable.)

Section 1990.170. Section 6(b) Model Standard for a Category II Toxic Substance

Notice of Proposed or Final Rulemaking

Section 1910.0000 xxxxx

(a) Scope and application. This section applies to all occupational exposures to xxxxx (Chemical Abstracts Service Registry Number (0000), except that this section does not apply to: (to be filled in as applicable.)

(b) Definitions.

"xxxxx" means (definition of substance to be regulated).

"Authorized person" means any person specifically authorized by the employer and whose duties require the person to be a present in areas where xxxxx is present; and any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education and Welfare, or designee.

(b) Definitions.

"xxxxx" means (definition of substance to be regulated).

"Authorized person" means any person specifically authorized by the employer whose duties require the person to enter a regulated area or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under paragraph (r) of this section.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U. S. Department of Health, Education and Welfare, or designee.

(b) Definitions.

"xxxxx" means (definition of substance to be regulated).

" Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U. S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health, U. S. Department of Health, Education and Welfare, or designee.

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which is likely to, or does, result in unexpected exposure of xxxxx in excess of the ceiling limit.

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

"Emergency" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which is likely to, or does, result in unexpected exposure, of xxxxx in excess of the ceiling limit.

"OSHA Area Office" means the Area Office of the Occupational Safety and Health Administration having jurisdiction over the geographic area where the affected workplace is located.

(c) Permissible exposure limits.

(1) Inhalation.

(i) Time-weighted average limit (TWA). Within (insert appropriate time) from the effective date of this emergency temporary standard, the employer shall assure that no employee is exposed to an airborne concentration of xxxxx in excess of: (insert appropriate exposure limit representing the lowest feasible level that can be complied with immediately) as an eight (8)-hour time-weighted average.

(c) Permissible exposure limits.

(1) Inhalation.

(i) Time-weighted average limit (TWA). The employer shall assure that no employee is exposed to an airborne concentration of xxxxx in excess of: (insert appropriate exposure limit representing: (a) the lowest feasible level, except as modified by paragraph (c)(3) of this section or (b) when it is determined by the Secretary that there are available substitutes for all uses or classes of uses that are less hazardous to humans, the proposal shall permit no occupational exposure) as an eight (8)-hour time-weighted average.

(c) Permissible exposure limits.

(1) Inhalation.

(i) Time-weighted average limit (TWA). The employer shall assure that no employee is exposed to an airborne concentration of xxxxx in excess of: (insert appropriate exposure limit representing (a) the present OSHA standard found in 29 CFR 1910.1000 or (b) where none exists, an appropriate level based upon acute or chronic effects of exposure to xxxxx other than carcinogenicity or (c) where acute or chronic effects other than carcinogenicity indicate that the present OSHA standard is inadequate, the exposure level shall be lowered from the present OSHA standard to the level found appropriate by the Secretary to protect against such effects) as an eight (8)-hour time-weighted average.

(ii) Ceiling limit. (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of xxxxx in excess of: (insert appropriate exposure limit representing the lowest feasible level that can be complied with immediately) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. The employer shall assure that no employee is exposed to eye contact or skin contact with xxxxx.

(ii) Ceiling limit. (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of xxxxx in excess of: (insert appropriate exposure limit representing the lowest feasible level, which shall however, not be more than five (5) times the TWA) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. The employer shall assure that no employee is exposed to eye contact or skin contact with xxxxx.

(3) Other restrictions. The employer shall assure that there is no occupational exposure to xxxxx from the following uses or classes of uses: (Where the Secretary determines, in the proposal or upon the record of the public rulemaking, that there are materials less hazardous to employees and that those materials are suitable substitutes in certain applications

(ii) Ceiling limit. (If appropriate.) The employer shall assure that no employee is exposed to an airborne concentration of xxxxx in excess of: (insert the appropriate exposure limit) as averaged over any: (insert appropriate time period) during the working day.

(2) Dermal and eye exposure. The employer shall assure that no employee is exposed to eye contact or skin contact with xxxxx.

where xxxxx might otherwise be used, the Secretary here shall specify that no occupational exposure to xxxxx shall be permitted in those circumstances and uses, listing those circumstances or uses.)

(d) Notification of Use. Within (insert appropriate time) of the effective date of this section, or within fifteen (15) days following the introduction of xxxxx into the workplace, every employer shall report the following information to the nearest OSHA Area Office for each such workplace:

(1) The address and location of each workplace in which xxxxx is present;

(2) A brief description of each process or operation which may result in employee exposure to xxxxx;

(3) The number of employees engaged in each process or operation who may be exposed to xxxxx and an estimate of the frequency and degree of exposure that occurs; and

(d) Notification of use and emergencies.

(1) Use.

Within (insert appropriate time), or within fifteen (15) days following the introduction of xxxxx into the workplace, every employer shall report, unless he has done so pursuant the emergency temporary standard issued pursuant to 29 CFR 1990.150(d) herein, the following information to the OSHA Area Office for each such workplace:

(i) The address and location of each workplace in which xxxxx is present;

(ii) A brief description of each process or operation which may result in employee exposure to xxxxx;

(iii) The number of employees engaged in each process or operation who may be exposed to xxxxx and an estimate of the frequency and degree of exposure that occurs;

(d)

Notification of use and emergencies.

(1) Use.

Within (insert appropriate time), or within fifteen (15) days the introduction of xxxxx into the workplace, every employer shall report the following information to the OSHA Area Office for each such workplace:

(i) The address and location of each workplace in which xxxxx is present;

(ii) A brief description of each process or operation, which may result in employee exposure to xxxxx;

(iii) The number of employees engaged in each process or operation who may be exposed to xxxxx and an estimate of the frequency and degree of exposure that occurs;

(4) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to xxxxx;

(iv) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to xxxxx; and

(v) Whenever there has been a significant change in the information required by this paragraph or 29 CFR 1990.150(d), the employer shall promptly amend such information previously provided to the OSHA area office.

(2) Emergencies and remedial action. Emergencies, and the facts obtainable at that time, shall be reported within twenty four (24) hours of the initial occurrence to the OSHA Area Office. Upon request of the OSHA Area Office, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of a similar nature.

(iv) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to xxxxx; and

(v) Whenever there has been a significant change in the information required by this paragraph, the employer shall promptly amend such information previously provided to the OSHA area office.

(2) Emergencies and Remedial Action. Emergencies, and the facts obtainable at that time, shall be reported within twenty-four (24) hours of the initial occurrence to the OSHA Area Office. Upon request of the OSHA Area Office, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of a similar nature.

(e) Exposure monitoring.

(1) General.

(i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to xxxxx over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) Initial monitoring. Each employer who has a place of employment in which xxxxx is present shall monitor, within thirty (30) days of the effective date of this standard, each such workplace and work operation to accurately determine the airborne concentrations of xxxxx to which employees may be exposed.

(e) Exposure monitoring.

(1) General.

(i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to xxxxx over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) Initial monitoring. Each employer who has a place of employment in which xxxxx is present shall monitor each such workplace and work operation to accurately determine the airborne concentrations of xxxxx to which employees may be exposed.

(e) Exposure monitoring.

(1) General.

(i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to xxxxx over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(2) Initial monitoring. Each employer who has a place of employment in which xxxxx is present shall monitor each such workplace and work operation to accurately determine the airborne concentrations of xxxxx to which employees may be exposed.

(3) Frequency.

(i) If the monitoring, required by this section, reveals employee exposure to be below the permissible exposure limits, the employer shall repeat such monitoring at least quarterly.

(ii) If the monitoring, required by this section, reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employees at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) Additional monitoring. Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to xxxxx, or whenever the

(3) Frequency.

(i) If the monitoring, required by this section, reveals employee exposure to be below the permissible exposure limits, the employer shall repeat such monitoring at least quarterly.

(ii) If the monitoring, required by this section, reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employee at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) Additional monitoring. Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to xxxxx, or whenever the

(3) Frequency.

(i) If the monitoring, required by this section, reveals employee exposure to be below the permissible exposure limits, the employer shall repeat such monitoring at least quarterly.

(ii) If the monitoring, required by this section, reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat the determinations for each such employees at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven (7) days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(4) Additional monitoring. Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to xxxxx, or whenever the

employer has any other reason to suspect a change which may result in new or additional exposures to xxxxx, additional monitoring which complies with this paragraph shall be conducted.

(5) Employee notification.

(i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

employer has any other reason to suspect a change which may result in new or additional exposures to xxxxx, additional monitoring which complies with this paragraph shall be conducted.

(5) Employee notification.

(i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employees exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

employer has any other reason to suspect a change which may result in new or additional exposure to xxxxx, additional monitoring which complies with this paragraph shall be conducted.

(5) Employee notification.

(i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever such results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(6) Accuracy of measurement. The method of measurement shall be accurate, to a confidence level of 95 percent, to within plus or minus (insert appropriate value) for concentrations of xxxxx at or above the permissible exposure limits.

(7) Type of monitoring. (Where applicable, specific mandatory monitoring devices and techniques may be required.)

(6) Accuracy of measurement. The method of measurement shall be accurate, to a confidence level of 95 percent, to within plus or minus (insert appropriate value) for concentrations of xxxxx at or above the permissible exposure limits.

(7) Type of monitoring. (Where applicable, specific mandatory monitoring devices and techniques may be required.)

(6) Accuracy of measurement. The method of measurement shall be accurate, to a confidence level of 95 percent, to within plus or minus (insert appropriate value) for concentrations of xxxxx at or above the permissible exposure limit.

(7) Type of monitoring. (Where applicable, specific mandatory monitoring and techniques may be required.)

(f) Regulated areas. (deleted.)

(f) Regulated areas.

(1) The employer shall establish regulated areas where xxxxx concentrations are in excess of the permissible exposure limits.

(2) Regulated areas shall be demarcated and segregated from the rest of the workplace, in any manner that minimizes the number of persons who will be exposed to xxxxx.

(3) Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the Act or regulations issued pursuant thereto.

(4) The employer shall assure that in the regulated area, food or beverages are not present or consumed, smoking products are not present or used, and cosmetics are not applied, (except that these activities may be conducted in the lunchroom, change rooms and showers required under paragraphs (m)(1) - (m)(3) of this section.)

(f) Regulated areas. (deleted.)

(g) Methods of compliance.

(1) General policy. OSHA 's general policy as to methods of compliance for permanent standards has traditionally required that employee exposures to a substance be reduced to the permissible exposure limits solely by use of engineering and work practice controls. OSHA has permitted reduction of employee exposures by use of respiratory protection only where the employer proves that engineering and work practice controls are not feasible to reduce such exposures to the permissible exposure limits. This general policy is inherent in the model standards found in 29 CFR 1990.160 and 1990.170. However, during the effective period of this emergency temporary standard, OSHA recognizes the need to permit employee exposures to airborne concentrations of xxxxx to be controlled by any practicable combination of engineering controls, work practices and personal protective devices and

(g) Methods of compliance.

(1) Engineering and work practice controls.

(i) The employer shall institute engineering or work practice controls to reduce and maintain employee exposures to xxxxx to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (h) of this section.

(g) Methods of compliance.

(1) Engineering and work practice controls.

(i) The employer shall institute engineering or work practice controls to reduce and maintain employee exposures to xxxxx to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest levels achievable by those controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (h) of this section.

equipment as follows. OSHA recognizes that the immediate reduction of exposure to xxxxx may generally be achieved primarily through the use of respiratory protection and the institution of good work practices during the effective period of this emergency temporary standard, such as the prohibitions against the blowing of dust containing xxxxx or the permitting of open containers and vessels of liquids containing xxxxx. On the other hand, OSHA believes that where engineering or work practice controls can reduce exposure, they should be used, even where such controls by themselves do not reduce the exposures to the permissible exposure limits.

Thus, engineering controls to reduce the airborne concentration of xxxxx shall be instituted, if practicable, as soon as possible. Examples of such controls include substitution of a less hazardous material, enclosure of the process, and use of local exhaust

ventilation systems. The employer should also examine each work area in which xxxxx is present and institute, as soon as possible, work practices to reduce employee exposures to xxxxx to or below the permissible exposure limits. Examples of such work practices include, among other things, limiting access to work areas where xxxxx is present to authorized personnel only; written procedures and work practices for each operation which may result in employee exposure to xxxxx; prohibiting smoking and the consumption of food and beverages in work areas where xxxxx is present; requiring the use of appropriate personal protective clothing and equipment to minimize eye and skin contact with xxxxx; use of signs, labels, or other means to clearly designate all work areas where xxxxx may be present; and institution of good housekeeping practices as set forth in paragraph (k) of this section.

Finally, as pointed out, whenever the engineering and work practice controls described are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer should supplement them by the use of respiratory protection which complies with the requirements of the emergency temporary standard.

(2) Engineering and work practice control plan.

(i) Within ninety (90) days of the effective date of this emergency temporary standard, the employer shall develop a written plan describing proposed means to reduce employee exposures to the lowest feasible level solely by means of engineering and work practice controls (which will be eventually required by a permanent standard for occupational exposure to xxxxx, issued pursuant to section 1990.160 (g) of this subpart).

(ii) Written plans required by this paragraph shall be submitted, upon request, to the Assistant Secretary and the Director and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, and any affected employee or designated representative.

(2) Compliance program.

(i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limits solely by means of engineering and work practice controls, as required by paragraph (g)(1) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to xxxxx;

(B) Engineering plans and other studies used to determine the controls for each process;

(C) A report of the technology considered in meeting the permissible exposure limits;

(2) Compliance program.

(i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limits solely by means of engineering and work practice controls, as required by paragraph (g)(1) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to xxxxx;

(B) Engineering plans and other studies used to determine the controls for each process;

(C) A report of the technology considered in meeting the permissible exposure limits;

(D) A detailed schedule for the implementation of engineering or work practice controls; and

(E) Other relevant information.

(iii) Written plans for such a program shall be submitted, upon request, to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, or any affected employee or representative.

(iv) The plans required by this paragraph shall be revised and updated at least every six (6) months to reflect the current status of the program.

(D) A detailed schedule for the implementation of engineering or work practice controls; and

(E) Other relevant information.

(iii) Written plans for such a program shall be submitted, upon request, to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, the Director, or any affected employee or representative.

(iv) The plans required by this paragraph shall be revised and updated at least every six (6) months to reflect the current status of the program.

(h) Respiratory protection.

(1) Required use. The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposures to within the permissible exposure limits and in emergencies.

(h) Respiratory protection.

(1) General. The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposures to within the permissible exposure limits and in emergencies. Compliance with the permissible exposure limits may not be achieved by the use of respirators except:

(i) During the time period necessary to install or implement feasible engineering and work practice controls; or

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; or

(h) Respiratory protection.

(1) General. The employer shall assure that respirators are used where required pursuant to this section to reduce employee exposure to within the permissible exposure limits and in emergencies. Compliance with the permissible exposure limits may not be achieved by the use of respirators except:

(i) During the time period necessary to install or implement feasible engineering and work practice controls; or

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible; or

(iii) In work situations where feasible engineering and work practice controls are not yet sufficient to reduce exposure to or below the permissible exposure limits; or

(2) Respirator selection.

(i) Where respiratory protection is required or permitted under this section, the employer shall select and provide at no cost to the employee, the appropriate respirator from Table 1 below and shall assure that the employee wears the respirator provided.

Table 1

RESPIRATORY PROTECTION FOR XXXXX

* * *

(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to xxxxx).

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(iv) In emergencies.

(2) Respirator selection.

(i) Where respiratory protection is required under this section, the employer shall select and provide at no cost to the employee, the appropriate type of respirator from Table 1 below and shall assure that the employee wears the respirator provided.

Table 1

RESPIRATORY PROTECTION FOR XXXXX

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(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to xxxxx).

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(iv) In emergencies.

(2) Respirator selection.

(i) Where respiratory protection is required under this section, the employer shall select and provide at no cost to the employee, the appropriate type of respirator from Table 1 below and shall assure that the employee uses the respirator provided.

Table 1

RESPIRATORY PROTECTION FOR XXXXX

* * *

(The table will contain a listing of the appropriate type of respirator for various conditions of exposure to xxxxx).

(ii) The employer shall select respirators from those approved by the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

(3) Respirator program.

(i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator facepiece to prevent potential skin irritation associated with respirator use.

(3) Respirator program.

(i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator facepiece to prevent potential skin irritation associated with respirator use.

(3) Respirator program.

(i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f).

(ii) Employees who wear respirators shall be allowed to wash their face and respirator facepiece to prevent potential skin irritation associated with respirator use.

(i) Emergency situations.

(deleted.)

(i) Emergency situations.

(1) Written plans.

(i) A written plan for emergency situations shall be developed for each workplace where xxxxx is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped as required in paragraph (h) of this section until the emergency is abated.

(2) Alerting employees.

(i) Alarms. Where there is the possibility of employee exposure to xxxxx in excess of the ceiling limit due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(i) Emergency situations.

(1) Written plans.

(i) A written plan for emergency situtations shall be developed for each workplace where xxxxx is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped as required in paragraph (h) of this section until the emergency is abated.

(2) Alerting employees.

(i) Alarms. Where there is the possibility of employee exposure to xxxxx in excess of the ceiling limit due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(ii) Evacuation. Employees not engaged in correcting the emergency shall be restricted from the area and shall not be permitted to return until the emergency is abated.

(ii) Evacuation. Employees not engaged in correcting the emergency shall be restricted from the area and shall not be permitted to return until the emergency is abated.

(j) Protective clothing and equipment.

(1) Provision and use. Where eye or skin contact with xxxxx may occur, the employer shall provide, at no cost to the employee, and assure that employees wear, appropriate protective clothing or other equipment in accordance with 29 CFR 1910.132 and .133 to protect the area of the body which may come in contact with xxxxx.

(2) Cleaning and replacement.

(i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this paragraph, as needed, to maintain their effectiveness. In addition the employer shall provide clean protective clothing and equipment at least (insert appropriate time) to each affected employee.

(j) Protective clothing and equipment.

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(2) Cleaning and replacement.

(i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this paragraph,

as needed, to maintain their effectiveness. In addition the employer shall provide clean protective clothing and equipment at least (insert appropiate time) to each affected employee.

(ii) The employer shall assure that the employee removes all protective clothing and equipment at the completion of a workshift.

(iii) The employer shall assure that xxxxx-contaminated protective clothing and equipment is placed and stored in closed containers which prevent dispersion of xxxxx outside the container.

(ii) The employer shall assure that the employee removes all protective clothing and equipment at the completion of a work shift and only in change rooms as required by paragraph (m)(1) of this section.

(iii) The employer shall assure that xxxxx-contaminated protective clothing and equipment is placed and stored in closed containers which prevent dispersion of xxxxx outside the container.

(iv) The employer shall assure that no employee removes xxxxx-contaminated protective equipment or clothing from the change room, except for those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(ii) The employer shall assure that the employee removes all protective clothing and equipment at the completion of a work shift and only in change rooms as required by paragraph (m)(1) of this section.

(iii) The employer shall assure that xxxxx-contaminated protective clothing and equipment is placed and stored in closed containers which prevent dispersion of xxxxx outside the container.

(iv) The employer shall assure that no employee removes contaminated protective equipment or clothing from the change room except for those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iv) The employer shall inform any person who launders or cleans xxxxx contaminated protective clothing or equipment of the potentially harmful effects of exposure to xxxxx.

(v) The employer shall assure that the containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with paragraph (p)(3) of this section.

(vi) The employer shall prohibit the removal of xxxxx from protective clothing or equipment by blowing or shaking.

(v) The employer shall inform any person who launders or cleans xxxxx contaminated protective clothing or equipment of the potentially harmful effects of exposure to xxxxx.

(vi) The employer shall assure that the containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with paragraph (p)(3)(ii) of this section.

(vii) The employer shall prohibit the removal of xxxxx from protective clothing or equipment by blowing or shaking.

(v) The employer shall inform any person who launders or cleans xxxxx contaminated protective clothing or equipment of the potentially harmful effects of exposure to xxxxx.

(vi) The employer shall assure that the containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with paragraph (p)(3)(ii) of this section.

(vii) The employer shall probihit the removal of xxxxx from protective clothing or equipment by blowing or shaking of work clothing.

(k) Housekeeping.

(1) Surfaces.

(i) All surfaces shall be maintained free of accumulations of xxxxx.

(ii) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces where xxxxx dust or liquids are found is prohibited.

(iii) Where vacuuming methods are selected, either portable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that xxxxx is not reintroduced into the work place air; and

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(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters, or other appropriate means of contaminant removal, so that xxxxx is not reintroduced into the work place air; and

(B) Portable vacuum units used to collect xxxxx, may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (p)(3) of this section.

(iv) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) Liquids. Where xxxxx is present in a liquid form, or as a resultant vapor, all containers or vessels containing xxxxx shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(B) Portable vacuum units used to collect xxxxx, may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (p)(3) of this section.

(iv) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) Liquids. Where xxxxx is present in a liquid form, or as a resultant vapor, all containers or vessels containing xxxxx shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(3) Dust collection systems. Periodic cleaning of dust collection systems, i.e. ducts and filters, shall be performed to reduce xxxxx dust buildups and to maintain the effectiveness of the system.

(B) Portable vacuum units used to collect xxxxx, may not be used for other cleaning purposes and shall be labeled as prescribed by paragraph (p) (3) of this section.

(iv) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(2) Liquids. Where xxxxx is present in a liquid form, or as a resultant vapor, all containers or vessels containing xxxxx shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(3) Dust collection systems. Periodic cleaning of dust collection systems, i.e. ducts and filters, shall be performed to reduce xxxxx dust buildups and to maintain the effectiveness of the system.

(1) Waste disposal. xxxxx waste, scrap, debris, bags, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of xxxxx outside the container.

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(1) Waste disposal. xxxxx waste, scrap, debris, bags, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of xxxxx outside the container.

(m) Hygiene facilities and practices. Where employees are exposed to airborne concentrations of xxxxx, or where employees are required to wear protective clothing or equipment pursuant to paragraph (j) of this section, or where otherwise found to be appropriate, the facilities required by 29 CFR 1910.141 shall be provided by the employer for the use of those employees, and the employer shall assure that the employees use the facilities provided.

(m)

Hygiene facilities and practices. Where employees are exposed to airborne concentrations of xxxxx, or where employees are required to wear protective clcthing or equipment pursuant to paragraph (j) of this section, or where otherwise found to be appropriate, the facilities required by 29 CFR 1910.141 shall be provided by the employer for the use of those employees and the employer shall assure that the employees use the facilities provided. In addition, the following additional facilities or requiments are mandated.

(1) Change rooms. The employer shall provide clean change rooms in accordance with 29 CFR 1910.141(e).

(2) Showers.

(i) The employer shall provide shower facilities in accordance with 29 CFR 1910.141(d)(3).

(m)

Hygiene facilities and practices. Where employees are required to wear protective clothing or equipment pursuant to paragraph (j) of this section, or where otherwise found to be appropriate, the facilities required by 29 CFR 1910.141 or in this paragraph shall be provided by the employer for the use of those employees and the employer shall assure that the employees use the facilities provided. In addition, the following additional facilities or requirements are mandated.

(1) Change rooms. The employer shall provide clean change rooms in accordance with 29 CFR 1910.141(e).

(2) Showers.

(i) The employer shall provide shower facilities in accordance with 29 CFR 1910.141(d)(3).

(ii) In addition, the employer shall also assure that employees exposed to xxxxx shower at the end of the work shift.

(3) Lunchrooms.

(i) Whenever food or beverages are consumed in the workplace, the employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees exposed to xxxxx.

(ii) In addition the employer shall also assure that employees exposed to xxxxx wash their hands and face prior to eating.

(ii) In addition, the employer shall also assure that employees exposed to xxxxx shower at the end of the work shift.

(3) Lunchrooms.

(i) The employer shall provide appropriate facilities for eating and drinking in accordance with 29 CFR 1910.141 (g) and (h).

(ii) The employer shall assure that employees exposed to xxxxx wash their hands and face prior to eating.

(n) Medical surveillance.

(1) General.

(i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to xxxxx. The employee shall provide each such employer with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(n) Medical Surveillance.

(1) General.

(i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to xxxxx. The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this paragraph.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

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(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(2) Initial examinations. Within thirty (30) days of the effective date of this section, or thereafter at the time of initial assignment, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history, a medical history, and a physical examination with direct emphasis towards the pulmonary, renal, and hepatic systems, and shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors. Additionally, such factors as the current systems review, pregnancy, current treatment with steroids or cytotoxic agents, and smoking habits should be considered.

(ii) The medical examination shall also include the following: (insert appropriate medical protocol).

(2) Initial examinations. At the time of initial assignment, or upon institution of the medical surveillance program, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history, a medical history, and a physical examination with direct emphasis towards the pulmonary, renal and hepatic systems, and shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors. Additionally, such factors as the current systems review, pregnancy, current treatment with steroids or cytotoxic agents, and smoking habits should be considered.

(ii) The medical examination shall also include the following: (insert appropriate medical protocol).

(2) Initial examinations. At the time of initial assignment, or upon institution of the medical surveillance program, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history, a medical history, and a physical examination with direct emphasis towards the pulmonary, renal and hepatic systems, and shall include the personal history of the employee, family, and occupational background, including genetic and environmental factors. Additionally, such factors as the current systems review, pregnancy, current treatment with steroids or cytotoxic agents, and smoking habits should be considered.

(ii) The medical examination shall also include the following: (insert appropriate medical protocol).

(3) Periodic examinations. (Insert appropriate medical protocol and time.)

(4) Interim examinations. If the employee for any reason develops signs or symptoms commonly associated with exposure to xxxxx, the employer shall provide appropriate examination and emergency medical treatment.

(3) Periodic examinations.

(i) The employer shall provide examinations specified in this paragraph at least (insert appropriate time) for all employees specified in paragraph (n)(1) of this section.

(ii) If an employee has not had the examinations prescribed in paragraph (n)(2) of this section within 6 months of termination of employment, the employer shall make such examination available to the employee upon such termination.

(4) Additional examinations. If the employee for any reason develops signs or symptoms commonly associated with exposure to xxxxx, the employer shall provide appropriate examination and emergency medical treatment.

(3) Periodic examinations.

(i) The employer shall provide examinations specified in this paragraph at least (insert appropriate time) for all employees specified in paragraph (n)(1) of this section.

(ii) If an employee has not had the examinations prescribed in paragraph (n)(2) of this section within 6 months of termination of employment, the employer shall make such examination available to the employee upon such termination.

(4) Additional examinations. If the employee for any reason develops signs or symptoms commonly associated with exposure to xxxxx, the employer shall provide appropriate examination and emergency medical treatment.

(5) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this emergency temporary standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level; and

(iv) A description of any personal protective equipment used or to be used.

(5) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) Information from previous medical examinations of the affected employee, which is not otherwise available to the examining physician.

(5) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) Information from previous medical examinations of the affected employee, which is not otherwise available to the examining physician.

(6) Physician's written opinion.

(i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to xxxxx;

(C) Any recommended limitations upon the employee's exposure to xxxxx or upon the use of protective clothing and equipment such as respirators; and

(6) Physician's written opinion.

(i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to xxxxx;

(C) Any recommended limitations upon the employee's exposure to xxxxx or upon the use of protective clothing and equipment such as respirators; and

(6) Physician's written opinion.

(i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to xxxxx,

(C) Any recommended limitations upon the employee's exposure to xxxxx or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examinaticn or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to xxxxx;

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examinaticn or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to xxxxx;

(iii) The employer shall provide a copy of the written opinion to the affected employee.

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(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to xxxxx.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) Employee information and training.

(1) Training program.

(i) Within thirty (30) days from the effective date of this standard, the employer shall institute a training program for all employees where there is occupational exposure to xxxxx and shall assure their participation in the training program.

(ii) The employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B and C;

(o)

Employee Information and Training.

(1) Training Program.

(i) The employer shall institute a training program for all employees where there is occupational exposure to xxxxx and shall assure their participation in the training program.

(ii) The training program shall be provided at the time of initial assignment, or upon institution of the training program, and at least annually thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B and C;

(o)

Employee information and training.

(1) Training program.

(i) The employer shall institute a training program for all employees where there is occupational exposure to xxxxx and shall assure their participation in the training program.

(ii) The training program shall be provided at the time of initial assignment, or upon institution of the training program, and at least annually thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B and C;

(B) The quantity, location, manner of use, release or storage of xxxxx and the specific nature of operations which could result in exposure to xxxxx, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators;

(D) The purpose and description of the medical surveillance program required by paragraph (n) of this section; and

(E) A review of this standard.

(B) The quantity, location, manner of use, release or storage of xxxxx and the specific nature of operations which could result in exposure to xxxxx, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of the respirators;

(D) The purpose and a description of the medical surveillance program required by paragraph (n) of this section;

(E) The emergency procedures developed, as required by paragraph (i) of this section; and

(F) The engineering and work practice controls, their function and the employee's relationship thereto; and

(G) A review of this standard.

(B) The quantity, location, manner of use, release or storage of xxxxx and the specific nature of operations which could result in exposure to xxxxx, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators;

(D) The purpose and a description of the medical surveillance program required by paragraph (n) of this section;

(E) The emergency procedures developed, as required by paragraph (i) of this section;

(F) The engineering and work practice controls, their function and the employee's relationship thereto; and

(G) A review of this standard.

(2) Access to training materials.

(i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(2) Access to Training Materials.

(i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(2) Access to training materials.

(i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) Signs and labels.

(1) General.

(i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from such effects of the required sign or label.

(2) Signs.

(i) The employer shall post signs to clearly indicate all workplaces where xxxxx may be present. The signs shall bear the following legend:

DANGER

XXXXX

(Insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONS ONLY

(p) Signs and Labels.

(1) General.

(i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from such effects of the required sign or label.

(2) Signs.

(i) The employer shall post signs to clearly indicate all workplaces where xxxxx may be present. The signs shall bear the following legend:

DANGER

XXXXX

(insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(p) Signs and labels.

(1) General.

(i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this paragraph, which contradicts or detracts from the effects of such required sign or label.

(2) Signs.

(i) The employer shall post signs to clearly indicate all work areas where xxxxx may be present. The signs shall bear the following legend:

CAUTION

XXXXX

(insert appropriate trade or common names)

POTENTIAL CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(iii) Where airborne concentrations of xxxxx exceed the permissible exposure limits, the signs shall bear the additional legend: "Respirators Required"

(3) Labels.

(i) The employer shall assure that precautionary labels are affixed to all containers of xxxxx and of products containing xxxxx, and that the labels remain affixed when the xxxxx or products containing xxxxx are sold, distributed or otherwise leave the employer's workplace.

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(iii) Where airborne concentrations of xxxxx exceed the permissible exposure limits, the signs shall bear the additional legend: "Respirator Required"

(3) Labels.

(i) The employer shall assure that precautionary labels are affixed to all containers of xxxxx and of products containing xxxxx, and that the labels remain affixed when the xxxxx or products containing xxxxx are sold, distributed or otherwise leave the employer's workplace.

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readibly visible.

(iii) Where airborne concentrations of xxxxx exceed the permissible exposure limits, the signs shall bear the additional legend:

"Respirator Required"

(3) Labels. The employer shall assure that precautionary labels are affixed to all containers of xxxxx and of products containing xxxxx and that the labels remain affixed when the xxxxx or products containing xxxxx are sold, distributed or otherwise leave the employer's workplace. The label shall bear the following legend:

CAUTION

CONTAINS XXXXX

POTENTIAL CANCER HAZARD

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER

CONTAINS XXXXX

CANCER HAZARD

(ii) The employer shall assure that the precautionary labels required by this paragraph are readily visible and legible. The labels shall bear the following legend:

DANGER

CONTAINS XXXXX

CANCER HAZARD

(q) Recordkeeping.

(1) Exposure monitoring.

(i) The employer shall establish and maintain an accurate record of all monitoring required by paragraph (e) of this section.

(ii) This record shall include:

(A) The dates, number, duration and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(q) Recordkeeping.

(1) Exposure Monitoring.

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(A) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

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(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for the effective period of this emergency temporary standard, and for any additional period required by the permanent standard.

(2) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physicians' written opinions;

(B) Any employee medical complaints related to exposure to xxxxx;

(C) A copy of the information provided to the physician as required by paragraph (n) (6) of this section; and

(D) A copy of the employee's work history.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(2) Medical Surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physicians' written opinions;

(B) Any employee medical complaints related to exposure to xxxxx;

(C) A copy of the information provided to the physician as required by paragraph (n) (6) of this section; and

(D) A copy of the employee's work history.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(2) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) A copy of the physicians' written opinions;

(B) Any employee medical complaints related to exposure to xxxxx;

(C) A copy of the information provided to the physician as required by paragraph (n) (6) of this section; and

(D) A copy of the employee's work history.

(iii) The employer shall assure that this record be maintained for the effective period of this emergency temporary standard, and for any additional period required by the permanent standard.

(3) Availability.

(i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall assure that employee exposure measurement records, as required by this section, be made available, upon request, for examination and copying to the affected employee, former employee, or designated representative.

(iii) The employer shall assure that this record be maintained for at least forty (40) years, or for the duration of employment plus twenty (20) years, whichever is longer.

(3) Availability.

(i) The employer shall assure that all records required to be maintained by this section be made available upon request to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall assure that employee exposure measurement records, as required by this section, be made available, upon request, for examination and copying to the affected employee, former employee, or designated representative.

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(iii) The employer shall assure that employee medical records required to be maintained by this section, be made available, upon request, for examination and copying to the affected employee or former employee, or to a physician designated by the affected employee, former employee, or designated representative.

(iii) The employer shall assure that employee medical records required to be maintained by this section, be made available, upon request, for examination and copying, to the affected employee or former employee, or to a physician designated by the affected employee, former employee, or designated representative.

(4) Transfer of records.

(i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) The employer shall assure that employee medical records required to be maintained by this section, be made available, upon request, for examination and copying to the affected employee or former employee, or to a physician designated by the affected employee, former employee, or designated representative.

(4) Transfer of records.

(i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall transmit these records to the Director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall transmit these records to the Director.

(r) Observation of monitoring.

(1) Employee observation. The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitcring of employee exposure to xxxxx conducted pursuant to paragraph (e) of this section.

(2) Observation procedures.

(i) Whenever observation of the monitoring of employee exposure to xxxxx requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

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(ii) Without interfering with the monitoring observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of xxxxx performed at the place of exposure; and

(C) Record the results obtained.

(ii) Without interfering with the monitoring observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of xxxxx performed at the place of exposure; and

(C) Record the results obtained.

(ii) Without interfering with the monitoring observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of xxxxx performed at the place of exposure; and

(C) Record the results obtained.

(s) Effective date. This section shall become effective (insert date of publication).

(t) Appendices. The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

Appendix A

SUBSTANCE SAFETY DATA SHEET

XXXXX

Appendix B

SUBSTANCE TECHNICAL GUIDELINES

XXXXX

Appendix C

MEDICAL SURVEILLANCE GUIDELINES

XXXXX

(s) Effective date. This section shall become effective (insert appropriate period) following publication.

(t) Appendices. The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

Appendix A

SUBSTANCE SAFETY DATA SHEET

XXXXX

Appendix B

SUBSTANCE TECHNICAL GUIDELINES

XXXXX

Appendix C

MEDICAL SURVEILLANCE GUIDELINES

XXXXX

(s) Effective dates. This section shall become effective (insert appropriate period) following publication .

(t) Appendices. The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

Appendix A

SUBSTANCE SAFETY DATA SHEET

XXXXX

Appendix B

SUBSTANCE TECHNICAL GUIDELINES

XXXXX

Appendix C

MEDICAL SURVEILLANCE GUIDELINES

XXXXX

Advance Orders are now being Accepted for delivery in about 6 weeks

CODE OF FEDERAL REGULATIONS

(Revised as of April 1, 1977)

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