AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 43—No. 9
1-13-78
PAGES
1915-2166

federal register

FRIDAY, JANUARY 13, 1978

highlights

SUNSHINE ACT MEETINGS 2043

PUBLIC INTERNATIONAL ORGANIZATIONS
Executive order removing the Southeast Asia Treaty Organization and the International Coffee Study Group from list of organizations entitled to privileges and immunities 1915

ACTION COOPERATIVE VOLUNTEERS
Executive order providing for the appointment of former volunteers to the civilian career service 1917

DRUG ABUSE PREVENTION WEEK
Presidential proclamation 1919

FIRE ANTS
USDA/APHIS amends lists of areas infested by imported fire ants in order to prevent their spread; effective 1-13-78 1924

HUMAN BLOOD PRODUCTS
HEW/FDA requires that blood intended for transfusion be labeled "paid donor" or "volunteer donor;" effective 5-13-78, (Part VI of this issue) 2141

NEW ANIMAL DRUGS
HEW/FDA approves application for use of a gentamicin sulfate injection for preventing early mortality in day-old chickens; effective 1-13-78 1941

COLOR ADDITIVE
HEW/FDA announces withdrawal of petition regarding FD and C Blue No. 1, FD and C Green No. 3, and FD and C Red No. 4 . 1998

FULLY HALOGENATED CHLOROFLUOROALKANES
HEW/ FDA, EPA, CPSC hold public participation meeting on nonpropellant uses of fully halogenated chlorofluoralkanes to aid in making regulatory decisions, 2-21 through 2-24-78, (3 documents) 1997

FOOD STAMP PROGRAM
USDA/FNS amends method of counting utility costs for the food stamp excess shelter deduction; effective 1-1-78 1922

NATIONAL SCHOOL LUNCH PROGRAM
USDA/FNS proposes regulations concerning food service management companies and vendors and procurement standards; comments by 2-25-78 1955

SOCIAL SECURITY
HEW/SSA increases, and proposes to further increase, the monetary amounts of substantial gainful activity guidelines; effective 1-13-78; comments on the proposed rule by 2-13-78; (2 documents) 1938, 1964

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

Documents normally scheduled for publication 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.

federal register
Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

INFORMATION AND ASSISTANCE

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

FEDERAL REGISTER, Daily Issue:	
Subscription orders (GPO)	**202**–783–3238
Subscription problems (GPO)	**202**–275–3050
"Dial - a - Regulation" (recorded summary of highlighted documents appearing in next day's issue).	**202**–523–5022
Scheduling of documents for publication.	523–3187
Copies of documents appearing in the Federal Register.	523–5240
Corrections	523–5237
Public Inspection Desk	523–5215
Finding Aids	523–5227
Public Briefings: "How To Use the Federal Register."	523–3517
Code of Federal Regulations (CFR)	523–3419
	523–3517
Finding Aids	523–5227
PRESIDENTIAL PAPERS:	
Executive Orders and Proclamations.	523–5286
Weekly Compilation of Presidential Documents.	523–5284
Public Papers of the Presidents	523–5285
Index	523–5285
PUBLIC LAWS:	
Public Law dates and numbers	523–5266
	523–5282
Slip Laws	523–5266
	523–5282
U.S. Statutes at Large	523–5266
	523–5282
Index	523–5266
	523–5282
U.S. Government Manual	523–5287
Automation	523–5240
Special Projects	523–4534

HIGHLIGHTS—Continued

NONDISCRIMINATION ON THE BASIS OF HANDICAP

HEW issues enforcement procedures, standards for determining which persons are handicapped, and guidelines for determining discriminatory practices; effective 1–13–78 (Part V of this issue) **2132**

MEDICAL DEVICES

HEW/FDA issues notice of a device classification panel recommendation for a device used to quantitate levels of theophylline in human serum or plasma; comments by 2–13–78 ... HEW/FDA amends effective date of a notice on licensing Limulus Amebocyte Lysate as an alternative to the rabbit test for detecting pyrogens ..... **1996** HEW/FDA issues notice on a recommendation to reclassify a serum assay kit; comments by 2–13–78 ..... **1995, 1996**

VETERANS EDUCATION

VA issues notice on revised statements of policy and procedure; comments by 3–13–78 ..... **2035**

YOUTH PROGRAMS

Labor implements youth programs under CETA for migrant and seasonally employed families; effective 2–13–78, comments by 2–13–78 (Part VII of this issue) **2150**

EMERGENCY SCHOOL AID

HEW/OE proposes to make appeals resulting from suspension of assistance subject to the Department Grant Appeals Process; comments by 2–13–78 ..... **1969**

CONTACT LENSES

HEW/FDA withdraws proposal that would have classified certain contact lenses as new drugs **1966**

RESEARCH INVOLVING CHILDREN

HEW/Secy issues report and recommendations; comments by 3–14–78 (Part III of this issue) **2084**

IMPORTED MILK AND MILK PRODUCTS

USDA/APHIS proposes to provide alternate procedures under which specified milk and milk products may be imported; comments by 2–13–78 ..... **1962**

DAIRY INDEMNITY PAYMENT PROGRAM

USDA/ASCS proposes to extend coverage; comments by 1–30–78 ..... **1958**

MERGERS IN DAIRY INDUSTRY

FTC establishes criteria for assessing future mergers in the dairy industry **1992**

CARBON STEEL PLATE FROM JAPAN

Treasury determines that carbon steel plate from Japan is selling at less than fair value; effective 1–13–78 ..... **2032**

PIPE AND TUBING FROM JAPAN

Treasury determines welded stainless steel pipe and tubing from Japan is selling for less than fair value in United States; effective 1–13–78 ..... **2031**

TELEVISION TRANSLATOR RELAY STATIONS

FCC adds rules providing for operations to improve the quality of television signals in remote communities; effective 2–17–78. **1943**

DEPARTMENT OF ENERGY ADMINISTRATIVE PROCEDURES

DOE/ERA amends administrative procedures regarding issuance of remedial orders; effective 1–6–78, comments by 2–15–78 ..... **1930**

INTERAGENCY REGULATORY LIAISON GROUP

CPSC, EPA, HEW/FDA and Labor/OSHA request written materials by 2–10–78 on testing standards and guidelines **2003**

POSTAL SERVICE

PS proposes to delete inconsistent language in Postal Service Manual pertaining to newspaper receptacles on rural mailboxes; comments by 2-13-78 1966

MEETINGS—

Commerce/Census: Census Advisory Committee on the Spanish Origin Population for the 1980 Census, 2-3-78 .. 1979
EPA: Administrator's Toxic Substances Advisory Committee, 1-31-78 1985
HEW/FDA: Advisory Committee meetings for month of February 1978 2002
HSA: PHS Hospitals ad hoc Advisory Committee, 1-27 and 1-28-78 2003
FDA: Regional ad hoc professional meeting concerning health care services, 2-1-78 2003
NIH: Clinical Cancer Education Committee, 2-22 and 2-23-78 2004
Committees Advisory to the National Cancer Institute, 2-9, 2-10, 2-14, 2-15, 2-21, 2-23, 2-24, 2-27 and 2-28-78 2008
Division of Research Grants Study Section, Meetings for the months of February and March 2004
Ethics Advisory Board, 2-3 and 2-4-78 2007
National Advisory Environmental Health Sciences Council, 2-6 and 2-7-78 2007
Recombinant DNA Molecule Program Advisory Committee, 2-13 and 2-14-78 2007
OE: National Advisory Council on Vocational Education, Committees and Task Forces, 1-31-78 2008
National Advisory Council on Women's Educational Programs, 1-30 through 2-1-78 2009
Labor/OSHA: National Advisory Committee on Occupational Safety and Health, Subgroups I and II, 1-30-78 2020
NSF: Advisory Committee for Environmental Biology, Subcommittee on Systematic Biology, 2-2 and 2-3-78 2022
Advisory Committee for Physiology, Cellular and Molecular Biology, Subcommittee on Cell Biology, 2-2 through 2-4-78 2021
Advisory Committee for Behavioral and Neurol Sciences, Subcommittee on Psychobiology, 2-2 and 2-3-78 2022
Advisory Committee for Physiology, Cellular and Molecular Biology, Subcommittee on Molecular Biology, Group A, 1-30 and 1-31-78 2021
Science and Technology Policy Office: Basic Research in the Department of Energy Working Group, 2-2 and 2-3-78 2028
SEC: Valuation of Portfolio Securities by Money Market Funds, 1-26-78 2028

CHANGED MEETINGS

HEW/FDA: Obstetrics and Gynecology Advisory Committee, 1-30 and 1-31-78 2003
NIH: National Advisory Allergy and Infectious Diseases Council, 1-25 and 1-26-78 2007
National Diabetes Advisory Board, 1-18-78 2008

CANCELLED MEETING

EPA: Subcommittee on Scientific Criteria for Photochemical Oxidants of the Science Advisory Board Executive Committee, 1-23 and 1-24-78 1985

HEARING—

EPA: Environment and Conservation in Nonnuclear Energy Research and Development, March 1978 1988

BUDGET RESCISSIONS AND DEFERRALS

OMB issues cumulative report as of January 1978 (Part VIII of this issue) 2156

SEPARATE PARTS OF THIS ISSUE

Part II, HUD/FIA 2062
Part III, HEW/Secy 2084
Part IV, Labor/ESA 2116
Part V, HEW/Secy 1978
Part VI, HEW/FDA 2142
Part VII, Labor 2150
Part VIII, OMB 2156

contents

THE PRESIDENT

Executive Orders

ACTION cooperative volunteers, former; providing for appointment to civilian career service 1917
Public international organizations; removal of certain organizations from list of those entitled to privileges and immunities 1915

Proclamation

Drug Abuse Prevention Week.... 1919

EXECUTIVE AGENCIES

AGRICULTURAL MARKETING SERVICE

Rules

Lemons grown in Calif. and Ariz 1929

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

Rules

Indian tribal farming ventures; payment limitations 1928

Proposed Rules

Dairy indemnity payment program 1958

AGRICULTURE DEPARTMENT

See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Food and Nutrition Service; Forest Service; Rural Electrification Administration; Soil Conservation Service.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Rules

Plant quarantine, domestic: Fire ant, imported 1924

Proposed Rules

Animal and poultry import restrictions: Rinderpest and foot-and-mouth disease; milk and milk products 1962

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM

Notices

Procurement list, 1978; additions and deletions (2 documents) 1980
Procurement list, 1978; additions and deletions; correction 1980

CENSUS BUREAU

Notices

Population census, special; results 1979
Spanish Origin Population for 1980 Census Advisory Committee 1979

CIVIL AERONAUTICS BOARD

Notices

Hearings, etc.:
California-Nevada low-fare route proceeding 1973
International Air Transport Association 1973
K.L.M. Royal Dutch Airlines . 1978
Twin Cities-Las Vegas/Phoenix/San Diego route proceeding 1976

CIVIL SERVICE COMMISSION

Rules

Excepted service: Arms Control and Disarmament Agency 1921

Civil Aeronautics Board 1921
Commerce Department 1921
Energy Department 1922
Federal Home Loan Bank Board 1921
Federal Maritime Commission. 1922
Interior Department 1921
Treasury Department 1922

COMMERCE DEPARTMENT

See Census Bureau; Industry and Trade Administration; Maritime Administration; National Oceanic and Atmospheric Administration.

COMMODITY FUTURES TRADING COMMISSION

Notices

Future contracts; contract designations; 30 industrial stock average; Kansas City Board of Trade; correction 1981

CONSUMER PRODUCT SAFETY COMMISSION

Notices

Chlorofluorocarbons, nonpropellant uses, meeting..... 1981
Interagency Regulatory Liaison Group:
Testing standards and guidelines; inquiry; cross reference 1981

CUSTOMS SERVICE

Rules

Protests; judicial review of administrative decisions..... 1937

Proposed Rules

Air commerce regulations:
Felts Field, Spokane, Wash.; international airport status revocation 1963

Notices

Tariff classification:
Men's or boy's cotton suits, not knit..... 2028

DISEASE CONTROL CENTER

Proposed Rules

Noise dosimeter sets, personal; certification; correction 1968

DRUG ENFORCEMENT ADMINISTRATION

Notices

Registration applications, etc.; controlled substances:
Hoffmann LaRoche Inc..... 2019
Philadelphia Seed Co..... 2019

ECONOMIC REGULATORY ADMINISTRATION

Rules

Administrative procedures and sanctions; oil:
Remedial order, proposed disallowance and order of disallowance notices 1930

Notices

Appeals and applications for exception, etc.; cases filed with Administrative Review Office:
List of applicants, etc. (2 documents)..... 1981
Common carrier pipelines; investigation procedures 1984

EDUCATION OFFICE

Proposed Rules

Emergency school aid:
Grant appeals process; cross reference 1969
Grant appeals process and emergency school aid..... 1969

Notices

Advisory councils and committees; annual report; availability 2009
Meetings:
Vocational Education National Advisory Council 2008
Women's Educational Programs National Advisory Council 2009

EMPLOYMENT AND TRAINING ADMINISTRATION

Notices

Employment transfer and business competition determinations; financial assistance applications..... 2020

EMPLOYMENT STANDARDS ADMINISTRATION

Notices

Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions 2080

ENERGY DEPARTMENT

See Economic Regulatory Administration.

ENVIRONMENTAL PROTECTION AGENCY

Proposed Rules

Air quality implementation plans; approval and promulgation; various States, etc.:
Pennsylvania 1967

Notices

Chlorofluorocarbons; nonpropellant uses; meeting..... 1986
Environmental statements; availability, etc 1988
Interagency Regulatory Liaison Group:
Testing standards and guidelines; inquiry..... 1987
Meetings:
Administrator's Toxic Substances Advisory Committee 1985
Science Advisory Board..... 1985
Nonnuclear energy research and development, environment and conservation; hearing 1988
Pesticide applicator certification and interim certification; State plans:
Missouri 1988
Toxic and hazardous substances control:
Chemicals, candidate list; availability; addendum 1987
Water pollution control; safe drinking water; public water systems designations:
Maryland 1985

FEDERAL COMMUNICATIONS COMMISSION

Rules

Cable television and experimental broadcast services:
Television translator relay stations; use of FM microwave and direct video and audio feed modulation..... 1943

Proposed Rules

Television broadcast stations; table of assignments:
Utah; extension of time 1970

FEDERAL INSURANCE ADMINISTRATION

Rules

Flood Insurance Program, National:
Flood elevation determinations, etc. (36 documents). 2062-2082

FEDERAL MARITIME COMMISSION

Notices

Agreements filed, etc..... 1990
Freight forwarder licenses:
Argent-Cargo, Inc., et al 1990

FEDERAL RESERVE SYSTEM

Notices

Applications, etc.:
First State Bancorp, Inc 1990
Meadows Bankcorp, Inc..... 1990

FEDERAL TRADE COMMISSION

Rules

Sunshine Act; implementation (2 documents) 1937

Notices

Authority delegations:
Consumer Protection Bureau Director; referral of complaints 1991
Dairy industry; future mergers, assessment criteria 1992
Warranties, request for waivers:
Coleman Co., Inc.; denied..... 1991

FOOD AND DRUG ADMINISTRATION

Rules

Animal drugs, feeds, and related products:
Drug applications; reinstatement provisions..... 1941

Gentamicin sufate injection ... 1941
Haloxon drench; correction 1941
Nicarbazin; correction 1942
Biological products:
Blood, whole, and components for transfusion; donor classification labeling requirements 2142
Food additives:
Antitoxidants and/or stabilizers for use in adhesives and rubber articles; correction ... 1941
Sanitizing solutions; use of adjuvant in; correction 1941
Styrene block polymers; correction 1941
Food for human consumption:
Reorganization and recodification; correction 1941
Human drugs:
Antibiotic-containing ophthalmic combination drugs; certification revocation; correction 1941
Medical devices; public information, environmental considerations, etc.:
Intraocular lenses; investigational device exemptions, correction 1940

Proposed Rules

Animal drugs, feeds, and related products:
Chlortetracycline and oxytetracycline; correction 1966
Cosmetics:
Hair dyes, coal tar; warning statements; correction 1966
Human drugs:
Contact lenses; marketing 1966

Notices

Chlorofluorocarbons; nonpropellant uses; meeting 1997
Color additives, petitions filed or withdrawn:
Scott, Glenn M. W 1998
Committees; establishment, renewals, terminations, etc.:
Drugs Bureau advisory committees 1998
Food additives, petitions filed or withdrawn:
Betz Laboratories; correction . 1997
GRAS review; flavoring substances; effective date extended; correction 1995
Human drugs:
Limulus amebocyte lysate as alternative for rabbit pyrogen test; licensing; extension of effective date 1996
Interagency Regulatory Liaison Group:
Testing standards and guidelines; inquiry, cross reference 2003
Medical devices:
AMISAK, amikacin serum assay kit; panel recommendation 1995
EMIT, theophylline assay; panel recommendation 1996
Meetings:
Advisory committees, panels, etc 2002
Health care services 2003
Obstetrics and Gynecology Advisory Committees; meeting change 2003
Nuclear medicine; thyroid gland diseases evaluation; inquiry; correction 2003

FOOD AND NUTRITION SERVICE

Rules

Food stamp program:
State agencies and eligible households participation; method of counting utility costs for excess shelter deduction 1922

Proposed Rules

School lunch program, National:
School fund authorities and food service management companies, etc.; contractual arrangements, etc 1955

FOREST SERVICE

Notices

Boundary descriptions:
Lake Tahoe Basin Management Units; Calif. and Nev .. 1971

GENERAL ACCOUNTING OFFICE

Notices

Regulatory reports review; proposals, approvals, etc. (2 documents) 1994, 1995

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Disease Control Center; Education Office; Food and Drug Administration; Health Care Financing Administration; Health Services Administration; National Institutes of Health; Social Security Administration.

Rules

Nondiscrimination:
Handicapped in federally-assisted programs; enforcement coordination 2116

Proposed Rules

Grant appeals process and emergency school aid 1968

Notices

Human subjects, protection of; research involving children; report availability 2084

HEALTH CARE FINANCING ADMINISTRATION

Notices

Committees; establishment, renewals, terminations, etc.:
Pharmaceutical Reimbursement Advisory 2004

HEALTH SERVICES ADMINISTRATION

Notices

Meetings:
PHS Hospitals ad hoc Advisory Committee 2004

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Insurance Administrator.

INDUSTRY AND TRADE ADMINISTRATION

Notices

Export privileges, actions affecting:
Naya, Yoshihiro, et al 1979

INTERIOR DEPARTMENT

See Land Management Bureau.

INTERNAL REVENUE SERVICE

Notices

Employee benefit plans:
Prohibitions on transactions; exemption proceedings, applications, hearings, etc 2029

INTERNATIONAL TRADE COMMISSION

Notices

Import investigations:
Golf balls, certain molded 2019

INTERSTATE COMMERCE COMMISSION

Rules

Rail carriers:
Boxcars, incentive per diem charges 1954

Notices

Hearing assignments .....
Railroad car service rules, mandatory; exemptions (4 documents) 2041
Rerouting of traffic:
Western Maryland Railway Co 2042

JUSTICE DEPARTMENT

See Drug Enforcement Administration.

LABOR DEPARTMENT

See also Employment and Training Administration; Employment Standards Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Rules

Comprehensive Employment and Training Act:
Youth programs; migrant and seasonal farmworker families 2150
Wage rates, predetermination procedure; Davis-Bacon Information System 1942

Notices

Adjustment assistance:
Profile Industries, Inc 2021

LAND MANAGEMENT BUREAU

Notices

Applications, etc.:
New Mexico (2 documents) 2019
Authority delegations:
District Managers, Ariz..... 2019
Outer Continental Shelf:
Oil and gas leasing..... 2009

MANAGEMENT AND BUDGET OFFICE

Notices

Budget rescissions and deferrals 2156

MARITIME ADMINISTRATION

Rules

Seamen's service awards; additional service provision and service ribbons price change .. 1943

NATIONAL INSTITUTES OF HEALTH

Notices

Meetings:
Allergy and Immunology Study Section et al 2004
Allergy and Infectious Diseases National Advisory Council; correction 2007
Cancer Institute, National; advisory committees..... 2008
Clinical Cancer Education Committee 2004
Diabetes National Advisory Board 2008
Environmental Health Sciences National Advisory Council 2007
Ethics Advisory Board 2007
Recombinant DNA Molecule Program Advisory Committee..... 2007

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Notices

Fishery management plans, preliminary; draft; environmental statements, meetings, etc.:
Trawl fisheries, Gulf of Alaska, et al., corrections 1980

NATIONAL SCIENCE FOUNDATION

Notices

Meetings:
Behavioral and Neural Sciences Advisory Committee... 2022
Environmental Biology Advisory Committee..... 2022
Physiology, Cellular and Molecular Biology Advisory Committee (2 documents).... 2021

NUCLEAR REGULATORY COMMISSION

Rules

Conduct standards:
Foreign gifts and decorations 1929

Notices

Regulatory guides; issuance and availability 2024
Applications, etc.:
Baltimore Gas & Electric Co . 2025
Carolina Power & Light Co 2025
Commonwealth Edison Co. (3 documents) 2026
Consumers Power Co. (2 documents)..... 2027
Duke Power Co. (2 documents)..... 2022, 2027
Florida Power & Light Co..... 2023
Georgia Power Co. et al 2023
Nuclear Engineering Co., Inc.. 2023
Philadelphia Electric Co 2024
Power Authority of State of New York 2024
Southern California Edison Co. et al 2024

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Notices

Interagency Regulatory Liaison Group:
Testing standards and guidelines; inquiry; cross reference 2020
Meetings:
Occupational Safety and Health National Advisory Committee 2020

POSTAL SERVICE

Proposed Rules

Postal Service Manual:
Newspaper receptacles on rural mailboxes 1966

RURAL ELECTRIFICATION ADMINISTRATION

Notices

Environmental statements; availability, etc.:
Plains Electric Generation & Transmission Cooperative, Inc 1971

SCIENCE AND TECHNOLOGY POLICY OFFICE

Notices

Meeting:
Basic Research in the Department of Energy Working Group 2028

SECURITIES AND EXCHANGE COMMISSION

Notices

Valuation of portfolio securities by money market funds; meetings 2028

SOCIAL SECURITY ADMINISTRATION

Rules

Aged, blind, and disabled; supplemental security income, and old-age, survivors, and disability insurance:
Gainful activity, substantial, guidelines 1938

Proposed Rules

Aged, blind, and disabled; supplemental security income, and old-age, survivors, and disability insurance:
Gainful activity, substantial, guidlines 1964

SOIL CONSERVATION SERVICE

Notices

Environmental statements on watershed projects; availability, etc.:
Altoona Pigeon Bluff Water-Based Fish and Wildlife RC&D Measure, Wash 1972
Bear Lake Water-Based Recreation RC&D Measure, Utah 1972

TREASURY DEPARTMENT

See also Customs Service; Internal Revenue Service.

Notices

Antidumping:
Carbon steel plate from Japan. 2031
Pipe and tubing, welded stainless steel, from Japan 2031

VETERANS ADMINISTRATION

Notices

Education benefits; policies and procedures 2035

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

3 CFR

EXECUTIVE ORDERS:
10866 (Revoked by EO 12033).... 1915
10943 (Revoked by EO 12033).... 1915
12033 1915
12034 1917

PROCLAMATIONS:
4544 1919

5 CFR

213 (8 documents) 1921, 1922

7 CFR

271 1922
301 1924
795 1929
910 1928

PROPOSED RULES:
210 1955
760 1958

9 CFR

PROPOSED RULES:
94 1962

10 CFR

0 1929
205 1930

16 CFR

4 (2 documents) 1937

19 CFR

174 1937

19 CFR—Continued

PROPOSED RULES:
6 1963

20 CFR

404 1938
416 1938

PROPOSED RULES:
404 1964
416 1964

21 CFR

Ch. I 1940
25 1940
177 1941
178 (2 documents) 1941
444 1941
514 1941
520 1941
522 1941
556 1942
558 1942
606 2142
640 2142
813 1940

PROPOSED RULES:
310 1966
558 1966
740 1966

24 CFR

1917 (36 documents) 2062-2082

29 CFR

1 1942
94 2150
97 2150

39 CFR

PROPOSED RULES:
111 1966

40 CFR

PROPOSED RULES:
52 1967

42 CFR

PROPOSED RULES:
81 1968

45 CFR

85 2132

PROPOSED RULES:
16 1968
185 (2 documents) 1968, 1969

46 CFR

350 1943

47 CFR

74 1943
78 1943

PROPOSED RULES:
73 1970

49 CFR

1036 1954

CUMULATIVE LIST OF PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

Ch. I 1

3 CFR

EXECUTIVE ORDERS:
10866 (Revoked by EO 12033).... 1915
10943 (Revoked by EO 12033).... 1915
12033 1915
12034 1917

PROCLAMATIONS:
4544 1919

5 CFR

213 (12 documents) 1471-1474, 1921, 1922
511 1473
534 1473

5 CFR—Continued

PROPOSED RULES:
300 1506

7 CFR

2 1289
16 969
215 1059
271 ..... 1611, 1922
301 1924
725 1
795 1929
907 ..... 753, 969, 1785
910 ..... 970, 1060
928 1785
929 1474
959 1475
967 1475
1430 1061

7 CFR—Continued

1435 1476
1468 2
1472 3
1488 1786
1955 1290
1980 1291
2871 3

PROPOSED RULES:
210 1955
760 1958
915 974
945 1096
980 1098
1001 779
1464 1351
1701 ..... 11, 12, 1098
1823 1098

9 CFR

73 1062
113 1478
114 1479

PROPOSED RULES:

92 1506
94 1962
317 1099
381 1099

10 CFR

0 1929
9 10
51 970
Ch. II 1613
205 ..... 1479, 1930
211 1291

12 CFR

204 1615
511 1786

PROPOSED RULES:

7 1800

13 CFR

101 3
124 1489

PROPOSED RULES:

121 12

14 CFR

39 ..... 3, 4, 949, 950, 1293–1301, 1786
71 ..... 5, 6, 951–953, 1303, 1304, 1787
93 6
95 1304
97 1787
121 1789
221 1322
298 1489
302 1323
385 1616

PROPOSED RULES:

39 ..... 13, 974, 975, 1352–1355, 1801
71 1802
75 1802
97 1803

15 CFR

Ch. III 7
301 7
303 753

16 CFR

0 753
3 754
4 ..... 754, 1937
195 ..... 954, 1790

PROPOSED RULES:

4 ..... 779, 1804
13 1506
1303 1804

17 CFR

1 1323
200 755
210 1063
240 1327

PROPOSED RULES:

210 878

18 CFR

PROPOSED RULES:

2 1509
154 1509

19 CFR

153 954
159 ..... 955, 956, 1790
174 1937

PROPOSED RULES:

6 1963
24 1806
153 ..... 1099, 1356–1358

20 CFR

404 1938
416 1938

PROPOSED RULES:

404 1964
416 1964

21 CFR

Ch. I 1940
25 1940
73 1490
177 1941
178 1941
444 1941
514 1941
520 1941
522 1941
540 8
556 1942
558 1942
606 2142
640 2142
813 1940

PROPOSED RULES:

146 1509
182 1509
184 1509
186 1509
310 1966
333 1210
343 1100
511 1100
558 1966
740 ..... 1101, 1966
800 1106
801 1106

22 CFR

51 1791

23 CFR

630 1490
640 1328
642 1328

24 CFR

300 1791
570 1602
1917 2062–2082

PROPOSED RULES:

570 1610

26 CFR

1 1064
11 1064

26 CFR—Continued

PROPOSED RULES:

1 976
20 976

28 CFR

0 1066
43 1066

PROPOSED RULES:

50 1506

29 CFR

1 1942
4 1491
94 2150
97 2150
2615 1334

PROPOSED RULES:

1607 1506
2605 1358
2608 1358

30 CFR

50 1617

PROPOSED RULES:

11 979
70 979
71 979
91 979
211 781

31 CFR

500 1335
515 1336

32 CFR

166 1617
230 1066
505 1336
656 1792
816 1070
861 1070
865 1619
983 1070
984 1070

PROPOSED RULES:

832 980

32A CFR

Ch. VI 8

33 CFR

3 1056
117 ..... 956–958, 1336–1338
203 1434

PROPOSED RULES:

117 ..... 981, 982, 1363

36 CFR

7 1792

PROPOSED RULES:

7 779
223 1628

37 CFR

201 ..... 771, 958
202 ..... 763, 964, 965
203 774
204 774

38 CFR

PROPOSED RULES:

1 1628
2 1635

39 CFR

111 1619

PROPOSED RULES:

111 1966

40 CFR

3 1338
20 1339
35 ..... 1493, 1598
52 ..... 10, 755, 1070, 1341, 1793
60 ..... 10, 1494
61 10
180 ..... 1795, 1796
205 1796
220 1071
227 1071
228 1071
249 1872
458 1341

PROPOSED RULES:

52 ..... 4, 1967
86 1108
124 1256
180 15

41 CFR

5A-1 1347
5A-2 1347
5A-16 1348
5A-72 1348
5A-73 1348
5A-76 1350
15-1 967
15-3 1797
105-61 1798
114-26 761

PROPOSED RULES:

60-3 1506

42 CFR

5 1586
66 1498
122 1253
478 854

42 CFR—Continued

PROPOSED RULES:

81 1968
405 780
449 780
450 780

43 CFR

20 1072

PROPOSED RULES:

4100 1108

45 CFR

46 1758
85 2132
100a 1762

PROPOSED RULES:

16 1968
46 1050
128 1862
137 1865
139 1868
185 ..... 1968, 1969
1351 1363
1606 20
1622 1807
1623 19

46 CFR

188 967
251 1621
280 8
310 9
350 1943

PROPOSED RULES:

283 1363

47 CFR

21 1498
73 1499-1503
74 1943
78 1943
81 1623
83 1623
87 1504
94 1624

PROPOSED RULES:

73 ..... 1510-1516, 1970

49 CFR

172 970
255 1091
266 858
1006 972
1011 1091
1036 1954
1102 1799
1125 1692
1127 1715
1131 1625
1201 1732
1033 ..... 762, 971, 1092
1056 762
1059 972
1201 1799
1240 1799
1241 1799
1243 1799
1308 972

PROPOSED RULES:

171 1369
173 ..... 983, 369
174 983
177 983
178 983
266 1108
391 16
392 ..... 20, 1809
395 ..... 20, 21
523 1370
533 1370
1057 1109
1200 1370
1201 1371
1206 1371
1241 1375
1331 1809

50 CFR

17 968
20 ..... 1093, 1799
21 968
216 ..... 1093, 1627
260 1094
402 870
651 777

PROPOSED RULES:

601 1460
602 1460
603 1460
652 21

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	*Date*	*Pages*	*Date*	*Pages*	*Date*
1-751	Jan. 3	1059-1287	6	1611-1783	11
753-947	4	1289-1469	9	1785-1913	12
949-1057	5	1471-1610	10	1915-2166	13

reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

FCA—Loan policies and operations and funding operations 63179; 12-15-77
FMC—U.S. and Guatemala trade; adjustments to meet conditions unfavorable to shipping 62914; 12-14-77
HEW/FDA—D&C Blue No. 6; listing for use in surgical sutures 62471; 13-13-77

List of Public Laws

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

[3195-01]

Title 3—The President

Executive Order 12033 • **January 10, 1978**

Removal of Certain International Organizations No Longer in Existence From the List of Those Entitled to Privileges and Immunities

By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), and as President of the United States of America, in order to remove the Southeast Asia Treaty Organization and the International Coffee Study Group from the list of international organizations afforded certain privileges and immunities, because those organizations no longer exist, the following are hereby revoked: Executive Order No. 10866 of February 20, 1960; and, Executive Order No. 10943 of May 19, 1961.

Jimmy Carter

THE WHITE HOUSE,
January 10, 1978.

[FR Doc. 78-1125 Filed 1-11-78; 3:56 pm]

[3195-01]

Executive Order 12034 • **January 10, 1978**

Providing for the Appointment of Former ACTION Cooperative Volunteers to the Civilian Career Service

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Any person who is certified by the Director of ACTION as having served satisfactorily as a full-time ACTION Community Volunteer (including Criminal Justice Volunteers, Volunteers in Justice, and VETREACH Volunteers) for a period of service of at least one year under Part C of Title I of the Domestic Volunteer Service Act of 1973 (Public Law 93-113), and who was enrolled as a Volunteer in such program prior to October 1, 1976, shall be eligible for noncompetitive appointment to the Civilian Career Service in the same manner as that provided for Peace Corps Volunteers by Executive Order No. 11103 of April 10, 1963.

SEC. 2. This Order shall be effective 60 days after the date of signature and its applicability to persons who have completed their volunteer service on or before that date shall begin on such effective date.

Jimmy Carter

THE WHITE HOUSE,
January 10, 1978.

[FR Doc. 78-1126 Filed 1-11-78; 3:57 pm]

[3195-01]

PROCLAMATION 4544

Drug Abuse Prevention Week, 1978

By the President of the United States of America

A Proclamation

History teaches us that almost every discovery or invention designed to make our lives a little better can, in the wrong hands, become an instrument of tragedy and suffering. Nothing better illustrates this than the problem of drug abuse in America. When used properly, today's drugs can work miracles that were unimaginable only a short time ago. When they fall into the hands of the immature, the careless, the ignorant, or the despairing, their effects can be devastating.

If we are to rid our society of the problem of drug abuse, we must first rid ourselves of the idea that it is confined to a single group. Drug abusers include the busy executive who cannot function without the aid of heavy drinking, the youth who is addicted to heroin, and the victim of disease who grows dependent upon prescribed medication.

Once we understand that the problem does not derive from a single source, we can appreciate the futility of attempting to seek a single solution. Controlling the availability of drugs and seeking better methods of treating the drug abuser are vital, but unless we also identify and reduce the social pressures which encourage drug abuse, our other efforts will achieve little.

Recognizing this we are focusing our efforts on the search for ways to stop drug abuse before it starts. In particular, we are directing our attention to ways of helping young people understand themselves and their surroundings without the artificial support of dangerous drugs. How successful we will be remains to be seen. But each of us needs the courage to face these hard truths, the insight to recognize that this problem affects us all, and the determination to do something about it.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, in order to inaugurate the 1978 National Drug Abuse Prevention Campaign, do hereby proclaim the week beginning January 15, 1978, as National Drug Abuse Prevention Week.

I call upon government officials, educators, medical professionals, clergy, business and civic leaders to join together in working to create an America where people are no longer tempted to abuse drugs. I call upon parents to examine the ways they respect or abuse drugs in their homes and to remember that their attitudes are likely to shape the attitudes of their children. Most of all, I ask each American to take the time and trouble to learn about drug abuse prevention, to kindle positive values within our families and communities, and to create opportunities for people of all ages and all backgrounds to come together to share their ideas, skills, and resources.

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

Jimmy Carter

[FR Doc. 78-1215 Filed 1-12-78; 11:08 am]

rules and regulations

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

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

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Civil Aeronautics Board

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Secretary (Stenography) to the General Counsel is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3340(g) as added as set out below:

§ 213.3340 Civil Aeronautics Board.

* * * * *

(g) One Secretary (Stenography) to the General Counsel.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-998 Filed 1-12-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Commerce

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The position of Congressional Liaison Officer is excepted from the competitive service under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3314(a)(9) is amended as set out below:

§ 213.3314 Department of Commerce.

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

(9) Four positions of Congressional Liaison Officer.

* * * * *

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-996 Filed 1-12-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Federal Home Loan Bank Board

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Secretary (Stenography) to the Director, Office of Industry Development, is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3354(o) is added as set out below:

§ 213.3354 Federal Home Loan Bank Board.

* * * * *

(o) One Secretary (Stenography) to the Director, Office of Industry Development.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-999 Filed 1-12-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of the Interior

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Confidential Assistant to the Director, Office of Surface Mining Reclamation and Enforcement, is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 3312(o)(2) is added as set out below:

§ 213.3312 Department of the Interior.

* * * * *

(o) *Office of Surface Mining Reclamation and Enforcement.* * * *

(2) One Confidential Assistant to the Director.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-997 Filed 1-12-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

U.S. Arms Control and Disarmament Agency

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Staff Assistant to the General Advisory Committee is excepted under Schedule C because it is confidential in nature.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3364(o) is added as set out below:

§ 213.3364 U.S. Arms Control and Disarmament Agency.

* * * * *

(o) One Staff Assistant to the General Advisory Committee.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-1000 Filed 1-12-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Treasury

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Section 213.3305 is amended to reflect the following organizational title change: Deputy Assistant Secretary (Research and Planning), Office of the Assistant Secretary (International Affairs), to Deputy Assistant Secretary for International Economic Anaylsis, Office of the Assistant Secretary (Economic Policy).

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Sallie E. West, Civil Service Commission, 202-632-3782.

FOR FURTHER INFORMATION ON POSITION CONTENT CONTACT:

Morris A. Simms, Department of Treasury, 202-566-2701.

Accordingly, 5 CFR 213.3305(a)(31) is revised as set out below:

§ 213.3305 Department of Treasury.

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

(31) Deputy Assistant Secretary for International Economic Analysis.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-995 Filed 1-12-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment reestablishes under schedule C five positions which formerly existed at the Federal Power Commission before its functions were absorbed into the Department of Energy on September 30, 1977. The five include one position of Assistant to the Chairman and four positions of Technical Assistant to a Member of the Commission.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(c) (3) and (4) are added as set out below:

§ 213.3331 Department of Energy.

* * * * *

(c) *Federal Energy Regulatory Commission.* * * *

(3) One Assistant to the Chairman.

(4) Four Technical Assistants to Members of the Commission.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-1090 Filed 1-12-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Federal Maritime Commission

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: One position of Administrative Assistant to the Managing Director is revoked under the provisions of § 213.3301(b), because it has been vacant for more than 60 days. In addition, one position of Special Assistant to the Managing Director is excepted under schedule C because it is confidential in nature.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3367(b) is amended and (h) is added as set out below:

§ 213.3367 Federal Maritime Commission.

(b) One Private Secretary to each Commissioner.

* * * * *

(h) One Special Assistant to the Managing Director.

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-1091 Filed 1-12-78; 8:45 am]

[3410-30]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. No. 129]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program

NOTE.—This document originally appeared in the FEDERAL REGISTER for Wednesday, January 11, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See the inside cover of this issue for information about agencies publishing on assigned days of the week.)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the final regulation (7 CFR 271.3(f)) issued on November 30, 1977 (42 FR 60916) which changed the method of counting utility costs for the food stamp excess shelter deduction. This amendment deletes the requirement that State agencies certify within 10 days households documenting increases of more than $25 at initial application or at subsequent certification and modifies the notice requirements imposed by 7 CFR 271.3(f)(9), as amended. This change is in response to the comments.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

William R. Tlucek, Chief, State Agency Operations Branch, Food Stamp Division, 500 12th Street SW., Washington, D.C. 20250 202-447-8360.

SUPPLEMENTAL INFORMATION: On November 30, 1977, there was published a final rule changing the method of counting utility costs from "as paid" to "as billed" for the food stamp excess shelter deduction and requiring expedited certification and processing of interim changes for households reporting increases of more than $25 in heating and utility bills. That regulatory amendment responded to testimony presented at food stamp public hearings sponsored by the Department during October 1977. Eight hundred and sixty-two persons testified at the 17 public hearings, generating a total of 6,152 transcript pages. Testimony relevant to the November 30 rulemaking indicated participant concern over high winter utility costs caused by the unusually harsh winter of 1976-77. To avoid hardships resulting from anticipated increases in utility costs during this winter, the Department published the November 30 amendment. In light of

the need to implement before winter, the Department determined it was contrary to the public interest to give notice of proposed rulemaking. Delaying the rule until this winter was partly or entirely past would have defeated the very purpose of the rulemaking. For the same reasons, this rulemaking is in final form.

However, because the Department believed that public and State agencies and other interested parties should have an opportunity for comment, comments were solicited even though the regulation was published as a final rule.[1] These comments were carefully considered, just as in a normal proposed rulemaking process, and based on these comments the Department is hereby making some modifications in the final rule. Letters received pursuant to the November 30 rulemaking are available for public inspection and copying, during regular business hours, in Room 698, 500 12th Street, SW., Washington, D.C.

This rulemaking generated twenty-one letters; nineteen from State and local welfare agencies and one each from the Peace and Justice Commission of the Catholic Diocese of Albany, N.Y., and the American Public Welfare Association (APWA). In addition, the public file contains relevant letters from Food and Nutrition Service (FNS) Regional Offices and summaries of significant meetings between State and FNS officials. Also contained in the file are State responses to the FNS telegram of November 8, 1977, which provided State Welfare Commissioners and FNS Regional Administrators with advance notice of the nature of the imminent utility, allowance changes.[2]

Generally, State agencies regarded the November 30 regulatory changes as inequitable, untimely, and extremely difficult to implement. Virginia[3] and Texas emphasized that the ten day certification requirement (7 CFR 271.3(f)(2)), for households with increased utility costs, could unfairly divert critical time and resources from households more in need of prompt assistance. Virginia noted that "it should not be assumed that every incident of a $25 increase in shelter costs will automatically constitute an emergency condition." Texas specifically criticized the "preferential treatment to households with higher than normal utility bills over those in need of prompt emergency assistance." In addition to these inequities, South Carolina, Alabama and Mississippi felt it would be "virtually impossible" to meet the ten day deadlines; New York considered it "impossible."

7 CFR 271.3(f)(2) is withdrawn to avoid program inequities, to foster the timely delivery of benefits to all households, and to avoid program dissatisfaction stemming from the promise of timeliness of service which some States may be unable to deliver. Households with increases in utility bills, which "are in need of emergency certification," will still be entitled to preferential treatment in most States (7 CFR 271.4(a)(2)(iii)). Moreover, State agencies will still be required to adjust allotments for households reporting increases in utility billings according to 7 CFR 271.3(f)(6), as amended.

The APWA, along with Missouri, Kansas, South Dakota, Mississippi, Michigan, and New York asserted that notice to the entire caseload, by January 15 (7 CFR 271.3(f)(9), as amended), would inundate local offices with requests for increases in benefits and information; thus increasing waiting lines, delaying normal and emergency certification activities, creating false expectations and unnecessarily increasing participant frustration and dissatisfaction. The APWA stated that mass notice would "swell the numbers of persons contacting food stamp offices, [and] * * * set up many participants for a rather serious disappointment." New York anticipates "from past experience" that the notice would mean that "* * * tens of thousands will seek increased benefits who are not entitled to them * * *."[4] Missouri fears that "* * * notification to all clients will cause the majority of Missouri's total food stamp population to call or come into our county offices during that month."

To resolve these problems, New York recommended that since "* * * only those who pay for their own heat are apt to benefit from a recalculation * * * only they should receive a copy of the notice." Michigan and the APWA endorsed this suggestion. Accordingly, the revised amendment provides for a longer notification period and allows States, with the "capability of identifying and notifying only those households which pay utility costs separately from rent and mortgage payments," to do only that. While modifying the individual notice requirement, the new amendment requires that "States must make every effort to mail the notice with the January 1, ATP [card] * * *." This compromise strikes a fair balance between the participant interest in immediate individual notification and the participant and State agency interests in protecting the timely delivery of benefits to the entire caseload.

Almost all State agencies and the APWA were concerned that the lead time, prior to the January 1 implementation deadline, would not allow adequate opportunity to prepare instructions, train staff, print forms and secure FNS interpretations. However, all State agencies were given advance notice, by telegram of November 8, of the general nature of the imminent regulatory changes. FNS regional offices were advised to provide State agencies with assistance and advice regarding the amendment. More critically, except for 7 CFR 271.3(f) (6) and (8), as amended, the regulatory package does not seem to require extensive preparations.

State agencies were already required to provide a deduction for utility costs based on anticipated payment of bills during the certification period (7 CFR 271.3(c)(1)(iii)(h)). However, we found that some State agencies were erroneously averaging the household's past utility payments to project payments for the current certification period. This practice did not accurately reflect the household's current bills as originally intended by the regulation. Further, State agencies are presently required to make adjustments in benefit levels, based on reported changes (7 CFR 271.3(a)(1)(iii)); to restore lost benefits (7 CFR 271.1(q)) and to assign short certification periods (7 CFR 271.4(a)(4)(iii)(a)). Based on the "need for timely implementation to benefit households experiencing higher utility costs this winter" (42 FR 60917); and on the determination that adequate advance notice was given, State agencies are accountable for failure to timely implement these regulatory changes.

To provide State agencies with notice of changes in the November 30 regulatory language, in advance of the January 1 implementation date, all State Welfare Commissioners were sent telegrams on December 23, 1977. FNS believes that the advance telegraphic warning was justified, eight days prior to the end of the voluntar-

---

[1] Final rulemaking without a notice and comment period is permitted by Federal law. See section 553(b)(B) Administrative Procedures Act.

[2] Three State agencies, the Food Action and Community Education Project of Ohio and the FNS New England regional office wrote letters pertinent to the utility allowance in advance of the FEDERAL REGISTER notice, but after the November 8, telegram.

[3] Each reference to correspondence from a State normally refers to a letter from the department of the State government with overall Food Stamp Program responsibilities.

[4] A December 14, 1977, N.Y. Department of Social Services press release states that, "[r]ather than aiding the citizens that qualify, many will be hurt [by the regulatory amendment.]" That press release notes that "more than 90 percent of New York City's more than one million recipients would be ineligible for the additional food stamp benefits since heat is included in their rent."

ily imposed comment period, to avoid unnecessary waste of State agency time, effort and money, especially in light of the significant and convincing commentary received by the day the telegram was sent.[5] The text of the telegram is published with this amendment.

Continuing the discussion of the comments, there is no significant commentary on provisions concerning projections, "based on the most recent actual [utility] bills" (7 CFR 271.3(f)(2)(ii), as amended) and conversions, from and to the standard allowance (7 CFR 271.3(f)(7), as amended). Those sections remain unchanged by this rulemaking. Using the most recent bills, instead of averaging past costs, should more accurately reflect the household's immediate utility costs and, therefore, food stamp need. Moreover, the provision for conversions to and from the standard allowance gives the household an opportunity to use the most advantageous approach.

Some commentators suggested that the burden of winter increases in utility costs be reduced through universal or regional adjustments in the standard utility allowances, allotment amounts, or purchase requirements. However, these adjustments, because of varying and unpredictable climatic and weather conditions, would benefit many households not needing the additional assistance and not benefit certain households in greater need.

Because residents of Puerto Rico and the Virgin Islands do not experience substantial increases in utility costs in the winter months, these State agencies are exempted from providing individual notices to households. FNS does not believe the expense and burden of providing individual notices, especially considering the size of the food stamp population involved, are warranted. However, Puerto Rico and the Virgin Islands are still required to comply with all other provisions of the amendment, including all other means of publicizing the changes.

Accordingly, § 271.3 of Chapter II, Title 7, Code of Federal Regulations is amended as follows:

1. In § 271.3(f) delete subparagraph 2 and renumber all subsequent subparagraphs accordingly.

2. In the renumbered § 271.3(f)(8) strike all language and substitute the following:

§ 271.3 Household eligibility.

* * * * *

(f) Utility costs deduction.

* * * * *

(8) State agencies shall publicize the provisions of this paragraph in the media in each project area and by a notice posted in each welfare office. The notice shall be posted as soon as possible but no later than December 31, 1977, shall remain posted through April 30, 1978, and shall be in language other than English where appropriate. In addition, the State agency shall notify each of their outreach contact groups. With the exception of Puerto Rico and the Virgin Islands, the State agency shall also notify each participating household individually unless it has the capability of identifying and notifying only those households which pay utility costs separately from rent or mortgage payments. Although States must make every effort to mail the notice with the January 1 ATP card, States unable to mail the notice with the January 1 ATP card must send the notice with an additional January ATP card if such is issued. Otherwise States must mail the notice with the February 1 ATP card. In jurisdictions that satisfy FNS they have no mechanism to mail FNS approved notices, such notices must be handed individually to all households at issuance points starting no later than January 15 and continuing through the end of February.

3. In the renumbered subparagraph § 271.3(f)(9), strike out the words "January 15, 1978" and insert the words "in accordance with this amendment."

(78 Stat. 703, as amended; (7 U.S.C. 2011-2026).)

NOTE.—The Food and Nutrition 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.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: January 10, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-884 Filed 1-10-78; 8:45 am]

[5] Twelve of the twenty-one public or State agency letters were received prior to, or on, December 20, 1977. This final amendment reflects all comments received during the full comment period. This amendment differs from the telegraphic advance warning by allowing for State agency notice after January 15, 1978.

[3410-34]

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

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Imported Fire Ant

MISCELLANEOUS AMENDMENTS TO REGULATED AREAS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the supplemental regulations which list generally infested regulated areas and suppressive regulated areas for purposes of the Imported Fire Ant Quarantine by adding areas in Alabama, Mississippi, South Carolina, and Texas to the list of generally infested regulated areas and by deleting an area in Texas from the list of suppressive regulated areas. These additions are necessary in order to prevent the spread of the imported fire ant. The deletion is necessary because the imported fire ant has been eradicated from the area deleted and it is not needed to regulate such area in order to prevent the spread of the imported fire ant.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

H. I. Rainwater, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, Md. 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION: The imported fire ant (*Solenopsis* spp.) is an insect that interferes with farming operations, can cause damage to certain crops, and is a pest of livestock and pets, as well as people, in rural and urban areas. In the nine States quarantined for imported fire ant, areas have been designated as generally infested regulated areas or suppressive regulated areas. Such designations relate to specified restrictions with respect to the movement of certain articles in order to prevent the spread of the imported fire ant. Regulated areas where eradication of infestation is undertaken as an objective are designated as suppressive areas.

Surveys conducted by the United States Department of Agriculture and State agencies have established that the imported fire ant has spread or is likely to spread to certain areas beyond the outer perimeter of the generally infested areas. Therefore, in order to prevent the spread of imported fire ant, generally infested areas are added or extended in the following counties: Colbert, Lawrence, and Limestone in Alabama; Bolivar, Carroll, Lafayette, and Yalobusha in Mississippi; Darlington, Dillon, Florence, and Marlboro in South Carolina; Atascosa, Bastrop, Bee, Calhoun, Cass, De Witt, Ellis, Frio, Gillespie, Goliad, Gonzales, Grayson, Hays, Kerr, Lee, Leon, Limestone, Refugio, Travis, Upshur, Williamson, and Wilson in Texas.

Also, such surveys have established that the imported fire ant has been eradicated in the previously suppressive regulated area in Bowie County, Tex., and, that it is not necessary to regulate such area in order to prevent the spread of the imported fire ant. Therefore, such portion of Bowie County, Tex., is deleted from the list of suppressive regulated areas.

Accordingly, the list of regulated areas specifically designated as generally infested areas and suppressive areas with respect to the States of Alabama, Mississippi, South Carolina, and Texas in § 301.81-2a of the Imported Fire Ant Quarantine regulations (7 CFR 301.81-2a) is hereby amended to read as set forth below:

§ 301.81-2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as imported fire ant regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

ALABAMA

(1) *Generally infested areas.*

Autauga County. The entire county.
Baldwin County. The entire county.
Barbour County. The entire county.
Bibb County. The entire county.
Blount County. The entire county.
Bullock County. The entire county.
Butler County. The entire county.
Calhoun County. The entire county.
Chambers County. The entire county.
Cherokee County. T. 10 S., R. 8 and 9 E.; T. 11 S., R. 8, 9, 10, 11, and 12 E.; T. 12 S., R. 8, 9, 10, 11, and 12 E.
Chilton County. The entire county.
Choctaw County. The entire county.
Clarke County. The entire county.
Clay County. The entire county.
Cleburne County. The entire county.
Coffee County. The entire county.
Colbert County. That portion of the county lying south of the north line of T. 4 S.
Conecuh County. The entire county.
Coosa County. The entire county.
Covington County. The entire county.
Crenshaw County. The entire county.
Cullman County. The entire county.
Dale County. The entire county.
Dallas County. The entire county.
Elmore County. The entire county.
Escambia County. The entire county.
Etowah County. The entire county.
Fayette County. The entire county.
Franklin County. The entire county.
Geneva County. The entire county.
Greene County. The entire county.
Hale County. The entire county.
Henry County. The entire county.
Houston County. The entire county.
Jefferson County. The entire county.
Lamar County. The entire county.
Lawrence County. T. 4, 5, 6, 7, and 8 S., El/2, R. 7 W.; T. 4, 5, 6, 7, and 8 S., R. 6 W.; S½, T. 7 S., R. 7, 8 and 9 W.; T. 8 S., R. 7, 8, and 9 W.
Lee County. The entire county.
Limestone County. S½, T. 3 S., R. 4, 5, and 6 W.; T. 4 S., R. 4, 5, and 6 W.; T. 5 S., R. 4 W.
Lowndes County. The entire county.
Macon County. The entire county.
Marengo County. The entire county.
Marion County. The entire county.
Marshall County. T. 7, S., R. 1. E.; T. 8 S., R. 1, 2, 3 E.; T. 9 S., R. 2, 3, and 4 E.; T. 10 S., R. 2, 3, 4, and 5 E.; T. 11 S., R. 3 E.
Mobile County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Morgan County. T. 4 S., R. 5 W.; T. 5 S., R. 4 and 5 W.; T. 6 S., R. 4 and 5 W.; and that portion of the county lying south of the north line of T. 7 S.
Perry County. The entire county.
Pickens County. The entire county.
Pike County. The entire county.
Randolph County. The entire county.
Russell County. The entire county.
St. Clair County. The entire county.
Shelby County. The entire county.
Sumter County. The entire county.
Talladega County. The entire county.
Tallapoosa County. The entire county.
Tuscaloosa County. The entire county.
Walker County. The entire county.
Washington County. The entire county.
Wilcox County. The entire county.
Winston County. The entire county.

(2) *Suppressive area.*

Lauderdale County. Sec. 8, T. 1 S., R.7 W.

* * * * *

MISSISSIPPI

(1) *Generally infested areas.*

Adams County. The entire county.
Amite County. The entire county.
Attala County. The entire county.
Bolivar County. T. 20 N., R. 6, 7, and 8 W.; T. 21 N., R. 5, 6, and 7 W., and S½, T. 22 N., R. 6 W.
Carroll County. That portion of the county lying south of the north line of T. 18 N., and the portion of the county lying east of the west line of R. 4 E.
Calhoun County. The entire county.
Chickasaw County. The entire county.
Choctaw County. The entire county.
Claiborne County. The entire county.
Clarke County. The entire county.
Clay County. The entire county.
Copiah County. The entire county.
Covington County. The entire county.
Forrest County. The entire county.
Franklin County. The entire county.
George County. The entire county.
Greene County. The entire county.
Grenada County. N½, T. 21 N., R. 4 E.; S½, T. 22 N., R. 4 E., and that portion of the county lying east of the west line of R. 5 E.
Hancock County. The entire county.
Harrison County. The entire county.
Hinds County. The entire county.
Holmes County. The entire county.
Humphreys County. The entire county.
Issaquena County. The entire county.
Itawamba County. The entire county.
Jackson County. The entire county.
Jasper County. The entire county.
Jefferson County. The entire county.
Jefferson Davis County. The entire county.
Jones County. The entire county.
Kemper County. The entire county.
Lafayette County. That portion of the county lying south of the north line of T. 10 S.; T. 9 S., R. 1, 2, and E½, R. 3 W.; T. 8 S., R. 1 W.; T. 7 S., R. 1 W., and SE¼, T. 6 S., R. 3 W.
Lamar County. The entire county.
Lauderdale County. The entire county.
Lawrence County. The entire county.
Leake County. The entire county.
Lee County. The entire county.
Leflore County. That portion of T. 16 N., R. 2 W., lying in the county; S½ T. 17 N., R. 2 W.; and N½ T. 19 N., R. 2 W.
Lincoln County. The entire county.
Lowndes County. The entire county.
Madison County. The entire county.
Marion County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Neshoba County. The entire county.
Newton County. The entire county.
Noxubee County. The entire county.
Oktibbeha County. The entire county.
Pearl River County. The entire county.
Perry County. The entire county.
Pike County. The entire county.
Pontotoc County. The entire county.
Prentiss County. That portion of the county lying south of the north line of T. 5 S.; and that portion of T. 4 S., R. 9 E. lying in the county.
Rankin County. The entire county.
Scott County. The entire county.
Sharkey County. The entire county.
Simpson County. The entire county.
Smith County. The entire county.
Stone County. The entire county.
Sunflower County. T. 17 N., R. 4 W.; That portion of T. 17 N., R. 3 W., lying in the county; T. 18 N., R. 3 W.; T. 19 N., R. 5 W.; and T. 20 N., R. 5 W.
Tippah County. That portion of the county lying south of the north line of T. 4 S., and that portion of T., 3 S., R. 5 E. lying in the county.
Tishomingo County. That portion of the county lying south of the north line of T. 5 S.
Union County. The entire county.
Walthall County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Wayne County. The entire county.
Webster County. The entire county.
Wilkinson County. The entire county.
Winston County. The entire county.
Yalobusha County. All of T. 10, 11, and 12 S., R. 3 and 4 W., lying in the county; and all of T. 23, 24, and 25 N., R. 5, 6, and 7 E., lying in the county.
Yazoo County. The entire county.

(2) *Suppressive areas.* None.

* * * * *

SOUTH CAROLINA

(1) *Generally infested area.*

Aiken County. That portion of the county bounded by a line beginning at a point where the Savannah River and the Aiken-Edgefield County line junction, thence northeast along said county line to its intersection with the South Fork Edisto River, thence southeast along said river to its junction with the Aiken-Barnwell County line, thence southwest along said county line to its intersection with U.S. Highway 278, thence west along said highway to its junction with State Primary Highway 28, thence west along said highway to its junction with the Savannah River, thence northwest along said river to the point of beginning.

Allendale County. That portion of the county bounded by a line beginning at a point where State Primary Highway 3 intersects the Allendale-Barnwell County line, thence east along said county line to its junction with the Salkehatchie River, thence southeast along said river to its junction with the Allendale-Hampton County line, thence southwest along said county line to its junction with the Southern Railway, thence north along said railway to its intersection with State Secondary Highway 47, thence northwest along said highway to its intersection with State Primary Highway 3, thence north along said highway to the point of beginning.

Bamberg County. The entire county.

Barnwell County. That portion of the county bounded by a line beginning at a

point where State Primary Highway 39 intersects the South Fork Edisto River, thence east along said river to its junction with the Barnwell-Bamberg County line, thence south along said county line to its junction with the Barnwell-Allendale County line, thence west along said county line to its intersection with State Primary Highway 3, thence northeast along said highway to its junction with U.S. Highway 278, thence north along said highway to its junction with State Primary Highway 37 thence north along said highway to its junction with State Primary Highway 39, thence northeast along said highway to the point of beginning.

Beaufort County. The entire county.

Berkeley County. The entire county.

Calhoun County. The entire county.

Charleston County. The entire county.

Clarendon County. The entire county.

Colleton County. The entire county.

Darlington County. That portion of the county bounded by a line beginning at a point where U.S. Highway 401 intersects the Darlington-Lee County line at Lynches River, thence northwest and northeast along said county line to its intersection with State Secondary Highway 131, thence east along said highway to its intersection with State Secondary Highway 290, thence easterly along said highway to its junction with U.S. Highway 401, thence northeast and north along said highway to its intersection with the Great Pee Dee River, thence southerly along said river to its junction with the Darlington-Florence County line, thence southwesterly along said county line to its junction with the Lynches River, thence northwest along said river to the point of beginning.

Dillon County. That portion of the county bounded by a line beginning at a point where State Primary Highway 34 intersects the Dillon-Marlboro County line, thence northeast along said county line to its intersection with State Primary Highway 9, thence southeast and east along said highway to its intersection with State Secondary Highway 23, thence northeasterly along said highway to its intersection with the Little Pee Dee River, thence southeasterly along said river to its intersection with U.S. Highway 301, thence southwesterly along said highway to its intersection with the Dillon, South Carolina City limits, thence east and south along said city limits to its intersection with State Primary Highway 57, thence south along said highway to its junction with State Secondary Highway 46, thence south along said highway to its junction with State Secondary Highway 92, thence southwest along said highway to its intersection with the Dillon-Marion County line, thence southwesterly, northwesterly, and northeasterly along the Dillon County line to the point of beginning.

Dorchester County. The entire county.

Edgefield County. That portion of the county bounded by a line beginning at a point where State Primary Highway 23 intersects the Edgefield-McCormick County line, thence east along said highway to its intersection with State Secondary Highway 10, thence southeast along said highway to its junction with U.S. Highway 25, thence southeast along said highway to its junction with State Primary Highway 19, thence southeast along said highway to its intersection with the Edgefield-Aiken County line, thence southwest along said county line to its junction with the Savannah River, thence northwest along said river to its junction with the Edgefield-McCormick County line, thence north along said county line to the point of beginning.

Fairfield County. That portion of the county lying south of a line beginning at a point where State Primary Highway 34 intersects the Broad River, thence east along said highway to its junction with State Primary Highway 200, thence east along said highway to its junction with State Secondary Highway 41, thence east along said highway to its intersection with Little Wateree Creek, thence northeast along said creek to its junction with the Fairfield-Lancaster County line, where the line ends.

Florence County. That portion of the county bounded by a line beginning at a point where the Lynches River junction with the Florence-Darlington County line, thence northeasterly along said county line to its junction with the Great Pee Dee River, thence southeasterly along said river to its junctions with Jefferies Creek, thence northwest along said creek to its junction with Claussen Creek, thence west along said creek to its intersection with State Primary Highway 327, thence southerly and southwesterly along said highway to its junction with U.S. Highway 52, thence south along said highway to its junction with State Primary Highway 541, thence westerly along said highway to its intersection with State Primary Highway 403, thence northwesterly along said highway to its intersection with the Florence-Sumter County line, thence northeast along said line to its junction with the Lynches River, thence northwesterly along said river to the point of beginning.

Georgetown County. The entire county.

Hampton County. The entire county.

Horry County. The entire county.

Jasper County. The entire county.

Kershaw County. That portion of the county lying west and south of a line beginning at a point where the Kershaw-Lancaster County line junctions with State Secondary Highway 58, thence southerly along said highway to its junction with U.S. Highway 521, thence southerly along said highway to its intersection with State Primary Highway 34, thence easterly along said highway to its intersection with the Kershaw-Lee County line, where the line ends.

Lee County. That portion of the county bounded by a line beginning at a point where State Primary Highway 34 intersects the Lee-Kershaw County line, thence easterly along said highway to its intersection with the Lee-Darlington County line, thence southerly along said county line to its intersection with U.S. Highway 401, thence southwest along said highway to its intersection with State Primary Highway 341, thence northwest along said highway to its junction with State Secondary Highway 34, thence westerly along said highway to its junction with U.S. Highway 15, thence southwesterly along said highway to its junction with State Primary Highway 441, thence southwesterly along said highway to its junction with State Secondary Highway 25, thence northwesterly along said highway to its intersection with the Lee-Kershaw County line, thence northeast along said line to the point of beginning.

Lexington County. That portion of the county lying east of a line beginning at a point where the Lexington-Richland County line intersects State Primary Highway 6, thence south along said highway to its junction with State Primary Highway 215, thence south along said highway to its intersection with the Lexington-Aiken County line, where the line ends.

Marion County. That portion of the county bounded by a line beginning at a point where the Great Pee Dee River junctions with the Marion-Dillon County line, thence northeasterly along said county line to its intersection with U.S. Highway 501, thence southerly along said highway to its intersection with State Primary Highway 41A, thence south along said highway to its junction with State Secondary Highway 9, thence southwest along said highway to its junction with State Secondary Highway 34, thence northwest along said highway to its junction with State Secondary Highway 25, thence northeast along said highway to its intersection with U.S. Highway 76 By-pass, thence northwest along said highway to its junction with U.S. Highway 76, thence northwesterly along said highway to its intersection with the Great Pee Dee River, thence northerly along said river to the point of beginning; that portion of the county lying south of U.S. Highway 378.

Marlboro County. That portion of the county bounded by a line beginning at a point where State Secondary Highway 611 junctions with the Great Pee Dee River, thence east along said highway to its junction with State Secondary Highway 57, thence north along said highway to its junction with State Secondary Highway 29, thence northeast and east along said highway to its junction with State Secondary Highway 23, thence east along said highway to its intersection with the Marlboro-Dillon County line, thence south along said county line to its junction with the Great Pee Dee River, thence northwesterly along said river to the point of beginning.

McCormick County. That portion of the county bounded by a line beginning at a point where U.S. Highway 221 intersects the Savannah River, thence northeast along said highway to its junction with State Primary Highway 28, thence southeast along said highway to its junction with State Secondary Highway 88, thence northeast along said highway to its intersection with the McCormick-Edgefield County line, thence southeasterly and southwesterly along said county line to its junction with the Savannah River, thence northwesterly along said river to the point of beginning.

Newberry County. That portion of the county bounded by a line beginning at the intersection of Cannons Creek and U.S. Highway 176, thence east along said creek to its junction with the Broad River, thence south along said river to its junction with the Newberry-Richland County line, thence southwest along said county line to its intersection with U.S. Highway 176, thence northwest along said highway to the point of beginning.

Orangeburg County. The entire county.

Richland County. The entire county.

Sumter County. The entire county.

Williamsburg County. That portion of the county bounded by a line beginning at a point where the Seaboard Coast Line Railroad intersects the Williamsburg-Florence County line, thence southwest along said railroad to its intersection with U.S. Highway 521, thence southeasterly along said highway to its junction with State Secondary Highway 30, thence northeast along said highway to its junction with State Secondary Highway 254, thence northeasterly along said highway to its intersection with State Primary Highway 527, thence southeasterly along said highway to its junction with State Secondary Highway 383, thence northeast and east along said highway to its

intersection with the Seaboard Coast Line Railroad, thence northeasterly along said railroad to its intersection with State Primary Highway 512, thence southeast along said highway to its intersection with the Williamsburg-Georgetown County line, thence in a clockwise direction along the Williamsburg County line to the point of beginning.

(2) *Suppressive areas.* None.

TEXAS

(1) *Generally infested area.*

Anderson County. That portion of the county bounded by a line beginning at the point where U.S. Highway 287 intersects U.S. Highway 84, thence easterly along said highway to the Anderson-Cherokee County line, thence southeasterly along said county line to its junction with the Anderson-Houston County line, thence westerly along said county line to its intersection with U.S. Highway 287, thence northwesterly along said highway to the point of beginning, including all of the city of Palestine and all of the town of Elkhart.

Angelina County. The entire county.

Atascosa County. The entire county.

Austin County. The entire county.

Bandera County. That portion of the county bounded by a line beginning at a point where Texas Highway 16 intersects the Bandera-Kerr County line, thence southeasterly along said county line to its junction with the Bandera-Kendall County line, thence southeasterly along said county line to its junction with the Bandera-Bexar County line, thence southwesterly along said county line to its junction with the Bandera-Medina County line, thence southwesterly, westerly, northerly, and westerly along said county line to its intersection with Farm to Market Road 689, thence northerly along said road to its intersection with Texas Highway 16, thence northwesterly along said highway to the point of beginning, including the entire towns of Bandera and Medina.

Bastrop County. The entire county.

Bee County. That portion of the county bounded by a line beginning at a point where U.S. Highway 59 intersects with Bee-Live Oak County line, thence easterly along said highway to its intersection with Farm to Market Road 351, thence southeasterly along said road to its junction with State Highway 202, thence easterly along said highway to its intersection with the Bee-Refugio County line, thence southwesterly along said county line to its junction with the Bee-San Patricio County line, thence southwesterly and northwesterly along said county line to its junction with the Bee-Live Oak County line, thence northeasterly and northwesterly along said county line to the point of beginning, but excluding the city of Beeville.

Bell County. That portion of the county lying east of a line beginning at a point where State Highway 317 intersects the Bell-McLennan County line, thence southwesterly along said highway to its junction with Interstate 35, thence southwesterly along Interstate 35 to the Bell-Williamson County line, including the city of Belton.

Bexar County. The entire county.

Blanco County. That portion of the county lying south of a line beginning at a point where the Blanco-Gillespie County line is intersected by U.S. Highway 290, thence easterly along said highway to its merger with U.S. Highway 281, thence southerly along U.S. Highway 281/290 and continuing southerly along U.S. Highway 281 to its junction with Farm to Market Road 165, thence northeasterly along said Farm to Market Road to the Blanco-Hayes County line, but excluding the city of Johnson City.

Bowie County. That portion of the county bounded by a line beginning at a point where Farm to Market Road 2148 intersects Interstate Highway 30, thence easterly along said highway to its intersection with the Texas-Arkansas State line, thence southerly along said State line to its intersection with Sulphur River, thence northwesterly and westerly along said river to its intersection with U.S. Highway 59, thence northerly along said highway to its junction with Farm to Market Road 2148, thence northerly along said road to the point of beginning.

Brazoria County. The entire county.

Brazos County. The entire county.

Burleson County. The entire county.

Caldwell County. The entire county.

Calhoun County. The entire county.

Camp County. That area within a circle having a radius of 3 miles with the center at the intersection of loop 238 and State Highway 11.

Cass County. That portion of the county lying east and south of a line beginning at a point where U.S. Highway 59 intersects the Cass-Marion County line, thence northerly and northeasterly along said highway to its intersection with State Highway 77, thence southeasterly along said highway to its intersection with the Louisiana-Texas-Arkansas State line, but excluding the cities of Linden and Atlanta.

Chambers County. The entire county.

Cherokee County. The entire county.

Collin County. The entire county.

Colorado County. The entire county.

Comal County. The entire county.

Dallas County. The entire county.

Denton County. The entire county.

De Witt County. That portion of the county bounded by a line beginning where U.S. Highway 87 intersects the De Witt-Gonzales County line, thence northeasterly along said county line to its junction with the De Witt-Lavaca County line, thence southeasterly along said county line to its junction with the De Witt-Victoria County line, thence southwesterly along said county line to its junction with the De Witt-Goliad County line, thence northwesterly along said county line to its intersection with U.S. Highway 183, thence northerly along said highway to its junction with U.S. Highway 87, thence northwesterly along said highway to the point of beginning, but excluding the town of Westhoff.

Ellis County. That portion of the county lying north of U.S. Highway 287 including the cities of Midlothian and Ennis, but excluding the city of Waxahachie.

Falls County. That area within a circle having a radius of 3 miles with the center at the junction of the State Highway 7 and U.S. Highway 77.

Fayette County. The entire county.

Fort Bend County. The entire county.

Freestone County. That area within a circle having a radius of 3 miles with the center at the intersection of Farm to Market road 80 and Main Street in the city of Teague.

Frio County. That portion of the county beginning at a point where Farm to Market Road 462 intersects the Frio-Median County line, thence east along said county line to its junction with the Frio-Atascosa County line, thence south along said county line to its junction with the Frio-LaSalle County line, thence west along said county line to its intersection with Farm to Market Road 1582, thence northwest along said road to its junction with U.S Highway 81, thence northeast along said highway to its intersection with Farm to Market Road 140, thence northwesterly along said road to its intersection with Interstate Highway 35, thence northerly along said highway to its intersection with Farm to Market Road 462, thence northwest along said road to the point of beginning, including the entire city of Pearsall and the town of Moore.

Galveston County. The entire county.

Gillespie County. The entire county.

Goliad County. That portion of the county bounded by a line beginning where State Highway 239 intersects the Goliad-Karnes County line, thence northeasterly along said county line to its junction with the Goliad-De Witt County line, thence northeasterly and southeasterly along said county line to its junction with the Goliad-Victoria County line, thence southeasterly and southerly along said county line to its junction with the Goliad-Refugio County line, thence southwesterly along said county line to its intersection with U.S. Highway 183, thence northwesterly along said highway to its intersection with U.S. Highway 59, thence westerly along said highway to its junction with State Highway 239, thence northwesterly along said highway to point of beginning.

Gonzales County. The entire county.

Grayson County. The portion of the county lying south of a line beginning at a point where State Highway 56 intersects the Cooke-Grayson County line, thence east along said highway to its junction with U.S. Highway 82, thence east along said highway to its intersection with the Grayson-Fannin county line, but excluding the city of Sherman and the towns of Whitesboro, Southmayd, and Bells.

Gregg County. The entire county.

Grimes County. The entire county.

Guadalupe County. The entire county.

Hardin County. The entire county.

Harris County. The entire county.

Harrison County. The entire county.

Hays County. That area within a semicircle having a radius of 4 miles with the focal point at the intersection of Farm to Market Road 32 and the Hays-Comal County line.

Houston County. The entire county.

Jackson County. The entire county.

Jasper County. The entire county.

Jefferson County. The entire county.

Jim Wells County. That area within a circle having a radius 5 miles with the center at the intersection of State Highway 359 and U.S. Highway 281.

Kendall County. The entire county.

Kerr County. That portion of the county bounded by a line beginning at the meeting point of Kerr-Edwards-Kimble County line, thence east along Kerr-Kimble County line to its junction with the Kerr-Gillespie County line, thence south and east along Kerr-Gillespie County line to its junction with the Kerr-Kendall County line, thence south along said county line to its junction with Kerr-Bandera County line, thence northwest and west along the said county line to its intersection with State Highway 16, thence northeasterly along said highway to its intersection with State Highway 27, thence northwest along said highway to its intersection with State Highway 41, thence southwest along said highway to its intersection with the Kerr-Real County line,

thence north and west along said county line to its junction with the Kerr-Edwards County line, thence north along said county line to point of beginning, including the towns of Mountain Home, Ingram, and the entire city of Kerrville.

Lavaca County. The entire county.

Lee County. The entire county.

Leon County. The entire county.

Liberty County. The entire county.

Limestone County. The entire county.

Madison County. The entire county.

Marion County. That portion of the county lying east of U.S. Highway 59, including the city of Jefferson.

Matagorda County. The entire county.

Medina County. That portion of the county bounded by a line beginning at a point where Texas Farm to Market Road 689 intersects the Medina-Bandera County line, thence easterly, southerly, and northeasterly along said county line to its junction with the Medina-Bexar County line, thence south along said county line to its junction with the Medina-Frio County line, thence west along said county line to its intersection with Texas Farm to Market Road 462, thence northwest and north along said road to its intersection with U.S. Highway 90, thence east along said highway to its junction with Texas Farm to Market Road 689, thence northerly along said highway to the point of beginning, excluding the towns of Yancey and Hondo.

Milan County. The entire county.

Montgomery County. The entire county.

Nacogdoches County. The entire county.

Navarro County. That area within a circle having a radius of 3 miles with the focal point at the intersection of Texas Highway 31 and Farm to Market Road 1129.

Newton County. The entire county.

Nueces County. The entire county.

Orange County. The entire county.

Panola County. The entire county.

Polk County. The entire county.

Refugio County. That portion of the county bounded by a line beginning at a point where State Highway 239 intersects the Goliad-Refugio County line, thence northeast along said county line to its junction with the Refugio-Victoria County line, thence east and southeast along said county line to its junction with the Refugio-Calhoun County line, and continuing along said county line to its junction with the Refugio-Aransas County line, thence westerly along said county line to its intersection with State Highway 35, thence northerly along said highway to its intersection with Farm to Market Road 774, thence westerly along said road to its junction with U.S. Highway 77, thence northerly along said highway to its junction with U.S. Highway 183, thence northwesterly along said highway to its intersection with Goliad-Refugio County lines, thence northeasterly along said county line to the point of beginning but excluding the city of Refugio.

Robertson County. The entire county.

Rusk County. The entire county.

Sabine County. The entire county.

San Augustine County. The entire county.

San Jacinto County. The entire county.

San Patricio County. The entire county.

Shelby County. The entire county.

Smith County. The entire county.

Tarrant County. That portion of the county lying east of a line beginning at a point where Farm to Market Road 718 intersects the Tarrant-Wise County line, thence southeasterly along said road to its junction with State Highway 496, thence southerly along said highway to its intersection with Interstate Highway 35-W, thence southerly along said highway to its intersection with the Tarrant-Johnson County line, including that portion of the city of Ft. Worth lying east of the above described line.

Travis County. The entire county.

Trinity County. The entire county.

Tyler County. The entire county.

Upshur County. That portion of the county lying south of a line beginning at a point where State Highway 154 intersects the Wood-Upshur County line, thence easterly along said highway to its intersection to Farm to Market Road 726, thence northeasterly along said road to its intersection with the Upshur-Harrison County line, including the city of Gilmer.

Victoria County. The entire county.

Walker County. The entire county.

Waller County. The entire county.

Washington County. The entire county.

Wharton County. The entire county.

Williamson County. The entire county.

Wilson County. That portion of the county bounded by a line beginning at a point where Farm to Market Road 536 intersects the meeting point of the Atascosa-Bexar-Wilson County lines, thence northeast along the Bexar-Wilson County line to its junction with the Bexar-Guadalupe County line, thence south and southeast along said county line to its intersection with State Highway 123, thence south along said highway to its intersection with the Wilson-Karnes County line, thence southwest along said county line to its junction with the Wilson-Atascosa County line, thence northwest along said county line to point of beginning, but excluding the city of Stockdale.

Wood County. That portion of the county lying south of the city limits of Alba, State Highway 182 and State Highway 154, but excluding the cities of Alba and Quitman.

(2) *Suppressive areas.* None.

(Secs. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33 (7 U.S.C. 161, 162, 150ee); 37 FR 28464, 28477 as amended; 38 FR 19141; 7 CFR 301.81-2, 39 FR 21117.)

The Deputy Administrator of the Plant Protection and Quarantine Programs has deterimined that the imported fire ant has been found or there is reason to believe it is present in the civil divisions and parts of civil divisions listed as regulated areas or that it is necessary to regulate such areas because of their proximity to imported fire ant infested localities. Further, the Deputy Administrator has determined that the areas designated as suppressive and generally infested areas are eligible for such designation under § 301.81-1.

The Deputy Administrator has also determined that each of the quarantined States, wherein only portions of the State have been designated as regulated areas, has adopted and is enforcing a quarantine or regulation which imposes restrictions on intrastate movement of the regulated articles which are substantially the same as the restrictions on interstate movement of such articles imposed by the quarantine and regulations in this subpart, and that designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of the imported fire ant. Therefore, such civil divisions and parts of civil divisions listed above are designated as imported fire ant regulated areas.

To the extent that this revision relieves certain restrictions presently imposed, it should be made effective promptly in order to be of maximum benefit to persons subject to the restrictions which are being relieved. To the extent that this revision imposes restrictions that are necessary in order to prevent the spread of the imported fire ant, they should be made effective promptly to accomplish their purpose in the public interest. Also, this action is based on surveys by the United States Department of Agriculture and State agencies, and it does not appear that additional information would be made available to the Department by public participation in rulemaking proceedings on this amendment.

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

NOTE.—The Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., this 9th day of January 1978.

T. G. DARLING,
Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 78-963 Filed 1-12-78; 8:45 am]

[3410-05]

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

PART 795—PAYMENT LIMITATION

Change To Include Exemption of Indian Tribal Farming Ventures From Payment Limitation

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

ACTION: Final rule.

SUMMARY: This amendment exempts Indian tribal ventures from the payment limitation of the Government farm program payments where a responsible official of the Bureau of Indian Affairs or the Indian Tribal Council certifies that an amount no

more than the program payment limitation shall accrue directly or indirectly to an individual Indian and the State ASC committee reviews and approves the case. This change is needed to clarify the status of Indian Tribal ventures.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Coplin, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-4542.

SUPPLEMENTARY INFORMATION: This change will be for the benefit of the producers affected. Since payment limitation cases are currently being submitted for review, it is essential that this amendment be effective as soon as possible. It is, therefore, found upon good cause that compliance with the notice of proposed rulemaking, public participation procedure, and 30-day effective date provisions of 5 U.S.C. 553 is unnecessary, impracticable, and contrary to public interest. Therefore, this amendment is being issued without compliance with such procedure.

7 CFR 795.2 is amended by adding paragraph (e) to read as follows:

§ 795.2 Applicability.

* * * * *

(e) The limitation shall not be applicable to payments made to Indian tribal ventures for participating in the programs where a responsible official of the Bureau of Indian Affairs or the Indian Tribal Council certifies that no more than the program payment limitation shall accrue directly or indirectly to any individual Indian and the State ASC committee reviews and approves the case.

(Title 1, Pub. L. 91-524, 84 Stat. 1367, as amended by Pub. L. 93-86, 87 Stat. 221 (7 U.S.C. 1307); Title 1, Pub. L. 94-214, 90 Stat. 181 (7 U.S.C. 428 note).)

Signed in Washington, D.C., on January 4, 1978.

STEWART N. SMITH,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-892 Filed 1-12-78; 8:45 am]

[3410-02]

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

[Lemon Reg. 128]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period January 15-21, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: January 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, 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 the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on January 10, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues steady on 115's and smaller, easier on 95's and larger.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

910.428 Lemon Regulation 128.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period January 15, 1978, through January 21, 1978, is established at 190,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: January 11, 1978.

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

[FR Doc. 78-1218 Filed 1-11-78; 11:19 am]

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 0—CONDUCT OF EMPLOYEES

Foreign Gifts and Decorations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations so that they refer to the recently enacted amendments in Pub. L. 95-105 to the Foreign Gifts and Decorations Act of 1966.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

William C. Parler, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7527.

SUPPLEMENTARY INFORMATION: Because this amendment merely updates a reference to a newly applicable law and relates solely to matters of agency management of personnel, good cause exists for omitting notice of proposed rulemaking, and public procedure thereon and for making the rule effective on January 1, 1978 without the customary 30 day waiting period.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Pub. L. 95-105, 91 Stat. 862, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter 1, Code of Federal Regulations, Part 0 is published as a document subject to codification.

§ 0.735-42 [Amended.]

Paragraph (e) of § 0.735-42 is amended by deleting "89-673, 80 Stat. 952" and substituting therefor "95-105, 91 Stat. 862".

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. § 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. § 5841); and Sec. 515, Pub. L. 95-105 (5 U.S.C. § 7342).)

Dated at Bethesda, Md., this 9th day of January 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-923 Filed 1-12-78; 8:45 am]

[3128-01]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION[1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Amendments to Administrative Procedures Regarding Issuance of Remedial Orders

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Interim rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby amends its administrative procedures regulations regarding the manner in which remedial orders are issued. The purpose of the amendments is to provide a fuller administrative review of the issues raised in each remedial order proceeding prior to issuance of the order in final form. Remedial orders will be issued in proposed form and aggrieved or interested parties will be able to present evidence relevant thereto prior to issuance of the order in final form. Evidentiary hearings will be convened where appropriate and an opportunity for oral argument provided as a matter of right. The revised procedures will also apply to remedial orders for immediate compliance and orders of disallowance.

EFFECTIVE DATE: January 6, 1978; Comments by February 15, 1978.

ADDRESSES: Written Comments to: Department of Energy, Office of Regulations Management, Room 2214, 2000 M Street, Box QW, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Deanna Williams (DOE Reading Room), 12th and Pennsylvania Avenue NW., Room 2107, Washington, D.C. 20461, 202-566-9161.

Ed Vilade (Media Relations), 12th and Pennsylvania Avenue NW., Room 3104, Washington, D.C. 20461, 202-566-9833.

Melvin Goldstein (Office of Administrative Review), 2000 M Street NW., Room 8002, Washington, D.C. 20461, 202-254-5134.

Nancy E. Williams (Office of General Counsel), 12th and Pennsylvania Avenue NW., Room 7132, Washington, D.C. 20461, 202-566-2454.

SUPPLEMENTATY INFORMATION: (A) Background, (B) Amendments Adopted, (C) Comment Procedure, (D) Interim Requirements, (E) Other Procedural Considerations.

A. BACKGROUND

The procedures which now govern the issuance of remedial orders pursuant to the Emergency Petroleum Allocation Act of 1973, as amended, are found in Subpart O of 10 CFR Part 205. ERA wishes to revise these procedures in order to produce a more fully developed administrative record prior to issuance of a remedial order. The development of a record through the hearing process described below will assist any reviewing authority in considering arguments on the appeal of a remedial order in an effective and efficient manner. These procedures will also give interested parties a better chance to present facts and legal arguments in support of the position they contend the ERA should adopt in the remedial order.

The ERA has separated the prosecutorial and adjudicatory functions which are within the jurisdiction of the Administrator. Under the amendments, the offices of the Special Counsel for Compliance and of the Assistant Administrator for Enforcement will issue proposed remedial orders. Those proposed orders will then be subject to review by the Office of Administrative Review. In any proceeding before the Office of Administrative Review regarding a proposed remedial order, the enforcement office that issued the proposed order will be a party to the proceeding and will submit its position in the same manner as any other party.

B. AMENDMENTS ADOPTED

Under the new procedures the Special Counsel for Compliance or the Assistant Administrator for Enforcement of the ERA will issue notices of probable violation or proposed remedial orders under Subpart O of Part 205 in order to commence most formal compliance proceedings. If a notice of probable violation is served, the person upon whom it is served will continue to have an opportunity to file a reply as now provided in § 205.191. If the enforcement office then finds that a violation exists or is about to occur, it will issue a proposed remedial order. it may also eliminate the notice of probable violation step and proceed immediately to the issuance of a proposed remedial order. In either case, the proposed remedial order will be served upon all parties to the compliance proceeding. Once the proposed remedial order is issued, further proceedings in the matter will be before the Office of Administrative Review.

Any aggrieved party will have the opportunity to file briefs and other documents specifying the errors which it is believed appear in the proposed remedial order. Parties will also have the opportunity to request that an evidentiary hearing be convened with respect to relevant, substantial and material issues of fact. An opportunity for oral argument will, in addition, be provided as a matter of right, and the parties to the proceeding will be afforded an opportunity to respond in a formal manner to the written submissions of any other party.

The amendments also include provisions which will permit various types of prehearing discovery. A prior showing will, however, have to be made that the discovery is necessary to obtain relevant and material evidence and that discovery will not unduly delay the proceeding.

After the completion of such proceedings, the proposed remedial order will be considered in view of the material presented and, if appropriate, a final remedial order will be issued by the Office of Administrative Review.

The amendments provide that decisions with respect to the issuance of final remedial orders will be made solely by the Office of Administrative Review. Consequently, individuals in the Office of Administrative Review who are responsible for deciding a case will not be permitted to receive ex parte communications from persons outside that Office regarding matters involved in a remedial order proceeding.

The new procedures will apply to remedial orders for immediate compliance and orders of disallowance as well as to remedial orders.

The amendments provide that a recipient of a remedial order issued pursuant to a NOPV issued after October 1, 1977, may request a review of that order by the Federal Energy Regulatory Commission, in accord with the DOE Organization Act. For purposes of the amendments, the contest and review of a remedial order as described in section 503 of the DOE Act shall be deemed to be an Appeal, and governed by § 205.199C of the new regulations, "Appeal of Remedial Order."

Nothing in these amendments is intended to prohibit the Special Counsel for Compliance or the Assistant Administrator for Enforcement, in coordination with the Department of

[1] Editorial Note: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

Justice, from initiating an appropriate civil or criminal enforcement action in court rather than utilizing the administrative procedures established in these regulations.

C. COMMENT PROCEDURE

No substantial issue of fact or law exists with respect to the amendments, and the amendments are unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Thus, ERA will not provide opportunity for oral presentation of views, data, or arguments regarding the amendments.

You are, however, invited to submit written views, data or arguments regarding the amendments set forth in this notice. Submit comments to the address indicated in the "addresses" section of this preamble and write on the outside of the envelope the designation "Amendments to Administrative Procedures Regarding Issuance of Remedial Orders." Fifteen copies should be submitted. You may inspect all comments received by DOE in the DOE Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., between 8 a.m. and 4:30 p.m., Monday through Friday, and in the Office of the Administrative Review Public Docket Room, Room B-120, 2000 M Street NW., between 1 p.m. and 5 p.m., Monday through Friday.

D. INTERIM REQUIREMENTS

The amendments will be adopted immediately by the ERA for purposes of further remedial order proceedings, although the regulations will not be promulgated as final rules until public comment thereon has been received and analyzed. Immediate adoption of the new procedures will provide for a consistent approach with respect to remedial order proceedings in the period until these regulations are adopted as final rules.

The ERA also believes immediate adoption of the procedures in the amendments will aid in effectuating the intent of Congress as expressed in the conference report accompanying the DOE Organization Act, i.e., to guarantee a "separation of the prosecutorial and judicial functions relating to enforement." Further, since the new procedures provide additional rights in that a greater opportunity is afforded for submission of factual data and legal arguments in support of a party's position prior to the issuance of a final Order, the ERA believes it is appropriate, and that no party will be adversely affected thereby, to adopt the new procedures effective immediately.

Since the proposed regulations will be adopted immediately, any formal administrative remedial action which is taken by the Assistant Administrator for Enforcement or the Special Counsel for Compliance subsequent to the issuance of these amendments will be issued in the form of a proposed remedial order. The procedures of the amendments will then be applicable to issuance of the proposed remedial order as a final Order.

E. OTHER PROCEDURAL CONSIDERATIONS

These amendments do not affect the quality of the environment, and therefore the provisions of section 7(a)(1) of the Federal Energy Administration Act of 1974, as amended, are not applicable to the amendments.

This document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

In accord with section 404 of the DOE Organization Act, the Federal Energy Regulatory Commission was notified that the Administrator intended to adopt these amendments, and the Commission has not determined that the regulations would significantly affect any function within its jurisdiction pursuant to Section 402(a)(1), (b) and (c)(1) of that Act.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act. Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 205 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective immediately.

Issued in Washington, D.C., January 6, 1978.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

1. The table of contents for Part 205, Subpart O, is amended by revising the entries for §205.190 through 205.197 and by adding §205.198 through 205.199J, as follows:

* * * * *

Subpart O—Notice of Probable Violation, Remedial Order, Notice of Proposed Disallowance, and Order of Disallowance

* * * * *

Sec.
205.190 Purpose and scope.
205.191 Notice of probable violation, commencement of enforcement proceedings.
205.192 Issuance of proposed remedial order.
205.193 Notice of objection.
205.194 Statement of objections.
205.195 Response to statement of objections.
205.196 Motion for evidentiary hearing.
205.197 Decision with respect to motion for evidentiary hearing.
205.198 Discovery.
205.199 Evidentiary hearing.
205.199A Hearing for the purpose of oral argument only.
205.199B Issuance of remedial order.
205.199C Appeal of remedial order.
205.199D Interim remedial order for immediate compliance.
205.199E Notice of proposed disallowance, proposed order of disallowance, and order of disallowance.
205.199F Ex parte communications.
205.199G Extension of time; interim and ancillary orders.
205.199H Actions not subject to administrative appeal.
205.199I Remedies.
205.199J Consent orders.

* * * * *

Sections 205.190, 205.191, 205.192, 205.193, 205.194, 205.195, 205.196, and 205.197 are revised and §§205.198 through 205.199J are added as follows:

§205.190 Purpose and scope; commencement of enforcement proceedings.

(a) This subpart establishes the procedures for determining the nature and extent of violations of the ERA regulations and the procedures for issuance of a notice of probable violation, a proposed remedial order, a remedial order, or a remedial order for immediate compliance, except that it shall not apply with respect to violations of Parts 209 and 213. Nothing in these regulations is intended to affect the authority of ERA enforcement officials in coordination with the Department of Justice to initiate appropriate civil or criminal enforcement actions in court without first initiating administrative proceedings pursuant to this subpart.

(b) When any report required by the ERA or any audit or investigation discloses, or the ERA otherwise discovers, that there is reason to believe a violation of any provision of this chapter, or any order issued thereunder, has occurred, is continuing or is about to occur, the ERA may conduct proceedings to determine the nature and extent of the violation and may issue a Remedial Order thereafter. The ERA may commence such proceeding by serving a notice of probable violation, a proposed remedial order, or an interim remedial order for immediate compliance.

§205.191 Notice of probable violation.

(a) The ERA may begin a proceeding under this subpart by issuing a notice of probable violation if the ERA has reason to believe that a violation has occurred, is continuing or is about to occur.

(b) Within 10 days of the service of a notice of probable violation, the

person upon whom the notice is served may file a reply with the ERA office that issued the notice of probable violation at the address provided in § 205.12. The ERA may extend the 10-day period for good cause shown.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the notice of probable violation. Such facts shall include a complete statement of the business or other reasons that justify the act or transaction, if appropriate; a detailed description of the act or transaction; and a full discussion of the pertinent provisions and relevant facts reflected in any documents submitted with the reply. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the reply. When the notice of probable violation pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information regarding the entire transaction shall be submitted.

(d) The reply shall include a discussion of all relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE or its predecessor agencies.

(e) The reply should indicate whether the person requests or intends to request a conference regarding the notice. Any request not made at the time of the reply shall be made as soon thereafter as possible to insure that the conference is held when it will be most beneficial. A request for a conference must conform to the requirements of § 205.171.

(f) If a person has not filed a reply with the ERA within the 10-day period provided, and the ERA has not extended the 10-day period, the person shall be deemed to have conceded the accuracy of the factual allegations and legal conclusions stated in the notice of probable violation.

(g) If the ERA finds, after the 10-day period provided in § 205.191(b), that no violation has occurred, is continuing, or is about to occur, or that for any reason the issuance of a remedial order would not be appropriate, it shall rescind the notice of probable violation and inform the person to whom the notice was issued of the rescission.

§ 205.192 Issuance of proposed remedial order.

(a) If the ERA finds, after the 10-day period provided in section 205.191(b), that a violation has occurred, is continuing, or is about to occur, it may issue a proposed remedial order, which shall set forth the relevant facts and legal basis for the conclusions reached therein.

(b) The ERA may issue a proposed remedial order at any time it finds that a violation has occurred, is continuing, or is about to occur even if it has not previously issued a notice of probable violation.

(c) The ERA shall serve a copy of the proposed remedial order upon the person to whom it is directed and upon any other person readily identifiable by the ERA as likely to be aggrieved by issuance of the proposed remedial order as a final order.

(d) A proposed remedial order may be referred at any time to the Department of Justice for appropriate action in accordance with subpart P.

§ 205.193 Notice of objection.

(a) Within 10 days of service of the proposed remedial order any aggrieved person may file a notice of objection to the order with the National Office of Administrative Review. The notice shall briefly describe how the person would be aggrieved by issuance of the proposed remedial order as a final order.

(b) Any person who fails to file a timely notice of objection shall be deemed to consent to the issuance of the proposed remedial order as a final order.

(c) Any person who files a notice of objection shall serve a copy of the Notice upon each person who is readily identifiable as a person who will be aggrieved by the ERA action sought, including those persons who have been served copies of the proposed remedial order, and upon the person who issued the proposed remedial order.

(d) The notice shall include a certification of compliance with the provisions of this section, the names and addresses of each person served with a copy of the notice, and the date and manner of service.

(e) The Office of Administrative Review may issue a final remedial order without further proceedings if no person files a timely notice of objection.

(f) In order to exhaust administrative remedies with respect to a remedial order proceeding, a party must file a timely notice of objection with the Office of Administrative Review.

§ 205.194 Statement of objections.

(a) *Filing requirement.* A statement of objections to a proposed remedial order must be filed within 30 days of service of the proposed remedial order. A request for an extension of time for filing must be submitted in writing and may be granted for good cause shown.

(b) *Filing and service of statement of objections and related documents.* (1) Statements of objections, responses to such statements, and any motions or other documents filed in connection with the proceeding shall be filed with the National Office of Administrative Review.

(i) Any document referred to in (b)(1) shall be filed in triplicate.

(ii) If a party claims that any portion of a document referred to in (b)(1) contains confidential information, such information should be deleted from two (2) of the copies which are filed. One copy from which confidential information has been deleted will be placed in the Public Docket Room described in § 303.13.

(2) A copy of each of the documents referred to in subsection (b)(1) shall be served upon each person who is readily identifiable as a person who will be aggrieved by the ERA action sought, including those persons who have been served copies of the proposed remedial order, and upon the person who issued the proposed remedial order.

(3) Any filing made under this section shall include a certification of compliance with the provisions of this section, the names and addresses of each person served, and the date and manner of service.

(c) *Contents of statement of objections.* The statement of objections shall set forth the basis for the objections to the issuance of the proposed remedial order as a final order, including a specification of every issue of fact or law which the party intends to contest in any further proceeding involving the compliance matter which is the subject of the proposed remedial order. The statement shall set forth the particular findings of fact contained in the proposed remedial order which are contested and the alternative findings which are sought. The statement shall include a discussion of all relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE or its predecessor agencies.

§ 205.195 Response to statement of objections.

Within 20 days of receipt of a statement of objections any party may file a response. The response shall contain a full discussion of the position which the party asserts should be adopted in the matter and a discussion of the legal and factual basis which supports that position.

§ 205.196 Motion for evidentiary hearing.

Any party may file a motion requesting that an evidentiary hearing be convened with respect to relevant, substantial and material issues of fact at the same time that it files a statement of objections. A motion requesting an evidentiary hearing may be filed by any other party within 15 days after that party is served with a statement of objections.

(a) *Contents of motion for evidentiary hearing.* A motion for evidentiary hearing shall specify the manner in which the movant proposes to establish the basis for the alternative findings it asserts in its statement of objections. The movant shall also describe the manner in which the issue of fact was raised in any prior administrative proceeding which led to issuance of the proposed remedial order. If the movant asserts that its position can only be established through the introduction of evidence at an evidentiary hearing, the movant shall with respect to each disputed finding of fact:

(1) Identify each witness whose testimony is required;

(2) State the reasons why the testimony of the witness is necessary; and

(3) State the reasons why the asserted position can be established only through the direct questioning of witnesses at an evidentiary hearing.

(b) *Statement of additional factual representations.* At the time a motion for an evidentiary hearing is filed, the movant may also file a statement of factual representations which are not referred to in the proposed remedial order that the movant contends are material and relevant to establish that the proposed remedial order is either erroneous in fact or law or is arbitrary or capricious. The statement shall set forth the particular findings of fact which the movant asserts should be made, the reasons why such representations are relevant and material, and the manner by which the validity of the factual representations will be established. The movant shall also specify if and how the issue of fact was raised in any prior administrative proceeding which led to issuance of the proposed remedial order. If the movant asserts that its position can only be established through the introduction of evidence at an evidentiary hearing, the movant shall:

(1) Identify each witness whose testimony is required;

(2) State the reasons why the testimony of the witness is necessary; and

(3) State the reasons why the asserted position can be established only through the direct questioning of witnesses at an evidentiary hearing.

(c) *Response to motion for evidentiary hearing.* Within 20 days of receipt of any motion for evidentiary hearing and accompanying statements, the person who has issued the proposed remedial order shall, and any aggrieved party may, file a response with the Office of Administrative Review. A response shall, with respect to each factual representation in the movant's statements:

(1) Specify the particular factual representations which are accepted as correct for purposes of the proceeding;

(2) Specify the particular factual representations which are denied;

(3) Specify the particular factual representations which the movant is not in a position to accept or deny;

(4) Specify the particular factual representations which are not accepted and the responding party wishes proven by the submission of evidence; and

(5) Specify the particular factual representations which the responding party is prepared to dispute through the testimony of witnesses or the submission of verified documents.

(d) *Motions to dismiss.* Within 20 days of receipt of any motion for evidentiary hearing and accompanying statements, any party may also file a motion to dismiss any factual representation put forward by the movant on the grounds of vagueness, immateriality, or irrelevance. Any party filing a motion to dismiss shall have 10 days following a decision on the motion to dismiss to file the response referred to in (c) above.

§ 205.197 Decision with respect to motion for evidentiary hearing.

(a) After all submissions with respect to a motion for evidentiary hearing are filed, the Office of Administrative Review may conduct conferences in order to resolve any differences of view and may convene a hearing for the presentation of oral argument. Any such hearing shall be convened pursuant to § 205.172. In addition, the Office of Administrative Review may adopt procedural measures which it concludes are appropriate to facilitate a resolution of the matter.

(b) After considering all relevant information received in connection with the motion, the Office of Administrative Review shall enter an order with respect to the motion. If the motion is granted in whole or in part, the order shall specify the particular issues of fact which will be set forth for the evidentiary hearing. If the motion is denied, the order may nevertheless permit the movant to file affidavits or other documents in support of the particular finding of fact(s) which it asserted should be reached in the motion.

(c) The order of the Office of Administrative Review with respect to a motion for evidentiary hearing shall be deemed to be an interlocutory order which is subject to further administrative review or appeal only upon issuance of the remedial order referred to in § 205.199B.

§ 205.198 Discovery.

(a) Any party may file a motion for discovery at the same time that it files the statement of objections referred to in § 205.194. A motion for discovery may be filed by any other party within 15 days after that party is served with a statement of objections.

(b) A motion for discovery may request that:

(1) A party produce for inspection and photocopying nonprivileged written material in its possession;

(2) A party respond to written interrogatories;

(3) A party admit to the genuineness of any relevant document or the truth of any relevant fact; or

(4) The deposition of a material witness be taken.

(c) Any motion for discovery shall set forth in detail the reasons why the particular discovery is necessary in order to obtain relevant and material evidence.

(d) Within 10 days after a motion for discovery is received, any party may file a request that the motion be denied in whole or in part, stating the reasons which support the request.

(e) Discovery may be conducted only pursuant to an order issued by the Office of Administrative Review. A motion for discovery will be granted only if it is concluded that discovery is necessary for the party to obtain relevant and material evidence and that discovery will not unduly delay the proceeding. Depostitions will be permitted only if a clear and convincing showing is made that the party cannot obtain the material through one of the other discovery means specified in § 205.198(b).

(f) The Director of the Office of Administrative Review or his designee may issue subpoenas in connection with the approval of a motion for discovery. The provisions of § 205.8 for witness fees shall apply to any such subpoena.

(g) Any direct expenses incurred by a party to produce evidence pursuant to a motion for discovery may be charged to the party who filed the motion, if so ordered by the Office of Administrative Review.

(h) (1) If a party fails to comply with an order relating to discovery, the Office of Administrative Review may take appropriate action, including but not limited to the following:

(i) Infer that the testimony, documents or other evidence sought to be discovered would have been adverse to the party;

(ii) Rule that for the purposes of the proceeding the matter or matters sought to be discovered be taken as established adversely to the party;

(iii) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party or the documents or other evidence;

(iv) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld testimony, documents or other evidence would have shown;

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which

discovery was sought, be stricken, or that a decision with regard to the proceeding be rendered against the party, or both.

(2) It shall be the duty of parties to request action of the foregoing types or to request that other appropriate relief be fashioned to compensate them for the lack of withheld testimony, documents or other evidence.

(3) For purposes of subsection (h)(1), an evasive or incomplete answer will be deemed a failure to answer.

(i) Any order issued by the Office of Administrative Review with respect to discovery shall be deemed to be an interlocutory order which is subject to further administrative review or appeal only upon issuance of the remedial order referred to in § 205.199B.

§ 205.199 Evidentiary hearing.

(a) All evidentiary hearings convened pursuant to this section shall be conducted by the Director of the Office of Administrative Review or his designee.

(b) At any evidentiary hearing, the parties shall have the opportunity to present evidence which:

(1) Directly relates to a particular issue of fact which has been set forth for hearing; and

(2) Is material and relevant to establish the validity of the position which it is asserted the ERA should adopt.

(c) The presiding officer shall afford the right of cross examination to the extent he determines that such is necessary for a full and true disclosure of the facts.

(d) The presiding officer may administer oaths and affirmations, rule on objections to the presentation of evidence, receive relevant material, dispose of procedural requests, determine the format of the hearing, direct that written motions or briefs be provided with respect to issues raised during the course of the hearing and otherwise regulate the course of the hearing. Further, the presiding officer may take reasonable measures to exclude duplicative material from the hearing. The presiding officer may also require that evidence be submitted through affidavits or other documents if he concludes that the presentation of evidence through the direct testimony of witnesses will unduly delay the orderly progress of the hearing and would add little substantive value in resolving the issues involved in the hearing.

(e) The provisions of § 205.8 of this part which relate to subpoenas and witness fees shall apply to any evidentiary hearing.

(f) Following the presentation of all evidence, the parties shall be afforded an opportunity to present oral argument. The presiding officer may direct that written memoranda, briefs or other documentary material be submitted in support of any position which a party advances or with respect to any other issue specified. If written submissions are requested, other parties shall be permitted to file responsive memoranda, briefs or documents.

§ 205.199A Hearing for the purpose of oral argument only.

(a) If an evidentiary hearing is not convened, any party may nevertheless request a hearing so that oral argument may be presented with respect to the proposed remedial order.

(1) If a party does not file a motion for evidentiary hearing at the time it files the statement of objections referred to in § 205.194, a request for oral argument shall be filed at the time a statement of objections is filed.

(2) If a party files a motion for evidentiary hearing at the time a statement of objections is filed, but that motion is subsequently denied, the party shall file a request for oral argument within 10 days of receipt of that denial.

(3) A request for a hearing for oral argument shall be filed by any other party within 10 days after that party is served with a statement of objections.

(b) Upon a timely request by any party or on its own initiative, the Office of Administrative Review shall conduct a hearing for the purpose of receiving oral argument. A hearing will generally be conducted only after the issues involved in the proceeding have been delineated and any written material which the Office of Administrative Review has requested as a supplement to the statement of objections, referred to in § 205.194, or the response, referred to in § 205.195, has been submitted. The procedures specified in § 205.172 shall generally apply to such hearings.

(c) The provisions of § 205.199(f) of this section with respect to written submission shall also apply to hearings convened pursuant to this section.

§ 205.199B Issuance of remedial order.

(a) After considering all information received during the proceeding, the Director of the Office of Administrative Review or his designee shall issue a final remedial order. The remedial order may adopt the findings and conclusions contained in the proposed remedial order or may modify or rescind any such finding or conclusion on the basis of a determination that the finding or conclusion is erroneous in fact or law or is arbitrary or capricious. The Office of Administrative Review may also reach the determination that no remedial order should be issued. Every determination issued pursuant to this section shall include a statement which sets forth the relevant facts and legal basis supporting the determination.

(b) The ERA shall serve a copy of any final remedial order upon the person to whom it is directed, any person who was served a copy of the proposed remedial order, the person who issued the proposed remedial order, and any other person readily identifiable by the ERA as one who is aggrieved by the order. A copy of each remedial order, modified to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, will also be placed on file in the public docket room described in § 303.13.

(c) A remedial order may be referred at any time to the Department of Justice for appropriate action in accordance with subpart P.

§ 205.199C Appeal of remedial order.

(a) An Appeal may be filed from the following remedial orders:

(1) Those issued prior to the effective date of these regulations and pursuant to a NOPV issued prior to October 1, 1977; and

(2) Those issued pursuant to NOPV's or proposed remedial orders issued subsequent to October 1, 1977;

(b)(1) An Appeal as described in (a)(1) shall be filed with and decided by the National Office of Administrative Review in accord with subpart H of this part. Any such appeal must be filed within 30 days of service of the order. In any such proceeding, the remedial order shall be sustained unless the appellant demonstrates that the order was erroneous in fact or law or was arbitrary or capricious.

(2) An appeal as described in (a)(2) shall be instituted by the recipient notifying the National Office of Administrative Review within 30 days of service of the order that it wishes to contest the Order.

(c) The Office of Administrative Review shall immediately advise the Federal Energy Regulatory Commission of its receipt of a notice described in (b)(2).

(d) The Office of Administrative Review may, on a case by case basis, set reasonable time limits for the Federal Energy Regulatory Commission to complete action on a proceeding referred to in (c).

(e) In order to exhaust administrative remedies with respect to a remedial order proceeding, a party must file a timely appeal pursuant to the procedures set forth in this section and await an order granting or denying the appeal.

§ 205.199D Interim remedial order for immediate compliance.

(a) Notwithstanding the provisions of §§ 205.191 through 205.199C, the ERA may issue an interim remedial order for immediate compliance, which shall be effective upon issuance and until rescinded or suspended, if it finds:

(1) There is a strong probability that a violation has occurred, is continuing or is about to occur;

(2) Irreparable harm will occur unless the violation is remedied immediately; and

(3) The public interest requires the avoidance of such irreparable harm through immediate compliance and waiver of the procedures afforded under §§ 205.191 through 205.199C.

(b) An interim remedial order for immediate compliance shall be served promptly upon the person against whom such Order is issued by telex or telegram, with a copy served by registered or certified mail. The copy shall contain a written statement of the relevant facts and the legal basis for the remedial order for immediate compliance, including the findings required by paragraph (a) of this section.

(c) The ERA may rescind or suspend an interim remedial order for immediate compliance if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a notice of probable violation issued under § 205.191.

(d) If at any time in the course of a proceeding commenced by a notice of probable violation the criteria set forth in paragraph (a) of the section are satisfied, the ERA may issue an interim remedial order for immediate compliance, even if the 10-day period for reply specified in § 205.191(b) has not expired.

(e) At any time after an interim remedial order for immediate compliance has become effective, the order may be referred to the Department of Justice for appropriate action in accordance with subpart P.

(f) Any person who is aggrieved by an interim remedial order for immediate compliance may contest the basis for the order by filing a notice of objection which meets the requirements of § 205.193 within 10 days of the issuance of the interim order. The person objecting to the issuance of the interim remedial order for immediate compliance shall follow the procedures specified in §§ 205.192 through 205.199C of this subpart to establish that the interim order is erroneous in fact or law or is arbitrary or capricious.

(g) Any aggrieved person who fails to file a timely notice of objection to the issuance of an interim remedial order shall be deemed to consent to issuance of the interim order in final form. Under those circumstances, the interim order shall as a matter of course be made a permanent order of the ERA.

(h) After considering all information received during a proceeding convened pursuant to a notice of objection described in (f), the Director of the Office of Administrative Review or his designee shall determine whether the interim order should be made permanent, should be modified, or should be rescinded. The general procedures in §§ 205.192 through 205.199D of this subpart shall apply to any such determination.

(i) Any party aggrieved by an interim order for immediate compliance may file an application for a temporary stay or an application for a stay of that order with the National Office of Administrative Review. The Office of Administrative Review shall decide on an application for a temporary stay within 48 hours of receipt of the application and on an application for stay within 10 working days of receipt of the application.

(1) Any party whose application for a stay of an interim remedial order is denied may appeal that denial to the Federal Energy Regulatory Commission. The Office of Administrative Review may, on a case by case basis, set reasonable time limits for the Commission to complete action on any such appeal.

(2) After reaching a decision on an appeal involving an application for stay, the Federal Energy Regulatory Commission shall refer the matter back to the Office of Administrative Review for proceedings on the merits of the interim remedial order pursuant to (f) through (h) above.

(j)(1) An Appeal from a remedial order for immediate compliance issued pursuant to § 205.199D(h) must be filed within 30 days of service of the Order.

(2) If a person who receives a remedial order for immediate compliance issued pursuant to a proceeding as to which no NOPV had been issued as of October 1, 1977, or issued pursuant to a NOPV issued on or after October 1, 1977, wishes to contest the remedial order, that person shall so notify the National Office of Administrative Review in accordance with the procedures set forth in § 205.199C(b)(2), and the procedures of § 205.199C (c) and (d) shall apply to the appeal.

(3) In order to exhaust administrative remedies with respect to a remedial order for immediate compliance proceeding, a party must file an appeal pursuant to the procedures set forth in this section and await an order granting or denying the appeal.

§ 205.199E Notice of proposed disallowance, proposed order of disallowance, and order of disallowance.

(a) The ERA shall begin a proceeding under this section by issuing a notice of proposed disallowance pursuant to the provisions of parts 205 and 212 of this chapter.

(b) Within 10 days of service, the person upon whom the notice of proposed disallowance is served may file a reply with the ERA office that issued the notice. The ERA may extend the 10-day period for good cause shown.

(c) The reply shall set forth all relevant facts pertaining to the matter that is the subject of the notice, and be signed by the person filing it.

(d) The reply shall include a discussion of all relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE or its predecessor agencies.

(e) A request for a conference regarding the notice should be included in the reply, or made as soon as possible after the reply is filed. A request for a conference must conform to the requirements of § 205.171.

(f) If a reply has not been filed with the ERA within the 10-day or extended period provided, the recipient shall be deemed to have conceded the accuracy of the factual allegations and legal conclusions stated in the notice of proposed disallowance, and the notice shall become a proposed order of disallowance.

(g) After consideration of any timely reply filed, the ERA may adopt, modify, or rescind the notice of proposed disallowance and issue a proposed order of disallowance. The proposed order shall set forth the relevant facts and legal basis for the conclusions reached therein.

(h) The procedures specified in §§ 205.192 through 205.199C shall be applicable to proposed orders of disallowance, and shall govern the issuance of orders of disallowance and appeals from orders of disallowance.

(i) An order of disallowance shall be effective upon issuance.

(j) An order of disallowance may be referred at any time to the Department of Justice for appropriate action in accordance with subpart P.

§ 205.199F Ex Parte communications.

(a) No person who is not employed or otherwise supervised by the Office of Administrative Review shall submit ex parte communications to the Director or any person employed or otherwise supervised by the Office with respect to any matter involved in remedial order or order of disallowance proceedings.

(b) Ex parte communications includes any ex parte oral or written communications relative to the merits of a proposed remedial order, interim remedial order for immediate compliance, or proposed order of disallowance proceeding pending before the Office of Administrative Review. The term shall not, however, include requests for status reports, inquiries as to procedures, or the submission of statistical or technical data or reports containing proprietary or confidential information requested after notice to all parties by a person employed or

otherwise supervised by the Office of Administrative Review.

(c) If any communication occurs that violates the provisions of this section, the Office of Administrative Review shall take appropriate action to mitigate the adverse impact to any party of the ex parte contact.

§ 205.199G Extensions of time; interim and ancillary orders.

The Director of the Office of Administrative Review or his designee may permit any document or submission referred to in this subpart to be filed within a time period different from that specified. The Director or his designee may also issue any interim or ancillary orders or make any rulings or determinations which are deemed necessary to insure that the proceedings specified in this subpart are conducted in an appropriate manner and are not unduly delayed.

§ 205.199H Actions not subject to Administrative Appeal.

A notice of probable violation, notice of proposed disallowance, proposed remedial order or interim remedial order for immediate compliance issued pursuant to this subpart shall not be an action of which there may be an administrative appeal pursuant to subpart H. In addition, a determination by the Office of Administrative Review that a remedial order or a remedial order for immediate compliance should not be issued shall not be appealable pursuant to subpart H. Further, any remedial order which is first issued as a proposed remedial order pursuant to a NOPV issued prior to October 1, 1977, or any order of disallowance which is first issued as a proposed order of disallowance pursuant to a notice of proposed disallowance issued prior to October 1, 1977, shall not be appealable pursuant to subpart H.

§ 205.199I Remedies.

(a) A remedial order, a remedial order for immediate compliance, an order of disallowance, or a consent order may require the person to whom it is directed to roll back prices, to make refunds equal to the amount (plus interest) charged in excess of those amounts permitted under part 212, to make appropriate compensation to third persons for administrative expenses of effectuating appropriate remedies, and to take such other action as the ERA determines is necessary to eliminate or to compensate for the effects of a violation or any cost disallowance pursuant to §§ 212.83 or 212.84. Such action may include a direction to the person to whom the order is issued to make refunds directly to any purchasers of the products involved, notwithstanding that those purchasers obtained such products from an intermediate distributor of such person's products, and may require as part of the remedy that the person to whom the order is issued maintain his prices at certain designated levels, notwithstanding the presence or absence of other regulatory controls on such person's prices.

(b) The ERA may, when appropriate, issue orders ancillary to a remedial order, remedial order for immediate compliance, order of disallowance, or consent order requiring that a direct or indirect recipient of a refund passthrough, by such means as the ERA deems appropriate, including those described in paragraph (a) of this section, all or a portion of the refund, on a pro rata basis, to those customers of the recipient who were adversely affected by the initial overcharge.

§ 205.199J Consent orders.

(a) Notwithstanding any other provision of this subpart, the ERA may at any time resolve an outstanding compliance investigation or proceeding, or a proceeding involving the disallowance of costs pursuant to § 205.199E of this subpart, with a consent order. A consent order shall be the exclusive administrative means, besides a remedial order or order of disallowance, for resolving compliance proceedings in which the ERA has issued a notice of probable violation, a proposed remedial order, a notice of proposed disallowance or a proposed order of disallowance, and a violation or overrecovery has been found. A consent order must be signed by the person to whom it is issued, or a duly authorized representative, and must indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that ERA regulations have been violated, nor need it constitute a finding by the ERA that such person has violated ERA regulations. A consent order shall, however, set forth the relevant facts which form the basis for the order.

(b) A consent order is a final order of the ERA having the same force and effect as a remedial order issued pursuant to § 205.199B or an order of disallowance issued pursuant to § 205.199E, and may require one or more of the remedies authorized by § 205.199I and § 212.84(d)(3). A consent order becomes effective no sooner than 30 days after publication under paragraph (c) below, except that the ERA may make a consent order effective immediately if expressly deemed necessary in the public interest. However, all consent orders involving sums of less than $500,000 in the aggregate, excluding penalties, will be effective when signed both by the person to whom it is issued and the ERA, and will not be subject to the provisions of paragraph (c) unless the ERA determines otherwise. A consent order shall not be appealable pursuant to the provisions of § 205.199C or § 205.199D and subpart H, and shall contain an express waiver of such appeal or judicial review rights as might otherwise attach to a final order of the ERA.

(c) When a proposed consent order has been signed, both by the person to whom it is issued and the ERA, the ERA will publish notice of such proposed consent order in the FEDERAL REGISTER and in a press release to be issued simultaneously therewith. The FEDERAL REGISTER notice and the press release will state at a minimum the name of the company concerned, a brief summary of the consent order and other facts or allegations relevant thereto, and the address and telephone number of the ERA office at which copies of the proposed consent order will be available free of charge, the address to which comments on the proposed consent order will be received by the ERA, and the date by which such comments should be submitted, which date will not be less than 30 days from publication of the FEDERAL REGISTER notice. After the expiration of the comment period the ERA may withdraw its agreement to the consent order, attempt to negotiate a modification of the consent order, or issue the consent order as proposed. The ERA will publish in the FEDERAL REGISTER, and by press release, notice of any action taken on a proposed consent order and such explanation of the action taken as deemed appropriate. The provisions of this paragraph shall be applicable notwithstanding that a consent order may have been made immediately effective pursuant to paragraph (b) of this section (except in cases where the consent order involves sums of less than $500,000 in the aggregate, excluding penalties).

(d) At any time and in accordance with the procedures of Subpart J, a consent order may be modified or rescinded, upon petition by the person to whom the consent order was issued, and may be rescinded by the ERA upon discovery of new evidence which is materially inconsistent with evidence upon which the ERA's acceptance of the consent order was based. Modifications of a consent order which is subject to public comment under the provisions of Paragraph (c) of this section, which in the opinion of the ERA significantly change the terms or the impact of the original order, shall be republished under the provisions of that paragraph.

(e) Notwithstanding the issuance of a consent order, the ERA may seek civil or criminal penalties or compromise civil penalties pursuant to subpart P concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the ERA from so doing.

(f) If at any time after a consent order becomes effective it appears to the ERA that the terms of the consent order have been violated, the ERA may refer such violations to the Department of Justice for appropriate action in accordance with subpart P.

[FR Doc. 78-956 Filed 1-10-78; 1:03 pm]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 4—MISCELLANEOUS RULES

Commission Meetings

AGENCY: Federal Trade Commission.

ACTION: Final rule amendment.

SUMMARY: A stenographer or court reporter under contract to the Commission to transcribe Commission proceedings attends all closed Commission meeting or portions of such meetings for which a verbatim transcript is required by the Government in the Sunshine Act. This amendment to the Commission's rules provides that such stenographers or court reporters (1) may attend all closed Commission meetings at which their services are required, but (2) will not be listed by name and affiliation in the public notice of closed meetings that they do attend.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry Hull, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3802.

Accordingly, 16 CFR 4.15(c)(1) is amended to read as follows:

§ 4.15 Commission meetings.

* * * * *

(c) *Closed Meetings*—(1) Whenever the Commission votes to close a meeting or series of meetings under these rules, it shall make publicly available within one day notices both of such vote and the General Counsel's determination regarding certification under 5 U.S.C. 552b(f)(1). Such determination by the General Counsel shall be made prior to the Commission vote to close a meeting or series of meetings. Further, except with respect to meetings closed under paragraph (c)(2) of this section, the Commission shall make publicly available within one day a full written explanation of its action in closing any meeting, and a list specifying the names and affiliations of all persons expected to attend, except Commission employees and consultants and any stenographer or court reporter attending for the sole purpose of preparing a verbatim transcript. All Commission employees and consultants may attend nonadjudicative portions of any closed meeting and members of Commissioners' personal staffs, the General Counsel and his staff, and the Secretary and his staff may attend the adjudicative portions of any closed meeting except to the extent the notice of a particular closed meeting otherwise specifically provides. Stenographers or court reporters may attend any closed meeting at which their services are required by the Commission.

* * * * *

By direction of the Commission dated December 22, 1977.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-964 Filed 1-12-78; 8:45 am]

[6750-01]

PART 4—MISCELLANEOUS RULES

Public Records

AGENCY: Federal Trade Commission.

ACTION: Final rule amendment.

SUMMARY: This amendment to the Commission's rules provides that copies of minutes of open Commission meetings held under the Government in the Sunshine Act, as well as copies of all explanatory material provided to members of the public who attend open meetings, will be routinely available for public inspection and copying.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Barry R. Rubin, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3865.

Accordingly, 16 CFR 4.9(b)(25) is revised to read as follows:

§ 4.9 Public records.

* * * * *

(b) * * *

(25) Summaries of or other explanatory materials relating to matters to be considered at open meetings made available pursuant to § 4.15(b)(3), and Commission minutes of open meetings held pursuant to § 4.15(b);

* * * * *

By direction of the Commission dated December 22, 1977.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-965 Filed 1-12-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 78-17]

PART 174—PROTESTS

Judicial Review of Denied Protests

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by setting forth the statutory right to judicial review of certain administrative decisions of Customs Officers. The right of judicial review is being restated in the regulations to ensure that all parties who are entitled to seek judicial review of administrative decisions are aware of their right to do so.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Terry Polino, Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, 202-566-8237.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under sections 514 and 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1514, 1515), and Part 174 of the Customs Regulations (19 CFR Part 174), a party dissatisfied with any of certain decisions made by a district director of Customs may obtain administrative review of that decision by filing a written protest with the district director who made the decision. Instead of having the review made by the district director, a party may seek further review of a protest and have the matter reviewed by a regional Commissioner of Customs or, in certain stated circumstances, by the Commissioner of Customs. In either event, the appropriate Customs officer must review the protest and either allow it or, if denied in whole or in part, mail a notice of the denial to the protesting party. The party may then contest the denial by bringing a civil action in the United States Customs Court in accordance with 28 U.S.C. 2632.

It has come to the attention of the Customs Service that occasionally a party may not be aware of its right to seek judicial review of a denial of a protest. To ensure that all parties are aware of this right, on June 17, 1977, the Customs Service published a notice in the FEDERAL REGISTER (42 FR 30961) announcing that it had adopted a new procedure whereby parties whose protests have been denied

would be individually notified in writing of the right to seek judicial review at the same time they are given notice of the denial. It has been determined advisable to amend Part 174 of the Customs Regulations to set forth the statutory right to judicial review of the denial of protests.

This amendment will not affect the previously announced procedure. Customs will continue to notify each party individually of his right to seek judicial review of the denial of a protest. Setting forth the statutory right in the Customs Regulations, together with continuing the individual notification procedure, will ensure that all parties are aware of the right to seek judicial review of the denial of any protest.

Inasmuch as this amendment places no affirmative duty or burden on the public, notice and public procedure are unnecessary and good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553.

DRAFTING INFORMATION

The principal author of this amendment was Terry Polino, Regulations and Legal Publications Division of the Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development, both on matters of substance and style.

AMENDMENT TO THE REGULATIONS

Part 174 of the Customs Regulations (19 CFR Part 174) is amended by adding a new § 174.31 to read as follows:

§ 174.31 Judicial review of denial of protest.

Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Customs Court in accordance with 28 U.S.C. 2632 within 180 days after—

(a) The date of mailing of notice of denial, in whole or in part, of a protest, or

(b) The date a protest, for which accelerated disposition was requested, is deemed to have been denied in accordance with § 174.22(d).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624).)

R. E. CHASEN,
Commissioner of Customs.

Approved: January 3, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-982 Filed 1-12-78; 8:45 am]

[4110-07]

Title 20—Employees' Benefits

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

[Reg. Nos. 4 and 16]

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

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

Substantial Gainful Activity

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These amendments increase the monetary amounts of the substantial gainful activity guidelines under Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits) and Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act, to conform more closely to increases in earnings levels of workers in the national labor market. These earnings guidelines are evaluation measures used for determining, in the absence of evidence to the contrary, ability to engage in substantial gainful activity. Under the increased amounts, an individual's earnings from work activities averaging in excess of $230 per month beginning for the calendar year 1976 shall be deemed to demonstrate the ability to engage in substantial gainful activity. Earnings from work activities which average less than $150 a month beginning for the calendar year 1976 will not demonstrate that an employee is able to engage in substantial gainful activity. Under regulations in effect before these amendments, these amounts were $200 and $130, and these amounts will remain in effect for calendar years prior to 1976. However, in a Notice of Proposed Rulemaking being published in the FEDERAL REGISTER today, the Social Security Administration is proposing to increase the earnings guideline amounts again for the calendar years after 1976.

The systematic adjustment mechanism provision upon which future adjustments were proposed to be made is being withdrawn because of excessive program costs and the effects of Pub. L. 94-202, which makes the proposed method for computing the adjustment unworkable. This withdrawal will mean that the earnings guidelines will not be increased automatically in future years, as proposed in the Notice of Proposed Rulemaking which preceded this final regulation.

EFFECTIVE DATE: This amendment shall be effective on January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: On February 18, 1976, there was published in the FEDERAL REGISTER (41 FR 7415) a Notice of Proposed Rulemaking with proposed amendments revising the substantial gainful activity monetary guidelines used for assessing work activity of disability claimants and beneficiaries under title II and title XVI of the Social Security Act. These proposed amendments to the regulations provided a mechanism for the systematic adjustment of the substantial gainful activity amounts in the earnings guidelines and also calculated the first monetary adjustment under this procedure. The initial adjustment, which was proposed to be effective back to January 1976, would increase the primary substantial gainful activity amount from $200 to $230 and the secondary substantial gainful activity amount from $130 to $150. Future increases in these earnings guidelines were also proposed to be based on the systematic adjustment mechanism.

Interested persons were given the opportunity to submit, within 30 days, data, views, or arguments with regard to the proposed changes. Public comments on the Notice of Proposed Rulemaking were received from only three sources. While all comments were favorable to increasing the monetary amounts of the substantial gainful activity guidelines, one correspondent questioned whether they were being raised high enough.

After due consideration of the comments received and other information which has become available after publication of the Notice of Proposed Rulemaking, the proposal for using the systematic adjustment mechanism for determining substantial gainful activity earnings guidelines is being withdrawn. The decision to not use the proposed systematic adjustment was made because Pub. L. 94-202 changes earnings reporting to the Social Security Administration from a quarterly basis to an annual basis, rendering the proposed adjustment mechanism unworkable, and because, if it were applied to the substantial gainful activity levels of $230 and $150 respectively for 1976, significant additional long-range cost would result. However, the monetary amounts of $230 and $150 announced as new substantial gainful activity guidelines for the calendar year 1976 in the Notice of Proposed Rule Making are being adopted.

The proposed systematic adjustment procedure was based on the rate of increase in average taxable wages reported to the Social Security Administration for the first calendar quarter

of each year. Under this proposal, the substantial gainful activity earnings amounts would be determined by multiplying the substantial gainful activity earnings amounts in effect by the ratio of average taxable wages reported for the first quarter in one year to the average taxable wages reported for the first quarter of the previous base period. The first calculation under this formula resulted in a maximum substantial gainful activity monetary guideline amount of $230 for 1976 and required that future increases be adjusted on the basis of this $230 amount computed for 1976. Applying the formula to determine the 1977 substantial gainful activity amounts would have resulted in a maximum monetary guideline amount of $250 for that calendar year.

The office of the Actuary of the Social Security Administration indicated that the increased program costs which were anticipated from future adjustments under this systematic adjustment provision tied to $230 for base year 1976 would require an increase in social security taxes or a decrease in benefits. Recommending an increase in taxes to cover the additional costs is not now a viable alternative. Nor can benefits be reduced in other program areas in order to compensate for the increased cost that would result from implementation of the automatic adjustment mechanism with $230 for base year 1976. Therefore, the maximum substantial gainful activity amount of $230 for calendar year 1976 will not be used as a frame of reference for future actuarial estimates of cost or as a base figure for making projections for increasing the substantial gainful activity guideline amounts in the future.

Moreover, the $230 figure does not maintain the historical relationship to earnings as existed with prior substantial gainful activity amounts. The $230 amount maintains the same relationship to earnings as did the current maximum substantial gainful activity amount of $200, which became effective on January 1974, but for actuarial purposes the relationship must be maintained with the maximum substantial gainful activity amounts which were in effect prior to January 1974; i.e., $125 effective July 1966, and $140 effective January 1968. The resulting equivalent maximum substantial gainful activity amounts would be $220 for 1976 and $240 for 1977. However, the maximum substantial gainful activity amount can be increased to $230 for 1976, at negligible cost, as long as the increase for 1977 is held to $240. This is so because actuarial estimates for future years must be based on the $240 amount for 1977, rather than $230 amount for 1976; this will maintain the relationship to earnings which has existed since July 1966.

Since the public has been promised a higher substantial gainful activity guideline amount of $230 for 1976, the Social Security Administration is promulgating these final regulations to provide for this guideline amount beginning for the calendar year 1976. However, the systematic adjustment provision must be withdrawn; otherwise, this substantial gainful activity guideline amount would under the formula be increased automatically to $250 for calendar year 1977. In order to make an adjustment for the excess of this substantial gainful activity guideline amount of $230 for calendar year 1976 over the actuarially correct estimated amount of $220 for that year, the Social Security Administration is proposing to limit the 1977 maximum substantial gainful activity guideline amount to $240.

Also, the systematic adjustment of substantial gainful activity guideline amounts under the Notice of Proposed Rulemaking, published in the FEDERAL REGISTER on February 18, 1976 (41 FR 7415), is based on the rate of increase in average taxable wages and salaries of covered employees as reported to the Social Security Administration by employers for the first calendar quarter of each year. Under the provisions of Pub. L. 94-202, enacted January 2, 1976, the Social Security Administration will no longer receive employers' quarterly wage reports. The Social Security Administration will rely upon annual reports of earnings. The first annual reports to be processed by the Social Security Administration are expected to be for wages paid in 1978. This change from quarterly to annual reporting of earnings makes the proposed version of the systematic adjustment mechanism inoperative.

Although the automatic adjustment feature is being withdrawn, the Social Security Administration is studying the feasibility of introducing another systematic adjustment concept with a formula which will be consistent with the actuarial integrity of the programs. The systematic adjustment concept under consideration will also be adapted to the new system of annual reporting of earnings provided by Pub. L. 94-202.

Under these new amendments, earnings from work activities by an individual averaging in excess of $230 a month beginning for calendar year 1976 will be considered sufficient earnings to demonstrate an ability to engage in substantial gainful work activity, unless there is other evidence to establish that the individual does not have such ability. Under regulations in effect prior to these amendments, this earnings guideline amount was $200. The $200 amount will remain in effect for evaluating earnings in calendar years prior to 1976.

Earnings from work activities by an employee which average less than $150 a month beginning for calendar year 1976 will be considered insufficient earnings to demonstrate that the individual is able to engage in substantial gainful work activity in absence of evidence to the contrary. This earnings guideline monetary amount is being increased from $130, which was in effect before these amendments. The $130 amount will continue to apply in evaluating earnings in calendar years prior to 1976.

Where an individual's earnings from work activities average between $150 and $230 a month beginning for calendar year 1976, other facts and circumstances relating to the person's work and his medical restrictions will be evaluated together with the amount of his earnings in determining whether or not such individual is able to engage in substantial gainful work activity. As presently in effect, these amounts will remain $130 and $200 for evaluating earnings in calendar years prior to 1976.

The new higher earnings amounts will apply in the adjudication of any disability claim involving earnings by a claimant on or after January 1, 1976. Any claim involving earnings on or after that date will be considered or reopened on the basis of those higher amounts as appropriate.

Sections 404.1534 and 416.934 of Title 20 CFR Parts 404 and 416 respectively are being amended to reflect these new earnings guideline amounts.

In addition, in a Notice of Proposed Rulemaking, which is also being published in the FEDERAL REGISTER today, we are proposing to raise these amounts again, to $240 and $160 respectively for calendar years after 1976.

After due consideration of the comments received and other information which has become available, the proposed amendments pertaining to the systematic adjustment provisions are withdrawn and the amendments establishing new substantial gainful activity guideline amounts beginning for calendar year 1976 are hereby adopted as set forth below.

(Secs. 205, 223, 1102, 1614, 1631, Social Security Act, as amended; 53 Stat. 1368, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended, 86 Stat. 1471, 1475, as amended; (42 U.S.C. 405, 423, 1302, 1382c, 1383))

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program)

NOTE.—The Social Security 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: October 21, 1977.

J. B. CARDWELL,

Commissioner of Social Security.

Approved: January 3, 1978.

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

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

1. Section 404.1534 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 404.1534 Evaluation of earnings from work.

* * * * *

(b) *Earnings sufficient to demonstrate an ability to engage in substantial gainful activity.* Unless there is evidence that an individual's work activities establish that the individual does not have the ability to engage in substantial gainful activity under the criteria in §§ 404.1532 and 404.1533 and paragraph (a) of this section, an individual's earnings from work activities shall be deemed to demonstrate ability to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings average more than $200 a month; or

(2) Beginning in calendar year 1976, earnings average more than $230 a month.

(c) *Earnings insufficient to demonstrate an ability to engage in substantial gainful activity.* Unless an evaluation of the work performed by an individual (see § 404.1532) establishes that the person is able to engage in substantial gainful activity, regardless of the amount of average monthly earnings, an individual's earnings from work activities as an employee shall not demonstrate that the person is able to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings average less than $130 a month; or

(2) Beginning in calendar year 1976, earnings average less than $150 a month.

(d) *Earnings neither high enough or low enough to determine whether an individual is able to engage in substantial gainful activity.* (1) Consideration will be given to the amount of an individual's earnings together with other circumstances relating to the work activities (see §§ 404.1532 and 404.1533), the medical evidence relating to the person's impairment or impairments, and other factors (see § 404.1502) to determine whether the individual is able to engage in substantial gainful activity if:

(i) In calendar years prior to 1976, earnings from work activities average between $130 and $200 a month; or

(ii) Beginning in calendar year 1976, earnings from work activities average between $150 and $230 a month.

(2) However, such activities and such earnings ordinarily would not establish the ability to engage in substantial gainful activity in the case of an individual working in a sheltered workshop (such as a workshop especially organized for disabled persons) or comparable facility, whose activities are limited by his or her impairment if:

(i) In calendar years prior to 1976, earnings average $200 a month or less; or

(ii) Beginning in calendar year 1976, earnings average $230 a month or less.

* * * * *

2. Section 416.934 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 416.934 Evaluation of earnings from work.

* * * * *

(b) *Earnings sufficient to demonstrate an ability to engage in substantial gainful activity.* Unless there is evidence that an individual's work activities establish that the individual does not have the ability to engage in substantial gainful activity under the criteria §§ 416.932 and 416.933 and paragraph (a) of this section, an individual's earnings from work activities shall be deemed to demonstrate ability to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings averaged more than $200 a month; or

(2) Beginning in calendar year 1976, earnings averaged more than $230 a month.

(c) *Earnings insufficient to demonstrate an ability to engage in substantial gainful activity.* Unless an evaluation of the work performed by an individual (see § 416.932) establishes that the person is able to engage in substantial gainful activity, regardless of the amount of average monthly earnings, an individual's earnings from work activities as an employee shall not demonstrate that the person is able to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings averaged less than $130 a month; or

(2)Beginning in calendar year 1976, earnings averaged less than $150 a month.

(d) *Earnings neither high enough nor low enough to determine whether an individual is able to engage in substantial gainful activity.*

(1) Consideration will be given to the amount of an individual's earnings together with other circumstances relating to the work activities (see §§ 416.932 and 416.933), the medical evidence relating to the person's impairment or impairments, and other factors (see § 416.902) to determine whether the individual is able to engage in substantial gainful activity if:

(i) In calendar years prior to 1976, earnings from work activities averaged between $130 and $200 a month; or

(ii) Beginning in calendar year 1976, earnings from work activities average between $150 and $230 a month.

(2) However, such activities and such earnings ordinarily would not establish the ability to engage in substantial gainful activity in the case of an individual working in a sheltered workshop (such as a workshop especially organized for disabled persons) or comparable facility, whose activities are limited by his or her impairment if:

(i) In calendar years prior to 1976, earnings averaged $200 a month, or less; or

(ii) Beginning in calendar year 1976, earnings average $230 a month or less.

* * * * *

[FR Doc. 78-835 Filed 1-11-78; 8:45 am]

[1505-01]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

SUBCHAPTER H—MEDICAL DEVICES

[Docket No. 76N-0324]

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

PART 813—INVESTIGATIONAL EXEMPTIONS FOR INTRAOCULAR LENSES

Intraocular Lenses; Investigational Device Exemption Requirements

Correction

In FR Doc. 77-32258, appearing at page 58874 in the issue for Friday, November 11, 1977:

1. On page 58889, third column, sixth line from the top, the word "reviewing" should read "revising".

2. On page 58892, first column, in (a)(6) of § 813.25, "Indentification" should read "Identification".

3. On page 58893, middle column, fourth line of (b) in § 813.35, "disapproved" should read "disapproval".

4. On page 58893, third column, the paragraph numbered "(12)" should be "(2)".

5. On page 58899, first column, in the fourth line of (a) of § 813.150, the "." after "Administration" should be ",".

6. On page 58899, third column, in the twelfth line of (c) in § 813.155, "deports" should read "reports".

[1505-01]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Recodification Docket No. 15; Docket No. 76N-0501]

Reorganization and Republication

Correction

In FR Doc. 77-31096, appearing at page 56728 in the issue for Friday, October 28, 1977:

1. On page 56728, middle column, in the last line of 2a, "NA" should read "NA"., and in the second line of 3, the number "121.060" should read "121.1060".

[1505-01]

[Docket No. 76F-0461]

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

Styrene Block Polymers

Correction

In FR Doc. 77-25093 appearing in the issue of Tuesday, August 30, 1977 on page 43621, second column 3d paragraph, the 5th line should read, "for the safe use of styrene block polymers".

[1505-01]

[Docket No. 76F-0342]

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Subpart B—Substances Utilized To Control the Growth of Microorganisms

Correction

In FR Doc. 77-21241 appearing in the issue of Tuesday, July 26, 1977 on page 37974 in the middle column § 178.1010(b)(16), the last line should read, "hydroxypoly (oxyethylene) having an av-[erage] * * *".

[1505-01]

[Docket No. 76F-0370]

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Antioxidants and/or Stabilizers

Correction

In FR Doc. 77-33220 appearing at page 59496 in the issue for Friday, November 18, 1977, first column, in the second line under "*Substances*" of § 178.2010(b), "P-cresol" should read "*p*-cresol".

[1505-01]

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 77N-0062; DESI 10106]

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

Certain Antibiotic-Containing Ophthalmic Combination Drugs; Effective Date of Order Revoking Provisions for Certification

Correction

In FR Doc. 77-21245 appearing in the issue of Tuesday, July 26, 1977 on page 37974, on page 37975 in paragraph, "SUPPLEMENTARY INFORMATION", the 5th line should read, "provisions of § 148i.15 (21 CFR § 148i.15)".

[4160-03]

[Docket No. 77N-0420]

PART 514—NEW ANIMAL DRUG APPLICATIONS

Notice of Reinstatement

AGENCY: Food and Drug Administration.

ACTION: Reinstatement.

SUMMARY: This document amends the animal drug regulations to reinstate a provision regarding failure to file a written appearance that was inadvertently deleted when the administrative practices and procedures final regulations were issued.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert S. Brigham, Bureau of Veterinary Medicine (HFV-238), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of January 25, 1977 (42 FR 4680), the Food and Drug Administration issued final regulations on general provisions for its administrative practices and procedures. A conforming amendment to the animal drug regulations inadvertently deleted 21 CFR 514.201 Failure to file an appearance and codified a hearing procedure provision at 21 CFR 514.201.

This document restores the failure to file an appearance provision by incorporating it into an existing regulation (21 CFR 514.200 Contents of notice of opportunity for hearing).

Since this document merely reinstates a provision that was inadvertently deleted, notice and public procedure and delayed effective date are not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 514 is amended in § 514.200 by redesignating paragraph (b) as (c), and paragraph (c) as (d), and adding new paragraph (b) to read as follows:

§ 514.200 Contents of notice of opportunity for a hearing.

* * * * *

(b) If the applicant fails to file a written appearance in answer to the notice of opportunity for hearing, his failure will be construed as an election not to avail himself of the opportunity for the hearing, and the Commissioner without further notice may enter a final order.

* * * * *

Effective date: This amendment shall be effective January 13, 1978.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: January 9, 1978.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 78-941 Filed 1-12-78; 8:45 am]

[1505-01]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 520—ORAL DOSAGE FROM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Haloxon Drench

Correction

FR Doc. 77-27253 (42 FR 47192, September 20, 1977), was corrected on page 61255 of the issue for Friday, December 2, 1977. In the fifth line of that correction, "141.5 grains" should read "141.5 grams".

[4110-03]

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

Gentamicin Sulfate Injection

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application (NADA) submitted by the Schering Corp. for the subcutaneous use of a new animal drug for preventing early mortality in day-old chickens.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: In accordance with section 512(i) of the act (21 U.S.C. 360b(i)), part 522 of the regulations (21 CFR Part 522) is amended in § 522.1044 (21 CFR 522.1044) to reflect approval of NADA 101-862V filed by the Schering Corp., Galloping Hill Road, Kenilworth, N.J. 07033. In addition, the existing regulation is revised to reflect the current format.

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 effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, during regular working hours.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 522 is amended by revising § 522.1044 to read as follows:

§ 522.1044 Gentamicin sulfate injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains gentamicin sulfate equivalent to 5 or 50 milligrams of gentamicin.

(b) *Sponsor.* See No. 000085 in § 510.600(c) of this chapter for use of 50 milligram/milliliter solution in dogs, cats, and chickens, as in paragraph (d) (1) and (3) of this section; see No. 000138 for use of 5 milligram/milliliter solution in turkeys, as in paragraph (d)(2) of this section.

(c) *Related tolerances.* See § 556.300 of this chapter.

(d) *Conditions of use*—(1) *Dogs and cats*—(i) *Amount.* Two milligrams of gentamicin per pound of body weight, twice daily on the first day, once daily thereafter, using a 50 milligram-per-milliliter solution.

(ii) *Indications for use*—(a) *Dogs.* For the treatment of infections of the urinary tract (cystitis, nephritis), respiratory tract (tonsillitis, pneumonia, tracheobronchitis), skin and soft tissue (pyodermatitis, wounds, lacerations, peritonitis).

(*b*) *Cats.* For the treatment of infections of the urinary tract (cystitis, nephritis), respiratory tract (pneumonitis, pneumonia, upper respiratory tract infections), skin and soft tissue (wounds, lacerations, peritonitis), and as supportive therapy for secondary bacterial infections associated with panleucopenia.

(iii) *Limitations.* Administer intramuscularly or subcutaneously. If response is not noted after 7 days, the antibiotic sensitivity of the infecting organism should be retested. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Turkeys*—(i) *Amount.* One milligram of gentamicin per poult, using a 5 milligram-per-milliliter solution.

(ii) *Indications for use.* As an aid in the prevention of early mortality due to Arizona paracolon infections susceptible to gentamicin.

(iii) *Limitations.* For 1- to 3-day-old turkey poults. Administer subcutaneously in the neck. Injected poults must not be slaughtered for food for at least 9 weeks after treatment.

(3) *Chickens*—(i) *Amount.* 0.2 milligram of gentamicin per 0.2-milliliter dose, using a 50 milligram-per-milliliter solution diluted with sterile physiological saline to 1.0 milligram per milliliter.

(ii) *Indications for use.* In day-old chickens, for prevention of early mortality caused by *Escherichia coli, Salmonella typhimurium,* and *Pseudomonas aeruginosa* that are susceptible to gentamicin.

(iii) *Limitations.* For use in day-old chickens only. Administer aseptically, injecting the diluted product subcutaneously in the neck. Do not slaughter treated animals for food for at least 5 weeks after treatment.

Effective date. January 13, 1978.

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

Dated: January 5, 1978.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-914 Filed 1-12-78; 8:45 am]

[1505-01]

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Nicarbazin

Correction

In FR Doc. 77-31236, appearing at page 56729 in the issue for Friday, October 28, 1977, in the footnote at the bottom of the third column, "NBC" should read "NRC".

[4510-22]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 1—PROCEDURE FOR PREDETERMINATION OF WAGE RATES

Incorporating Procedural Changes

AGENCY: Department of Labor.

ACTION: Procedural rule.

SUMMARY: The Department is in the process of installing in Washington, D.C. an automated Davis-Bacon Information System. The purpose of this system is to build up a file of preprepared wage determination schedules which will be available for issuance when a request for a wage determination is received. Requests for wage determinations should now be directed to the National Office. This document incorporates procedural changes into the regulations.

DATES: This change in procedure should be initiated as soon as possible but shall in any event be effective February 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert M. Brock, Director, U.S. Department of Labor, Employment Standards Administration, Division of Construction Wage Determinations, Room S-3012, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-7455.

SUPPLEMENTARY INFORMATION: The Department is in the process of installing an automated Davis-Bacon Information System which will be located in Washington, D.C. A basic purpose of this system is to build up a file of preprepared wage determination schedules which will be available for issuance when a request for a wage determination is received. Accordingly, processing of requests through regional offices will no longer be necessary.

This new procedure will be in effect in the near future. Requests for determinations should be sent directly to the National Office of the Wage and Hour Division, which will issue the determination. Requests submitted to the regional offices will not be returned but will be immediately put in the correct channels. This may cause minor unavoidable delay. Accordingly, the cooperation of the requesting agencies in correctly directing the Standard Form 308 request is requested so that there will be a minimum of disruption during the changeover to automation.

This document was prepared under the direction and control of Robert M. Brock, Director, Division of Construction Wage Determinations, Wage and Hour Division.

Accordingly, Part 1 of Title 29 is amended as set forth below.

Section 1.5 is amended as follows:

§ 1.5 Procedure for requesting wage determinations.

(a)(1) The Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Construction Wage Determinations, Washington, D.C. 20210.

State highway departments under the Federal-Aid Highway Act as codified in 23 U.S.C. 113 and State and local governments requiring wage determinations pursuant to the State and Local Fiscal Assistance Act of 1972 (Title I, Pub. L. 92-512) shall similarly request a wage determination by using Standard Form 308.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work (inserting a note such as "entire schedule" or "all applicable classifications" is not sufficient). Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form. The agency shall not list classifications which can be fitted into classifications on the form, or classifications which are not generally recognized in the area or in the construction industry.

* * * * *

Signed at Washington, D.C., on this 6th day of January, 1978.

WARREN D. LANDIS,
Acting Administrator,
Wage and Hour Division.

[FR Doc. 78-1041 Filed 1-12-78; 8:45 am]

[3510-03]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER J—MISCELLANEOUS

PART 350—SEAMEN'S SERVICE AWARDS

Miscellaneous Amendments

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This action amends the regulations governing seamen's service awards to reflect both an additional service to be provided to qualified seamen and a change in the price of service ribbons due to increased costs.

EFFECTIVE DATE: January 13, 1978.

ADDRESS: Secretary, Maritime Administration, Room 3099, 14th and E Streets. NW., Washington, D.C. 20230, 202-377-2188.

FOR FURTHER INFORMATION CONTACT:

Arthur Friedberg, Director, Office of Maritime Manpower, Room 3069, 14th and E Streets NW., Washington, D.C. 20230, 202-377-3018.

SUPPLEMENTARY INFORMATION: These amendments to 46 CFR Part 350 update the regulations governing Seamen Service Awards. Under Pub. L. 759, 84th Congress (46 U.S.C. 249 et seq.), the Secretary of Commerce is authorized, under such rules and regulations as may be prescribed, to issue a merchant marine service ribbon to each master, officer, or crewman of a United States ship who, after June 30, 1950, has served in any time of war or national emergency, or during an operation by the Armed Forces outside the continental United States. Pub. L. 84-759 also authorizes the Secretary of Commerce to permit replacements of these decorations to be provided at reasonable prices by persons authorized by the Secretary, if the awards are lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the owner. A&N Trading Company, 714 12th Street NW., Washington, D.C. 20005, has been providing these service ribbons at a cost of fifty-five cents since June 22, 1973; this price no longer covers increased domestic and internationl postage, increased labor charges and other handling costs.

Part 350 is also being amended to add the Presidential Testimonial Letter to § 350.5(b) as an item which may be replaced, at no cost, upon application. Finally, a minor spelling error in § 350.3 is being corrected.

Because these amendments involve both a public benefit and a public contract, they are exempted from the provisions of 5 U.S.C. 553. Consequently, they are published in final form and, except for the price change in § 350.4(b), become effective immediately. The effective date of the price change is retroactive to the relevant effective date in the underlying contract with the supplier.

NOTE.—It has been determined that none of these amendments represents a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Accordingly, 46 CFR Part 350 is amended as follows:

§ 350.2 [Amended]

1. Section 350.2 is amended by striking "three-eights" when it first appears in the section and substituting "three-eighths" in lieu thereof.

§ 350.4 [Amended]

2. In § 350.4, paragraph (b) is amended by striking "fifty-five cents" where it appears in the paragraph and substituting "eighty-five cents" in lieu thereof.

§ 350.5 [Amended]

3. In § 350.5, paragraph (b) is amended by adding at the end thereof, immediately following (b)(6), a new item (7), to read as follows:

* * * * *

(b) * * *

(7) Presidential Testimonial Letter.

(Pub. L. 84-759, 70 Stat. 605 (46 U.S.C. 249 et seq.); Department of Commerce, Order 10-8 (38 FR 19707, July 23, 1973).)

Dated: January 5, 1978

By order of the Assistant Secretary of Commerce for Maritime Affairs.

ROBERT J. PATTON, Jr.,
Assistant Secretary, Maritime Administration/Maritime Subsidy Board.

[FR Doc. 78-1015 Filed 1-12-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20539; FCC 77-835]

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

PART 78—CABLE TELEVISION RELAY SERVICE

Providing For Use of FM Microwave by Television Translator Relay Stations, and To Provide for Operation of Television Translator Stations Using Modulation of Direct Video and Audio Feed

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: Report and order was issued amending the Federal Communications Commission's rules to permit the use of frequency modulated television translator relay stations and to permit television broadcast translator stations to retransmit the programs and signals of television broadcast stations received from various suitable sources such as television intercity relay stations, common carrier microwave stations, etc. This proceeding was initiated as a result of a petition from the National Translator Association and the purpose of the new rules is to provide for operations which can improve the quality of television signals in remote communities. Simultaneously on its own motion, the Federal Communications Commission included amendments to rules of other television auxiliary radio services pertaining to continuous operation, observations

of the transmitted signal of stations operating unattended, and operator license requirements. This latter action was taken to more closely align the rules governing television auxiliary microwave stations with those governing similar operations in the Safety and Special and Common Carrier services.

EFFECTIVE DATE: February 17, 1978.

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

FOR FURTHER INFORMATION CONTACT:
Wilson A. LaFollette, Broadcast Bureau, 202-632-9660

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: December 8, 1977.

Released: January 12, 1978.

In the matter of amendment of subparts F and G of part 74 and subpart B of part 78 to provide for the use of FM microwave by television translator relay stations, and to provide for the operation of television translator stations using modulation of direct video and audio feed. Amendment of subpart F, part 74 (television auxiliary broadcast stations) of the Commission's rules and regulations.[1], Docket No. 20539.

1. The Commission has before it for consideration its Notice of Inquiry and Notice of Proposed Rulemaking released on July 11, 1975, in this proceeding, FCC 75-796, inviting comments on a proposal to expand the means by which television translator stations may receive television signals for simultaneous rebroadcast. The Notice asked for comments as to whether television translator relay stations should be authorized to use FM microwave for transporting television signals to feed translator stations; whether television translator stations should be able to receive and utilize a broadcast television signal coming from any suitable source, such as a television intercity relay station; and whether television translator stations should be able to employ modulating equipment for conversion of a direct video and audio feed to television frequencies. Comments were invited on a number of aspects of this proposal: what impact the use of television auxiliary bands A, B, and D by translator relay stations would have on present and future uses of this band; what technical standards should be applicable to translator systems employing modulating equipment; whether television translator relay stations should continue to be authorized only on a secondary, non-interference basis; whether we should continue to authorize AM heterodyne translator relay stations if the FM system is adopted; and other pertinent matters. Comments and data were filed by television translator associations, television station licensees, cable companies and others.[2] Three parties oppose the use of modulating equipment by translator stations and FM microwave by translator relay stations on essentially competitive grounds.

HISTORY OF THE TELEVISION TRANSLATOR RELAY SERVICE

2. A television translator station is a low-power broadcast station intended to receive a regular television station's signal and retransmit it on another frequency. A television translator relay station is a microwave auxiliary station intended to transport the television broadcast station's signal to the translator site. A television translator relay station may be used where the desired television signals are otherwise unavailable at the television translator site.

3. Many communities can obtain an input signal for a translator station either from the television station directly or from another translator station. Some communities desiring translator service are unable to obtain a signal for rebroadcast by these means, and, in 1936, the Commission looked toward microwave frequencies for bringing television signals to translator sites.[3] Television translator relay stations were authorized by amending the Television Auxiliary Services rules in part 74. The microwave equipment in use in the auxiliary services up to this time mostly employed frequency modulation. Translator relay stations were authorized to use only amplitude modulation (A5) for the visual signal and frequency modulation (F3) for the aural signal, obtained by simple heterodyne frequency conversion. This type of equipment required no significant modification to existing translator equipment or technical standards. Translator relay stations, like the translator stations they served, were to be direct frequency conversion devices. Therefore, many of the complex technical parameters of a television signal were a function of the originating station, and translators could continue to operate as inexpensive rebroadcast devices. Though simple, this system was acknowledged from its outset as not producing the same quality television signals available with frequency modulation techniques, as the AM system was much more susceptible to noise over long transmission paths. The Commission observed that "Our proposal herein is an attempt to provide a means for relaying TV signals to translators without changing the basic purpose and equipment of translators. The proposals to permit modulation of translators go beyond this objective and create additional problems for translator operators as well as other policy, legal and technical problems."[4]

USE OF FM MICROWAVE

4. Now, ten years after the Report and Order authorizing translator relay stations, we again consider the use of FM microwave by these stations. The different position now taken is attributable to several factors: Advanced technology which has increased the dependability of equipment; the near-saturation of color television which is particularly susceptible to degradation; public demand for higher quality television signals where once the public was satisfied with less; and the availability of equipment at lower costs. Most respondents wholeheartedly supported the proposal. Washington County indicates that it is extremely difficult to maintain a quality color picture in conventional translators that receive their signal via intermediate translators. Riverton Radio and TV, Inc., indicates that Wyoming,

[1] On our own motion, as discussed in paragraphs 18-21 herein, we are amending subpart F, part 74 of the Commission's rules to more closely align these rules with those governing operations of a similar nature in the safety and special and common carrier services. Under the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B), prior notice of proposed rulemaking is not required inasmuch as these amendments impose no additional burdens and raise no new or separate issues upon which comments would serve any useful purpose. See 40 FR 47522, October 9, 1975.

[2] The parties which filed comments in this proceeding are as follows: City of St. George, Utah; Tepco Corp.; Bureau of Educational Communications of the New York State Education Department; Riverton Radio and TV, Inc.; Washington County, Utah; joint comments by 69 CATV companies; Maryland Public Broadcasting Commission; National Translator Association; Association of Maximum Service Telecasters, Inc.; Minnesota Congressman Bob Bergland; New York State Commission on Cable Television; Board of Cooperative Educational Service of Greene, Delaware, Schoharie, and Otsego Counties, N.Y.; Northwest Minnesota Telecommunications Inc.; Cornhusker Television Corp.; joint comments by KMSO-TV, Inc., and KLIX Corporation; and Blue Mt. TV Association; National Cable Television Association. Additionally, comments were received from Communications Services, Inc., however, these comments were not timely filed and go far beyond the scope of this proceeding. Therefore, they have not been considered herein, but the Commission is accepting their filing as a petition for rulemaking, RM-2826, and will act on that petition separately.

[3] Licensing of Microwave Relays to Translator Operators, 5 FCC 2d 772, 8 R.R. 2d 1643 (1966).

[4] Id.

with only three television stations in the entire state and no educational stations, sorely needs a reliable system for transporting television to remote areas. The National Translator Association (NTA) contends that use of FM microwave will eliminate unnecessary limitations on the techniques used to transport television signals to translator sites. Cornhusker Television Corp. states that its existing AM heterodyne translator relay system has a severe intermodulation problem when transmitting color signals.

5. We believe that, due to the growth of the translator service and advances in technology, the problems previously encountered in the use of FM microwave by translator relay stations should be re-examined. At the present time, an impediment exists with the existing television translator service: "degradation with multiple hops." A translator station may receive the signal of the primary station via one or more intermediate translators, but with each repetition, there is a subsequent loss in quality. After four or five hops, the television signal may well be unusable. Because translator relay stations presently employ amplitude modulation, they are functionally similar to the existing television translator service, and present the same problem of degradation with multiple hops. Use of FM microwave may be a solution in that a television signal can be processed through a large number of relay stations and still maintain excellent quality. With an FM microwave system, small remote communities may have available television service of a quality comparable to that available to viewers of regular television stations. One of the factors which, in 1966, militated against FM microwave systems for small communities desiring television service was the prohibitive cost. But it appears that, where once there was satisfaction with any type of television service, there now is a demand for clear color reception and a willingness to finance necessary equipment changes. Further, it appears that the translator relay service as presently authorized is inadequate. There have been approximately 25 translator relay stations authorized in the past ten years, and more than half of these have received waivers to permit frequency modulation.[5] Another factor that discouraged the use of FM microwave to feed translator stations was that it would necessitate an increase in the complexity of the translator equipment. For technical reasons, the translator could no longer be a frequency conversion device, but would need to be a low-power television transmitter. NTA, in its petition for rule making, states that the technology of the needed modulation equipment has improved to such a degree that it is now totally practical to allow this more complicated equipment for translator stations. They indicate that there is now a severe need for local modulation, as most television transmissions are in color, which is much more susceptible to signal degradation with the existing translator system. Respondents generally agree that the additional equipment can perform reliably. The New York State Commission on Cable Television (New York Cable Commission) indicates that modulation equipment may be able to be used for three to six months without checks or adjustments. We concur in the view that modulation equipment can perform reliably. The FM microwave-translator systems we have previously authorized on a waiver basis give every indication of performing adequately.

6. Technically, therefore, an FM microwave system presents no undue problems. The only area of concern voiced in the comments was due to a feared increase in the "importation" of signals, via translators, into cable and small-market television service areas. These concerns have been considered, but we are not convinced that we should forestall action that would allow many rural areas of our country, whose only means for receiving television is through translators, from receiving the quality television service that is technically available. Though the primary function of translators is to serve areas where television is unavailable by other means, some translator stations serve areas also served by regular television stations and cable systems. We shall discuss later in this Report, the "importation" of signals into these markets.

Use of Television Signals From Various Sources

7. In the NTA petition for rule making and in our Notice, the idea was presented that translators be allowed to utilize a television signal from an intercity relay, a studio-to-transmitter link (STL) or other suitable source. Though this aspect of our proposed changes did not receive direct comment from respondents, there was general support for the changes proposed. Television microwave signals, from STL's, intercity relays, Cable Television Relay Service (CARS) stations, and common carriers are readily available in many areas. If such a television microwave signal path is close to a town desiring translator service, there appears to be no reason to prohibit the use of that signal as a source of television. There are no technical problems in this proposal other than those also involved in allowing FM translator relay stations. If we allow use of FM microwave by translator relay stations, there would be no reason to prohibit use of convenient television signals from other FM microwave sources. So long as the translator station remains a rebroadcast device, no additional policy issues are raised. A translator applicant or licensee who desires to use a satellite or terrestrial common carrier microwave feed will, of course, be required to purchase the service in the same manner as any other customer, in accordance with prevailing tariffs.

Authorization of the Service

8. For the reasons discussed, we are convinced that the use of FM microwave to feed television translator stations would significantly improve the television service available to rural areas of our country and adoption of rule amendments, as set forth in the Appendix, is in the public interest. We will allow translator relay stations to employ frequency modulation, and we will allow a television translator station to utilize a signal from any suitable source, such as an intercity relay station. We caution, however, that the signal rebroadcast must be originally transmitted or intended for transmission on a simultaneous basis by a regular television broadcast station. Program origination and use of signals other than those broadcast by television broadcast stations are not being considered in this proceeding. We now turn our attention to formulating regulations to effectively implement our decision. Such aspects as frequency availability, technical standards, and "signal importation", and the comments solicited by our Notice with respect to these matters, will now be discussed.

Use of All Television Auxiliary Services Bands

9. Our Notice asked for comments concerning the impact of television translator relay stations using bands A, B and D in the Television Auxiliary Services. Translator relays are presently allowed to use only certain frequencies in band A. Most parties responding to this aspect of our Notice argued that, since translator relay stations would generally be serving sparsely settled areas that would not have a high concentration of present or anticipated television microwave use, all bands could be utilized by translator relay stations with little fear that the microwave needs of regular television stations could not be met. The New York State Education Department and the Association of

[5] In Nevada Radio-Television, Inc., et al., 38 FCC 2d 555, 25 R.R. 2d 1197 (1972), the Commission waived various rules and authorized an extensive translator system which employs FM microwave relay stations to transport television signals to sparsely settled regions of Nevada. Similar other FM microwave relay stations have since been authorized on a waiver basis.

Maximum Service Telecasters (AMST) indicated that there would be no impact if translator relay stations continued to be authorized on a secondary basis. The New York Cable Commission stated that a more efficient use of the radio spectrum would result from authorizing all three bands for use by television translator relay stations, as the different transmission characteristics peculiar to each frequency band could be properly utilized. A group of 69 cable television companies (69 CATV Companies) indicated that such use would not be efficient, and that we should guard against creating a scarcity of frequencies in already congested bands. The frequency congestion that occurs in the Television Auxiliary Services is chiefly located in larger metropolitan areas where translator relay stations are not likely to be located. Furthermore, we intend to continue to authorize translator relay stations on a secondary, non-interference basis. If intolerable frequency congestion occurs in an area of television translator relay stations, the translator relay could be removed from service to make way for a higher priority use. The 69 CATV Companies hold that use of three microwave bands is more than that offered to cable television companies in the Cable Television Relay Service (CARS). Since it is not, and need not be, our purpose here to equalize translator relay service and CARS, we will allow translator relay stations to use bands A, B, and D in the Television Auxiliary Service. However, in another proceeding (RM-2208) we have been asked to examine the spectrum allocation for the Cable Television Relay Service.

Technical Standards for Translators Employing Modulators

10. If a signal is transported to a translator site by FM microwave, the actual feed to the translator equipment will be a direct video and audio signal, or "base band." As a technical necessity, modulating equipment must then be used in order to convert the base band signal to a television frequency for subsequent retransmission. Television translator stations have heretofore been frequency conversion and amplification devices; the signal transmitted by the translator station remains essentially unchanged from that radiated by the primary station, and the equipment employed is relatively simple. A translator station modulating with base band input, however, must have equipment to control the modulation characteristics, and we therefore must determine specifications for the additional equipment. Modulating equipment will be needed only by those translator stations that intend to utilize a base band input signal; e.g., a signal from an FM microwave source.

11. There was general agreement among the respondents that the modulator must meet the requirements of paragraphs (a) and (b) of § 73.687 of our rules. This section pertains to the technical standards of television broadcast stations and contains requirements applicable to modulating equipment. It also requires that the frequency, as radiated, shall have an envelope as would be produced by a modulating signal in conformity with § 73.682 and the appropriate figure of § 73.99. Compliance with § 73.687 (a) and (b) will insure that the translator can in fact rebroadcast a properly assembled television signal. It appears that there is equipment available capable of meeting these standards; the respondents indicate that such a requirement can be met; therefore we will apply the requirements of § 73.687 (a) and (b) to translator stations employing modulating equipment. These requirements will be applicable to the entire translator unit. We are not so much concerned with technical quality at some intermediate point, such as at the modulator, as we are at the final output of the translator. We will also require, in § 74.752, that the equipment be checked after installation by a first class radiotelephone operator, to insure that it is functioning normally and meets the requirements necessary for proper operation of a television transmitter.[6] This will be similar to the "proof of performance" required of television broadcast stations, except that we will not normally require the measurement data to be submitted to the Commission for examination. Maintaining this information with the station records should prove sufficient.

12. Concerning the frequency tolerance for translators employing modulating equipment, the New York Cable Commission indicates that the requirements of § 73.687(c) for regular broadcast television stations are too stringent to be applied to translator stations, and that compliance with this requirement could not reasonably be expected. AMST indicates that the frequency tolerance requirement could be relaxed for translators. The New York State Education Department suggests that the visual carrier frequency tolerance be 0.0015 percent of the assigned frequency, and the aural carrier frequency tolerance be 4.5 MHz ±1 kHz above the visual carrier. NTA sugguests 0.005 percent visual and plus 4.5 MHz ±1 kHz aural. After due consideration, we feel that television translator stations should meet generally the same visual frequency tolerance requirements regardless of whether or not modulating equipment is employed. The present requirements are 0.02 percent for transmitters of 100 watts or less, and 0.002 percent for transmitters rated at greater than 100 watts. While perhaps these frequency tolerance requirements should be reviewed, we feel that there is no need for a separate visual frequency tolerance requirement for stations employing modulating equipment. The present requirements will be examined in another proceeding. With regard to the aural carrier frequency tolerance, however, the present translator rules have not had a separate requirement. Because a proper modulation process assembles the visual and aural carriers at a 4.5 MHz frequency difference, we will require that translator equipment maintain the aural carrier 4.5 MHz ±1 kHz above the visual carrier. This is the same requirement in use by television broadcast stations.

13. Other suggestions were received concerning technical requirements. NTA takes the viewpoint that the modulator is a part of the microwave relay receiving apparatus rather than a part of the translator. As a television transmitter could be simply viewed as a modulator and an amplifier, it seems appropriate to consider the modulating equipment a component of transmitting, rather than receiving, apparatus. Furthermore, if the modulator were considered to be a part of the microwave receiving equipment, there would be no requirement for type acceptance, which we consider necessary for insuring that the equipment can perfor adequately. NTA also suggests that a rule be formulated to allow a reference white level adjustment at the translator site and to require it to be 12.5 ±2.5 percent of the peak carrier level. Manufacturers of equipment may wish to include such a control, but we make no such requirement.

Requirements for Unattended Operation

14. Our objective in this proceeding is to increase the quality of television reception available in rural areas. The FM system herein adopted is capable of meeting this objective if the equipment is maintained at a satisfactory level of performance. However, with the addition of a modulator to translator equipment, the translator is a much more complicated device. AMST points out that use of modulators could result in worse rather than better service if strict precautions are not taken. It advocates use of a great deal of monitoring equipment, and either remote control operation or twice-weekly inspections by a first class radiotelephone operator. NTA indicates that its petition for rule making, which initiated our Notice, was predicated on the assumption that an operator would not be needed with the addition of an FM microwave link

[6] For editorial purposes, we will also move certain paragraphs in § 74.750 to this new section, with slight modification.

to a translator system. It states that an operator requirement would be impractical and unneeded. Section 318 of the Communications Act allows the Commission to permit operation of television translator stations without operators, and the vast majority of existing translator stations do not require an operator on duty.

15. There were several other views concerning unattended operation of television translators and television translator relays. The New York State Education Department states that the present requirements for unattended operation are adequate to cover the use of modulating equipment. Tepco Corporation indicates that monitoring of an unattended microwave station is not needed as problems arising from their operation are generally due to power failure or component breakdown, rather than out of band operation or excessive deviation. The 69 CATV Companies state that unattended operation for television translator stations is not consistent with a reliable and adequate television service. The New York Cable Commission states that a monitoring requirement for television translator stations is much needed. The Board of Cooperative Educational Services of Greene, Delaware, Schoharie, and Otsego Counties, N.Y. (BOCES) supports unattended operation for the system. Riverton Radio and TV, Inc., feels that unattended operation should be permitted as it would be impractical to have an operator stay at an oftentime remote location.

16. Allowing a better quality system will not result in better television service for translator stations if there are not some safeguards to assure that the equipment will be maintained and operated satisfactorily. We do not wish to impose the strict operating requirements of high power television stations on a low-power inexpensive device that serves a small community with limited financial resources and operator availability, but neither do we wish to see a service degraded by lack of adequate control. We seek to strike a balance between conflicting ends.

17. *Television Translator Stations.* With the advent of modulating equipment at the translator sites, we must reevaluate our operator requirements for translator stations. Modulating equipment approaching the quality of that used by regular broadcast television stations will be used for television translators and these stations are then no longer unsophisticated frequency conversion devices. Except for output power, they are comparable in complexity to satellite television stations. While the views of the respondents concerning an operator requirement and monitoring for translators varied from vital to unnecessary, we are convinced that a station of this complexity needs more control than the conventional translator if the promise of improved service is in fact to be fulfilled. At the same time, we desire our regulations to be an aid toward this end, rather than a burden, particularly since we usually see translators operated by local groups as a public service to small communities and we do not wish to discourage this public service by unnecessary requirements. Some further control of this new type of equipment will be obtained by the first class operator certification that the installed equipment meets our requirements (discussed in paragraph 11 of this Report). To insure that the equipment is maintained to operate properly, we will stipulate, in § 74.752, that a first or second class radiotelephone operator service the equipment as often as necessary to provide a dependable service to the community served. Under this requirement, we leave to the individual licensees a determination of the extent and frequency of maintenance adjustments, under our guideline of continuing to provide an adequate service. These installation and maintenance requirements are deemed adequate to insure proper operation of the modulating equipment, and we therefore will add only a minimal monitoring requirement to our present requirements for unattended operation. Monitoring may be easily accomplished by viewing a regular television receiver at a convenient location, to insure that a good quality signal is in fact being transmitted. We will require monitoring once each day, for a ten minute period, by a person designated by the licensee. This slight additional requirement will serve to reinforce what many translator licensees probably are already doing: Observing the received picture each day to be sure that the signal continues to be of acceptable quality. We specify the minimum time period of ten minutes to allow the television receiver to stabilize after being turned on, and to encourage the observer to study the received picture for any signs, not apparent to an untrained viewer, that may signal the beginnings of a transmitter fault. The monitoring requirement will be applicable only to those translator stations that employ modulating equipment; heterodyne frequency conversion translator stations presently do not have such a requirement, and we add none here.

Television Translator Relay Stations

18. At present, television intercity relay stations, television translator relay stations, and television STL stations, (studio-to-transmitter link), must be equipped with a device that will automatically terminate radiation whenever the incoming signal ceases to be received. In addition, television intercity relay stations and television STL stations must have their radiated signal observed every three hours. This latter requirement is not imposed on television translator relay stations.

19. The Commission believes the reliability and frequency stability of present day equipment is such that these auxiliary broadcast stations may be allowed to operate continuously with less frequent observation of the transmitted signal. Equipment used for relay purposes under Subpart F of Part 74 is quite similar, or in many cases identical, to that used in the Safety and Special and Common Carrier services. Yet microwave stations authorized in those services are not subject to either of these requirements. Moreover, licensees report better reliability and stability of microwave transmitters is achieved if the equipment operates continuously. Intermittent operation of the transmitting equipment, on the other hand, has contributed to component failure. Consequently, the Commission is persuaded the present broadcast rule requirements are no longer warranted. These stations will now be permitted to operate continuously and § 74.635(a)(1) of the rules is deleted below accordingly. However, § 74.637(a) is also amended to indicate that radiation of the carrier without modulation may not cause harmful interference to other authorized stations. Rather than delete the observation requirement entirely, however, the Commission will increase the interval permitted between observations to 24 hours. This should be sufficient to allow the person performing this function to recognize any signs present in the video or audio portions of the transmitted signal that may indicate improper operation of the relay equipment.[7]

20. The increased reliability of the auxiliary broadcast equipment also obviates the need for a licensed operator (i.e., a person holding a valid radiotelephone first class or radiotelephone second class license) to be on duty at all times and in charge of the auxiliary station, as required by § 74.665 (a), (b), and (c). Comparable operations in the Safety and Special and Common Carrier services are governed by a

[7] No doubt some of the older and less stable equipment is still authorized to operate under Part 74. Licensees of this equipment should note that they are, in any event, responsible for its operating in a non-interference manner; hence, they may find it advantageous (and perhaps necessary) to continue restricting radiation in the absence of a received signal. In other words, this rule change should not be interpreted as authorizing licensees of older equipment to forego a reasonable precaution which may be necessary to ensure the interference-free operation of that equipment.

more general requirement. It stipulates that unless the transmitters in those services are designed so none of the operations required during the normal rendition of service may cause off-frequency operation, or result in unauthorized radiation, it must be operated by a person holding a first- or second-class license.

21. A requirement such as this enables the licensee to determine whether or not a licensed operator is required. We believe it is a desirable alternative to the present broadcast rule requirement and we are therefore amending the broadcast rules along the same lines.

22. The monitoring requirement set forth above should prove adequate if the equipment is properly and regularly serviced by a licensed first- or second-class radiotelephone operator. While we established no minimum time period for maintenance checks, we point to our existing rule in § 74.665(e), which states that servicing, maintenance, and installation tests and adjustments are to be performed by or under the immediate supervision of a licensed first- or second-class radiotelephone operator. We encourage station licensees to intitiate such servicing on a regular basis, and to establish an adequate preventive maintenance program.

23. The operator of a translator relay station, if the requirements for unattended operation are met, may be stationed at a location receiving the signals of the associated television translator station, and must view the received signal, at intervals not exceeding 24 hours, and initiate correction of any improper operation observed. From this monitoring location, if a problem were to occur in the operation of the television system, the operator would not immediately know if the fault was with the translator station, the translator relay station, or the originating source, but would be expected to discover the source of the problem and initiate corrective action.

Translator Relay Stations Authorized on a Secondary Non-Interference Basis

24. Respondents generally favored retention of the requirement that television translator relay stations be authorized on a secondary, non-interference basis. The needs of regular television broadcast stations have heretofore been considered primary to the needs of television translator stations, as translators are mainly low-power fill-in devices. We see no reason to change this policy and therefore agree that translator relay stations must continue to be secondary to other television auxiliary users in the A, B, and D microwave bands. However, § 74.602(i) of the rules, which states that channel assignments will be made to other types of stations without regard to the existence of television translator relay stations, appears to reflect a lesser regard for the status of these stations than is warranted. We will modify this provision, as FM translator relay station licensees will be investing substantial sums of money in equipment, and, even though a secondary service, are entitled to at least some reasonable assurance of stability. It is not our intention to have a translator relay station "bumped off" by a proposed station on the same frequency when there may be other frequencies available in the same band. But if a particular band becomes overly congested with television auxiliary use in a certain area, the translator relay station shall bear the burden of finding another frequency in another band or possible ceasing service altogether. As translator relay stations will likely be located in remote areas, away from the frequency congestion of the big cities, this problem appears minimal.

Translator Relays Authorized To Use Either Amplitude or Frequency Modulation

25. Our Notice requested comments addressed to whether AM heterodyne translator relay stations should be supplanted by the FM system or whether we should continue to authorize AM translator relay stations as well as FM. All parties responding to this aspect of our Notice indicated a desire to have both systems available for use. While the AM system is technically inferior over long paths, it may suffice in some instances and cost considerably less. Section 74.637(a) of our rules allows any type of suitable emission for television auxiliary stations, except that translator relay stations are restricted to A5 for the visual signal and F3 for the aural signal. We will allow frequency modulation for translator relay stations by deleting this restriction; amplitude modulation will continue to be available for any television auxiliary station by the terms of revised § 74.637(a), which states in part that "Television broadcast auxiliary stations * * * may be authorized to employ any type of emission * * *." In summary, a party desiring a new AM translator relay station may continue to apply under the provisions of Subpart F of Part 74.

"Importation" of Signals by Translator Stations Into Cable and TV Markets

26. In addition to the specific comments requested by our Notice, comments were received concerning various other issues. The primary additional consideration voiced by respondents concerned the "importation" by translators of television signals into cable or small market television service areas. Joint comments by 69 Cable Companies and joint comments by KMSO-TV, Inc., and the KLIX Corp. objected to our proposed rule changes on the grounds that FM microwave fed translators would have an adverse impact on cable and small market television stations. In addition, NCTA states that if the proposed rule change is adopted, instead of merely filling-in Grade B coverage areas of television broadcast stations, translators will become satellite stations and use frequencies which are allocated to provide full broadcasting services. NCTA urges the Commission to refrain from adopting the proposed change until it develops an allocations scheme for translators within the framework of a nationwide communications policy.[*]

27. The concern voiced by these parties is essentially that the availability of FM microwave feeds will give rise to a proliferation of translators in areas where such stations have not heretofore been feasible. Institution of this new translator service will, it is claimed, result in fractionalizing audiences of small market TV stations and cable systems to their detriment. The Commission is not persuaded that adoption of the proposed rules would produce this result.

28. It is important to recognize that current Commission rules and policies concerning eligibility and licensing in the translator service proscribe unwarranted extension of service by television station licensees. For example, such licensees may not, by VHF translator, extend their service into a community which is beyond the primary station's predicted Grade B contour and within the predicted Grade B contour of a small market station assigned to a different community. This, and all other currently applicable rules and policies governing extension of TV service by translators, are unaltered by the rules adopted herein. Accordingly, permitting the use of an FM microwave system merely provides television programs and signals for use by television translators without the inherent degradation sometimes experienced by use of other techniques. This is the primary consideration underlying this proceeding. Our decision here does no more than open a new opportunity to fill unsatisfied service needs. Further, it must not be overlooked that, in addition to meeting requirements prescribed by rules and policy, translators are authorized pursuant to our application processing procedures. These procedures afford an opportunity to take due account of

[*] The NCTA comments, together with the CSI petition (Note 2, supra) and another petition (RM-2751) filed by Cablecom-General, call for a policy review beyond the scop of this rulemaking, and will be dealt wit separately.

any claims of adverse impact. It is in this context that such claims are more properly considered rather than in the context of this rulemaking proceeding.

29. As a final note regarding this matter, we intend to observe closely the development of FM microwave systems to guard against abuses. We do not, however, believe that it is prudent or sound, as a policy matter, to proscribe a worthwhile project merely on the basis that the possibility may exist for abuse. We are confident that those who have expressed their concern will be equally alert and will not hesitate to draw to our attention situations which suggest abuse.

ADDITIONAL CONSIDERATIONS

30. Various other questions have arisen in the consideration of this rulemaking. There are instances where microwave stations that are available to provide feeds to television translator stations may also be carrying material not intended for rebroadcast to the public, or the microwave station may be carrying material intended for delayed broadcast by television stations. Licensees of television translator stations utilizing feeds from such microwave stations must take whatever steps are necessary to insure that there is no transmission of any material which is not a simultaneously reproduction of their primary station's (or stations') signals.

31. Because we have attempted to make television translator relay, STL and intercity relay stations comparable insofar as possible, we also will allow a subcarrier for operational communications to be placed on a television translator relay station signal. This may aid maintenance and could allow for remote control operation of translator stations. One respondent also suggested that we restrict the financial support given by a primary station to a television translator relay station, in a manner similar to the restriction on financial support by primary stations for VHF translators in § 74.732 of the rules. Since our rules provide that translator relay stations will be authorized only to the licensee of the translator station with which they are to be used, the present rules are adequate with respect to the construction of new translators and associated relay systems, i.e., if financial support is prohibited for the construction of the translators, it would be prohibited for the construction of the associated relay stations. If, however, there is an existing translator and a relay system is proposed, no such restrictions would apply because the rules now allow financial support for existing translators and we would consider a relay system, under these circumstances, to be a device for improving existing service.

32. Section 74.731(f) of the Commission's rules allows UHF translator stations to originate messages, seeking or acknowledging financial support, for up to 30 seconds each hour, and modulating equipment is used to inject these local messages on a translator station's signal. However, the certification requirement we are adopting with regard to modulating equipment will not be applicable to these existing systems. Where modulating equipment is used only for this limited purpose, we consider that a first-class radiotelephone operator certification is unneeded. We have no indication that such regulation of this existing and limited use of modulating equipment is warranted, and we do not wish to inhibit efforts to enable UHF translators to be selfsupporting.

SUMMARY OF RULES CHANGES

33. The various rules amended are indicated below, with a summary of the changes made. The actual rule changes may be found in the appendix.

AMENDMENTS TO SUBPART F OF PART 74

Section 74.601: Removes restriction that translator relay stations obtain a signal only by direct reception of the primary station.

Section 74.602: Allows use of bands A, B and D by television translator relay stations on a secondary non-interference basis to other television auxiliary stations.

Sections 74.603, 74.604 and 74.651: Achieves parity between television intercity, STL and translator relay stations as regards multiplexing and frequency assignment.

Section 74.631: Allows various input sources for a translator relay station. Allows multiplexing.

Section 74.632: Requires designation of the input source of a television translator relay station.

Section 74.634: Amends requirement for licensed operator.

Section 74.635: Formulates requirements for unattended operation.

Section 74.637: Allows translator relay stations to use any suitable emission.

Section 74.661: Formulates new frequency tolerance standards for translator relay stations.

Section 74.665: Amends operator requirements.

Section 74.682: Special station identification requirements eliminated for translator relay stations.

AMENDMENTS TO SUBPART G OF PART 74

Section 74.701: Eliminates restriction on input signal sources.

Section 74.731: Allows rebroadcast of a signal from a variety of input sources. Allows the translator to use modulating equipment.

Section 74.734: Indicates under what conditions unattended operation of translator stations will be authorized.

Section 74.750: Amended to include type acceptance standards for translator equipment using modulators.

Section 74.752: Added to specify installation and maintenance requirements.

Section 74.761: Adds frequency tolerance requirement for the aural carrier.

Section 74.766: Amended to clarify operator requirements.

Section 74.784: Limits a translator station to rebroadcasting programs and signals which are simultaneously transmitted by a regular television broadcast station.

AMENDMENTS TO SUBPART B OF PART 78

Section 78.1: Adds broadcast translator stations for use of CARS stations.

Section 78.3: Adds part 74 as a cross reference.

Section 78.5: Amended to provide distribution to television translators.

Section 78.11: Eliminates restriction that a CARS station may be used only to feed cable television systems.

Section 78.18: Achieves parity between the various television auxiliary stations as regards frequency assignment.

CONCLUSION

34. Authority for the adoption of the amendments herein is contained in section 4 (i) and (j), and section 303 (a) through (g) and (r) of the Communications Act of 1934, as amended. For the reasons stated above, we are of the view that adoption of the rules as formulated herein would serve the public interest. In view of the foregoing: *It is ordered*, That effective February 17, 1978, subparts F and G of part 74 and subpart B of part 78 of the Commission's rules and regulations are amended in accordance below. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307).)

For the Federal Communications Commission.*

WILLIAM J. TRICARICO,
Secretary.

Parts 74 and 78 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

1. In § 74.601, paragraph (d) is amended to read as follows:

§ 74.601 Classes of television auxiliary broadcast stations.

* * * * *

(d) *Television translator relay station.* A fixed station used for relaying programs and signals of television

*See attached concurring and dissenting Statement of Commissioner Margita E. White.

broadcast stations to television broadcast translator stations.

* * * * *

2. In § 74.602, introductory text of paragraph (a), and paragraph (h) are amended and paragraph (i) is deleted and reserved to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television intercity relay, and television translator relay stations.

* * * * *

(h) Translator relay stations will be assigned on a secondary basis, i.e., subject to the condition that no harmful interference is caused to other television auxiliary stations or to CARS stations operating between 12700 and 12950 MHz, and that translator relay stations must accept any interference caused by such stations.

(i) [Reserved]

3. In § 74.603, paragraph (a) is amended to read as follows:

§ 74.603 Sound channels.

(a) The frequencies listed in § 74.602(a) may be used for the simultaneous transmission of the picture and sound portions of television broadcast programs and for cue and order circuits, either by means of multiplexing or by the use of a separate transmitter within the same channel. When multiplexing of a television STL station is contemplated, consideration should be given to the requirments of § 73.687 of this chapter regarding the overall system performance requirements. Applications for new television pickup, television STL, television intercity relay and television translator relay stations shall clearly indicate the nature of any multiplexing proposed. Multiplexing equipment may be installed on licensed equipment without further authority of the Commission: *Provided*, That the Commission in Washington, D.C., and the Commission's Engineer in Charge of the radio district in which the station is located shall be promptly notified of the installation of such apparatus: *And provided further*, That the installation of such apparatus on a television STL station shall not result in degradation of the overall system performance of the television broadcast station below that permitted by § 73.687 of this chapter.

* * * * *

4. In § 74.604, paragraph (a) is amended to read as follows:

§ 74.604 Frequency selection to avoid interference.

(a) Applicants for new television pickup, television STL, television intercity relay and television translator relay stations shall endeavor to select frequency assignments which will be least likely to result in mutual interference with other licensees in the same area. Consideration should be given to the relative locations of receiving points, normal transmission paths, and the nature of the contemplated operation.

* * * * *

5. In § 74.631, paragraphs (d) and (g) are amended to read as follows:

§ 74.631 Permissible service.

* * * * *

(d) The transmitter of an STL, intercity relay station or television translator relay station may be multiplexed to provide additional communication channels for the transmission of aural program material and operational communications. Operational communications include voice communications, telemetery signals, alerting signals, fault reporting signals, and control signals all of which must be directly related to the technical operation of the associated broadcast television or television translator station or the STL, intercity relay or translator relay system of which the multiplexed transmitter is a part. Aural program material may include the sound accompanying the visual program material transmitted over the system or aural program material intended for broadcast by other AM, FM, or TV broadcast stations owned by or under the common control of the licensee of the television STL or intercity relay station. Multiplexing on television translator relay stations shall be limited to the sound accompanying the visual program material and operational communications as defined in this paragraph. A television broadcast STL or intercity relay station will be authorized only in those cases where the principal use is the transmission of television broadcast program material for use by its associated TV broadcast station. However, STL or intercity relay stations so licensed may be operated at any time for the transmission of aural program material and operational communications whether or not visual program material is being transmitted, provided that such operation does not cause harmful interference to television broadcast pickup, STL or intercity relay stations transmitting television broadcast program material.

* * * * *

(g) Except as provided in paragraph (d) of this section, a television translator relay station is authorized solely for the purpose of relaying the programs and signals of a television broadcast station to television broadcast translator stations for simultaneous retransmission.

6. In § 74.632, paragraph (e) is amended to read as follows:

§ 74.632 Licensing requirements.

* * * * *

(e) A license for a television translator relay station will be issued only to the licensee of a television broadcast translator station. The application for construction permit shall designate the television broadcast station to be relayed, the source of the television broadcast station's signals, and the television broadcast translator station with which it is to be operated.

7. In § 74.634, paragraph (a)(1) is amended by deleting the word "licensed" to read as follows:

§ 74.634 Remote control operation.

(a) * * *

(1) The operating position shall be under the control and supervision of the licensee and shall be the place at which an operator meeting the requirements of § 74.665 and responsible for the operation of the transmitter is stationed;

* * * * *

8. In § 74.635, paragraph (a)(1) is deleted and marked "Reserved", paragraph (a)(4) is amended, paragraph (a)(5) is deleted and marked "Reserved", as follows:

§ 74.635 Unattended operation.

(a) * * *

(1) [Reserved]

(2) * * *

(3) * * *

(4) In the case of television intercity relay stations, television STL stations, and television translator stations, observations shall be made at intervals not exceeding 24 hours, at the receiving end of the microwave circuit, by a person designated by the licensee, who shall institute measures sufficient to ensure prompt correction of any condition of improper operation that is observed: *Provided, however*, That for an STL station associated with a television station operated by remote control, the observations may be made by monitoring the television station's transmitted signal at the remote control point: *And provided further*, That for a television translator relay station, the observations may be made by monitoring the associated television translator station's transmitted signal.

(5) [Reserved]

* * * * *

9. In § 74.637, paragraph (a) is amended to read as follows:

§ 74.637 Emission and bandwidth.

(a) Television broadcast auxiliary stations operating on frequencies above 1000 MHz may be authorized to employ any type of emission suitable for the transmission of the visual and aural and operational signals as may be permitted under the rules of this subpart. Continuous radiation of the carrier without modulation is permitted provided harmful interference is not caused to other authorized stations.

* * * * *

10. In § 74.651, paragraph (a)(3) and paragraph (c) are amended to read as follows:

§ 74.651 Equipment changes.

(a) * * *

(3) A change in the location of a television STL, television intercity relay station or television translator relay station (except relocation of the equipment within the same building) or a change in the area of operation of a television pickup station.

* * * * *

(c) Multiplexing equipment may be installed on any licensed television broadcast STL, intercity relay, or translator relay station without further authority of the Commission: *Provided,* That the engineer in charge of the radio district in which the station is located and the Commission in Washington, D.C., are promptly notified in writing of such addition and the use which will be made of the additional aural circuits, and that the changes are shown in the next application for renewal of license for the station.

11. In § 74.661, paragraph (c) is amended to read as follows:

§ 74.661 Frequency tolerance.

* * * * *

(c) Television translator relay stations shall maintain their operating frequency within 0.002 percent of the assigned frequencies: *Provided, however,* That frequency modulated television translator relay stations shall maintain their operating frequency within 0.005 percent of the assigned frequencies.

12. In § 74.665, paragraphs (a), (b), (c), (f), and (g) are amended to read as follows:

§ 74.665 Operator requirements.

(a) Notwithstanding any other provisions of this section, unless the transmitter and its associated equipment is designed so none of the operations necessary to be performed during normal service may cause off-frequency operation, or result in any unauthorized radiation, such transmitter shall be operated by a person holding a radiotelephone first- or second-class operator license.

(b) Except as provided in paragraph (c) of this section, a person designated by the licensee shall be on duty at the place where the transmitting apparatus of any television STL, television intercity relay, or television translator relay station is located and in actual charge of its operation.

(c) If a station is operated by remote control as provided in § 74.634, the operator required by this section shall be on duty at the control point in lieu of the transmitting location. If a station is operated unattended as provided in § 74.635, the operator required by that section shall be on duty at the receiving end of the microwave circuit, or, in the case of television translator relay stations, at a receiving location for the associated broadcast television translator station's signals.

* * * * *

(f) Notwithstanding any other provision of this section, any person may, if directed to do so by the operator on duty and in charge of a television auxiliary broadcast station, turn the station's transmitter on or off.

(g) The operator on duty and in charge of a television auxiliary broadcast station may, at the discretion of the licensee, be employed for other duties; however, such duties shall not interfere with operation of the television auxiliary broadcast station.

13. In § 74.682, paragraph (f) is deleted and reserved as follows:

§ 74.682 Station identification.

* * * * *

(f) [Reserved]

14. In § 74.701, paragraphs (a) and (b) are amended to read as follows:

§ 74.701 Definitions.

(a) *Television broadcast translator station.* A station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.

(b) *Primary station.* The television broadcast station which provides the programs and signals being retransmitted by a television broadcast translator station.

* * * * *

15. In § 74.731, paragraph (b) is amended to read as follows:

§ 74.731 Purpose and permissible service.

* * * * *

(b) Except as provided in paragraph (f) of this section, a television broadcast translator station may be used only to receive the signals of a television broadcast station, another television broadcast translator station, a television translator relay station, a television intercity relay station, a television STL station, or other suitable source such as a CARS or common carrier microwave station, for the simultaneous retransmission of the programs and signals of a television broadcast station. Such retransmission may be accomplished by either:

(1) Reception of the television programs and signals of a television broadcast station directly through space, conversion to a different channel by simple heterodyne frequency conversion and suitable amplification; or,

(2) Modulation and amplification of a video and audio feed, in which case modulating equipment meeting the requirements of § 74.750(d) shall be used.

* * * * *

16. In § 74.734(a), subparagraph (6) is added as follows:

§ 74.734 Unattended operation.

(a) * * *

(6) In the case of television translator stations employing modulating equipment, observation of the television translator station signals shall be made for ten continuous minutes each day, by a person designated by the licensee, who shall institute measures sufficient to assure prompt correction of any condition of improper operation that is observed.

* * * * * *

17. In § 74.750, the headnote is amended, subparagraph (c)(1) is amended, a new paragraph (d) is added, the present paragraph (d) as amended is redesignated as paragraph (e), and paragraphs (f), (g), (h), and (i) are deleted and reserved to read as follows:

§ 74.750 Transmitters and associated equipment.

* * * * *

(c) * * *

(1) The equipment shall be so designed that the electrical characteristics of a standard television signal introduced into the input terminals will be maintained at the output. The overall response of the apparatus within its assigned channel, when operating at its rated power output and measured at the output terminals, shall provide a smooth curve, varying within limits separated by no more than 4 decibels: *Provided, however,* That means may be provided to reduce

the amplitude of the aural carrier below those limits, if necessary to prevent intermodulation which would mar the quality of the retransmitted picture or result in emissions outside of the assigned channel.

* * * * *

(d) Television translator equipment employing a modulation process for its rebroadcasting function must additionally meet the following requirements:

(1) The equipment shall meet the requirements of § 73.687 (a) and (b) at the final RF output terminal.

(2) The stability of the equipment shall be sufficient to maintain the operating frequency of the aural carrier to 4.5 MHz ± 1kHz above the visual carrier when subjected to variations in ambient temperature between −30° and +50° centigrade and variations in power main voltage between 85 and 115 percent of rated power supply voltage.

(e) Type acceptance will be granted only upon a satisfactory showing that the apparatus is capable of meeting the requirements of paragraphs (c) and (d) of this section. The following procedures shall apply:

(1) Any manufacturer of apparatus intended for use at television broadcast translator stations may request type acceptance by following the procedures set forth in Part 2, Subpart J, of this chapter. Equipment found to be acceptable by the Commission will be listed in the "Radio Equipment List" published by the Commission. These lists are available for inspection at any field office of the Commission and at the Washington, D.C., offices of the Commission.

(2) * * *

(3) * * *

(4) * * *

(f) through (i) [Reserved]

18. Section 74.752 is added to read as follows:

§ 74.752 Installation and maintenance.

(a) The installation of a television broadcast translator station employing type accepted apparatus may be made by a person with sufficient technical knowledge and skill to correctly follow the manufacturer's instructions.

(b) For stations employing modulating equipment, a first-class radiotelephone operator shall examine the transmitting system as installed and shall certify in the application for license that the equipment meets the transmitter requirements of § 74.750(d)(1), and the frequency tolerance requirements of § 74.761, and that the waveform of the transmitted signal conforms to the standards of a television broadcast signal. A report of the methods, measurements and results obtained shall be kept with the station records. Until such time as another form is specified by the Commission, the required report shall include performance data of the visual and aural transmitters comparable to that requested in the license application for television broadcast stations: *Provided, however,* That stations employing modulating equipment solely for the limited local origination of signals permitted by § 74.731(f) need not comply with the requirements of this paragraph.

(c) Any tests or adjustments which require the radiation of signals for their completion and which could result in improper operation of the apparatus, shall be made by or under the immediate supervision of a licensed first- or second-class radiotelephone operator. Repairs which require the replacement of attached components, adjustment of circuits, or technical measurements shall be made only by a person with the knowledge and skill to perform such tasks.

(d) Simple maintenance such as the replacement of tubes, fuses, or other plug-in components and adjustments which require no particular technical skill may be made by an unskilled person.

(e) No minimum maintenance schedule is specified for television translator stations. However, the translator equipment shall be tested and adjusted by a first- or second-class radiotelephone operator as often as necessary to provide a dependable and adequate service to the community served.

(f) The transmitting antenna system may be designed to produce either horizontal, vertical, or circular polarization.

19. In § 74.761, the introductory paragraph, and paragraphs (a) and (b) are amended, and paragraph (c) is added, to read as follows:

§ 74.761 Frequency tolerance.

The licensee of a television broadcast translator station shall maintain the output frequencies as set forth below. Translator stations utilizing direct frequency conversion of a received signal will operate with plus or minus the 10 kHz offset frequency, if any, of the primary station.

(a) The visual carrier shall be maintained to within 0.02 percent of the assigned visual carrier frequency for transmitters rated at not more than 100 watts peak visual power.

(b) The visual carrier shall be maintained to within 0.002 percent of the assigned visual carrier frequency for transmitters rated at more than 100 watts peak visual power.

(c) The aural carrier of stations employing modulating equipment shall be maintained at 4.5 MHz ± 1 kHz above the visual carrier frequency.

20. In § 74.766, paragraph (b) is added and the present paragraph (b) as amended is redesignated as paragraph (c), to read as follows:

§ 74.766 Operator requirements.

* * * * *

(b) The operator of a television broadcast translator station shall be in actual charge of the station's operation and, unless the requirements of § 74.734 relating to unattended operation are met, shall be on duty at the place where the transmitting apparatus of the television translator station is located.

(c) The operator of a television broadcast translator station may, at the discretion of the licensee, be employed for other duties. However, such duties shall not interfere with the operation of the television translator station.

21. In § 74.784, paragraph (c) is amended to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(c) A television translator station may only rebroadcast programs and signals which are simultaneously transmitted by a television broadcast station.

B. Part 78—Cable Television Relay Service.

1. Section 78.1 is amended to read as follows:

§ 78.1 Purpose.

The rules and regulations set forth in this part provide for the licensing and operation of fixed or mobile cable television relay service stations (CARS) used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public by cable. In addition, CARS stations may be used to transmit television and related audio signals to broadcast translator stations.

2. Section 78.3 is amended to read as follows:

§ 78.3 Other pertinent rules.

Other pertinent provisions of the Commission's rules and regulations relating to the cable television relay service (CARS) are included in the following parts of this chapter:

Part 0—Commission Organization.
Part 1—Practice and Procedure.
Part 2—Frequency Allocations and Radio Treaty matters; General Rules and Regulations.
Part 17—Construction Marking and Lighting of Antenna Structures.
Part 74—Experimental, Auxiliary, and Special Broadcast, and other Program Distribution Services.

Part 76—Cable Television Service.

3. In § 78.5, paragraphs (a) and (b) are amended to read as follows:

§ 78.5 Definitions.

* * * * *

(a) *Cable television relay service (CARS) station.* A fixed or mobile station used for the transmission of television and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting from the point of reception to a terminal point from the point of reception to a terminal point from which the signals are distributed to the public.

NOTE.—* * *

(b) *Local distribution service (LDS) station.* A fixed CARS station used within a cable television system or systems for the transmission of television signals and related audio signals, signals of standard and FM broadcast stations, signals of instructional television fixed stations, and cablecasting from a local transmission point to one or more receiving points, from which the communications are distributed to the public. LDS stations may also engage in repeater operation.

* * * * *

4. In § 78.11 paragraphs (a), (c), and (d) are amended and the introductory language in paragraphs (e) and (f) are revised to read as follows:

§ 78.11 Permissible service.

(a) CARS stations are authorized to relay television broadcast and related audio signals, the signals of AM and FM broadcast stations, signals of instructional television fixed stations, and cablecasting intended for use by one or more cable television systems. In addition, CARS stations are authorized to relay television broadcast and related audio signals to television translator stations in a manner consistent with this Part 78. LDS stations are authorized to relay television broadcast and related audio signals, the signals of AM and FM broadcast stations, signals of instructional television fixed stations, cablecasting, and such other communications as may be authorized by the Commission. Relaying includes retransmission of signals by intermediate relay stations in the system. CARS licensees may interconnect their facilities with those of other CARS, common carrier licensees, or television auxiliary broadcast service licensees, and may also retransmit the signals of such CARS or common carrier stations: *Provided,* That the program material retransmitted meets the requirements of this paragraph.

* * * * *

(c) CARS station licensees may be issued to cable television owners or operators and to cooperative enterprises owned by cable television owners or operators. Television translator licensees may be members of such cooperative enterprises.

(d) CARS systems shall supply program material to cable television systems and translator stations only in the following circumstances:

(1) * * *

(2) Where the licensee of the CARS station or system supplies program material to cable television systems or television translator stations either without charge or on a non-profit, cost-sharing basis pursuant to a written contract between the parties involved which provides that the CARS licensee shall have exclusive control over the operation of the CARS stations licensed to him and that contributions to capital and operating expenses are accepted only on a cost-sharing, nonprofit basis, prorated on an equitable basis among all cable television systems being supplied with program material in whole or in part. Records showing the cost of the service and its nonprofit, cost-sharing nature shall be maintained by the CARS licensee and held available for inspection by the Commission.

(e) a CARS licensee shall file a notification with the Commission thirty (30) days prior to supplying program material to any cable television system or any television translator that has not been specified in its license application or in a prior notification to the Commission containing the following information:

* * * * *

(f) Each CARS licensee providing program material to a cable television system or translator station pursuant to paragraph (d)(2) of this section shall file an annual report with the Commission within 90 days of the close of its fiscal year containing:

* * * * *

5. In § 78.18, paragraphs (a) and (b) are amended to read as follows:

§ 78.18 Frequency assignments.

(a) The cable television relay service is assigned the band of frequencies from 12.70 to 12.95 GHz. This band is shared with the fixed-satellite service (earth-to-space) from 12.70 to 12.75 GHz, and the television auxiliary broadcast service from 12.70 to 12.95 GHz. The following channels may be assigned to CARS stations for the propagation of radio waves with the indicated polarization:

* * * * *

(b) Television auxiliary broadcast service stations may be assigned channels in the band 12.70–12.95 GHz subject to the condition that no harmful interference is caused to CARS stations authorized at the time of such grants. Translator relay stations are assigned on a secondary basis. New CARS stations shall not cause harmful interference to television STL and intercity relay stations authorized at the time of such grants. Television pickup stations and CARS pickup stations will be assigned channels in the band on a co-equal basis subject to the condition that they accept interference from and cause no interference to existing or subsequently authorized television STL, television intercity relay, or fixed CARS stations. A cable television system operator will normally be limited in any one area to the assignment of not more than three channels for CARS pickup use: *Provided, however,* That additional channels may be assigned upon a satisfactory showing that additional channels are necessary and are available.

* * * * *

Statement of Commissioner Margita E. White Concurring in Part and Dissenting in Part

The Commission today has placed the cart before the horse. It has authorized TV translators to use any method to obtain primary signals for carriage before examining the implications of its decision.

I support the extension of television service to rural areas and support the Commission's decision insofar as it will upgrade and add service to those areas. I disagree, however, with both the timing of the decision and its overbreadth.

It may well be that unlimited translator service to all parts of the nation (including urban centers) would be in the public interest. But the Commission has not made that determination. It has not considered the policy implications of the integration of translator service into our national communications structure nor the impact of its action on the concept of local service.

The majority's position suggests (para. 28) that current Commission rules proscribe unwarranted extension of service by television station licensees. That is not the case. With very limited exception, the current rules prevent nothing. Rather than the rules, what has proscribed unwarranted extension of service was the lack of a cost-effective method of transmitting an acceptable quality signal from the primary station to the translator. This Commission action provides that cost-effective method, but no rules to guide its employment. Reliance on a case-by-case examination to prevent unwarranted expansion of translator service is foolhardy if the past is to serve as an example. See *Margaret S. Downey,* FCC 2d (1977), FCC 77-776, adopted November 9, 1977.

The critical defect of the overbreadth of the Report and Order (which is not limited to translators serving rural areas) is that by opening up all areas for translator development via new transmitting methods, the Commission may have set back the development of rural translator service. It is reasonable to assume that the flow of capital may be directed toward development of translator services in more populous (and more profitable) areas at the expense of less profitable rural communities. If so, then our haste is not only unseemly but unfortunate.

[FR Doc. 78-976 Filed 1-12-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. 252 (Sub-No. 1 and 2); Incentive Per Diem Charges—1968 (XF Cars)]

PART 1036—INCENTIVE PER DIEM CHARGES ON BOXCARS AND GONDOLA CARS

Incentive Per Diem Charges—Gondolas

AGENCY: Interstate Commerce Commission.

ACTION: Amendment of final rule.

SUMMARY: This document reissues a regulation that was published as a notice in the December 21, 1977 FEDERAL REGISTER (42 FR 63988). The regulation changes the rate structure for incentive per diem charges payable by one railroad to another for the use of boxcars from a daily (24 hour) rate to an hourly rate.

The Commission is taking this action in response to a petition of the Association of American Railroads. This change will encourage improved car utilization and make the handling of incentive per diem charges consistent with the handling of basic per diem charges.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Mrs. Janice M. Rosenak, Deputy Director, Section of Rates, Interstate Commerce Commission, Washington, D.C. 20423. Phone No.: 202-275-7693.

SUPPLEMENTARY INFORMATION: In an order decided December 7, 1977, published at 42 FR, page 63988 (December 21, 1977), the ICC ordered the implementation of incentive per diem on an hourly basis, effective July 1, 1978. The table in section 1036.2 of Subchapter A, Chapter X, Title 49 of the Code of Federal Regulations was amended to read as set forth in the attached appendix.

The level of incentive car hire rates will generally remain the same. The same reasons—such as improved car utilization—for hourly rates that were found convincing by the ICC when it decided to implement basic per diem on an hourly basis are also convincing as to incentive per diem. Furthermore, the need for uniformity in the handling of car hire settlements suggests that incentive car hire should apply on the same basis as basic car hire, which will apply on an hourly basis effective July 1, 1978.

By the Commission.

H. G. HOMME, Jr.,

Acting Secretary.

The table in 49 CFR 1036.2 is revised to read as follows:

APPENDIX

Cost Bracket	0-5 Yrs. Hourly Charge (Cents)	6-10 Yrs. Hourly Charge (Cents)	11-15 Yrs. Hourly Charge (Cents)	16-20 Yrs. Hourly Charge (Cents)	21-25 Yrs. Hourly Charge (Cents)	26-30 Yrs. Hourly Charge (Cents)	Over 30 Years Hourly Charge (Cents)
$ 0 - $ 1,000	1¢	1¢	1¢	1¢	1¢	1¢	1¢
1,001 - 3,000	3	2	2	1	1	1	1
3,001 - 5,000	5	5	4	3	2	1	1
5,001 - 7,000	8	7	6	4	3	2	1
7,001 - 9,000	11	9	7	6	4	2	1
9,001 - 11,000	14	11	9	7	5	3	1
11,001 - 13,000	16	14	11	8	6	3	2
13,001 - 15,000	19	16	13	10	7	4	2
15,001 - 17,000	22	18	15	11	8	4	2
17,001 - 19,000	24	20	16	12	9	5	3
19,001 - 21,000	27	23	18	14	10	5	3
21,001 - 23,000	30	25	20	15	10	6	3
23,001 - 25,000	32	27	22	17	11	6	4
25,001 - 27,000	35	29	24	18	12	7	4
27,001 - 29,000	38	32	26	19	13	7	4
29,001 - 31,000	41	34	27	21	14	8	4
31,001 - 33,000	43	36	29	22	15	8	5
33,001 - 35,000	46	38	31	24	16	9	5
35,001 - 37,000	49	41	33	25	17	9	5
37,001 - 39,000	51	43	35	26	18	10	6
39,001 - 41,000	54	45	37	28	19	10	6

[FR Doc. 78-867 Filed 1-12-78; 8:45 am]

proposed rules

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

[3410-30]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 210]

NATIONAL SCHOOL LUNCH PROGRAM

Proposed Rulemaking

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This proposed rule would amend the National School lunch Program regulations to accomplish the following:

(1) Require contractual arrangements between School Food Authorities and food service management companies or vendors similar to those under the Summer Food Service Program for Children (7 CFR Part 225);

(2) Make applicable to Schoool Food Authorities the procurement standards which currently apply only to State agencies. This action is being taken to effect better program management and to ensure the best interest of the school food service.

DATE: Comments must be received on or before February 25, 1978, to be assured of consideration.

ADDRESS: Send comments to: William G. Boling, Manager, Child Nutrition Programs, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

William G. Boling, Manager, Child Nutrition Programs, USDA, Washington, D.C. 20250, 202-447-8130.

SUPPLEMENTARY INFORMATION.

Food Service Management Companies and Vendors

State agencies will be required to develop a standard form of contract, for use by School Food Authorities contracting with food service management companies, or vendors. The use of the State's standard form of contract will be required when any School Food Authority contracts with a food service management company or vendor. The State agency must approve bids of $100,000 or more prior to their acceptance, and will be required to monitor compliance with the contracts by the parties involved.

Contracting for the services of a food service management company or vendor will be governed by the procurement provisions of the regulations (§ 210.19a). The contract between a School Food Authority and a food service management company or vendor must include provisions denying payment for meals that do not meet nutritional requirements, specifying sanctions for nonperformance, and requiring State or local health certification of the facility in which meals are prepared.

Procurement Standards

Currently, the procurement standards in the regulations pertain only to procurement of supplies, equipment, and other services by State agencies. In accord with the extension of Office of Management and Budget Circular A-102 to school districts, the proposed regulations would require adherence at the School Food Authority level.

Accordingly, it is proposed to amend Part 210 of Chapter II, Title 7 CFR as follows:

1. In § 210.2, paragraphs (h-1), (h-2), (h-3), (h-4), (h-5), and (h-6) are redesignated as (h-2), (h-3), (h-4), (h-5), (h-6), and (h-7), respectively, and new paragraphs (h-1) and (u) are added to read as follows:

§ 210.2 Definitions.

* * * * *

(h-1) "Food service management company" means a commercial enterprise or a nonprofit organization which is or may be contracted with by the School Food Authority to procure, prepare, and serve meals.

* * * * *

(u) "Vendor" means a merchandiser of complete meals which may or may not include milk.

* * * * *

2. In § 210.8, paragraph (d) is deleted and reserved.

3. A new § 210.8a is added to read as follows:

§ 210.8a Food service management companies and vendors.

(a) Any School Food Authority (including a State agency acting in the capacity of a School Food Authority) may contract with a food service management company or vendor for services and meals to be supplied in connection with its feeding operation in one or more of its schools. Any School Food Authority contracting with a food service management company or vendor shall adhere to the procurement standards set forth in § 210.19a. A School Food Authority that employs a food service management company or vendor shall remain responsible for seeing that the food service operation is in conformance with its agreement under the Program. The School Food Authority shall retain control of the quality, extent, and general nature of its food service and the prices to be charged the children for meals. Contracts that permit all receipts and expenses to accrue to the food service management company and "cost-plus-a-percentage-of-cost" contracts are prohibited. Contracts with food service management companies shall not establish management fees on a per meal basis.

(b) State agencies and FNSROs where applicable shall develop a standard form of contract. The Department shall develop a standard form of contract for use as guidance to State agencies and FNSROs in developing their standard contract. Such standard form of contract shall expressly provide that:

(1) The food service management company or vendor shall maintain such records as the School Food Authority will need to support its claim under this part, and shall report thereon to the School Food Authority promptly at the end of each month, at a minimum. Such records shall be available, for a period of 3 years from the date of receipt of final payment under the contract, for inspection and audit by representatives of the State agency, the Department, and the United States General Accounting Office at any reasonable time and place; except that, if audit findings have not been resolved, the records shall be retained beyond the three year period as long as required for the resolution of the issues raised by the audit;

(2) The food service management company or vendor shall have State or local health certification for the facility in which it proposes to prepare meals for use in the Program and it shall ensure that all health and sanitation requirements are met at all times;

(3) No payment shall be made for meals that are spoiled or unwholesome at time of delivery, do not meet de-

tailed specifications as developed by the School Food Authority for each food component specified in § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, weight, ingredients, formulation, etc. The Department shall provide guidance to assist in the development of specifications.

(c) Any School Food Authority entering into a contract with a food service management company or vendor shall use the standard form of contract developed by the State agency, or FNSRO where applicable. No contract may be entered into for a period longer than one year. Any proposed additional provision or deletion to the standard form of contract shall be submitted to the State agency, or FNSRO where applicable, for approval.

(d) School Food Authorities shall, in addition to the bidding requirements specified in § 210.19a, adhere to the following when contracting with food service management companies or vendors:

(1) The invitation to bid shall contain a cycle meau upon which the bids shall be based;

(2) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(3) A copy of the health certification required in this section shall be submitted by the food service management company or vendor with each bid;

(4) Contracts shall be submitted to the State Agency, or FNSRO where applicable, for prior approval when (i) approval is required under State law; (ii) the contract totals $100,000 or more; or (iii) award is contemplated to other than the lowest bidder (justification for selecting other than the low bidder must accompany the contract for approval).

(5) The invitation to bid shall indicate that nonperformance shall subject the food service management company or vendor to specified sanctions as provided for in the standard contract;

(e) Any federally donated commodities received by the School Food Authority and made available to the food service management company or vendor shall enure only to the benefit of the School Food Authority's feeding operation, and shall be utilized therein.

* * * * *

4. In § 210.14, new paragraphs (b) and (c) are added to read as follows:

§ 210.14 Special responsibilities of State agencies.

* * * * *

(b) *Food service management companies and vendors.* Each State agency and FNSRO where applicable, shall develop for use by the School Food Authority and food service management company or vendor a standard form of contract in accordance with § 210.8a of this section. The State agency and FNSRO where applicable, shall monitor compliance with the contract between the food service management company or vendor and the School Food Authority.

(c) Each State agency, and FNSRO where applicable, shall monitor food service management company or vendor facilities during the operation of the Program and may require that all food service management companies or vendors that wish to contract for food service with any sponsor in the State must register with the State agency.

* * * * *

5. Section 210.19a is revised to read as follows:

§ 210.19a Procurement standards.

(a) This section provides standards for use by State agencies and School Food Authorities in establishing procedures for the procurement of supplies including food, equipment, and other services with Program funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with provisions of applicable Federal law and Executive orders. State agencies or School Food Authorities may use their own procurement regulations which reflect applicable State and local law, rules, and regulations provided that procurements made with Program funds adhere to the standards set forth in this section.

(b) The standards contained in this section do not relieve a State agency or School Food Authority of the responsibilities arising under its contracts. The State agency or School Food Authority is the responsible authority regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of the Program. This includes, but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the State or Federal authority that has proper jurisdiction.

(c) Each State agency or School Food Authority shall maintain a code or standard of conduct which shall govern the performance of its officers, employees, or agents in contracting with the expending Program funds. The State agency's or School Food Authority's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards either by the State agency's or School Food Authority's officers, employees, or agents, or by contractors or their agents.

(d) All procurement transactions of a State agency or School Food Authority, regardless of whether negotiated or advertised and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. The State agency or School Food Authority should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(e) Each State agency or School Food Authority shall establish procurement procedures which comply with the provisions of this section.

(f) Proposed procurement actions shall be reviewed by appropriate officials of the State agency or School Food Authority to avoid purchasing unnecessary or duplicate items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(g) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by offerors should be clearly specified.

(h) Positive efforts shall be made by each State agency or School Food Authority to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for procurements to be performed with Program funds.

(i) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the Program. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(j) Formal advertising, with adequate purchasing descriptions, sealed bids, negotiations and public openings shall be the required method of pro-

curement unless negotiation pursuant to subparagraph (4) of this paragraph is necessary to accomplish sound procurement. However, procurements of $10,000 or less need not be so advertised unless otherwise required by State law or regulations. When formal advertising is employed:

(1) The awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the State agency or School Food Authority, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid;

(2) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the State agency or School Food Authority;

(3) Any or all bids may be rejected when it is in the State agency's or School Food Authority's interest to do so, and such rejections are in accordance with applicable State and local law, rules, and regulations;

(4) Procurements may be negotiated by the State agency or School Food Authority if it is not practicable or feasible to use formal advertising. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable. Generally, procurements may be negotiated if one or more of the following conditions prevail:

(i) The public exigency will not permit the delay incident to advertising;

(ii) The material or service to be procured is available from only one person or firm (all contemplated sole source procurements where the aggregate expenditure is expected to exceed $5,000 shall be referred to the State agency, or FNSRO where applicable, for prior approval);

(iii) The aggregate amount involved does not exceed $10,000;

(iv) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution;

(v) No acceptable bids have been received after formal advertising;

(vi) The purchases are for highly perishable materials or medical supplies, for materials or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture; or

(vii) Negotiation is otherwise authorized by applicable law, rules, or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(k) Contracts shall be made by State agencies or School Food Authorities only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(l) The procurement records or files of State agencies or School Food Authorities for negotiated purchases in amounts in excess of $10,000 shall provide at least the following pertinent information: (1) Justification for the use of negotiation in lieu of advertising, (2) contractor selection, (3) the basis for the cost or price negotiated.

(m) A system for contract administration shall be maintained by the State agency or School Food Authority to assure contractor compliance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(n) The State agency or School Food Authority shall include, in addition to provisions to define a sound and complete agreement, the following requirements in all contracts which it awards when the contract costs are to be borne by Program funds:

(1) All contracts in excess of $10,000 shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts awarded by State agencies or School Food Authorities in excess of $10,000 shall contain suitable provisions for termination by the State agency or School Food Authority, including the manner in which it will be effected and the basis for settlement. In addition, such contracts shall set forth the conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded by a State agency or School Food Authority and their contractors or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act provides that each contractor or School Food Authority shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The State agency shall report all suspected or reported violations to the Department.

(5) When required by the Federal grant program legislation, all construction contracts awarded by a State agency or School Food Authority in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The State agency of School Food Authority shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The State agency or School Food Authority shall report all suspected or reported violations to the Department.

(6) Where applicable, all contracts awarded by State agencies or School Food Authorities in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under section 103 of that act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard work day or work week is permissible: *Provided*, That the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promul-

gated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation;

(7) Contracts awarded by State agencies or School Food Authorities, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or contracts in the field of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department. The contractor shall be advised as to the source of additional information regarding these matters;

(8) All negotiated contracts (except those of $10,000 or less) awarded by State agencies or School Food Authorities shall include a provision to the effect that the State agency or School Food Authority, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the Program for the purpose of making audit, examination, excerpts, and transcriptions;

(9) Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857B et seq.). Suspected violations shall be reported by the State agency or School Food Authority in writing to the Regional Office of the United States Environmental Protection Agency, with a copy to the Department.

(o) State agencies or School Food Authorities shall observe their regular requirements and practices with respect to bonding and insurance.

NOTE.—The Food and Nutrition Service has determined that this document does not contain major proposals requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Program No. 10.555.)

Dated: January 6, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-833 Filed 1-12-78; 8:45 am]

[3410-05]

Agricultural Stabilization and Conservation Service

[7 CFR Part 760]

DAIRY INDEMNITY PAYMENT PROGRAM (1978-1981)

Removal of Certain Dairy Products From the Commercial Market

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of the proposed rule is to amend the Dairy Indemnity Program to incorporate provisions of the Food and Agriculture Act of 1977 (September 29, 1977, Pub. L. 95-113, 91 Stat. 913). The objective of the program is to make indemnity payments to dairy farmers and manufacturers who, through no fault of their own, are required to remove their milk and dairy products from the commercial market because such products contain harmful residues. Prior legislation covered only contamination by pesticide residues. The new legislation extends the coverage of the program to include residues of chemicals or toxic substances and to contamination by nuclear radiation or fallout for dairy farmers.

DATES: Comments must be received no later than January 30, 1978.

ADDRESSES: Emergency and Indemnity Payments Division, ASCS, USDA, Room 4702 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Gerald Schiermeyer (ASCS), telephone 202-447-4428.

SUPPLEMENTARY INFORMATION: The public is invited to submit written comments, suggestions, or objections regarding the proposed regulations to the above address. Each person submitting comments, suggestions, or objections regarding the proposed rule shall include his name and address and should give reasons for any suggested changes. Copies of all written communications received will be available for examination by interested persons in Room 4702 South Building, USDA, during regular business hours.

In accordance with the above, it is proposed to amend 7 CFR Part 760 by revising subpart—Dairy Indemnity Payment Program to read as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

PROGRAM OPERATIONS

Sec.
760.1 Administration.
760.2 Definitions.

PAYMENTS TO DAIRY FARMERS FOR MILK

760.3 Indemnity payments on milk.
760.4 Normal marketings of milk.
760.5 Fair market value of milk.
760.6 Information to be furnished.
760.7 Other requirements for affected farmers.
760.8 Application for payments for milk.
760.9 Other legal recourse.

PAYMENTS TO MANUFACTURERS AFFECTED BY PESTICIDES

760.20 Payments to manufacturers of dairy products.
760.21 Application for payments by manufacturers.
760.22 Information to be furnished by manufacturer.
760.23 Other requirements for manufacturers.

GENERAL PROVISIONS

760.24 Limitation of authority.
760.25 Estates and trusts; minors.
760.26 Appeals.
760.27 Setoffs.
760.28 Overdisbursement.
760.29 Death, incompetency or disappearance.
760.30 Records and inspection thereof.
760.31 Assignment.
760.32 Instructions and forms.

AUTHORITY: Sec. 1, 2, 3, Pub. L. 90-484, 82 Stat. 750, as amended; Sec. 204, Pub. L. 91-524, 84 Stat. 1361; Sec. 5, Pub. L. 93-86, 87 Stat. 223; Sec. 205, Pub. L. 95-113, 91 Stat. 920. (7 U.S.C. 450 j, k, l).

Subpart—Dairy Indemnity Payment Programs

PROGRAM OPERATIONS

§ 760.1 Administration.

This indemnity payment program will be carrier out by ASCS under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and county committees.

§ 760.2 Definitions.

For purposes of this subject, the following terms shall have the meanings specified:

(a) "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the U.S. Department of Agriculture to whom he has delegated, or to whom he may hereafter delegate, authority to act in his stead.

(b) "ASCS" means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Deputy Administrator" means the Deputy Administrator, State and County Operations, ASCS.

(d) "State committee" means the Agricultural Stabilization and Conservation State committee.

(e) "County committee" means the Agricultural Stabilization and Conservation county committee.

(f) "Pesticide" means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135-135k), and approved for use by the Federal Government.

(g) "Chemicals or Toxic Substances" means any chemical substance or mixture as defined in the Toxic Substances Control Act (15 U.S.C. 2602).

(h) "Nuclear Radiation or Fallout" means contamination from an atomic or nuclear blast.

(i) "Violating Substance" means one or more of the items defined in f, g, and h above.

(j) "Public agency" means any Federal, State or local public regulatory agency.

(k) "Affected farmer" means a person who produces whole milk which is removed from the commercial market any time from:

(1) January 1, 1964, to September 30, 1981, pursuant to the direction of a public agency because of the detection of pesticide residues in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency, or

(2) October 1, 1977, to September 30, 1981, pursuant to the direction of a public agency because of the detection of other residues of chemicals or toxic substances residues, or contamination from nuclear radiation or fallout in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(l) "Affected manufacturer" means a person who manufactures dairy products which are removed from the commercial market any time from November 30, 1970, to September 30, 1981, pursuant to the direction of a public agency because of the detection of pesticide residue in such dairy products by tests made a public agency or under a testing program deemed adequate for the purpose by a public agency.

(m) "Milk handler" means the marketing agency to or through which the affected dairy farmer marketed his whole milk at the time he was directed by the public agency to remove his whole milk from the commercial market.

(n) "Person" means an individual, partnership, association, corporation, trust, estate, or other legal entity.

(o) "Application period" means any period beginning not earlier than January 1, 1964, and ending not later than September 30, 1981, during which an affected farmer's whole milk is removed from the commercial market pursuant to direction of a public agency for a reason specified in paragraph (k) of this section and for which application for payment is made.

(p) "Pay period" means (1) in the case of an affected farmer who markets his whole milk through a milk handler, the period used by the milk hander in settling with the affected farmer for his whole milk, usually biweekly or monthly, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, a calendar month.

(q) "Whole milk" means milk as it is produced by cows.

(r) "Commercial market" means (1) the market to which the affected farmer normally delivers his whole milk and from which it was removed because of detection therein of a residue of a violating substance(s) or (2) the market to which the affected manufacturer normally delivers his dairy products and from which they were removed because of detection therein of pesticide residue.

(s) "Removed from the commercial market" means (1) produced and destroyed or fed to livestock, (2) produced and delivered to a handler who destroyed it or disposed of it as salvage (such as separating whole milk, destroying the fat, and drying the skim milk), or (3) produced and otherwise diverted to other than the commercial market.

(t) "Payment subject to refund" means a payment which is made by a milk handler to an affected farmer, and which such farmer is obligated to refund to the milk handler.

Payments to Dairy Farmers for Milk

§ 760.3 Indemnity payments on milk.

An indemnity payment for milk will be made to an affected farmer who is determined by the county committee to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of his normal marketings for the application period, as determined in accordance with §§ 760.4 and 760.5, less (a) any amount he received for whole milk marketed during the applications period, and (b) any payment not subject to refund which he received from a milk handler with respect to whole milk removed from the commercial market during the application period.

§ 760.4 Normal marketings of milk.

(a) The county committee shall determine the affected farmer's normal marketings which, for the purposes of this subpart, shall be the sum of the quantities of whole milk which such farmer would have sold in the commercial market in each of the pay periods in the application period but for the removal of his whole milk from the commercial market because of the detection of a residue of a violating substance.

(b) Determination of normal marketings for each pay period shall be based upon: (1) The actual quantity of milk produced and removed from the market provided such quantity does not exceed the quantity estimated under paragraphs b(2) or b(3) of this section, (2) If the affected farmer or another person marketed whole milk from the farm during the period in the previous year equivalent to the pay period, the marketings of whole milk from the farm during such equivalent period, or (3) If the affected farmer or another person did not market whole milk from the farm during the period in the previous year equivalent to the pay period, the average of the affected farmer's marketings of whole milk from the farm per pay period during the three months immediately prior to removal of his whole milk from the commercial market.

(c) The base for normal marketings determined (1) under paragraph (b)(2) of this section shall be adjusted to reflect any change in the rate of the affected farmer's whole milk production from the production of the previous year due to factors such as changes in herd size both before and after removal of whole milk from the commercial market, and changes in management practices before such removal, or (2) under paragraph (b)(3) of this section shall be adjusted to reflect normal changes in the affected farmer's whole milk production during the pay period due to seasonal factors affecting production and changes in herd size.

(d) If only a portion of a pay period falls within the application period, normal marketings for such pay period shall be reduced so that they represent only that part of such pay period which is within the application period.

§ 760.5 Fair market value of milk.

(a) The county committee shall determine the fair market value of the affected farmer's normal marketings, which, for the purposes of this subpart, shall be the sum of the net proceeds such farmer would have received for his normal marketings in each of the pay periods in the application period.

(b) The county committee shall determine the net proceeds the affected farmer would have received in each of the pay periods in the application period (1) in the case of an affected farmer who markets his whole milk through a milk handler, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk paid during the pay period by such farmer's milk handler in the same area for whole milk similar in quality and butterfat test to that marketed by the affected farmer in the base period used to determine his normal marketings, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of

whole milk, as determined by the county committee, which other producers in the same area who marketed their whole milk through milk handlers received for whole milk similar in quality and butterfat test to that marketed by the affected farmer during the base period used to determine his normal marketings.

(c) In determining the net price for whole milk, the county committee shall deduct from the gross price therefor any transportation, administrative, and other costs of marketing which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of his whole milk from the commercial market.

§ 760.6 Information to be furnished.

The affected farmer shall furnish to the county committee complete and accurate information sufficient to enable it to make the determinations required in §§ 760.4 and 760.5. Such information shall include, but is not limited to:

(a) A copy of the notice from, or other evidence of action by, the public agency which resulted in the removal of the affected farmer's whole milk from the commercial market.

(b) The specific name of the violating substance causing the removal of his whole milk from the commercial market, if not included in the notice or other evidence of action furnished under paragraph (a) of this section.

(c) A record of the quantity and butterfat test of whole milk which he produced on his farm and marketed, (1) if the affected farmer is covered by the provisions of § 760.4(b) (1) and (2), during each pay period during the 15 months immediately prior to the time the whole milk was removed from the commercial market, or (2) if the affected farmer is covered by the provision of § 760.4(b)(3), during the three months immediately prior to the removal of his whole milk from the commercial market. This record shall be either a certified statement furnished by the affected farmer's milk handler, or such other evidence as the county committee determines accurately establishes the butterfat test and quantity of whole milk produced and marketed during such periods.

(d) The number of cows milked during each pay period in the application period, and during the pay periods within the three-month period immediately prior to the application period.

(e) If the affected farmer markets his whole milk through a milk handler, a statement from the milk handler showing, for each pay period in the application period, the average price per hundred-weight of whole milk similar in quality to that marketed by the affected farmer during the base period used to determine his normal marketings. If the milk handler has information as to the transportation, administrative, and other costs of marketing which are normally incurred by producers who market through the milk handler but which the affected farmer did not incur because of removal of his whole milk from the market, the average price stated by the milk handler shall be the average gross price paid producers less any such costs. If the milk handler does not have such information, the affected farmer shall furnish a statement setting forth such costs, if any.

(f) The amount of proceeds, if any, received by the affected farmer from the marketing of whole milk produced during the application period.

(g) The amount of any payments not subject to refund made to the affected farmer by the milk handler with respect to the whole milk produced during the application period and remove from the commercial market.

(h) To the extent that such information is available to the affected farmer, the name of any pesticide, chemical, or toxic substance used on the farm within 24 months prior to the application period, the use made of the pesticide, chemical, or toxic substance, the approximate date of such use, and the name of the manufacturer and the registration number, if any, on the label on the container of the pesticide, chemical, or toxic substance.

(i) To the extent possible, the source of the pesticide, chemical, or toxic substance that caused the contamination of the whole milk, and the results of any laboratory tests on the feed supply.

(j) Such other information as the county committee may request to enable the committee to make the determinations required in this subpart.

§ 760.7 Other requirements for affected farmers.

An indemnity payment for milk will be made under this subpart to an affected farmer only under the following conditions:

(a) If the pesticide, chemical, or toxic substance, contaminating the milk was used by the affected farmer, he established each of the following:

(1) That the pesticide, chemical, or toxic substance, when used, was registered (if applicable) and approved for use as provided in § 760.2(f);

(2) That the contamination of his milk was not the result of his failure to use the pesticide, chemical, or toxic substance, according to the directions and limitations stated on the label;

(3) That the contamination of his milk was not otherwise his fault.

(b) If the pesticide, chemical, or toxic substance contaminating the milk was not used by the affected farmer, he establishes each of the following:

(1) He did not know or have reason to believe that any feed which he purchased and which contaminated his milk contained a harmful residue of a pesticide, a chemical, or a toxic substance or was contaminated by nuclear radiation or fallout.

(2) None of the milk was produced by dairy cattle which he knew, or had reason to know at the time he acquired them, were contaminated with residues of pesticides, chemicals or toxic substances, or by nuclear radiation or fallout.

(3) The contamination of his milk was not otherwise his fault.

(c) The affected farmer has adopted recommended practices for eliminating residues of pesticides, chemicals, or toxic substances or contamination from nuclear radiation or fallout from his milk as soon as practicable following the discovery of the initial contamination.

§ 760.8 Application for payments for milk.

The affected farmer or his legal representative, as provided in §§ 760.25 and 760.29, must sign and file an application for payment on a form which is approved for that purpose by the Deputy Administrator. The form must be filed with the county ASCS office for the county where the farm headquarters are located no later than December 31, 1981, or such later date as the Deputy Administrator may specify. The application for payment shall cover application periods of at least 28 days, except that, if the entire application period, or the last application period, is shorter than 28 days, applications for payment may be filed for such shorter period. The application for payment shall be accompanied by the information required by § 760.6 as well as any other information which will enable the county committee to determine whether the making of an indemnity payment is precluded for any of the reasons set forth in § 760.7. Such information shall be submitted on forms approved for the purpose by the Deputy Administrator.

§ 760.9 Other legal recourse.

No indemnity payment may be made for contamination resulting from residues of chemicals or toxic substances if the Deputy Administrator determines within thirty days after the application for payment that other legal recourse is available to the farmer. Nothwithstanding such a determination, the Deputy Administrator may reopen the case at a later date and make a new determination on the merits of the case as may be just and equitable.

PAYMENTS TO MANUFACTURERS AFFECTED BY PESTICIDES

§ 760.20 Payments to manufacturers of dairy products.

An indemnity payment will be made to the affected manufacturer who is determined by the Deputy Administrator to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of the product removed from the commercial market because of pesticide residues, less any amount the manufacturer receives for the product in the form of salvage.

NOTE.—Manufacturers are not eligible for payment when dairy products are contaminated by chemicals, toxic substances (other than pesticides) or nuclear radiation or fallout.

§ 760.21 Application for payments by manufacturers.

The affected manufacturer, or his legal representatives, shall file an application for payment with the Deputy Administrator, ASCS, Washington, D.C., through the county office serving the county where the contaminated product is located. The application for payment may be in the form of a letter or memorandum. Such letter or memorandum, however, must be accompanied by acceptable documentation to support such application for payment.

§ 760.22 Information to be furnished by manufacturer.

The affected manufacturer shall furnish the Deputy Administrator, through the county committee, complete and accurate information sufficient to enable him to make the determination as to the manufacturer's eligibility to receive an indemnity payment. Such information shall include, but is not limited to:

(a) A copy of the notice or other evidence of action by the public agency which resulted in the product being removed from the commercial market.

(b) The name of the pesticide causing the removal of the product from the commercial market and, to the extent possible, the source of the pesticide.

(c) A record of the quantity of milk or butterfat used to produce the product for which an indemnity payment is requested.

(d) The identity of any pesticide used by the affected manufacturer.

(e) Such other information as the Deputy Administrator may request to enable him to make the determinations required in this subpart.

§ 760.23 Other requirements for manufacturers.

An indemnity payment will be made under this subpart to an affected manufacturer only under the following conditions:

(a) If the pesticide contaminating the product was used by the affected manufacturer, he establishes each of the following: (1) That the pesticide, when used, was registered and recommended for such use as provided in § 760.2(f); (2) that the contamination of his product was not the result of his failure to use the pesticide in accordance with the directions and limitations stated on the label of the pesticide; and (3) that the contamination of his product was not otherwise his fault.

(b) If the pesticide contaminating the product was not used by the affected manufacturer: (1) He did not know or have reason to believe that the milk from which the product was processed contained a harmful level of pesticide residue; and (2) the contamination of his product was not otherwise his fault.

GENERAL PROVISIONS

§ 760.24 Limitation of authority.

(a) County executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee when such action has not been taken by the county committee. The State committee may also: (1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude the Deputy Administrator or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 760.25 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purpose of this subpart, be considered to represent an insolvent affected farmer or manufacturer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be the production of the person or manufacturer he represents. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) An affected dairy farmer or manufacturer who is a minor shall be eligible for indemnity payments only if he meets one of the following requirements: (1) The right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

§ 760.26 Appeals.

The appeal regulations issued by the Administrator, ASCS, Part 780 of this chapter, shall be applicable to appeals by dairy farmers or manufacturers from determinations made pursuant to the regulations in this subpart.

§ 760.27 Setoffs.

(a) If the affected farmer or manufacturer is indebted to any agency of the United States and such indebtedness is listed on the county debt record, indemnity payments due the affected farmer or manufacturer under the regulations in this part shall be applied, as provided in the Secretary's setoff regulations, Part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the affected farmer or manufacturer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 760.28 Overdisbursement.

If the indemnity payment disbursed to an affected farmer or to a manufacturer exceeds the amount authorized under the regulations in this subpart, the affected farmer or manufacturer shall be personally liable for repayment of the amount of such excess.

§ 760.29 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected farmer or manufacturer who is entitled to an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in Part 707 of this chapter. The person requesting such payment shall file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

§ 760.30 Records and inspection thereof.

(a) The affected farmer, as well as his milk handler and any other person who furnished information to such farmer or to the county committee for the purpose of enabling such farmer to receive a milk indemnity payment under this subpart, shall maintain any

existing books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected farmer, his milk handler, and any other person who furnishes such information to the affected farmer or to the county committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

(b) The affected manufacturer or any other person who furnishes information to the Deputy Administrator for the purposes of enabling such manufacturer to receive an indemnity payment under this subpart shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected manufacturer or any other person who furnishes such information to the Deputy Administrator shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

§ 760.31 Assignment.

No assignment shall be made of any indemnity payment due or to come due under the regulations in this subpart.

§ 760.32 Instructions and forms.

The Deputy Administrator shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart. Affected farmers and manufacturers may obtain information necessary to make application for a dairy indemnity payment from the county ASCS office. The following forms may be obtained at the county ASCS office: ASCS-373—Application for Milk Indemnity Payment, ASCS-374—Marketing and Payment Report, Milk Indemnity Payment Program.

NOTE.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in Accordance with the Federal Reports Act of 1942.

Signed at Washington, D.C., on January 4, 1978.

STEWART N. SMITH,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 78-890 Filed 1-12-78; 8:45 am]

[3410-34]

Animal and Plant Health Inspection Service

[9 CFR Part 94]

IMPORTATION—MILK AND MILK PRODUCTS

Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations which apply to the importation of certain milk and milk products from countries infected with rinderpest or foot-and-mouth disease. This action is proposed because experimental studies have shown that such milk and milk products may be safely imported into the United States under restrictions and procedures as proposed. The intended effect of this action is to provide alternate procedures under which specified milk and milk products may be imported thus relieving certain restrictions presently imposed.

DATE: Comments on or before February 13, 1978.

ADDRESS: Written comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 824, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. Blakey Deal, USDA, APHIS, VS, Federal Building, Room 824, Hyattsville, Md. 20782, 301-436-8379.

SUPPLEMENTARY INFORMATION: Recently completed experimental studies conducted at the Plum Island Animal Disease Center have established that live virus of rinderpest and foot-and-mouth disease in milk is destroyed if the milk is heated to 148° C (298.4° F) for a minimum of 2.5 seconds. Additionally, such studies have shown that it is no longer possible to recover the live virus of rinderpest and foot-and-mouth disease from casein that has been stored for a period of 84 days.

Because of the results of these studies, the Animal and Plant Health Inspection Service (APHIS) is proposing to amend certain requirements concerning the importation of milk, milk products, casein and casein derivatives. Specifically, APHIS proposes to amend the regulations to permit the importation of milk and milk products when such milk and the milk in such products have been heated to 148° C (298.4° F) for a minimum of 2.5 seconds. Further, such milk and milk products would be required to be accompanied by a certificate by an official of the national government where such milk has been so heated stating that such milk and milk products have been so treated. Such a certificate is being proposed to better insure that the heat treatment has occurred.

Further, to reflect the results of the Plum Island studies, casein, caseinate and sodium caseinate would be permitted to be imported without additional restrictions if imported in containers which are sealed with numbered metal seals which are applied at the plant where the product was produced; the numbers of such seals are listed on or are shown on a list attached to the bill of lading or any other document which shall accompany each shipment; upon arrival of the carrier at the United States port, an APHIS inspector determines that the seals are intact and that their numbers are in agreement with the numbers appearing on or attached to the accompanying document; upon arrival at the United States port, the product shall be moved in its sealed form directly to an approved warehouse where it shall be held for a continuous period of 84 days; and at the end of such quarantine period, if the seals are intact, the product will be released for entry into the United States.

The proposed regulations include caseinate and sodium caseinate because both are derivatives of casein and consequently, it appears that those restrictions applicable to casein should likewise be applicable to casein derivatives. The procedures for sealing and storing such products are proposed to insure that such products go through the entire storage period without contamination from any outside source and to insure that such products do not introduce rinderpest or foot-and-mouth disease into the United States.

The placing of this proposal into effect would relieve the present requirement for consignment of such products to approved establishments for further processing prior to their release and would therefore relieve certain restrictions presently imposed but which do not appear to be necessary for the safe importation of such products. Certain other changes in format have been made for the purpose of accommodation of the added material.

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 2 of the Act of February 2, 1903, as amended; sections 2, 3, 4, and 11, of the Act of July 2, 1962 (21 U.S.C. 111, 134a, 134b, 134f), the Animal and Plant Health Inspection Service is considering amending Part 94, Title 9, Code of Federal Regulations, in the following respects:

In § 94.16, paragraph (b)(2), (b)(3), and (b)(4) would be redesignated as paragraph (b)(3), (b)(4), and (b)(5) respectively; a new paragraph (b)(2) would be added; the introductory portion of paragraph (b) preceding the colon, and redesignated paragraph (b)(3) would be amended to read:

§ 94.16 Milk and milk products.

* * * * *

(b) Milk and milk products originating in, or shipped from, any country designated in § 94.1(a) as a country infected with rinderpest or foot-and-mouth disease may be imported into the United States if they meet the requirements of paragraph (b) (1), (2), (3), or (4) of this section.

* * * * *

(2) They are accompanied by a certificate signed by the Minister of Agriculture or an equivalent official of the exporting country which certifies that the milk or milk product was produced by initially heating the milk or the milk in such product to 148° C (298.4° F) for a minimum of 2.5 seconds.

(3) (i) They are dry milk or dry milk products, * * *; or

(ii) The milk product is casein, caseinate, or sodium caseinate and if:

(A) Such product is imported in containers which have been sealed with numbered, metal seals applied at the plant where the product was produced;

(B) The numbers of such seals are listed on or are shown on a list attached to the bill of lading or similar document which shall accompany each shipment;

(C) Upon arrival of the carrier at the United States port, an inspector of the Animal and Plant Health Inspection Service determines that the seals are intact and that their numbers are in agreement with the numbers appearing on the accompanying document;

(D) Upon arrival at the port of entry, the sealed container is moved directly to an approved warehouse 11 where it shall be held for a continuous quarantine period of 84 days; and

(E) At the end of the 84 days of continuous storage, an inspector of the Animal and Plant Health Inspection Service determines that the seals are intact.

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 824, Hyattsville, Md. 20782, 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 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of January 1978.

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.

J. K. ATWELL,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-962 Filed 1-12-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 6]

INTERNATIONAL AIRPORTS OF ENTRY

Proposed Revocation of International Airport Status of Felts Field, Spokane, Wash.

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the international airport status of Felts Field in Spokane, Washington, so that all international flights will normally be inspected by Customs at Spokane International (Geiger Field). It is difficult to provide adequate and timely service to both airports and there appears to be a need for only one airport in Spokane to receive international arrivals. This change in status will enable Customs to improve service to the public and provide more effective enforcement of the Customs laws and regulations.

DATES: Comments must be received on or before February 13, 1978.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Alice M. Rigdon, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5607.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under section 1109(b) of the Federal Aviation Act of 1958, (49 U.S.C. 1509(b)), the Secretary of the Treasury is authorized to designate places in the United States as ports of entry for civil aircraft arriving from any place outside of the United States and for merchandise carried on the aircraft. These airports are referred to as "international airports" and the location and name of each is listed in section 6.13 of the Customs Regulations (19 CFR 6.13). In accordance with section 6.2 of the Customs Regulations (19 CFR 6.2), the first landing of every civil aircraft arriving in the United States must be at one of these international airports unless the aircraft has been specifically exempted from this requirement or permission to land elsewhere has been granted. Customs officers are assigned to all international airports to accept entries of merchandise, collect duties, and enforce Customs laws and regulations. If a civil aircraft desires to land at a "landing rights airport", which means an airport which has not been designated as an international airport, permission must first be obtained and the Customs Service must assign personnel to that airport for that aircraft.

Within the Customs port of entry limits of Spokane, Washington, there are two airports: Felts Field, which has been designated as an international airport, and Spokane International, also known as Geiger Field, a "landing rights airport." Spokane International receives both private and commercial international flights whereas only private aircraft arriving internationally land at Felts Field. The Spokane Airport Board, operator of both airports, has advised Customs that it would like all international arrivals inspected at Spokane International, which will continue as a "landing rights airport."

A review of the Customs operations in the Spokane, Washington, port of entry indicates that it is difficult to provide adequate and timely service at both airports. Although Felts Field has been designated for Customs purposes as an international airport, inasmuch as most international flights land at Spokane International, it has become necessary for Customs to assign personnel at Spokane International on a regular basis and only send them to Felts Field when needed. As a result, when passengers or commercial aircraft are being cleared at Spokane International, aircraft arriving at Felts Field, which is 18 miles away, may have to wait up to 2½ hours for Customs service. Therefore, to improve service to the public and provide more effective enforcement of the Customs laws and regulations, it is considered desirable to revoke the international airport status of Felts Field. This revocation would not preclude aircraft arriving from foreign countries from applying for permission to land at Felts Field as a "landing rights airport." Aircraft denied permission to land at Felts Field could easily be handled, without undue inconvenience, at Spokane International, where Customs service would be available. No additional expenses would be imposed as a result of this proposal. The authority for this proposed revocation of international airport status is provided in section 1109(b) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1509(b)).

COMMENTS

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division of the Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development, both on matters of substance and style.

PROPOSED AMENDMENT

It is proposed to amend § 6.13 of the Customs (19 CFR 6.13) by deleting "Spokane, Wash----Felts Field" from the alphabetical list of international airports set forth in that section.

G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: January 3, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-983 Filed 1-12-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Parts 404, 416]

[Regs. No. 4, 16]

FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Substantial Gainful Activity

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The proposed amendments increase the monetary amounts of the substantial gainful activity guidelines under Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits) and Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act to conform more closely to increase in earnings levels of workers in the national labor market. These earnings guidelines are evaluation measures used for determining, in the absence of evidence to the contrary, ability to engage in substantial gainful activity. Under the increased amounts, an individual's earnings from work activities averaging in excess of $240 per month in the calendar years after 1976 shall be deemed to demonstrate the ability to engage in substantial gainful activity. Earnings from work activities which average less than $160 a month in the calendar years after 1976 will not demonstrate that an employee is able to engage in substantial gainful activity. Under regulations which are being published in final in the FEDERAL REGISTER today, these amounts are $230 and $150 respectively beginning for calendar year 1976.

DATES: Comments must be received on or before February 27, 1978.

ADDRESSES: Prior to final adoption of the proposed amendments to the regulations consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Under these proposed guidelines, earnings from work activities by an individual averaging in excess of $240 a month in calendar years after 1976 will be considered sufficient earnings to demonstrate an ability to engage in substantial gainful activity, unless there is other evidence to establish that the individual does not have such ability. Under regulations which are being published in final in the FEDERAL REGISTER today, this earnings guideline amount is $230 beginning for calendar year 1976. The amount of $200 will remain in effect for evaluating earnings in calendar years prior to 1976.

Earnings from work activities by an employee which average less than $160 a month in calendar years after 1976 will be considered insufficient earnings to demonstrate that the individual is able to engage in substantial gainful work activity in absence of evidence to the contrary. Under regulations which are being published in final in the FEDERAL REGISTER today, this earnings guideline amount is $150 beginning for calendar year 1976. The amount of $130 will remain in effect for evaluating earnings in calendar years prior to 1976.

Where an individual's earnings from work activities average between $160 and $240 a month in calendar years after 1976, or between $150 and $230 a month in calendar year 1976, other facts and circumstances relating to the person's work and his medical restrictions will be evaluated together with the amount of his earnings in determining whether or not such individual is able to engage in substantial gainful work activity. As presently in effect, these amounts will remain $130 and $200 for evaluating earnings in calendar years prior to 1976.

These proposed higher substantial gainful activity levels reflect general increases in earnings levels of workers in the national economy. These proposed higher guideline amounts will also maintain the relationship to earnings levels which has existed since 1966. The preamble of the final regulation published in the FEDERAL REGISTER this same day provides a further explanation of the reasons for proposing these amounts.

The new higher earnings amounts will apply in the adjudication of any disability claim involving earnings by a claimant on or after January 1, 1977. Any claim involving earnings on or after that date will be considered or reopened on the basis of those higher amounts as appropriate.

The proposed amendments to §§ 404.1534 and 416.934 of Title 20 CFR Parts 404 and 416 respectively reflect these proposed changes in the earnings guideline amounts.

On February 18, 1976, there was published in the FEDERAL REGISTER (41 FR 7415) a Notice of Proposed Rulemaking with proposed amendments, which provided a mechanism for the systematic adjustment of the substantial gainful activity amounts in the earnings guidelines and calculated the first monetary adjustment under this mechanism. Future increases in the earnings guidelines were also proposed to be based on the systematic adjustment mechanism under a formula which, if applied for calendar year 1977, would have made the maximum substantial gainful activity amount $250, instead of $240, for calendar years after 1976.

In a final regulation published in the FEDERAL REGISTER today, the earnings guideline amounts of $230 and $150 have been adopted beginning for calendar year 1976, but the systematic adjustment provision has been with-

drawn, primarily because of the excessive program costs which would result if the systematic adjustment mechanism were implemented. The automatic adjustment provision would yield results inconsistent with the historical relationship between substantial gainful activity levels and general earnings levels. Also, the proposed methodology for computing the adjustment is unworkable under the annual reporting under Pub. L. 94-202. However, the Social Security Administration is studying the feasibility of introducing another systematic adjustment concept which will be consistent with the actuarial integrity of the program and the new system of annual reporting of earnings. The preamble of the final regulation provides a further explanation of the reasons for the withdrawal.

These proposed amendments are to be issued under the authority of sections 205, 223, 1102, 1614, and 1631 of the Social Security Act, as amended; 53 Stat. 1368, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended, 86 Stat. 1471, 1475, as amended; 42 U.S.C. 405, 423, 1302, 1382c, and 1383.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

NOTE.—The Social Security 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: October 21, 1977.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: January 3, 1978.

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

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

1. Section 404.1534 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 404.1534 Evaluation of earnings from work.

* * * * *

(b) *Earnings sufficient to demonstrate an ability to engage in substantial gainful activity.* Unless there is evidence that an individual's work activities establish that the individual does not have the ability to engage in substantial gainful activity under the criteria in §§ 404.1532 and 404.1533 and paragraph (a) of this section, an individual's earnings from work activities shall be deemed to demonstrate ability to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings average more than $200 a month; or

(2) In calendar year 1976, earnings average more than $230 a month; or

(3) In calendar years after 1976, earnings average more than $240 a month.

(c) *Earnings insufficient to demonstrate an ability to engage in substantial gainful activity.* Unless an evaluation of the work performed by an individual (see § 404.1532) establishes that the person is able to engage in substantial gainful activity, regardless of the amount of average monthly earnings, an individual's earnings from work activities as an employee shall not demonstrate that the person is able to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings average less than $130 a month; or

(2) In calendar year 1976, earnings average less than $150 a month; or

(3) In calendar years after 1976, earnings average less than $160 a month.

(d) *Earnings neither high enough nor low enough to determine whether an individual is able to engage in substantial gainful activity.*

(1) Consideration will be given to the amount of an individual's earnings together with other circumstances relating to the work activities (see §§ 404.1532 and 404.1533), the medical evidence relating to the person's impairment or impairments, and other factors (see § 404.1502) to determine whether the individual is able to engage in substantial gainful activity if:

(i) In calendar years prior to 1976, earnings from work activities average between $130 and $200 a month; or

(ii) In calendar year 1976, earnings from work activities average between $150 and $230 a month; or

(iii) In calendar years after 1976, earnings from work activities average between $160 and $240 a month.

(2) However, such activities and such earnings ordinarily would not establish the ability to engage in substantial gainful activity in the case of an individual working in a sheltered workshop (such as a workshop especially organized for disabled persons) or comparable facility, whose activities are limited by his or her impairment if:

(i) In calendar years prior to 1976, earnings average $200 a month or less; or

(ii) In calendar year 1976, earnings average $230 a month or less; or

(iii) In calendar years after 1976, earnings average $240 a month or less.

* * * * *

2. Section 416.934 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 416.934 Evaluation of earnings from work.

* * * * *

(b) *Earnings sufficient to demonstrate an ability to engage in substantial gainful activity.* Unless there is evidence that an individual's work activities establish that the individual does not have the ability to engage in substantial gainful activity under the criteria in §§ 416.932 and 416.933 and paragraph (a) of this section, an individual's earnings from work activities shall be deemed to demonstrate ability to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings average more than $200 a month; or

(2) In calendar year 1976, earnings average more than $230 a month; or

(3) In calendar years after 1976, earnings average more than $240 a month.

(c) *Earnings insufficient to demonstrate an ability to engage in substantial gainful activity.* Unless an evaluation of the work performed by an individual (See § 416.932) establishes that the person is able to engage in substantial gainful activity, regardless of the amount of average monthly earnings, an individual's earnings from work activities as an employee shall not demonstrate that the person is able to engage in substantial gainful activity if:

(1) In calendar years prior to 1976, earnings average less than $130 a month; or

(2) In calendar year 1976, earnings average less than $150 a month; or

(3) In calendar years after 1976, earnings average less than $160 a month.

(d) *Earnings neither high enough nor low enough to determine whether an individual is able to engage in substantial gainful activity.*

(1) Consideration will be given to the amount of an individual's earnings together with other circumstances relating to the work activities (see §§ 416.932 and 416.933), the medical evidence relating to the person's impairment or impairments, and other factors (see § 416.902) to determine whether the individual is able to engage in substantial gainful activity if:

(i) In calendar years prior to 1976, earnings from work activities average between $130 and $200 a month; or

(ii) In calendar year 1976, earnings from work activities average between $150 and $230 a month; or

(iii) In calendar years after 1976, earnings from work activities average between $160 and $240 a month.

(2) However, such activities and such earnings ordinarily would not establish the ability to engage in substantial gainful activity in the case of an

individual working in a sheltered workshop (such as a workshop especially organized for disabled persons) or comparable facility, whose activities are limited by his or her impairment if:

(i) In calendar years prior to 1976, earnings average $200 a month, or less; or

(ii) In calendar year 1976, earnings average $230 a month or less; or

(iii) In calendar years after 1976, earnings average $240 a month or less.

* * * * *

[FR Doc. 78-834 Filed 1-11-78; 8:45 am]

[4110-03]

Food and Drug Administration

[21 CFR Part 310]

[Docket No. 75N-0254]

REGULATORY POLICY FOR MARKETING CONTACT LENSES

Withdrawal of Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Notice of Withdrawal.

SUMMARY: The agency is withdrawing its proposal of September 30, 1975, which would have declared certain contact lenses to be new drugs. The proposed regulation is no longer appropriate because of the enactment of the Medical Device Amendments of 1976. Now, all contact lenses, including those not consisting entirely of polymethylmethacrylate, are controlled as devices. Those that do not consist entirely of polymethyl- methacrylate ("soft" contact lenses) are also subject to the transitional provisions of section 520(l) of the Federal Food, Drug, and Cosmetic Act and therefore may not be commercially distributed without premarket approval.

FOR FURTHER INFORMATION CONTACT:

Max W. Talbott, Bureau of Medical Devices (HFK-410), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7538.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of September 30, 1975 (40 FR 44844), the Food and Drug Administration (FDA) declared as new drugs all contact lenses not consisting entirely of polymethylmethacrylate and proposed a regulation codifying this position.

The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq., as amended by the Medical Device Amendments of 1976, Pub. L. 94-295) includes an expanded definition of the term "device" in section 201(h) (21 U.S.C. 321(h)). The amended definition encompasses all contact lenses. Contact lenses that were regarded by FDA as new drugs before the amendments (i.e., "soft" contact lenses) will be subject to the regulatory controls described in section 520(l) of the act (transitional provisions, 21 U.S.C. 360j(l)) and, therefore, now require premarket approval unless FDA reclassifies them out of the premarket approval category (class III). Contact lenses that were regarded by FDA as devices before the amendments ("hard" contact lenses) continue to be regarded as devices; their classification will be determined by future regulations under section 513(d) of the act (21 U.S.C. 360c(d)).

The Commissioner of Food and Drugs recognizes that issues may arise as to whether particular contact lenses would have been regarded as devices or as new drugs before the Medical Device Amendments. These issues are relevant in determining whether particular contact lenses are subject to premarket approval by virtue of the transitional provisions. The Commissioner believes that such issues, if they arise, should be addressed on a case-by-case basis or in the future regulations classifying contact lenses that are not subject to the transitional provisions.

A notice explaining how FDA intends to implement section 520(l) of the act was published in the FEDERAL REGISTER of December 16, 1977 (42 FR 63472).

Accordingly, FDA has determined that promulgation of a regulation on the proposal of September 30, 1975, is no longer appropriate, and the proposal is hereby withdrawn. This withdrawal, however, does not affect the declaration of new drug status of "soft" contact lenses for purposes of assuring continued applicability to such lenses of premarket approval requirements under section 520(l)(1)(E) of the act.

Dated: January 9, 1978.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 78-942 Filed 1-12-78; 8:45 am]

[1505-01]

[21 CFR Part 558]

[Docket No. 77N-0317]

CHRLORTETRACYCLINE AND OXYTETRACYCLINE IN ANIMAL FEEDS

Notice of Proposed Rulemaking

Correction

In FR Doc. 77-30563, appearing at page 56254 in the issue of Friday, October 21, 1977, in the table on page 56263, the next to last entry in the "Limitations" column, under the subhearing, "Grower ration (Grams per ton)," now reading, "36.3-74.5 (0.004 pct-0.0083 pct)", should read, "36.3-75.4 (0.004 pct-0.0083 pct)".

[1505-01]

[21 CFR Part 740]

[Docket No. 77P-0353]

COAL TAR HAIR DYES CONTAINING 4-METHOXY-M-PHENYLENEDIAMINE (2,4-DIAMINOANISOLE) OR 4-METHOXY-M-PHENYLENEDIAMINE SULFATE (2,4-DIAMINOANISOLE SULFATE)

Proposed Warning Statement

Correction

In FR Doc. 78-254 appearing at page 1101 in the issue for Friday, January 6, 1978, in the "Dates" paragraph, the proposed effective date for the final regulation should have been designated as 90 days after the date of publication of the regulation in the FEDERAL REGISTER rather than as April 6, 1978.

[7710-12]

POSTAL SERVICE

[39 CFR Part 111]

RURAL SERVICE

Newspaper Receptacles on Rural Mailboxes

AGENCY: Postal Service.

ACTION: Proposed Rule.

SUMMARY: The proposed rule would delete language in section 156.532 of the Postal Service Manual which could be interpreted to permit receptacles used for the private delivery of newspapers to be attached to or be supported by rural letter boxes utilized by the Postal Service. Such language is inconsistent with the provisions and intent of other regulations which generally prohibit the direct and indirect use of letter boxes for delivery of matter not bearing postage.

DATE: Comments must be received on or before February 13, 1978.

ADDRESS: Written comments should be directed to Mr. James R. Braughton, Assistant Postmaster General, Delivery Service Department, United States Postal Service, 475 L'Enfant Plaza, West, SW., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Mr. Braughton's office at Room 4671.

FOR FURTHER INFORMATION CONTACT:

Jack T. DiLorenzo, 202-245-4614.

SUPPLEMENTAL INFORMATION: Section 151.11 of the Postal Service Manual reads in part: "Every letterbox or other receptacle intended or used for the receipt or delivery of mail on any * * * mail route is designated an authorized depository for mail within the meaning of 18 U.S.C. * * * 1725. For the purposes of 146.2, 151.12 * * * the post is not part of the receptacle."

18 U.S.C. 1725 prohibits the knowing and willful deposit of mailable matter on which no postage has been paid in letter boxes "established, approved, or accepted by the Postal Service for the receipt or delivery of mail matter." The corresponding Postal Service regulation is contained in section 146.21 of the Postal Service Manual.

Section 156.532 of the Postal Service Manual reads in part: "A receptacle for newspapers, not restricted to any one paper, may be placed *above or below the box or on the post or support*, provided it will not interfere with the delivery of mail, obstruct the view of the flag, or present a hazard to the carrier or his vehicle." (Emphasis added.) The use of the second word "or" in the emphasized portion implies that the receptacle may be attached to or be supported by the box.

Section 151.12 of the Postal Service Manual reads in part that "other than as permitted in 156.58 (which allows unstamped newspapers, regularly mailed as second-class mail, to be placed into rural letter boxes on sundays and national holidays only) no part of a mail receptacle (used by the Postal Service) may be used to deliver any matter not bearing postage. This applies to items or matter *placed upon, supported by, attached to, hung from, or inserted into, a mail receptacle.*" (Emphasis added.) This section and section 146.221 provide that such matter is subject to payment of postage. Restrictions on the use of letter boxes for the private delivery of materials have been judicially sustained (*Rockville Reminder, Inc.* v. *United States Postal Service*, 480 F.2d 4 (2d Cir. 1973); *B&M Ltd.* v. *Smith*, 351 F. Supp. 1057 (N.D. Ohio, 1972)). Several other cases challenging the restrictions are presently in litigation.

Since the deposit of privately delivered materials (not bearing postage) into a receptacle attached to or supported by a letter box is prohibited by sections 146.221 and 151.12, except to the extent permitted by section 156.58, there is an inconsistency between sections 146.221 and 151.12 and section 156.532 as it presently reads. The Postal Service believes that it is best generally to keep letter boxes free of the attachment of matter other than matter moving in the postal system. Accordingly, the Postal Service proposes to amend its regulations to eliminate the inconsistency in them by changing section 156.532 of the Postal Service Manual, Chapter I of which has been incorporated by reference in the FEDERAL REGISTER, see 39 C.F.R. 111.1, to make it clear that a receptacle for the private delivery of newspapers must not be attached to or be supported by the letter box utilized by the Postal Service. The amended section 156.532 leaves open the possibility of attaching a receptacle for the delivery of newspapers to the post. The requirement that the receptacle not be restricted to the delivery of any one newspaper would be eliminated. Although exempt under 39 U.S.C. 410(a) from the requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), (c), regarding proposed rulemaking, the Postal Service invites public comment on the following proposed revision of the Postal Service Manual.

PART 156—RURAL SERVICE

In Part 156 of the Postal Service Manual, revise the first sentence of .532 to read as follows:

.532 *Newspaper receptacles.* A receptacle for the delivery of newspapers may be attached to the post or support of a letter box which is used by the Postal Service: *Provided*, That no part of the receptacle will touch or be attached to or be supported by any part of the box, interfere with the delivery of mail, obstruct the view of the flag, or present a hazard to the carrier or his vehicle.

An appropriate amendment to 39 C.F.R. 111.3 to reflect these changes will be published if the proposal is adopted. (39 U.S.C. 401(2)).

ROGER P. CRAIG,
Deputy General Counsel.

[FR Doc. 78-940 Filed 1-12-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 842-3]

PENNSYLVANIA STATE IMPLEMENTATION PLAN

Proposed Revision

AGENCY: Environmental Protection Agency.

ACTION: Proposed Amendment to Pennsylvania Air Pollution Control Act.

SUMMARY: This proposed amendment, if approved, would provide for improved administrative procedures, create a stationary air contamination source permit system, provide additional remedies for abating air pollution, define the relationship between the Act and local ordinances, and impose penalties for violation of the Act.

DATE: Comments must be received on or before February 13, 1978.

ADDRESSES: Copies of these amendments are available for public inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pa. 19106, Attention: Mr. C. C. Miesse (3AH12); Bureau of Air Quality and Noise Control, Department of Environmental Resources, Fulton Building, Harrisburg, Pa. 17120, Attention: Mr. G. Triplett; Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. C. C. Miesse (3AH12), Environmental Protection Agency, Region III, Curtis Building, Sixth and Walnut Streets, Philadelphia, Pa. 19106, 215-597-8180.

SUPPLEMENTARY INFORMATION: On December 11, 1972, the Commonwealth of Pennsylvania submitted an amendment to the State Implementation Plan pertaining to miscellaneous nonregulatory revisions. As a result of an oversight at that time, the Administrator never formally approved this amendment as a revision of the Pennsylvania SIP, and the March 2, 1976 Notice of Rulemaking (41 FR 8956) erroneously listed this amendment under 40 CFR Paragraph 52.2020(c)(10). The erroneous entry was subsequently rescinded on December 6, 1976 (41 FR 53326).

Included in the proposed amendments are regulations for the powers and duties of the Department of Environmental Resources, the Environmental Quality Board, and the Environmental Hearing Board; also included are regulations governing permits; disposition of fines; civil remedies; powers reserved to political subdivisions; construction; and variances. Although the proposed regulation allows for variances for as long as 10 years, it is specified that "such rules and regulations shall not authorize the grant of a variance which will prevent or interfere with the attainment or maintenance of any ambient air quality standard imposed by Federal law within

the time prescribed by such law for the attainment of such standard." Hence, a variance would only be granted consistent with 40 CFR Part 51.

Since the proposed amendment included only nonregulatory revisions and hence would not prevent or interfere with the attainment or maintenance of any air quality standard imposed by Federal Law within the time prescribed, no public hearings on subject amendment are required (40 CFR 51.4(a)(2)).

The Administrator's decision to approve or disapprove this proposed revision will be based on whether or not it meets the requirements of Section 110(a)(2)(A)-(H) of the Clean Air Act and the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans.

(Authority: 42 U.S.C. 1857c-5).

Dated: December 15, 1977.

JACK J. SCHRAMM,
Regional Administrator.

[FR Doc. 78-902 Filed 1-12-78; 8:45 am]

[1505-01]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

[42 CFR Part 81]

CERTIFICATION OF PERSONAL NOISE DOSIMETER SETS

Correction

In FR Doc. 77-36902, appearing at page 65194 in the issue for Friday, December 30, 1977:

1. On page 65196, first column, sixth line of § 81.11, "§ 81.42" should read "§ 81.41", and "drawing" should read "drawings".

2. On page 65197, third column, first line of § 81.33(f), "certificated" should read "certified".

3. On page 65198, middle column, sixth line of § 81.41(d)(2), "or" should read "on".

4. On page 65199, first column, first line of § 81.54(a), "personnal" should read "personnel".

5. On page 65201, third column, ninth line of (l), "a" should read "no".

6. On page 65202, first column in paragraph (s), beginning with the tenth line, delete the following: "acoustically isolated" and "(or equivalent electrical impedance)"; and in paragraph (t), in the fourth line, "6" should read "60".

[4110-02]

Office of the Secretary

[45 CFR Parts 16 and 185]

DEPARTMENT GRANT APPEALS PROCESS AND EMERGENCY SCHOOL AID

Proposed Rulemaking

AGENCY: Office of the Secretary and Office of Education, HEW.

ACTION: Proposed rule.

SUMMARY: The Secretary proposes to amend regulations governing the Department grant appeals process to make those regulations apply to the resolution of disputes arising from determinations to terminate or void assistance under the Emergency School Aid Act. The Commissioner of Education, with the approval of the Assistant Secretary for Education and the Secretary, proposes to amend regulations under the Emergency School Aid Act for the same purpose, and for the purpose of making the suspension of ESAA assistance subject to regulations governing other Office of Education programs.

DATES: Comments must be received on or before February 13, 1978.

ADDRESSES: Comments concerning the Department grant appeals process should be addressed to Thomas M. Reynolds, Department of Health, Education, and Welfare, Room 3766, North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

Comments concerning the emergency School Aid Act should be addressed to Jesse J. Jordan, Office of Education, room 2007, FOB-6, 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Concerning the Department grant appeals process: Thomas M. Reynolds, 202-245-7342.

Concerning the Emergency School Aid Act: Jesse J. Jordan, 202-245-7965.

SUPPLEMENTARY INFORMATION: Current regulations under the Emergency School Aid Act (45 CFR Part 185) provide an opportunity for a hearing before an Administrative Law Judge where the Assistant Secretary finds grounds to terminate or void assistance under that statute. Those regulations also contain procedures for suspending assistance pending a hearing on termination. There is presently a shortage of Administrative Law Judges, and applicable statutes do not require that disputes arising from a decision to terminate or void ESAA assistance be resolved through formal adjudication under the Administrative Procedure Act (5 U.S.C. 554). Therefore, the Commissioner has determined that these disputes (like others arising under the ESAA) should be resolved by resort to procedures now applicable to disputes of this nature arising under other HEW programs. The Commissioner has also determined that considerations of simplicity and uniformity require making the suspension of ESAA assistance subject to regulations governing the suspension of assistance under other Office of Education programs (see, in particular, 45 CFR 100a.495). The proposed amendments to Part 185 would accomplish these purposes as well as make technical changes.

The proposed amendments to regulations governing the Department grant appeals process (45 CFR Part 16) are largely technical in nature. However, because of an ambiguity in those regulations, the proposed amendments would incorporate into Part 16 the definition of the term "grant" now contained in 45 CFR Part 74—Administration of Grants (see 41 FR 44552, October 8, 1976). The purpose of this amendment is to make it clear that the regulations in Part 16 apply to disputes arising from contracts of assistance like those awarded under Subpart H of the ESAA regulations, relating to educational television. The amendment does not affect Departmental guidelines for the selection of a grant or a contract as the form of award.

Invitation to comment. Interested persons are invited to submit comments, suggestions, or recommendations to be considered prior to the issuance of the final rule. Comments, suggestions, or recommendations may be sent to the addresses given at the beginning of this notice. All comments received on or before February 13, 1978, will be considered. All comments submitted will be available for public inspection both during and after the comment period at the addresses given in the beginning of this notice between the hours of 9 a.m. and 5:30 p.m. in the South Portal Building, and 8:30 a.m. and 4 p.m. in the FOB-6 building, Monday through Friday of each week.

Authority. The proposed amendment to the Department grant appeals process is issued under the authority of 5 U.S.C. 301 and sections 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631. The proposed amendment to the emergency school aid regulations is issued under the authority of the Emergency School Aid Act and 20 U.S.C. 1232c(c).

NOTE.—The Department of Health, Education, and Welfare and the Office of Education have determined that this document does not contain a major proposal requiring preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

(Catalog of Federal Domestic Assistance Nos. 13.525, 13.526, 13.528, 13.529, 13.530, 13.532.)

Dated: May 13, 1977.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: May 25, 1977.

MARY F. BERRY,
Assistant Secretary for Education.

Approved: January 9, 1978.

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

Title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 16—DEPARTMENT GRANT APPEALS PROCESS

1. In §16.3, paragraphs (e), (f), and (j) are revised, and a new paragraph (k) is added, as follows:

§16.3 Definitions.

* * * * *

(e) "Constituent agency" means the Office of the Assistant Secretary for Education (with respect to grants under the Emergency School Aid Act and section 404 of the General Education Provisions Act), the Office of Education, the National Institute of Education, the Office of the Assistant Secretary for Health (with respect to grants awarded by the Health Resources Administration, the Health Services Administration, the National Institutes of Health, the Center for Disease Control, the Food and Drug Administration, the Alcohol, Drug Abuse, and Mental Health Administration, and the Public Health Service regional offices), the Office of Human Development, the Administration on Aging, the Health Care Financing Administration, Social Security Administration, the Rehabilitation Services Administration, the Office of the Assistant Secretary for Management and Budget (with respect to determinations described in §16.5(a)(5)),the several regional offices of the Department (with respect to grants made by the regional directors), and any other organizational component the Secretary may designate.

(f) "Head of the constituent agency" means, as appropriate, the Assistant Secretary for Education (with respect to grants under the Emergency School Aid Act and section 404 of the General Education Provisions Act), the Commissioner of Education, the Director of the National Institute of Education, the Assistant Secretary for Health (with respect to grants awarded by the Health Resources Administration, the Health Services Administration, the National Institutes of Health, the Center for Disease Control, the Food and Drug Administration, the Alcohol, Drug Abuse, and Mental Health Administration, and the Public Health Service regional offices), the Assistant Secretary for Human Development, the Commissioner on Aging, the Administrator of the Health Care Financing Administration, the Commissioner of the Rehabilitation Services Administration, Commissioner of the Social Security Administration, the Assistant Secretary for Management and Budget (with respect to determinations described in §16.5(a)(5)), the several regional directors (with respect to grants made by them), and the head of any other organizational component which the Secretary may designate.

* * * * *

(j) "Grantee" means the agency, institution, organization, or individual named as the recipient in the grant award document.

(k) "Grant" means money, or property provided in lieu of money, paid or furnished by the Federal Government to an eligible recipient under programs that provide financial assistance. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance which provides services instead of money or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include a fellowship or other award of a fixed amount of funds which the recipient is not required to account for on an actual cost basis. (Authority Cited in Appendices)

2. In Appendix A, item 27 is revised as follows:

APPENDIX A—EDUCATION PROGRAMS

* * * * *

(27) Emergency School Aid Act (20 U.S.C. 1601 et seq.).

PART 185—EMERGENCY SCHOOL AID

1. In the table of contents, Subpart E is revised to read as follows:

Subpart E—General Requirements

Sec.

* * * * *

185.45 Termination, suspension, and voiding of assistance.

* * * * *

Subpart E—General Requirements

2. Section 185.45 is revised to read as follows:

§185.45 Termination, suspension, and voiding of assistance.

(a) The provisions of subchapter A of this chapter (General Provisions for Office of Education Programs) and the provisions of Part 16 of this title (Department Grant Appeals Process) govern the termination, suspension, and voiding of assistance awarded under this part.

(b) If the Assistant Secretary determines that an award of assistance under this part became void after the date on which the award was made, the Assistant Secretary shall not recognize any obligations incurred by the recipient after the date on which the award became void, or permit assistance under the award to be used for any expenditures made by the recipient after that date. If the Assistant Secretary determines that an award of assistance was void when made, the Assistant Secretary shall not permit assistance under the award to be used for any expenditures made by the recipient regardless of when the recipient incurred an obligation.

(c) This section does not preclude the Assistant Secretary or the Secretary from pursuing any other remedy authorized by law, including, but not limited to, remedies under Title VI of the Civil Rights Act of 1964, Title IX of Pub. L. 92-318, and section 504 of Pub. L. 93-112, and any regulations adopted under those statutes.

(20 U.S.C. 1601-1619, 1232c(c); Sen. Rep. No. 92-61, 92d Cong., 1st Sess. 18, 41-42 (1971).)

[FR Doc. 78-1017 Filed 1-12-78; 8:45 am]

[4110-02]

Office of Education

[45 CFR Part 185]

DEPARTMENT GRANTS APPEALS PROCESS AND EMERGENCY SCHOOL AID

Proposed Rulemaking

CROSS REFERENCE: For a document proposing amendments to regulations governing the Department Grant Appeals Process, see FR Doc. 78-1017 appearing under Office of the Secretary (HEW) in the proposed rules section of this issue. Refer to the table of contents under "HEALTH, EDUCATION, AND WELFARE DEPARTMENT" at the front of this issue to find the correct page number.

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 21358; RM-2661]

TELEVISION BROADCAST STATION IN OGDEN, UTAH

Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the date for filing reply comments in a proceeding concerning television channel assignments in Ogden, Utah. Petitioner, Golden Spike Television Corporation, stated that the additional time is necessary because of illness of both counsel responsible for matters in this proceeding.

DATES: Reply comments must be filed on or before January 20, 1978.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Adopted: January 6, 1978.

Released: January 10, 1978.

In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (Odgen, Utah), Docket No. 21358, RM-2661.

1. On August 10, 1977, the Commission released a *Notice of Proposed Rule Making*, 42 FR 41302, in this proceeding. The *Notice* proposes removing the reservation of television Channel *9 at Ogden, Utah, for noncommercial educational use only. The date for filing comments has expired and the date for filing reply comments is presently January 6, 1978.[1]

2. On January 5, 1978, counsel for Golden Spike Television Corporation, requested that the time for filing reply comments be extended to and including January 20, 1978. Counsel states that the senior counsel who was principally responsible for this proceeding underwent a serious operation on December 20, and the date of his return is not definite. Counsel adds that the matter was then reassigned to associate counsel who was in the midst of preparing reply comments when he also was taken ill on January 4, and is now at home under care of his physician. The other parties in this proceeding have been advised of this request and each has indicated that there is no objection to its grant.

3. Section 1.46 of the rules states that extension requests must be filed seven days in advance but permits late-filed requests in case of last-minute emergencies which could not have been anticipated by the party requesting the extension. We believe that good cause has been shown in this instance, and that justification for an extension has been shown, so we are granting the request.

4. *Accordingly, it is ordered*, that the date for filing reply comments in Docket 21358 is extended to and including January 20, 1978.

5. This action is taken pursuant to authority found in Sections (4)i, 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

For the Federal Communications Commission.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-975 Filed 1-12-78; 8:45 am]

[1] See 42 FR 64649, December 27, 1977.

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.

[3410-11]

DEPARTMENT OF AGRICULTURE

Forest Service

LAKE TAHOE BASIN MANAGEMENT UNIT

Administrative Boundary

Background. In 1972 the Forest Service established the Lake Tahoe Basin Management Unit. This is an administrative unit within the Forest Service organizational structure, headed by an Administrator. Basically, the administrative unit includes the area surrounding Lake Tahoe, located on the border between California and Nevada. The lands of the Lake Tahoe Basin Management Unit are also included within the boundaries of the following three National Forests, but not managed by the Forest Supervisors of these Forests:

Toiyabe National Forest, Nev.
Eldorado National Forest, Calif.
Tahoe National Forest, Calif.

Purpose. Since the Administrator of the Lake Tahoe Basin Management Unit has authority under 36 CFR 261.50 (a) and (b) to impose certain criminal prohibitions within his area of jurisdiction, it is considered necessary to publish this boundary description. Further, the land use and environmental constraints within the unit are significantly more restrictive than the surrounding National Forest lands and private lands, which creates a need for the public, States, and Federal agencies to know the limits of the restricted uses.

Boundary Description. The administrative boundary of the Lake Tahoe Basin Management Unit includes all of the lands lying within the following described boundary:

Beginning at Ward Peak, which is the point of intersection between the American River, Bear Creek and Lake Tahoe drainages; thence southerly along American River-Lake Tahoe Divide to a point on the Echo Lakes Road; thence southeasterly along said road to Old Highway 50; thence easterly along Old Highway 50 to the intersection of the Echo Summit Tract Road; thence southerly along the Echo Summit Tract Road to Highway 50; thence easterly along Highway 50 to the intersection of the South Echo Summit Tract Road; thence southerly along said road to the divide between the American River drainage and the Lake Tahoe Drainage; thence southerly and easterly along said divide to a point which is the intersection of the American River, Lake Tahoe and the Carson River drainages; thence northerly along the divide between the Carson River and Lake Tahoe drainages to a point on the Eldorado-Alpine County line in the near vicinity of Monument Peak; thence north to the section corner common to Sections 6 and 7, T. 12 N., R. 19 E., MDM; thence east ½ mile; thence north 1 mile; thence east ½ mile; thence north ½ mile; thence east 1 mile; thence north ¾ mile; thence east ½ mile, thence north ¾ mile, thence west ½ mile to the intersection of Highway 19; thence northwesterly and northeasterly along said highway to the intersection of the north line of the SE¼ of Section 19, T. 13 N., R. 19 E., MDM; thence along said north line to the intersection of the divide between the Lake Tahoe drainage and Carson River drainage; thence northerly along said divide to a point in Section 22, T. 17 N., R. 18 E., MDM, which is the intersection of the Lake Tahoe, Truckee River and Washoe Lake drainages; thence westerly along the divide between the Lake Tahoe and Truckee River drainages to the intersection of the north line of Section 36, T. 17 N., R. 17 E., MDM; thence west along said north section line to the section corner common to sections 25, 26, 35 and 36, T. 17 N., R. 17 E., MDM; thence south to the intersection of the aforementioned divide; thence southwesterly along said divide to the intersection of the north line of Section 2, T. 16 N., R. 17 E., MDM; thence west along said line to the north ¼ corner of said section 2; thence south to the intersection of the aforementioned divide; thence southwesterly to the north line of the southwest quarter of said Section 2; thence west along said line to the west quarter corner of said Section 2; thence south to the intersection of the divide between the Lake Tahoe and Truckee River drainages; thence westerly along said divide to a point on the north line of the south ½ of Section 8, T. 16 N., R. 17 E.; thence west along said line to the west quarter corner of said Section 8; thence south to the intersection of the aforementioned divide; thence southerly along said divide to a point on the north line of the S½ NE¼ Section 34, T. 16 N., R. 16 E., MDM; thence west to the North-South center line of said Section 34; thence south to the south quarter corner of said Section 34; thence west along the north line of sections 2 and 3, T. 15 N., R. 16 E., MDM to a point on the divide between the Bear Creek and Truckee River drainages; thence southwesterly along said divide to Ward Peak, point of beginning.

JOHN R. MCGUIRE,
Chief, Forest Service.

[FR Doc. 78-993 Filed 1-12-78; 8:45 am]

[3410-15]

Rural Electrification Administration

ENVIRONMENTAL IMPACT STATEMENT

Intent to Prepare

Notice is hereby given that the Rural Electrification Administration is considering the possibility of preparing an Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with possible financing assistance to Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road, NE., Albuquerque, N. Mex. 87107, in order to enable Plains to meet the projected load growth of its member-distribution cooperatives. Present planning indicates that the first increment of generating capacity should be in service by 1983. Described below are two proposed plans that could be developed for this need. In the event that an Environmental Impact Statement is prepared, all appropriate alternates will be addressed.

One alternate involves Plains' ownership-participation in the first 500 MW (net) unit in a proposed 2000 MW (net) generating plant complex, together with related transmission facilities. This generating plant complex is hereafter referred to as the "Bisti" complex. To assure that an adequate water supply for the "Bisti" complex is available, the project would encompass the acquisition of long-term water needs for the entire 2000 MW (net) complex. Construction of a water pipeline from the proposed water source to the "Bisti" complex would be necessary and the water put to a temporary use on farmland operations.

It is anticipated that the "Bisti" complex, which would consist of four units each with a net rating of 500 MW, would be owned jointly by Plains Electric Generation Transmission Cooperative, Inc., Public Service Co. of New Mexico, and El Paso Electric. The "Bisti" generating complex is expected to be built in northwestern New Mexico; the remainder of the supporting facilities are expected to be built within the confines of the State of New Mexico except for a portion of the transmission facilities which are contemplated for the El Paso, Tex., area.

Preliminary studies indicate that the bulk transmission facilities associated with this complex will be at the 345 kV and 500 kV voltage levels. Additional lower voltage transmission facilities would be needed for power plant construction, and water pumping. Specific transmission facilities, however, have not been completely identified.

The "Bisti" generating complex may be supplied coal from a new mine, ex-

panded existing mine, or uncontracted portion of an operating mine.

Another alternative being considered by Plains is the construction of a generating plant complex with a maximum capability of approximately 1,000 MW (net). This generating plant complex, hereafter referred to as the "Prewitt" complex, would be built in northwestern New Mexico.

It is expected that the bulk transmission facilities emanating from the "Prewitt" plant complex would be at the 345 kV voltage level. Additional lower voltage transmission facilities would be needed for power plant construction. As of the present time, specific transmission facilities and line routings have not been identified. Likewise, specific sources of coal to supply the "Prewitt" generating complex have not been identified to date.

Additional information with regard to either of the above-described alternate plans may be secured by request submitted to Mr. Richard F. Richter, Assistant Administrator, Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Comments concerning the environmental impact of these proposed construction plans, or any viable alternatives thereto, should be addressed to Mr. Richter at the address given above.

REA financing assistance for Plains' participation in any project will be subject to, and release of funds thereunder will be contingent upon REA's reaching satisfactory conclusions with respect to environmental effects and final action will be taken only after compliance with Environmental Statement procedures required by the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 4th day of January, 1978.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc. 78-641 Filed 1-12-78; 8:45 am]

[3410-16]

Soil Conservation Service

ALTOONA PIGEON BLUFF, PUBLIC WATER-BASED FISH AND WILDLIFE RC&D MEASURE, WASHINGTON

Intent Not To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Altoona Pigeon Bluff Public Water-Based Fish and Wildlife RC&D Measure, Columbia-North Pacific RC&D Area, Washington.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Galen S. Bridge, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project measure concerns a plan for the cooperative acquisition with the Washington State Department of Game of approximately 27 acres of woodland and 51 chains of second-class tideland as habitat for band-tailed pigeons. Located on the property are mineral springs whose waters and surrounding muddy areas are sought by the pigeons. Apparently, such waters contain specific minerals required in the pigeons' physiological processes. It has been estimated that there are about a dozen such springs in the State of Washington. This is the only known mineral spring in Wahkiakum County. Additionally, the area provides the band-tail with its primary food source (berries) as well as nesting and escape cover.

The tideland area consists of mudflats covered with various salt-tolerant plants on the higher portions. In addition to pigeon use, this area is valuable to various aquatic species, such as crustaceans. Also, it is used by various waterfowl and shore birds.

The property is located about a mile northwest of the village of Altoona in Wahkiakum County, and about 27 miles from the county seat, Cathlamet. State Highway 403 divides the wooded area from the tidelands.

The primary objective of the proposed RC&D measure is to preserve and protect the existing habitat for the continued use of the band-tailed pigeon, without alteration. No developments are planned presently for either site.

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by interested parties at the Soil Conservation Service, 360 U.S. Courthouse, Spokane, Wash. 99201. An environmental impact appraisal has been prepared and a limited number of copies are available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until February 13, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Public Law 87-703, 16 U.S.C. 590a-f, q.)

Date: January 6, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-966 Filed 1-12-78; 8:45 am]

[3410-16]

BEAR LAKE WATER-BASED RECREATION RC&D MEASURE, UTAH

Intent Not to Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bear Lake Water-Based Recreation RC&D Measure, Rich County, Utah.

The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George D. McMillan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project measure concerns a plan for the development of water-based recreation facilities located on the south shore of Bear Lake in Rich County, Utah. The planned works of improvement include: campground, picnic areas, sanitary facilities, boat launching site and marina. The plan also calls for parking lots, roads, trails, utilities and landscaping

The notice of intent not to prepare an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by interested parties at the Soil Conservation Service, Room 4012 Federal Building, 125 South State Street, Salt Lake City, Utah 84138. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests.

No administrative action on implementation of the proposal will be taken until February 13, 1978.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program—Public Law 87-703, 16 U.S.C. 590a-f,q.)

Date: January 6, 1978.

EDWARD E. THOMAS,
Assistant Administrator for Land Resources, Soil Conservation Service.

[FR Doc. 78-967 Filed 1-12-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 30777, Agreement CAB 27063, R-1 through R-12]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order

JANUARY 4, 1978.

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 Traffic Conference 3 of the International Air Transport Association (IATA). The agreement was adopted at the Composite Passenger Traffic Conference held in Cannes during October/November 1977.

The agreement is limited in nature and applies only to passenger air transportation between Japan and Korea and within the South Asian subcontinent.[1] In general, the agreement would increase first-class, normal economy-class, and promotional fares by various amounts, and is intended for effectiveness April 1, 1978 through March 31, 1979. We will approve those portions of the agreement which govern fares which are combinable with fares to/from U.S. points and thus have indirect application in air transportation as defined by the Act. We will disclaim jurisdiction on the remaining portions of the agreement, which govern noncombinable fares between foreign points and thus have no application in air transportation.

Pursuant to authority duly delegated by the Board's Regulations, 14 CFR 385.14:

1. It is not found that the following resolutions, which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Accordingly, *It is ordered* That:

1. Those portions of Agreement CAB 27063 described in finding paragraph 1 above be approved; and

Agreement CAB	IATA No.	Title	Application
27063:			
R-1	001bI	TC3 Special effectiveness resolution (tie-in)	3.
R-2	001bb	Special escape for TC3 supersonic fares	3.
R-3	001d	Special emergency escape for TC3 agreements (readopting and amending).	3.
R-4	001e	Special effectiveness resolution (new)	3.
R-5	002ss	Special readoption resolution	3.
R-6	014a	Construction rule for passenger fares (readopting and amending)	3.
R-7	053	TC3 First-class fares	3.
R-8	063	TC3 Economy-class fares	3.
R-12	281e	Sale of tickets under instalment plans in Bangladesh, India, Pakistan, Sri Lanka and Nepal (readopting and amending)..	3.

2. It is not found that the following resolutions affect air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
27063:			
R-9	070a	TC3 Excursion fares (readopting and amending)	3.
R-10	077f	TC3 Individual fares for ships' crews (readopting and amending)	3.
R-11	084k	TC3 Group inclusive tour fares (readopting and amending)	3.

2. Jurisdiction be disclaimed with respect to those portions of Agreement CAB 27063 described in finding paragraph 2 above.

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 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-875 Filed 1-12-78; 8:45 am]

[1] The area comprised of Afghanistan, Bangladesh, India, Nepal, Pakistan, Republic of Maldives, and Sri Lanka.

[6320-01]

[Docket Nos. 31574, etc.; Order 78-1-16]

AIR CALIFORNIA et al.

Order Regarding California—Nevada Low-Fare Route Proceeding

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of January 1978.

California-Nevada Low-Fare Route Proceeding, Docket 31574; applications of Air California, Docket 31722; American Airlines, Inc., Docket 31723; Braniff Airways, Inc., Docket 31710; Delta Air Lines, Inc., Docket 31720; Frontier Airlines, Inc., Docket 31775; Hughes Air Corp. d.b.a. Hughes Airwest, Docket 31718; National Airlines, Inc., Docket 31706; Northwest Airlines, Inc., Docket 31725; Trans World Airlines, Inc., Docket 31724; United Air Lines, Inc., Docket 31717; Western Air Lines, Inc., Docket 31719; under section 401 of the Federal Aviation Act of 1958, as amended.

Order 77-10-136, October 28, 1977, instituted a proceeding to determine whether the public convenience and necessity require the certification of an air carrier or carriers to engage in the air transportation of persons, property, and mail between Reno and Las Vegas, Nev. on the one hand and San Diego, Los Angeles, Long Beach, Burbank, Ontario, Fresno, Stockton, San Jose, San Francisco, Oakland, and Sacramento, Calif. on the other hand. Consolidated into the proceeding was the application for such authority of Pacific Southwest Airlines in Docket 30659. Petitions for reconsideration of the Board's order, a motion to modify the scope of the proceeding, applications, and motions to consolidate, and answers to those documents have been filed.[1] The pleadings are to delay the investigation, expand its scope, and consolidate applications into the proceeding.

Upon consideration of the pleadings, we have decided (1) not to delay the investigation, (2) to expand the proceeding to include Orange County-Santa Ana-Anaheim and Palm Springs among the California points to be considered, and (3) to consolidate applications to the extent they conform to the scope of the proceeding.

DELAY OF INVESTIGATION

United Air Lines, Inc., asks us to delay this investigation. It contends that there is no need to go forward with this case at this time because, not only has the Board inaugurated two other proceedings to explore the need for low-fare services,[2] but also United has filed to provide low-fare services in essentially similar markets.

United is asking for the opposite of the priority consideration we have adopted for this proceeding.[3] Its contentions raise little new matter and are unpersuasive.

See footnotes at end of document.

The board's order instituting this proceeding referred to the other cases noted by United containing low-fare services proposals. The order reflected the Board's decision to take advantage of a third opportunity to investigate the need for low-fare services and the question of whether they can be provided economically.

Accordingly, the only new factor presented by United is its recently filed tariffs. These are limited to the Reno-San Francisco/Oakland/Los Angeles markets, that is, three markets compared with the 22 which the Board determined to scrutinize. Furthermore, United's fare proposal does not pertain to any of the Las Vegas markets. While United describes its proposed low-cost, high-frequency service as the operation of an airline within an airline, it was our intention in initiating this proceeding to examine a proposal made by a potentially new entrant to the federally certificated system, an airline which on its existing system appears to have a cost structure consonant with the fares it proposes. Therefore, United's tariff proposal evokes the issues we wish to evaluate only to a minor degree.

For these reasons, we shall deny United's petition for reconsideration.[4]

Scope of Proceeding

Air California asks that Orange County and Palm Springs be included among the California points to be considered. Western Air Lines, Inc., also requests that Orange County be considered, describing the point as Orange County-Santa Ana-Anaheim,[5] limited to service to Las Vegas.

Hughes Air Corp. d.b.a. Hughes Airwest, which provides service in all the newly-proposed markets except Reno-Palm Springs, is the only party resisting the inclusion of the additional markets.[6] With respect to service at Orange County, Hughes Airwest contends the matter is extremely complex and would substantially complicate the issues and delay the proceeding. It maintains the question of improved service is hopelessly bogged down in environmentally related matters which have been the subject of court proceedings and which have resulted at the Orange County Airport in limitations on the number of daily operations, the hours of operation, and the types of aircraft that may be used, complex approach and departure regulations, and material terminal facility handicaps. The carrier asserts that, as a consequence of these circumstances, Continental Air lines, Inc., and Aeronaves de Mexico, S.A., have been unable to implement route awards for service at Orange County.[7]

We are not convinced that the contentions of Hughes Airwest justify excluding Orange County from this proceeding. While we are concerned with substantial civic opposition to the authorization of additional service on environmental grounds (see Order 78-1-20), the communities can weigh the environmental ramifications of the proposals made by the applicants against the service and fare advantages to be gained through the grant of additional authority in the particular markets.[8] We believe the most effective and fairest ways of assessing Hughes Airwest's claims are on the record developed at the hearing. At this juncture, it is our judgment that including the Orange County-Las Vegas/Reno markets will not unduly complicate the proceeding.

Hughes Airwest also submits no showing has been made that there is a need for additional service in any of the proposed additional markets and that traffic volumes are quite small in all the markets except Orange County-Las Vegas.

Our order instituting this proceeding was not founded on the premise of need for additional service in the terms Hughes Airwest appears to contemplate. Rather, as we have already indicated, it was grounded on "* * * the opportunity to explore the need for low-fare services and whether such services can be economically provided, * * *,"[8a] particularly where a proposal has been made by a potentially new entrant to the federally certificated air transportation system that appears to possess a low-cost structure for its existing operations.

As regards the volume of traffic, based on the twelve months ended June 30, 1976, the Las Vegas-Orange County market with 140,240 origin and destination (O&D) passengers would be the fourth largest market in this proceeding. Even the smallest proposed market, Reno-Palm Springs, 1,520 O&D passengers, outranks four markets which are already in issue. And, of course, to be determined in this proceeding is whether, and the extent to which, low fares would stimulate traffic in the markets in issue.

It is our conclusion that the addition to this proceeding of the four markets proposed by Air California will be conducive to the proper dispatch of the Board's business and to the ends of justice and will not unduly delay the proceeding.

Consolidation

Motions to consolidate applications in the dockets listed hereinafter have been filed by Air California (Docket 31722), American Airlines, Inc. (Docket 31723), Braniff Airways, Inc. (Docket 31710), Delta Air Lines, Inc. (Docket 31720), Frontier Airlines, Inc. (Docket 31775), Hughes Airwest (Docket 31718), National Airlines, Inc. (Docket 31706), Northwest Airlines, Inc. (Docket 31725), Trans World Airlines, Inc. (Docket 31724), United (Docket 31717), and Western (Docket 31719).[9] The motions to consolidate will be granted. However, the applications of American, Braniff, and Frontier will be consolidated only in part, for reasons discussed below.

The Board's order instituting this proceeding did not, and was not intended to, consider granting authority to carry local traffic between points in California. The proceeding involves only authority between the two Nevada points, on the one hand, and the listed California points, on the other hand. The applications of American, Braniff, and Frontier do not fully conform to this scope.

American's application requests the addition of a new segment to its route 4 between the "co-terminal points San Diego, Los Angeles-Burbank-Ontario, and San Francisco-San Jose-Oakland, Calif., on the one hand, and the co-terminal points Reno and Las Vegas, Nev., on the other hand."[10] Similarly, Frontier's application asks for a new segment between the "terminal point Las Vegas, Nev., and the co-terminal points San Diego, Los Angeles, Burbank, Ontario, Fresno, Stockton, San Jose, Oakland, and Sacramento, Calif."[11] As phrased, the applications bring into issue authority for the transportation of local traffic between the California cities listed, and, in the case of American, between Reno and Las Vegas.[12] Such issues, as indicated previously, are outside the ambit of the investigation instituted by the Board.[13] Accordingly, American's application will be consolidated only to the extent it involves service between Reno and Las Vegas, on the one hand, and the California points in the application, on the other hand. Frontier's application will be consolidated to the extent it involves service between Las Vegas, on the one hand, and the points in California listed in its application, on the other.

Braniff's application asks the Board to add a new segment to the carrier's certificate of public convenience and necessity for route 9 between the "terminal point Las Vegas, Nev., the intermediate points San Diego, Ontario, Oakland, and San Jose, Calif., and the terminal point Sacramento, California."[14]

Like the applications of American and Frontier, that of Braniff raises issues of service between the California points. We shall consider the application in this proceeding insofar as it concerns service between Las Vegas, on the one hand, and the California points, on the other.[15]

To the extent the applications of American, Braniff, and Frontier are not consolidated here, they will be dismissed.[16]

See footnotes at end of document.

Two other matters warrant comment. Hughes Airwest's request for consolidation of the portion of its application related to nonstop service between Los Angeles-Ontario and Reno is contingent on the Board determining that the issue should be heard in this case rather than in Docket 31185, where the carrier has requested nonstop authority in the markets in an application filed under Subpart M of the Board's Rules of Practice.[17]

Four carriers in addition to Hughes Airwest are applicants here for Reno-Los Angeles nonstop authority.[18] Five carriers besides Hughes Airwest seek Reno-Ontario nonstop authority.[19] We believe all requests for these authorities should be considered contemporaneously. Therefore, we shall consolidate Hughes Airwest's entire application in Docket 31718 into this proceeding.

Several of the applications request authority for any other or additional points which may be included in applications of other parties for new route operating authority. However, in order to facilitate disposition of the applications, no carrier will be considered for an award in a market for which it has not expressly applied. Any carrier desiring to apply for authority in the markets added by this order shall file an application or amended application and motion to consolidate as contemplated in Rule 915(c) of the Board's Rules of Practice,[20] accompanied by the required environmental evaluation[21] within the ten-day time limit prescribed by Rule 37 (a)[22] for petitions for reconsideration of orders defining the scope of a proceeding.

Accordingly, it is ordered, That: 1. The petition for reconsideration of United Air Lines, Inc., is denied.

2. Order clause 2(a) of Order 77-10-136, October 28, 1977, is amended to insert "Orange County-Santa Ana-Anaheim," and "Palm Springs," after "Ontario";

3. The following applications are consolidated here: Air California, Docket 31722; Delta Air Lines, Inc., Docket 31720; Hughes Air Corp. d.b.a. Hughes Airwest, Docket 31718; National Airlines, Inc., Docket 31706; Northwest Airlines, Inc., Docket 31725; Trans World Airlines, Inc., Docket 31724; United Air Lines, Inc., Docket 31717; and Western Air Lines, Inc., Docket 31719;

4. The application of American Airlines, Inc., in Docket 31723 is consolidated here to the extent authority is sought between Reno and Las Vegas, Nev., on the one hand, and San Diego, Los Angeles, Burbank, Ontario, San Francisco, San Jose, and Oakland, Calif., on the other hand;

5. The application of Braniff Airways, Inc., in Docket 31710 is consolidated here: to the extent authority is sought between Las Vegas, Nev., on the one hand, and San Diego, Ontario, Oakland, San Jose, and Sacramento, Calif., on the other hand;

6. The application of Frontier Airlines, Inc., in Docket 31775 is consolidated here: to the extent authority is sought between Las Vegas, Nev., on the one hand, and San Diego, Los Angeles, Burbank, Ontario, Fresno, Stockton, San Jose, Oakland, and Sacramento, Calif., on the other hand;

7. To the extent not consolidated here, the applications of American Airlines, Inc., in Docket 31723, of Braniff Airways Inc., in Docket 31710, and of Frontier Airlines, Inc., in Docket 31775 are dismissed; and

8. Petitions for reconsideration of this order, applications and amended applications and accompanying environmental evaluations, and motions to consolidate shall be filed within ten days after service of this order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[23]
Secretary.

FOOTNOTES

[1] Persons filing pleadings other than answers are mentioned in the text of this order. The only persons filing answers are Hughes Air Corp. d.b.a. Hughes Airwest, Pacific Southwest Airlines, the Las Vegas Parties, the Oakland Parties, the Reno Parties, and the Board's Bureau of Operating Rights.

[2] Chicago-Midway Low-Fare Route Proceeding, Docket 30277; Transcontinental Low-Fare Route Proceeding, Docket 30356.

[3] Completion Deadlines for High Priority Board Matters, Order 77-11-126, November 23, 1977.

[4] In their answer opposing United's petition for reconsideration, the Oakland Parties ask the Board to place in issue in this proceeding dormant or underused Oakland-Nevada authority of National Airlines, Inc., Trans World Airlines, Inc., United, and Western Air Lines, Inc., pursuant to section 401(g) of the Federal Aviation Act of 1958, as amended. This request is, in effect, a late-filed petition for reconsideration of the scope of the Board's instituting order. The circumstances of the request negative consideration of the proposal which, in any event, would unduly expand the proceeding.

[5] This is the description in the certificate of public convenience and necessity of Hughes Air Corp. d.b.a. Hughes Airwest.

[6] The Board's Bureau of Operating Rights does not object on the assumption that Air California intends to propose low-fare services in the additional markets.

[7] Pacific Northwest-California Investigation, 54 C.A.B. 38 (1970); Aeronaves de Mexico, S.A., Order 71-4-52, served April 13, 1971.

[8] In this case, at least one of the applicants already serves Orange County, and new service may be proposed which will not entail additional flights at the airport.

[9] Order 77-10-136 at 2.

[10] The applications are briefly described in the Appendix.

APPENDIX

BRIEF DESCRIPTION OF APPLICATIONS FOR WHICH CONSOLIDATION IS SOUGHT

1. *Air California*—Docket 31722. Authority between Reno and Las Vegas, Nev., on the one hand, and San Diego, Ontario, Orange County, Palm Springs, Fresno, San Jose, San Francisco, Oakland, and Sacramento, Calif., on the other hand. The authority sought includes the right to carry such traffic on operations performed by Air California in California pursuant to authority issued by the California Public Utilities Commission.

2. *American Airlines, Inc.*—Docket 31723. Authority between the coterminal points San Diego, Los Angeles-Burbank-Ontario, and San Francisco-San Jose-Oakland, Calif., on the one hand, and the coterminal points Reno and Las Vegas, Nev., on the other hand.

3. *Braniff Airways, Inc.*—Docket 3170. Authority between the terminal point Las Vegas, Nev., the intermediate points San Diego, Ontario, Oakland, and San Jose, California, and the terminal point Sacramento, Calif.

4. *Delta Air Lines, Inc.*—Docket 31720. Authority between Reno and Las Vegas, Nev., on the one hand, and San Diego, Los Angeles-Ontario-Long Beach, Calif., on the other hand, and between Reno, on the one hand, and San Francisco-Oakland-San Jose, Calif., on the other hand. Also removal of a long-haul restriction requiring that flights scheduled to serve Las Vegas also serve Fort Worth or Dallas, Tex., or a point east thereof, and of a restriction precluding single-plane service between San Jose and Las Vegas.

5. *Frontier Airlines, Inc.*—Docket 31775. Authority between the terminal point Las Vegas, Nev., and the co-terminal points San Diego, Los Angeles, Burbank, Ontario, Fresno, Stockton, San Jose, Oakland, and Sacramento, Calif.

6. *Hughes Air Corp. d.b.a. Hughes Airwest*—Docket 31718. The removal of one-

[10] Application in Docket 31723, p. 2.

[11] Application in Docket 31775, p. 2.

[12] Pacific Northwest Local-Service Case, 29 C.A.B. 660, 792 (1959); Additional California-Nevada Service, 10 C.A.B. 405, 426-427 (1949).

[13] In fact, the Board's order expressly states that authority between Las Vegas and Reno is not in issue. Order 77-10-136, p. 4, n. 7.

[14] Application in Docket 31710, p. 3.

[15] Pacific Southwest contends that Air California's application is in a form which would include local traffic rights in markets within California. Pacific Southwest does not explain its position. We do not read Air California's application as seeking traffic rights between California points. In any event, we reaffirm that this case does not involve authority to carry local traffic between points in California.

[16] 14 CFR 302.12(d).

[17] Id. at 302.1302 et seq.

[18] American, Delta, Northwest, and Pacific Southwest.

[19] Air California, American, Delta, Northwest, and Pacific Southwest.

[20] 14 CFR 302.915(c).

[21] *Id.* at 312.9(a)(1), 312.12(a).

[22] *Id.* at 302.37(a).

[23] All members concurred.

stop restrictions between Las Vegas, Nev., and San Francisco, Calif., and between Reno, Nev., on the one hand, and Burbank, Los Angeles-Ontario, Oakland, Riverside-Ontario, San Diego, and San Francisco, Calif., on the other hand.

7. *National Airlines, Inc.*—Docket 31706. Removal of a restriction prohibiting single-plane service between San Jose, Calif., and Las Vegas, Nev., and of a restriction requiring that flights scheduled to serve Las Vegas also serve Houston, Tex., or a point east thereof.

8. *Northwest Airlines, Inc.*—Docket 31725. Authority between Reno and Las Vegas, Nev., on the one hand, and San Diego, Los Angeles, Long Beach, Burbank, Ontario, Fresno, Stockton, San Jose, San Francisco, Oakland, and Sacramento, Calif., on the other hand.

9. *Trans World Airlines, Inc.*—Docket 31724. Authority between Las Vegas, Nev., and San Diego, Calif., and removal of restrictions which (a) permit service to Las Vegas and Los Angeles-Ontario, Calif., on the same flight only when such flight originates or terminates at Albuquerque, N. Mex., or a point east thereof; (b) prohibit single-plane service between San Jose, Calif., and Las Vegas; and (c) prohibit single-plane service between Ontario and Las Vegas.

10. *United Air Lines, Inc.*—Docket 31717. Amendment of the carrier's certificate of public convenience and necessity for route 1 so as to authorize the unrestricted nonstop carriage of traffic between Las Vegas, Nev., on the one hand, and Los Angeles, Ontario, San Diego, San Francisco, Oakland, and San Jose, Calif., on the other hand.

11. *Western Air Lines, Inc.*—Docket 31719. Authority between the terminal point Las Vegas, Nev., and the terminal point Orange County-Santa Ana-Anaheim, Calif. Removal of restrictions which prohibit (a) single-plane service between San Jose, Calif., on the one hand, and Las Vegas and Reno, Nev., on the other hand, and (b) deplaning at Las Vegas traffic enplaned at San Bernardino, Calif., or deplaning at San Bernardino traffic enplaned at Las Vegas.[1]

[FR Doc. 78-1005 Filed 1-12-78; 8:45 am]

[6320-01]

[Docket Nos. 31955, etc.; Order 78-1-20]

HUGHES AIR CORP. ET AL

Order Regarding Twin Cities—Las Vegas/Phoenix/San Diego Route Proceeding

Twin Cities-Las Vegas/Phoenix/San Diego Route Proceeding, Docket 31955; Applications of Hughes Air Corp. d.b.a. Hughes Airwest, Docket 30550; North Central Airlines, Inc., 30937 and 30942; Allegheny Airlines, Inc., 30630; Northwest Airlines, Inc., 30548; United Air Lines, Inc., 31074.

Adopted by the Civil Aeoronautics Board at its office in Washington, D.C., on the 6th day of January 1978.

On February 25, 1977, Hughes Air Corp. d.b.a. Hughes Airwest filed an application for authority to provide nonstop service between Las Vegas, Nevada, and Phoenix, Ariz., on the one hand, and Minneapolis/St. Paul (Twin Cities), on the other hand. A motion for hearing on the application was filed on March 10. Similar authority has also been requested by North Central Airlines. In addition, North Central seeks authority in the Las Vegas-Burbank/Orange County[1] and Phoenix-Orange County markets. Applications and motions for hearing were filed by North Central on May 27 and May 31. Applications for new authority have also been filed by Allegheny Airlines (Twin Cities-Las Vegas/Phoenix-San Diego/Burbank/Orange County; St. Louis-Las Vegas), Northwest Airlines (Twin Cities-Las Vegas/Phoenix-San Diego) and United Air Lines (Twin Cities-Las Vegas/Phoenix/San Diego).

In support of its motion for hearing Airwest alleges that it will provide first competitive service in two of the largest domestic monopoly markets—Twin Cities-Las Vegas and Twin Cities-Phoenix. In addition to the valuable service improvements it claims it will provide in these markets, Airwest points out that its proposal will result in first single-plane service between Twin Cities and Tucson, Arizona, and between Twin Cities and Hollywood/Burbank, and first competitive service between Twin Cities and San Diego. In addition, Airwest states that it will provide economy-class fares for all Twin Cities through-plane markets and night coach fares in the Twin Cities-Las Vegas/San Diego markets. It states further that the proposed Twin Cities service will reduce its subsidy need by $2.3 million and improve its efficiency without any serious diversionary effect on other carriers.

North Central, in support of its motions for hearing, alleges that it would provide first competitive service in five of the largest monopoly markets in the United States—Las Vegas-Orange County, Phoenix-Orange County, Las Vegas-Burbank, Twin Cities-Las Vegas, and Twin Cities-Phoenix. It contends that its proposals will produce substantial public benefits, including improved service to the Burbank and Orange County satellite airports, first single-plane service between Twin Cities and Orange County, and improved service to numerous beyond-market points on its system. Further, it states that as a result of the service it will substantially reduce its subsidy need with little impact upon incumbents.

Western Air Lines, the incumbent in the Twin Cities-Las Vegas and Twin Cities-Phoenix markets, filed answers in opposition to the motions of Airwest and North Central. Western states that the Twin Cities markets are not of sufficient size to warrant a hearing at this time, particularly in light of marked seasonal variations in traffic; that its service in the markets has been and will continue to be responsive to their needs; and that the future of growth in scheduled traffic between Twin Cities and Las Vegas is clouded by the advent of OTC and ABC charters. Western also questions the meaningfulness of Airwest's reduced fare proposals since Airwest does not now offer economy-class fares over any interstate segment on its system, and could offer night coach fares on only one of its proposed Twin Cities-Las Vegas flights. Western also contends that Airwest's proposed fare savings in the Las Vegas market would be minimal in any case, considering the large amount of traffic that already moves at group discount fares substantially lower than Airwest's proposed fares.

With respect to North Central's proposals, Western notes that they depend on the institution of operations at Orange County Airport, a highly speculative proposition in view of substantial civic opposition and other obstacles to obtaining landing rights there.

The County of Orange, Calif., and the City of Newport Beach also filed answers in opposition to North Central's motions. Orange County contends that the Orange County Airport is unable to handle additional traffic; that additional airline leases cannot be acted upon until completion of an environmental study now underway; and that further expansion of commercial air service at this time would have a direct impact on litigation now in progress concerning jet noise at the Orange County Airport.

Allegheny Airlines and North Central Airlines also filed answers to Airwest's motion for hearing. Northwest Airlines, Frontier Airlines, Allegheny and Airwest filed answers to North Central's motions. Northwest and Frontier support a hearing in the Twin Cities-Las Vegas-Phoenix markets, but oppose consideration of the Los Angeles satellite markets in the same proceeding. Airwest takes the same position. Generally these carriers contend that consideration of the Los Angeles markets along with the Twin Cities would unduly complicate the proceeding.

Allegheny supports both Airwest's and North Central's motions. Howev-

[1] In the *Western Route Realignment* case, Order 77-11-74, November 17, 1977, Western's domestic certificates of public convenience and necessity were consolidated into one certificate. Previously existing restrictions were modified to require (1) at least one intermediate stop at a point other than Oakland, Calif. (otherwise at least two stops), between San Jose and Las Vegas, (2) at least one intermediate stop other than Los Angeles-Long Beach or Palm Springs, Calif. (otherwise at least two stops) between Ontario-San Bernardino and Las Vegas, and (3) at least two intermediate stops between San Jose and Reno. Certificate for route 19, p. 3.

[1] Santa Ana-Orange County.

er, it requests that the Board consider all markets discussed in the various motions in a single proceeding, and, in addition, that it consider the Twin Cities-San Diego and St. Louis-Las Vegas markets. It alleges that these markets are also large monopoly markets which receive an insufficient level of service from the nonstop incumbents, and that consideration of these along with the ones proposed by Airwest and North Central would be an efficient use of the Board's limited resources.[2]

Airwest and North Central filed replies to the various answers to their motions, accompanied by motions for leave to file unauthorized documents. We again express our concern about the increasing number of unauthorized replies being filed in Board proceedings. More often that not, replies are filed primarily as a vehicle for having the last word. The Board's rules provide that unauthorized documents shall be received only for good cause shown. Thus, we have decided not to accept North Central's reply. It raises no matter which could not have been brought before the Board in its initial pleading, and, for the most part, repeats facts and arguments already presented to the Board. Airwest, on the other hand, has demonstrated good cause for acceptance of its reply. It presents revised exhibit material correcting serious flaws in its exhibits, which were caused by a traffic reporting error that was pointed out by Western's answer to Airwest's motion. In addition, Airwest's reply responds to matters raised by Allegheny and North Central which could not have been anticipated by Airwest at the time of its initial pleading, namely, the expansion of the prodeeding to include markets not the subject of Airwest's motion.

Civic parties answering in support of Airwest's motion are the Las Vegas Parties,[3] the Phoenix Parties,[4] the Minnesota Department of Transportation and the Minneapolis/St. Paul Metropolitan Airports Commission. The Las Vegas Parties also filed in support of North Central's motion, but noted the possibility of considering the Las Vegas-Brubank/Orange County markets in a separate proceeding.

Finally, North Central filed two motions to consolidate various portions of applications pending before the Board.[5] Essentially, North Central requests the Board to institute two proceedings—one to consider the Twin Cities-Las Vegas-Burbank/Orange County markets, and the other to consider the Twin Cities-Phoenix-Orange County markets. Answers were filed by Northwest, United and Airwest.[6] In addition, Western filed a motion to consolidate all applications pending before the Board seeking authority to provide nonstop service between Twin Cities, on the one hand and Dallas/Ft. Worth, Houston, Phoenix and Las Vegas, on the other hand. Answers were filed by Airwest and Northwest.

We have decided to grant Airwest's motion for hearing, and in part, North Central's motions for hearing, and institute the "Twin Cities-Las Vegas/Phoenix/San Diego Route Proceeding," Docket 31955, to consider the need for additional nonstop service between the Twin Cities, on the one hand, and Las Vegas, Phoenix and San Diego, on the other hand[7] We have decided not to consider at this time the markets involving Los Angeles satellite airports. Las Vegas-Burbank and Orange County authority will be in issue in the "California-Nevada Low-Fare Route Proceeding."[8] We are also concerned with the substantial civic opposition to the authorization of an additional carrier at the Orange County Airport. It appears that even if a new carrier is authorized at Orange County, it may not be able to operate at least until the county's many environmental problems are resolved. We have therefore decided not to hear this market in this more limited case. We also will not consider the St. Louis-Las Vegas market in this proceeding. Consideration of this market would unduly expand the scope of this proceeding. Unlike Twin Cities-San Diego, this market is unrelated to the Twin Cities markets being considered in this proceeding.

We note that Airwest has proposed minimal reductions in fares in the Twin Cities-Las Vegas and Twin Cities-Phoenix markets. We solicit additional reduced fare proposals from the other applicants, as well as the incumbent. In accordance with the policy announced in our order instituting the "Chicago-Albany/Syracuse-Boston Competitive Service Investigation" (Order 77-12-50), the offer or failure to offer lower prices will be taken into account in determining whether the public convenience and necessity require the award of new authority, and if so, which carrier(s) should be selected. We therefore expect the instituted proceeding to include an examination of the need for and feasibility of various new price/quality options and related issues, as we explained in Order 77-12-50. We repeat, however, that traditional service benefits, including the benefits of city-pair competition, are important issues which will be weighed with price and price/quality considerations. Moreover, as more fully set out in Order 77-12-50, the parties and the judge should focus on whether any new authority should be permisssive, whether multiple awards should be made, and whether multiple awards are consistent with encouraging real priced competition under the Federal Aviation Act.

Finally, any applicant having not already done so should file an environmental evaluation of its service proposal in accordance with Part 312 of the Board's Procedural Regulations. We will allow 30 days from the date of service of this order for the filing of these environmental evaluations.

Accordingly, it is ordered, that: 1. The motions for hearing of Hughes Airwest in Docket 30550 and North Central Airlines in Dockets 30937 and 30942, to the extent indicated in this order, be granted;

[2] Trans World Airlines filed a motion to dismiss the portion of Allegheny's answer which requests inclusion of the St. Louis-Las Vegas market in any investigation instituted in response to North Central's motions. TWA alleges that Allegheny should have filed a motion to consolidate its St. Louis-Las Vegas application with North Central's applications or a separate motion for hearing of this market, with appropriate supporting data. Allegheny answered TWA's motion, stating that it has not failed to comply with any of the Board's Procedural Regulations, and that it is not improper to advocate the appropriate scope of a case in an answer to a motion for hearing. We will deny TWA's motion. Under the Board's existing rules, any party may answer a motion for hearing and suggest the appropriate scope of a prospective proceeding. Any party wishing to respond to such an answer may do so by way of a reply accompanied by a motion for leave to file an unauthorized document. However, absent detailed supporting data as would be provided in a motion for hearing or motion to consolidate, the Board may not have sufficient information before it to justify inclusion of a given market in a proceeding. In many instances, therefore, it would be advantageous to the carrier to provide the Board with detailed economic and operating data with respect to additional markets requested to be included in a proceeding. See Notice of Proposed Rulemaking, PDR-47, October 20, 1977, in which the Board has proposed that all applications for route authority be accompanied by a motion for hearing, and all petitions to consolidate, which seek to enlarge or expand the route authority in question in another carrier's application, be accompanied by specific operational and economic data.

[3] Clark County, Nev., the Greater Las Vegas Chamber of Commerce, the City of Las Vegas, the Nevada Resort Association, and the Las Vegas Convention/Visitors Authority.

[4] City of Phoenix, Ariz., and Phoenix Metropolitan Chamber of Commerce.

[5] Applications of North Central (Dockets 30937 and 30942), Northwest (Docket 30548), Airwest (Docket 30550), Allegheny (Docket 30630) and United (Docket 31074).

[6] Airwest's answer was accompanied by a motion for leave to file an unauthorized document since it was not filed prior to the date provided for by the Board's rules. Good cause has been shown for the delay, and we will grant the motion.

[7] We will not consider, in this proceeding, the award of new authority in the Las Vegas-Phoenix, Las Vegas-San Diego, or Phoenix-San Diego markets.

[8] Docket 31574.

2. To the extent not granted by paragraph 1 above, the motions for hearing of North Central Airlines be denied;

3. A proceeding to be known as the "Twin Cities-Las Vegas/Phoenix/San Diego Route Proceeding," Docket 31955, be instituted, and be set for hearing before an administrative law judge of the Board at a time and place to be designated later;

4. The issues in the proceeding instituted in paragraph 3, above, shall include the following:

(a) Do the public convenience and necessity require the certification of an air carrier or air carriers to engage in additional nonstop air transportation in the following markets: Twin Cities-Las Vegas; Twin Cities-Phoenix; and Twin Cities-San Diego;

(b) If the answer to (a) is in the affirmative, which carrier(s) should be authorized to engage in such transportation; and

(c) What terms, conditions, and limitations, if any, should be placed upon the operation of such carrier(s)?

5. Any authority awarded in this proceeding shall be ineligible for subsidy;

6. The applications of Hughes Airwest in Docket 30550, North Central Airlines in Dockets 30937 and 30942, Allegheny Airlines in Docket 30630, Northwest Airlines in Docket 30548, and United Air Lines in Docket 31074, be consolidated into the proceeding instituted by paragraph 3, above, to the extent they conform to the scope of the proceeding as described in paragraph 4(a), above; to the extent not consolidated, they be dismissed;

7. The motions to consolidate of North Central Airlines be granted to the extent indicated by paragraph 6, above; otherwise, they be denied;

8. The motion to consolidate of Western Air Lines be denied;

9. Hughes Airwest, North Central Airlines, Allegheny Airlines, Northwest Airlines, United Air Lines, the Minneapolis-St. Paul Metropolitan Airports Commission, and the Minnesota Department of Transportation be made parties to this proceeding;

10. The petitions for leave to intervene of the County of Orange, California, and the City of Newport Beach, Calif. be dismissed;

11. The motion of Trans World Airlines to dismiss a portion of Allegheny's answer be denied;

12. The motions of Hughes Airwest to file unauthorized documents be granted; the motion of North Central Airlines to file an unauthorized document be denied;

13. All carriers filing applications in this proceeding shall file environmental evaluations pursuant to section 312.12 of the Board's Procedural Regulations, if they have not already done so, within 30 days from the date of service of this order; and

14. Applications, motions to consolidate, and petitions for reconsideration of this order shall be filed within 20 days from the date of service of this order, and answers to these pleadings shall be due 15 days thereafter.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[*]
Secretary.

[FR Doc. 78-1006 Filed 1-12-78; 8:45 am]

[6320-01]

[Docket No. 31915; Order 78-1-27]

K.L.M. ROYAL DUTCH AIRLINES AND FINNAIR OY

Order of Investigation and Suspension Regarding Transatlantic Economy-Class Budget Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 27th day of December 1977.

The Board has been following a policy of suspending transatlantic low-fare filings in cases where negotiation of special intergovernmental agreements are necessary to permit suspension of these fares after they become effective.[1] K.L.M. Royal Dutch Airlines (KLM) has filed tariffs for effect January 8, 1978, to introduce economy-class budget fares between New York and Amsterdam at a level of $149.50 for one-way travel and twice that amount for round-trip travel. Finnair Oy (Finnair) has filed to match KLM's budget fares effective January 30, 1978. The United States does not have agreements with the Governments of the Netherlands and Finland which would permit us to suspend the budget and other low fares once they become effective, although such agreements are in effect with the two governments covering super-APEX fares. In these circumstances, the Board finds that KLM and Finnair's proposed budget fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated and, pending investigation, should be suspended. Upon conclusion of suitable ad hoc agreements with the Netherlands and Finland, covering the budget and other low-fare proposals, the suspension will be vacated.

Accordingly, pursuant to the Federal Aviation Act of 1958 and particularly sections 102, 204(a), 403, 801, and 1002(j):

It is ordered, That: 1. An investigation be instituted to determine whether the fares and provisions set forth in appendix A hereof, and rules, regulations, or practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to take appropriate action to prevent the use of such provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the tariff provisions specified in appendix A hereof be suspended and their use deferred from January 8, 1978, to and including January 7, 1979, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President[2] and shall become effective on January 8, 1978;

4. The investigation ordered here shall be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated; and

5. Copies of this order shall be filed in the aforesaid tariffs and be served upon Finnair Oy and K.L.M. Royal Dutch Airlines.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[3]
Secretary.

---

[*] All Members concurred

[1] On September 16, 1977, the Board adopted an order suspending, pending investigation, super-APEX (advance-purchase excursion) fares proposed by several carriers in the New York-London market. The order was submitted to the President pursuant to section 801 of the Federal Aviation Act and, by letter dated September 26, 1977, the President notified the Board that he was disapproving its proposed suspension for reasons of foreign economic policy.

The Board had proposed suspension of the super-APEX fares based on its view that they would have a predatory impact on charter services, whether or not so intended. In his letter, the President stated that, if the Board obtained new evidence after the fares became effective that they were indeed predatory, he would consider a suspension under terms of the ad hoc agreement negotiated on September 19, 1977, with the United Kingdom. The ad hoc agreement gives either party the right to suspend the super-APEX fares on six weeks' notice, and was necessary since the terms of some bilateral air transport agreements do not provide for suspension of tariffs already in effect.

[2] This order was submitted to the President on December 27, 1977.

[3] All Members concurred.

PASSENGER FARES TARIFF NO. PF-4, CAB NO. 44 ISSUED BY AIR TARIFFS CORPORATION, AGENT

On original, 1st and 2nd Revised Pages 50-C, all provisions in Rule 157.

On 7th, 8th, and 9th Revised Pages 222-C, all fares and provisions in Table 157.

[FR Doc. 78-1007 Filed 1-12-78; 8:45 am]

[3510-07]

DEPARTMENT OF COMMERCE

Bureau of the Census

SPECIAL CENSUSES

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the Current Population Reports—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The data shown in the following table are the results of special censuses conducted since December 31, 1976, for which tabulations were completed between December 1, 1977, and December 31, 1977.

Dated: January 9, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

State/place or special area	County	Date of census	Population
Alabama:			
Livingston City	Sumter	Oct. 4, 1977	3,276
Arkansas:			
Jonesboro City—annexed areas only	Craighead	Oct. 25, 1977	1,364
Idaho:			
Chubbuck City	Bannock	Sept. 26, 1977	6,137
Kuna City	Ada	Oct. 10, 1977	1,492
Illinois:			
Braidwood City	Will	Oct. 5, 1977	3,169
East Peoria City	Tazewell	May 23, 1977	21,710
Fox Lake Village	Lake and McHenry	Sept. 22, 1977	5,811
German Valley Village	Stephenson	Oct. 3, 1977	320
Hoffman Estates Village	Cook	Sept. 9, 1977	33,575
Matteson Village	do	Sept. 28, 1977	8,350
Normal Town	McLean	Sept. 27, 1977	34,716
Raleigh Village	Saline	do	335
South Barrington Village	Cook	Oct. 5, 1977	777
Indiana:			
Zionsville Town	Boone	Oct. 10, 1977	2,708
North Carolina:			
Forest City Town	Rutherford	Oct. 3, 1977	7,348
Pennsylvania:			
Cranberry Township	Venango	Oct. 11, 1977	7,519
East Brandywine Township	Chester	do	3,338
Washington Township	Franklin	Sept. 21, 1977	9,123
Texas:			
South Padre Island Town	Cameron	Sept. 26, 1977	590
Wisconsin:			
Richfield Town	Washington	Sept. 8, 1977	7,883

[FR Doc. 70-815 Filed 1-12-70; 8:45 am]

[3510-07]

CENSUS ADVISORY COMMITTEE ON SPANISH ORIGIN POPULATION FOR 1980 CENSUS

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix I, (Supp V, 1975)), notice is herby given that the Census Advisory Committee on the Spanish Origin Population for the 1980 Census will convene on February 3, 1978, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Md.

The Committee is composed of 21 members appointed by the Secretary of Commerce. It was established in February 1975 to advise the Director, Bureau of the Census, on such 1980 census planning elements as improving the accuracy of the population count, developing definitions for classification of the Spanish-origin population, recommending subject content and tabulations of especial use to the Spanish-origin population, and expanding the dissemination of census results among present and potential users of census data in the Spanish-origin population.

The agenda for the meeting, which is scheduled to adjourn at 5 p.m., is: (1) Current status of 1980 census planning, (2) Affirmative Action Program, (3) testing and selection aids, (4) instructions for processing race and ethnic origin items, (5) data publication plans, (6) Committee discussion, and (7) Committee recommendations and plans for next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons wishing further information concerning this meeting or who wish to submit written statements may contact Clifton S. Jordan, Deputy Chief, Demographic Census Staff, Bureau of the Census, Room 3779, Federal Building 3, Suitland, Md. (Mailing address: Washington, D.C. 20233) Telephone: 301-763-5169.

Dated: January 9, 1978.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

[FR Doc. 78-947 Filed 1-12-78; 8:45 am]

[3510-25]

Industry and Trade Administration

YOSHIHIRO NAYA, AND NICHIMEN INTERNATIONAL, S.A.

Export Privileges Restored in Part; Order

In the matter of Yoshihiro Naya, and Nichimen International, S.A., P.O. Box 6-494, Eldorado, Panama, Republic of Panama, Respondents.

The above named respondents failed to answer the allegations of a September 2, 1977 charging letter that respondents reexported American made linotype equipment to Cuba without prior authorization from the U.S. government, all in violation of the Export Administration Regulations. The failure to answer was deemed an admission of the truth of the charges. By Order of August 8, 1977, they were denied all export privileges until May 31, 1980 (42 FR 41465 (Aug. 17, 1977)). Respondents petitioned for reinstatement.

The Hearing Commissioner reports that respondents' evidence in support of the petition, when considered with the prior evidence of record, discloses the following pertinent facts. Naya, with but 2 years of export sales experience, was appointed president of the then (1974) newly formed Nichimen S.A. of Panama, a wholly owned subsidiary of Nichimen International. Naya had been fully instructed concerning American export laws and was enjoined to comply with all U.S. export regulations. It appears that his naiveness, lack of understanding, or overzealousness induced Naya to sell (cash in advance) non-sensitive linotype equipment without prior identification of the purchaser or end-user. Had Naya made appropriate inquiry he would have learned of the ultimate

destination of the goods; destination to Cuba is proscribed.

The Commissioner stated that Naya admitted failure to comply with the law. He stated that the evidence received in mitigation demonstrates that neither the parent nor sister Nichimen company had any prior knowledge or involvement in the unlawful export. When the parent company learned of respondents' failure to comply with U.S. laws, Naya was relieved from all duties in Panama and recalled to Japan. A new president and staff were appointed to manage the respondent corporation on September 1, 1977. Noting that the restructured staff has been fully instructed by the parent corporation and its counsel concerning mandatory compliance with U.S. laws and regulations, he recommended that respondent corporation be restored to full export privileges but subject to probation until May 31, 1978; and that respondent Naya be restored on January 1, 1979, but subject to probation until May 31, 1980.

In view of Naya's recall from Panama, his replacement by fully informed individuals, and other steps taken to insure respondent corporation's compliance with American laws and regulations, it is reasonable to anticipate that there will be no further reason to inquire concerning respondent corporation's export activities. Furthermore, it does not appear that Naya will soon reengage in export activities involving American goods. Under such circumstances I find it appropriate to accept the Commissioner's recommendation to alleviate the penalty. This is consistent with the purposes of Export Administration Law and designed to achieve the effective enforcement of the Export Administration Regulations. Therefore, pursuant to the authority delegated to me, 15 CFR 388, it is directed that the Order of August 8, 1977 be amended as follows:

1. Nichimen S.A. is restored to all export privileges, however, subject to probation until May 31, 1978.

2. Naya is restored to all export privileges, effective January 1, 1979, however, subject to probation until May 31, 1980.

3. The terms of probation are that respondents must fully comply with all U.S. export laws and regulations, failing in which the Director, with or without prior notice to the respondents, may revoke the probation and deny all export privileges for such period as is deemed appropriate. Such supplemental Order, if any, shall not preclude the Industry and Trade Administration from taking such further action as may be warranted for any violation.

This Order is effective immediately.

Dated: January 10, 1978.

RAUER H. MEYER,
Director, Office of Export Administration.

[FR Doc. 78-968 Filed 1-12-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

PRELIMINARY FISHERY MANAGEMENT PLANS

Corrections to Supplements to Final Environmental Impact Statements for Preliminary Fishery Management Plans

Notice is hereby given of corrections to the supplements to the final environmental impact statements on the preliminary fishery management plans prepared by the National Marine Fisheries Service of the National Oceanic Atmospheric Administration, Department of Commerce. Corrections to the supplements are as follows:

TRAWL FISHERY OF THE GULF OF ALASKA

Page 7 of the supplement: add to (d) 2.3.2: (5) *Section 2.3.2.4 (p. 73); ". . . in 1978 will be set at 16,200 mt."*

TRAWL FISHERIES AND HERRING GILLNET FISHERY OF THE BERING SEA AND NORTHEAST PACIFIC

Page 11 of the supplement: change (7) to: Renumber the existing 2.3.2.10 Other Species "to 2.3.2.11 and reword the section as follows: *"TAC for this species in 1978 will be set at 93,000 mt."*

The notice of availability appeared in the FEDERAL REGISTER, Vol. 42, No. 230—Wednesday, November 30, 1977. Copies of this notice of correction will be mailed to persons who have commented on the draft environmental impact statements/preliminary fishery management plans and other interested parties that are potentially affected by the corrections to the supplements.

Individuals or organizations wishing to obtain additional information on these corrections may do so by writing Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

Dated: January 10, 1978.

WINFRED H. MEIBOHM,
National Marine Fisheries Service.

[FR Doc. 78-972 Filed 1-12-78; 8:45 am]

[6820-33]

COMMITTEE FOR PURCHASE FROM BLIND AND OTHER SEVERELY HANDICAPPED

PROCUREMENT LIST 1978

Deletion

Correction

In FR Doc. 78-256 appearing on page 1117 in the issue for Friday, January 6, 1978, in the second column, the ninth line should read: "00-530-7191".

[6820-33]

PROCUREMENT LIST 1978

Proposed Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Deletion from Procurement List.

SUMMARY: The Committee has received a proposal to delete from Procurement List 1978 a commodity produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 16, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

It is proposed to delete the following commodity from Procurement List 1978, November 14, 1977 (42 FR 59015):

CLASS 6695

Sampler-Spectro, Analysis Oil Kit 6695-00-758-1355.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-959 Filed 1-12-78; 8:45 am]

[6820-33]

PROCUREMENT LIST 1978

Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1978 a commodity to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 16, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity to Procurement List 1978, November 14, 1977 (42 FR 59015):

CLASS 8465

Hood, Sleeping Bag, 8465-00-518-2769.

C. W. FLETCHER,
Executive Director.

[FR Doc. 78-960 Filed 1-12-78; 8:45 am]

[6351-01]

COMMODITY FUTURES TRADING COMMISSION

PROPOSED 30 INDUSTRIAL STOCK AVERAGE FUTURES CONTRACT

Availability; Correction

In FR Doc. 78-131 appearing on page 997 in the FEDERAL REGISTER of January 5, 1978, concerning the above entitled matter, the telephone number for the Executive Secretariat is incorrect. The correct telephone number is 202-254-6314.

Dated: January 10, 1978.

WILLIAM T. BAGLEY,
Chairman.

[FR Doc. 78-961 Filed 1-12-78; 8:45 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

FULLY HALOGENATED CHLOROFLUOROALKANES

Notice of Meetings

CROSS REFERENCE: For documents announcing meetings to be held by the Environmental Protection Agency, Food and Drug Administration and the Consumer Product Safety Commission on the nonpropellant uses of fully halogenated chlorofluoroalkanes, see FR Docs. 78-920 and 78-921 appearing in the notices section of this issue. Refer to the table of contents at the front of this issue under Environmental Protection Agency and Food and Drug Administration to find the correct page number.

[6355-01]

[IRLG-1:003; FRL-842-2]

INTERAGENCY REGULATORY LIAISON GROUP

Testing Standards and Guidelines Work Group; Request for Written Materials

CROSS REFERENCE: For a document announcing agreement of the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, Health, Education, and Welfare Department and the Occupational Safety and Health Administration, Labor Department to work together as the Interagency Regulatory Liaison Group to aid in the development of preliminary drafts of testing guidelines, see FR Doc. 78-901 appearing under Environmental Protection Agency in the notices section of this issue. Refer to the table of contents at the front of this issue under "Environmental Protection Agency" to find the correct page number.

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

December 12 through December 16, 1977

Notice is hereby given that during the period December 12, through December 16, 1977, the proposed decisions and orders which are summarized below were issued by the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy with regard to applications for exception which had been filed with that office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 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 issuance of the proposed decision and order in final form 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, the party will be deemed to consent to the issuance of the proposed decision and order in final form. 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 Administrative Review, 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.s.t., except federal holidays.

Dated: January 6, 1978.

MELVIN GOLDSTEIN,
Director, Office of Administrative Review.

Altex Oil Corp., Denver, Colo., FEE-4477, crude oil

Altex Oil Corp. filed an application for exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit Altex to sell the crude oil which it produces from the Anschutz Ranch No. 1 Well located in Carbon County, Wyo. at the upper tier ceiling prices specified in 10 CFR 212.74. On December 16, 1977, the DOE issued a proposed decision and order which determined that the exception request be denied.

Bock and Bacon Oil Operators, Houston, Tex., FEE-4850, crude oil

Bock and Bacon Oil Operators filed an application for exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit Bock and Bacon to sell the crude oil produced from the Champion Paper Co. Lease at upper tier ceiling prices. On December 13, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted.

C&H Refinery, Inc., Lusk, Wyo., FEE-4318, crude oil

C&H Refinery, Inc. filed an application for exception from the provisions of 10 CFR 211.67(e)(2). The exception request, if granted, would permit C&H to receive additional bias entitlements for the crude oil which is processed for its account under processing agreements with other refiners. On December 16, 1977, the DOE issued a proposed decision and order which determined that the exception request be denied.

Dow Chemical, U.S.A., Houston, Tex., FEE-4857, crude oil

Dow Chemical U.S.A. filed an application for exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit Dow to sell the crude oil which it produces from the Rebekah Allnoch Well No. 1 located in Jackson County, Tex. at the upper tier ceiling prices specified in 10 CFR 212.74. On December 12, 1977, the DOE issued a proposed decision

and order which determined that the exception request be granted to the extent that Dow be permitted to sell 87.93 percent of the crude oil produced from the Allnoch well for the benefit of the working interest owners at upper tier ceiling prices.

Maguire Oil Co., Dallas, Tex., FEE-4404, crude oil

Maguire Oil Co., filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell the crude oil produced from the Chandler lease located in Howard County, Tex. at prices which exceed the lower tier ceiling prices set forth in 10 CFR 212.73. Maguire also requested that the relief be made retroactive to January 1, 1975. On December 16, 1977, the DOE issued a proposed decision and order which denied the firm's request for retroactive relief and permitted the firm to sell 16.79 percent of the crude oil produced from the Chandler lease at upper tier ceiling prices.

Moran Pipe and Supply Co., Inc., Seminole, Okla., FEE-4772, crude oil

Moran Pipe and Supply Co., Inc. filed an application for exception from the provisions of 10 CFR 212.73. The exception request, if granted, would permit Moran to sell the crude oil which it produces from the Cozar lease, located in Seminole County, Okla., at upper tier ceiling prices. On December 12, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

United Refining Co., Warren, Pa., FPI-0121, crude oil

United Refining Co. filed an application for exception from the provisions of 10 CFR 213.35(d)(2)(i). The exception request, if granted, would permit United Refining to import additional crude oil on a license fee-exempt basis pursuant to the "carry-forward" provision set forth in section 213.35(d)(2)(i). On December 12, 1977, the DOE issued a proposed decision and order which determined that the exception request be denied.

[FR Doc. 78-896 Filed 1-12-78; 8:45 am]

[3128-01]

ISSUANCE OF PROPOSED DECISIONS AND ORDERS BY THE OFFICE OF ADMINISTRATIVE REVIEW

December 19 Through December 23, 1977

Notice is hereby given that during the period December 19 through December 23, 1977, the proposed decisions and orders which are summarized below were issued by the Office of Administrative Review of the Economic Regulatory Administration of the Department of Energy with regard to applications for exception which had been filed with that Office.

Amendments to the DOE's procedural regulation, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 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 issuance of the proposed decision and order in final form 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, the party will be deemed to consent to the issuance of the proposed decision and order in final form. 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 Administrative Review, 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.s.t., except Federal holidays.

Dated: January 4, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Administrative Review.

Beacon Oil Co., Washington, D.C., DXE-0077, crude oil

Beacon Oil Co. filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Beacon of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Cologne Production Co., San Antonio, Tex., FEE-4398, crude oil

Cologne Production Co. filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit the firm to sell the crude oil which it produces from three units on the Algoa Field located in Galveston County, Tex., at upper tier ceiling prices. On December 22, 1977, the DOE issued a proposed decision and order which determined that Cologne's exception application be granted in part.

Edgington Oil Co., Inc., Washington, D.C., DXE-0081, crude oil

Edgington Oil Co., Inc., filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Edgington of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined the exception request be granted in part.

Fountain & Associates, San Antonio, Tex., FEE-4436, crude oil

Fountain & Associates filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Fountain to sell at exempt price levels the crude oil produced from a series of wells which Fountain plans to drill in the Austin Chalk/Buda Trend formations in the State of Texas. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be denied.

Husky Oil Co. of Delaware, Washington, D.C., DXE-0079, crude oil

Husky Oil Co. of Delaware filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Husky of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Kern County Refinery, Inc., Bakersfield, Calif., DXE-0088, crude oil

Kern County Refinery, Inc., filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Kern of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Lunday-Thagard Oil Co., South Gate, Calif., DXE-0076, crude oil

Lunday-Thagard Oil Co. filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Lunday-Thagard of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Mobil Petroleum Co., Inc., New York, N.Y., FEE-4296, refined petroleum products

Mobil Petroleum Co., Inc., filed an application for exception from the provisions of 10 CFR 212.83. The exception request, if granted, would permit Mobil Petroleum to increase the prices it charges for petroleum products sold on Guam to reflect a gross receipts tax imposed by the Territory of Guam on all retailers of petroleum products. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be denied.

Mohawk Petroleum Corp., Los Angeles, Calif., DXE-0078, crude oil

Mohawk Petroleum Corp. filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Mohawk of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Monsanto Co., Houston, Tex., FEE-454, crude oil

Monsanto Co. filed an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Monsanto to sell the crude oil produced from the Hendrick "F" lease at upper tier ceiling prices. On December 20, 1977, the DOE issued a proposed de-

cision and order which determined that the exception request should be granted.

Navajo Refining Co., Washington, D.C., DXE-0089, crude oil

Navajo Refining Co. filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Navajo of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted.

Polaris Production Corp., Midland, Tex., FMR-0119, crude oil

Polaris Production Corp. filed a submission which was determined to be an application for exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Polaris to sell the crude oil to be produced from the Lee Carter lease located in Lea County, N. Mex., at prices in excess of the ceiling levels permitted in 10 CFR, Part 212, Subpart D. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be denied.

San Joaquin Refining Co., Newport Beach, Calif., DXE-0095, crude oil

San Joaquin Refining Co. filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve San Joaquin of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Southland Oil Co./VGS Corp., Washington, D.C., DXE-0105, crude oil

Southland Oil Co./VGS Corp. filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Southland of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

TOSCO Corp., Los Angeles, Calif., FXE-4841, crude oil

TOSCO Corp. filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve TOSCO of a portion of its entitlement purchase obligations for the months of October through December 1977 in order to alleviate the negative cash flow situation presently being experienced by the firm. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted.

Warrior Asphalt Co. of Alabama, Washington, D.C., DXE-0080, crude oil

Warrior Asphalt Co. of Alabama filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Warrior of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Whitco, Inc., Dallas, Tex., DXE-0375, motor gasoline

Whitco, Inc., filed an application for exception from the provisions of 10 CFR 211.25. The request, if granted, would prohibit Sun Co., Inc., from supplying Whitco with motor gasoline through Amtel, Inc., its designated substitute supplier and would require Sun to supply Whitco directly. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted.

Young Refining Corp., Douglasville, Ga., DXE-0084, crude oil

Young Refining Corp., filed an application for exception from the provisions of 10 CFR 211.67. The exception request, if granted, would relieve Young of its obligation to purchase entitlements for a six month period. On December 20, 1977, the DOE issued a proposed decision and order which determined that the exception request be granted in part.

Requests for Exception Received From Natural Gas Processors

The Office of Administrative Review of the Department of Energy 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 permits the firms involved to increase the prices of the production of the gas plants listed below to reflect certain nonproduct cost increases:

Company	Case No.	Plant	Location	Amount of price increase (dollars per gallon)
Arkansas Louisiana Gas Co...	DXE-0173	Hamilton	Magnolia, Ark	$0.0222
Atlantic Richfield Co	DXE-0128	Adair	Gaines, Tex	.0304
Do	DXE-0129	Camrick	Beaver, Okla	.0123
Do	DXE-0130	Chesterville	Colorado, Tex	.0343
Do	DXE-0131	Crossett	Crane and Upton, Tex	.0146
Do	DXE-0132	Elmwood	Beaver, Okla	.0142
Do	DXE-0133	Elk Basin	Park, Wyo	.0419

Company	Case No.	Plant	Location	Amount of price increase (dollars per gallon)
Do	DXE-0134	Empire Abo	Eddy, N. Mex	.0099
Do	DXE-0135	Gillette	Campbell, Wyo	.0187
Do	DXE-0136	Headlee	Ector, Tex	.0132
Do	DXE-0137	Hull	Liberty, Tex	.0619
Do	DXE-0138	Kermit	Winkler, Tex	.0057
Do	DXE-0139	Knox-Bromide	Grady, Okla	.0301
Do	DXE-0140	Lapeyrouse	Terrebonne, La	.0306
Do	DXE-0141	Ojai Timber	Ventura, Calif	.1361
Do	DXE-0142	Pledger	Brazoria, Tex	Denied
Do	DXE-0143	Riverton Dome	Fremont, Wyo	.2582
Do	DXE-0144	Seiling	Dewey, Okla	.0117
Do	DXE-0145	Silsbee	Hardin, Tex	.1370
Do	DXE-0146	South Coles Levee	Kern, Calif	.0186
Do	DXE-0147	Taft	San Patricio, Tex	.0539
Do	DXE-0148	West Lake	Nolan, Tex	.0456
Do	DXE-0149	West Seminole	Gaines, Tex	.0178
Do	DXE-0150	Worland	Washakie, Wyo	.0437
Austral Oil Co., Inc	DXE-0151	South Thornwell	Cameron Parish, La	.0050
Do	DXE-0152	TSMA	Vermilion Parish, La	.0199
Continental Oil Co	DXE-0228	Elk Basin	Powell, Wyo	.0189
Do	DXE-0229	Kettleman Hills	Avenal, Calif	.0189
Do	DXE-0230	Medford	Medford, Okla	.0684
Do	DXE-0231	C. W. Ward	McAllen, Tex	.0491
Do	DXE-0232	Ramsey	Orda, Tex	.0635
Do	DXE-0233	Thomas	Thomas, Okla	.0257
Devon Corp	DXE-0225	Dubach	Calhoun, La	.0067
Sanford P. Fagadau	DXE-0171	Bluegrove	Clay County, Tex	.11787
Do	DXE-0172	Maryetta	Jack County, Tex	.06682
Kansas-Nebraska Natural Gas Co., Inc.	DXE-0127	Yenter	Sterling, Colo	.0347
Kerr-McGee Corp	DXE-0153	Milpay	Oklahoma	.1382
McCulloch Gas Processing	DXE-0107	Fairview	Richland County, Mont.	.0372
Do	DXE-0108	Hilight	Campbell County, Wyo	.0376
Do	DXE-0109	Jamison Prong	do	.1202
Do	DXE-0110	Tule Creek	Roosevelt County, Mont	.1792
Do	DXE-0111	Well Draw	Converse County, Wyo	.0649
Palo Pinto Oil & Gas Co	DXE-0226	Markley	Jack County, Tex	.03684
Shell Oil Co	DXE-0165	Elmwood	Beaver County, Okla	.0777
Do	DXE-0166	Goodwater	Clark County, Miss	.0916
Do	DXE-0167	Indian Basin	Eddy County, N. Mex	.0125
Do	DXE-0168	Molino	Santa Barbara County, Calif.	.1178
Do	DXE-0169	Seeligson	Jim Wells County, Tex	.0086
Do	DXE-0179	Tippett-Crossett	Crockett County, Tex	.0101
Sid Richardson Gasoline & Carbon Co.	DXE-0325	Keystone	Winkler County, Tex	.0299
Union Oil Co. of California	DXE-0123	Adena	Morgan County, Colo	.0286
Do	DXE-0124	Dominquez	Los Angeles County, Calif.	.0840
Do	DXE-0125	Rio Bravo	Kern County, Calif	.1047

[FR Doc. 78-897 Filed 1-12-78; 8:45 am]

[3128-01]

INVESTIGATION OF COMMON CARRIER PIPELINES

Notice of Decision and Order Issued by Office of Administrative Review: Investigation of Common Carrier Pipelines—Ex Parte No. 308 (Sub-No. 1)

AGENCY: Department of Energy.

ACTION: Decision of Energy.

SUMMARY: On January 6, 1978, the Department of Energy issued a decision and order concerning a proceeding entitled Investigation of Common Carrier Pipelines, which had been commenced by the Interstate Commerce Commission (ICC) on February 19, 1976. The ICC docket number for that proceeding was Ex Parte No. 308 (Sub-No. 1). Jurisdiction over this matter was vested in the Department of Energy pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101 et seq., and DOE Delegation Order No. 0204-4. In that decision and order, the DOE stayed an order which the Interstate Commerce Commission issued on September 30, 1977, pending further order of the Office of Administrative Review of the Department of

Energy. The text of the decision and order follows.

MELVIN GOLDSTEIN,
Director, Office of Administrative Review.

JANUARY 10, 1978.

DEPARTMENT OF ENERGY,
Washington, D.C., January 6, 1978.

DECISION AND ORDER OF THE DEPARTMENT OF ENERGY

STAY

Name of petitioner: Investigation of common carrier pipelines.
Case No.: Ex Parte No. 308 (Sub-No. 1).

In an order which it served on February 24, 1976, the Interstate Commerce Commission (ICC) initiated an Investigation of Common Carrier Pipelines, pursuant to Section 11 of the Clayton Act, 15 U.S.C. 21, and Sections 12 and 13 of the Interstate Commerce Act, 49 U.S.C. 12 and 13. The ICC investigation was designated as Ex Parte 308 (Sub-No. 1) and was designed to examine possible violations of Section 7 of the Clayton Act, 15 U.S.C. 18, involving petroleum pipeline ownership. All common carrier pipelines subject to Part I of the Interstate Commerce Act were made respondents in the proceeding, and were served on July 8, 1976, with Interrogatories propounded by the ICC's Bureau of Investigations and Enforcement (BIE). On March 2, 1977, the ICC served an Order requiring that respondents which had not complied with the interrogatories do so within 30 days, and specified procedures in Appendix A of the Order to protect the confidentiality of information submitted. This Order was modified by an Order on appeal served by the ICC on September 30, 1977. In that Order procedures were specified for transmittal to the Bureau of Competition of the Federal Trade Commission of discovery material designated as confidential pursuant to the March 2 Order. Under the terms of the September 30 ICC Order a number of conditions were established regarding further use by the Bureau of Competition of confidential data which it received.

Pursuant to the Department of Energy Organization Act, 42 U.S.C. 7101 et seq., as implemented by E.O. 12009, 42 FR 46267 (September 15, 1977), and DOE Delegation Order No. 0204-4, proceedings under Ex Parte No. 308 (Sub-No. 1) were transferred to the Economic Regulatory Administration (ERA).

On January 4, 1978, the Administrator of the ERA determined that the Office of Enforcement of the ERA would perform all functions previously performed in Ex Parte No. 308 (Sub-No. 1) by the ICC Bureau of Investigations and Enforcement. The Office of Administrative Review of the ERA was designated to perform all functions in connection with proceedings under Ex Parte No. 308 (Sub-No. 1) that were previously performed by the members of the ICC or by an administrative law judge designated by the ICC to hear and decide any aspect of the matter.

The record which has been furnished to the Office of Administrative Review at the present date indicates that a number of firms have requested that the September 30, 1977, ICC Order be reconsidered and rescinded. The issues presented in those petitions are certainly very important in the context of the overall investigation and should be evaluated by the ERA. In order to afford the ERA an opportunity to do so, the September 30, 1977, ICC Order will be stayed pending further proceedings before the Office of Administrative Review. This determination is in no way designed to reflect any conclusions with respect to the merits of the matter or to affect the continuing applicability of the Order which the ICC issued on March 2, 1977.

It is therefore ordered, That: The Order which the Interstate Commerce Commission issued on September 30, 1977, in a matter designated as Ex Parte 308 (Sub-No. 1) be and hereby is stayed pending further Order of the Office of Administrative Review of the Department of Energy.

Dated: January 6, 1978.

MELVIN GOLDSTEIN,
Director,
Office of Administrative Review.

[FR Doc. 78-994 Filed 1-12-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 842-1]

ADMINISTRATOR'S TOXIC SUBSTANCES ADVISORY COMMITTEE

Open Meeting

Under section 10(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that the second meeting of the Administrator's Toxic Substances Advisory Committee will be held at 9 a.m. on Tuesday, January 31, 1978 in Conference Room 3906, Mall area, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

The purpose of this meeting is to advise EPA on implementation of the Toxic Substances Control Act (Pub. L. 94-469). The agenda includes review of the reports of the Testing, Assessing Risks and Benefits, and Strategy Working Groups, Confidentiality and Proposed Freedon of Information Act Amendments, Public Awareness and Participation Plans, and Premanufacturing Notification and Review Plans.

The meeting will be open to the public. The Committee encourages the hearing of outside statements and may allocate a portion of time for public participation. Any outside parties interested in presenting an oral statement should petition the Committee in writing. The petition should include the general topic of the proposed statement and the petitioner's telephone number.

Any person who wishes to file a written statement can do so before or after a Committee meeting. Accepted written statements may be recognized at Committee meetings.

Any member of the public wishing to present an oral statement, or submit a written statement should contact Harvey Lieber, Executive Secretary for the Administrator's Toxic Substances Advisory Committee, Office of Toxic Substances (TS788), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The telephone number is: 202-755-4863.

Dated: January 9, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-904 Filed 1-12-78; 8:45 am]

[6560-01]

[FRL 842-4]

MARYLAND

Approval of Application for Drinking Water Primary Enforcement Responsibility

Public notice is hereby given in accordance with the provisions of Section 1413 of the Safe Drinking Water Act (Pub. L. 93-523, December 16, 1974) and 40 CFR 142, the National Interim Primary Drinking Water Regulations (41 FR 2918, January 20, 1976), that Mr. Donald H. Noren, Director of the Environmental Health Aministration of the Maryland Department of Health and Mental Hygiene, has submitted an application requesting primary enforcement responsibility under the Safe Drinking Water Act to the Environmental Protection Agency (EPA) Region III office for concurrence and approval.

Jack J. Schramm, Regional Administrator for EPA Region III, has approved the application from the State of Maryland for primary enforcement responsibility, which shall become effective thirty (30) days after the date of publication of this notice. This determination was concluded after a thorough evaluation of Maryland's water supply supervision program in relation to the requirements of 40 CFR 142.10 including the adoption and implementation of:

1. Drinking water standards and regulations.
2. An inventory of public water systems.
3. A systematic program for conducting sanitary surveys.
4. The establishment and maintenance of a program for the certification of laboratories.
5. Laboratory facilities certified by EPA.
6. A plan review program to assure the proper design and construction of new or modified public water systems.
7. Adequate statutory and regulatory authority.
8. Authority to sue in court and to enjoin continuing violations.
9. Authority permitting right of entry and inspection of public water systems.
10. Authority to require suppliers of water to keep appropriate records and make appropriate reports to the State.
11. Authority to require public notification of violations.
12. Authority to assess civil or criminal penalties for violation of State regulations.

13. Record keeping and reporting procedures.

14. A system for issuing variances and exemptions.

15. Adoption of a plan for the provision of safe drinking water under emergency circumstances.

Maryland's water supply supervision program, as presented and evaluated on the above noted points, has indicated that it is fully capable of carrying out all the areas required to attain primary enforcement responsibility.

Any interested parties are invited to submit written comments on this determination and may request a public hearing within thirty (30) days of this notice. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing, that the Regional Administrator issues an order affirming or rescinding the determination.

Requests for a public hearing shall be addressed to:

Mr. Jack J. Schramm, Regional Administrator, Region III—3RA00, 6th and Walnut Streets, Philadelphia, Pa. 19106.

A request for public hearing shall include the following information:

1. The name, address, and telephone number of the individual(s), organization, or other entity requesting a hearing.

2. A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing.

3. The signature of the individual(s) making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made within thirty (30) days after this notice a public hearing will be held. The Regional Administrator will give further notice in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the State of Maryland of any hearing to be held pursuant to a request submitted by an interested person, or on his own motion. Notice of the hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. In addition to publication as described above, notice will be sent to the person requesting a hearing and to the State. Notice of the hearing will include a statement of the purpose of the hearing, information regarding the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain furhter information concerning the hearing.

After receiving the record of the hearing the Regional Administrator will issue an order affirming or rescinding his determination. If the determination is affirmed, it shall become effective as of the date of this order.

If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days after issuance of the initial notice.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Aa complete copy of Maryland's application for primary enforcement responsibility is available for public inspection during normal business hours at the office of the Regional Administrator and at the following location in Maryland:

State of Maryland, Department of Health and Mental Hygiene, Environmental Health Administration, 210 West Preston Street, Baltimore, Md. 21203.

Dated: November 23, 1977.

JACK J. SCHRAMM,
Regional Administrator, Region III, Environmental Protection Agency.

[FR Doc. 78-903, Filed 1-12-78; 8:45 am]

[6560-01]

[FRL 841-8]

SCIENCE ADVISORY BOARD EXECUTIVE COMMITTEE; SUBCOMMITTEE ON SCIENTIFIC CRITERIA FOR PHOTOCHEMICAL OXIDANTS

Cancellation of Meeting

Under Pub. L. 92-463, notice is hereby given that the meeting of the Subcommittee on Scientific Criteria for Photochemical Oxidants of the Science Advisory Board Executive Committee scheduled for January 23 and 24, 1978, will not be held. The meeting was announced in the FEDERAL REGISTER, Vol. 42, page 63950, on December 21, 1977.

The meeting will probably be rescheduled for some time in February 1978. The new date and details of the rescheduled meeting will be announced in the FEDERAL REGISTER.

Further information on this cancellation and rescheduling may be obtained from the Secretariat, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460. Please ask for Mrs. Ilene Stein or Ms. Barbara Robinson. The telephone number is 703-557-7720.

RICHARD M. DOWD,
Staff Director, Science Advisory Board.

JANUARY 6, 1978.

[FR Doc. 78-905 Filed 1-12-78; 8:45 am]

[6560-01]

[FRL 840-5]

FULLY HALOGENATED CHLOROFLUOROALKANES

Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Public participation meeting.

SUMMARY: The Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Consumer Product Safety Commission (CPSC) will hold a second public participation meeting on the nonpropellant uses of fully halogenated chlorofluoroalkanes (chlorofluorocarbons—CFCs). The information obtained at the meeting will aid the agencies in making regulatory decisions on nonpropellant CFC emissions.

DATE: The meeting will be held February 21-24, 1978, at 10 a.m.

ADDRESS: The meeting will be held in the Humphrey Auditorium, Humphrey Building (formerly South Portal Building), 200 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Larry E. Longanecker, U.S. Environmental Protection Agency, Office of Toxic Substances (WH-557), 401 M Street SW., Washington, D.C. 20460, phone 202-755-1188.

SUPPLEMENTARY INFORMATION: If you wish to make a presentation at the meeting please telephone before February 7, 1978: Joni T. Repasch, U.S. Environmental Protection Agency, Office of Toxic Substances (WH-557), 401 M Street SW., Washington, D.C. 20460, phone 202-755-1188.

This meeting is the second in a continuing effort by EPA, FDA, and CPSC to gather information to determine whether there is a need to regulate nonpropellant uses of chlorofluorocarbons.

The first public meeting on nonpropellant uses of CFCs was held on October 25-27, 1977, at the Washington, D.C. headquarters of the Environmental Protection Agency. Participants submitted useful information on the use of these substances in refrigeration, air-conditioning, foam-blowing, solvent, and fire extinguishing applications. The agencies encourage further participation in regard to these uses. Participants who feel that insufficient time was allotted at the first meeting are invited to supplement their presentations at this time. As always, written submissions are encouraged to avoid duplication of oral presentations.

The FDA is particularly interested in obtaining information on the use of

CFCs in food-related activities, e.g., as liquid food freezants, as a food additive, in the production of styrofoam for use in food packaging and containers, as a local anesthetic, and as a dilutant for ethylene oxide sterilants. These and other uses of CFCs not previously addressed should be stressed at this time.

The agencies are also seeking information on planned, but not yet commercial, uses of CFCs. One such use, as a solvent in the beneficiation of coal, could, if developed, constitute a major use of these materials.

Recovery, recycle, and/or reuse of CFCs are important factors in the agencies' consideration of means to control emissions. Information on the technical feasibility, cost and present extent of such activities will be of special significance in making regulatory decisions. Participants are also encouraged to submit data on the use of alternatives and emission controls, including research in these areas.

Dated: December 30, 1977.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-920 Filed 1-12-78; 8:45 am]

[6560-01]

[IRLG-1:003; FRL-842-2]

INTERAGENCY REGULATORY LIAISON GROUP

Testing Standards and Guidelines Work Group; Request for Written Materials

AGENCY: Interagency Regulatory Liaison Group (IRLG) representing the U.S. Consumer Product Safety Commission (CPSC), the U.S. Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA).

ACTION: Notice of request for written materials.

SUMMARY: To aid in the development of preliminary drafts of testing guidelines, the Testing Standards and Guidelines Work Group invites submission of written materials relating to the guidelines which the Work Group is currently preparing.

DATES: Materials must be recieved on or before February 10, 1978.

ADDRESS MATERIALS TO: Dr. James R. Beall, Chairman, IRLG Testing Standards and Guidelines Work Group, WH-557, Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Dr. Phyllis B. Hetrick, Office of Toxic Substances (EPA), WH-557, Room 609 East Tower, 202-755-6843.

SUPPLEMENTARY INFORMATION: *Background.* The heads of the CPSC, EPA, FDA, and OSHA agreed to work together as the IRLG to reform the regulatory process and to improve protection of workers, public health, and the environment (42 FR 54856, 11 October 1977). To implement their agreement, the IRLG established a Testing Standards and Guidelines Work Group to develop common standards and guidelines for the four agencies to use in assessing existing and new testing regulations for interagency consistency and compatibility. The Work Group held a public meeting on December 14 (42 FR 59106, 15 Nov. 1977) to explain its purpose and goals and to answer questions about its activities.

The Work Group is developing drafts of the following guidelines: for testing to assess health effects: dermal, ingestion, and inhalation acute toxicity; dermal, ingestion, and inhalation subchronic toxicity; eye irritation, reproduction, and teratogenicity. For testing to assess ecological and environmental fate and effects: acute toxicity in seed-eating birds, fish, daphnia, shell fish, terrestrial and aquatic plants, and phytoplankton; microbial effects: growth inhibition and laboratory scale activated sludge communities; fish bioconcentration; vapor pressure; water solubility; hydrolysis rates (aqueous systems only); soil adsorption/desorption; and octonol/water partition coefficient.

The reference documents that the Work Group is using include: for health effects—Principles and Procedures for Evaluating the Toxicity of Household Substances (CPSC, NAS No. 1138, 1977), Guidelines for the Assessment of Drug and Medical Device Safety in Animals (PMA, 1977), recent draft Guidelines for Registering Pesticides (OPP/EPA, 1977), Report of the Secretary's Commission on Pesticides and Their Relationship to Environmental Health (HEW, 1969), and Appraisal of the Safety of Chemicals in foods, Drugs, and Cosmetics (FDA, 1959). For ecological/environmental studies—"A Flow-Through Testing Procedure with Duckweed (*Lemna minor L.*) (EPA, 1977), Standard Methods for the Examination of Water and Waste Water (APHA, 1976), Methods for Acute Toxicity Tests with Fish, Macroinvertebrates, and Amphibians (EPA, 1975), Proposed Guidelines for Registering Pesticides (EPA, 40 FR 26802, 25 June 1975), Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents (EPA, 1973), and various ASTM documents including Method No. 5 Radiometric Microscale Bioassay for Algicides, and the following working draft documents of proposed standard practices for conducting (a) acute toxicity tests with four species of bivalve mollusc larvae (draft No. 1, 5/77), (b) acute toxicity tests with fishes, macroinvertebrates, and amphibians (draft No. 6, 9/77), (c) bioconcentration with fishes (draft No. 6, 10/77), and (d) renewal life cycle toxicity tests with the daphnid, *Daphnia magna* (draft No. 2, 10/77), and draft No. 1 of Method No. 2 for determining efficacy of aquatic plant control agents: field trials in standing water.

Request for materials. The work group invites interested persons to submit similar written materials which are relevant to the guidelines and which will assist their development. Materials received by February 10, 1978, will be considered for the preliminary drafts. Materials received after February 10 will be held for consideration of the finals drafts. Contributions should bear the number IRLG-1:003 and be submitted in duplicate.

All materials submitted will be available in a public file for examination by interested persons during working hours at the same address.

Dated: January 6, 1978.

DR. JAMES R. BEALL,
Chairman, IRLG Testing Standards and Guidelines Work Group.

[FR Doc. 78-901 Filed 1-12-78; 8:45 am]

[6560-01]

[FRL 842-7; OTS-081004B]

ADDENDUM TO TSCA CANDIDATE LIST OF CHEMICAL SUBSTANCES

Availability of Document

This notice is to announce the availability of the first addendum to the April 1977 Toxic Substances Control Act (TSCA), Pub. L. 94-469, Candidate List of Chemical Substances (GPO No. 005-007-00001-2). The Candidate List is a reference document intended to simplify reporting of chemical substances identities to EPA in accordance with the TSCA Inventory Reporting Regulations (40 CFR Part 710) which became effective on January 1, 1978. The addendum is essentially a list of terms, most of which identify petroleum refinery intermediate and final process stream chemical substances, developed in conjunction with the American Petroleum Institute. All terms contained in the list have been assigned proper Chemical Abstracts Service (CAS) Registry Numbers and valid EPA Code Designations. The Addendum also includes guidelines used in drafting the list, which describe the scope and limitations of the terms.

Persons wishing to receive a copy of this document should call 800-424-9065 (or 554-1404 in the Washington, D.C. area), or write to:

Director, Office of Industry Assistance, Office of Toxic Substances (TS-788) Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Dr. George Semeniuk, at 202-755-1500.

Dated: January 9, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-1013 Filed 1-12-78; 8:45 am]

[6560-01]

[FRL 842-8]

ENVIRONMENT AND CONSERVATION IN NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT

Public Hearing

The Environmental Protection Agency (EPA) is making a preliminary announcement of a Public Hearing on Environment and Conservation in Nonnuclear Energy Research and Development to be held in Washington, D.C. during the last week of March, 1978. Final details of this hearing will be announced in the FEDERAL REGISTER within two weeks.

Section 11 of the Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577) directs the responsible agency (formerly the Council on Environmental Quality, currently EPA) to carry out a continuing analysis of the Federal nonnuclear energy research and development program to evaluate the adequacy of attention to:

(1) Energy conservation methods; and (2) Environmental protection from, and environmental consequences of the application of nonnuclear energy technologies.

Public views are an important component of this continuing analysis. Under direction of the Act, annual public hearings are held to provide the opportunity for interested individuals or groups to testify on environmental and conservation aspects of the research and development program. Transcripts of the hearings will be available to the public and will be transmitted to the president, the Congress, and the Secretary of the Department of Energy. Individuals or groups interested in participating will be asked to notify the EPA prior to the hearing. Further details of the hearing and procedures for participating will be announced within two weeks.

STEPHEN J. GAGE,
Acting Assistant Administrator for Research and Development.

JANUARY 5, 1978.

[FR Doc. 78-1014 Filed 1-12-78; 8:45 am]

[6560-01]

[FRL 842-5; OPP-42041C]

STATE OF MISSOURI

Approval of State Plan for Certification of Pesticide Applicators

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.), and the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators to submit a plan for such purpose, subject to approval by the Environmental Protection Agency (EPA). On April 6, 1977, the Missouri State Plan was approved contingent upon enactment of proposed amendments to the Missouri Pesticide Act of 1974 and subsequent promulgation of regulations described in the Plan. Notice of contingent approval was published in the FEDERAL REGISTER on April 15, 1977 (42 FR 19926). Subsequently, the 1977 State Legislature amended the Missouri Pesticide Act of 1974. The amendments became effective September 28, 1977; however, promulgation of regulations could not begin until amendments to the Missouri Act were in effect. On September 2, 1977, the State of Missouri requested an extension of regulations. On October 5, 1977, the Agency approved the request and granted Missouri an extension which is to expire on January 10, 1978. Notice of the extension was published in the FEDERAL REGISTER on October 25, 1977 (42 FR 56363). Subsequently, the necessary regulations were promulgated and became effective on December 11, 1977.

Having reviewed these amendments and regulations and finding that all requisite legal authorities required by FIFRA and 40 CFR Part 171 are now enacted and promulgated, the Regional Administrator, EPA, Region VII, hereby gives notice that the Missouri State Plan is now a fully approved State Plan.

Dated: January 3, 1978.

KATHLEEN Q. CAMIN,
Regional Administrator, E.P.A. Region VII.

[FR Doc. 78-1012 Filed 1-12-78; 8:45 am]

[6560-01]

[FRL 842-5]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

Pursuant to the President's Reorganization Plan No. 1, the Environmental Protection Agency is the official recipient for environmental impact statements (EIS) and is required to publish the availability of each EIS received weekly. The following is a list of environmental impact statements received by the Environmental Protection Agency from January 2 through January 6, 1978. The date of receipt for each statement is noted in the statement summary. Under the guidelines of the Council on Environmental Quality the minimum period for public review and comment on draft environmental statements is forty-five (45) days from this FEDERAL REGISTER notice of availability (February 27, 1978). The thirty (30) day period for each final statement begins on the day the statement is made available to the Environmental Protection Agency and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: January 10, 1978.

PETER L. COOK,
Acting Director, Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Errett Deck, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 307A, Washington, D.C. 20250, 202-447-6827.

FOREST SERVICE

Draft

North Idaho Forests Silvicultural Treatments, several counties in Idaho, January 3: Proposed is the reduction of competing vegetation, with herbicides, as a part of the timber resource management activities on National Forest lands in northern Idaho. Plan implementation calls for the spraying of up to 6,000 acres of brush fields per year and the additional spraying of 5,700 acres per year for site planting preparation. Spraying would continue through 1983. Adverse impacts include the alteration of wildlife habitat and shifts in the population levels of various species. (ELR Order No. 80005.)

Spruce Knob Lakes Complex, Monongahela National Forest, Randolph County, W. Va., January 3: Proposed is the development of flat water recreation facilities within the Spruce Knob Lake Complex, Monongahela National Forest, Randolph County, W. Va. Plan implementation calls for the construction of an 85 acre lake at the headwaters of Gandy Creek and the development of a campground and picnic area adjacent to the lake. Adverse impacts include the loss of about 100 acres of open, undeveloped land and about 30 acres of woodland; effects upon the wildlife environment adjacent to the proposed development; and construction-related pollution. (ELR Order No. 80004.)

SOIL CONSERVATION SERVICE

Draft

Rush Creek Watershed, Fairfield, Hocking, and Perry Counties, Ohio, January 5: Proposed is a project for watershed protection, flood prevention, and fish and wildlife in Fairfield, Hocking, and Perry Counties, Ohio. Planned watershed measures consist of 7 single-purpose floodwater retarding

structures, one multipurpose fish and wildlife and floodwater retarding structure, 23.0 miles of channel work, and 1.9 miles of dikes. Adverse effects include the permanent or periodic disturbance of change of use on approximately 1,668 acres of land and construction-related pollution. (ELR Order No. 80011.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

Supplement

Atlantic Groundfish Fisheries (S-1), January 6: This statement supplements a final EIS originally filed with CEQ in March of 1977. Proposed is the extension of the fishery plan (haddock, cod, yellowtail flounder) into the first part of 1978 on an interim basis with provisions for additional quarterly allocations and limitations. The optimum yield figures established in 1977 have not been reduced. The public comment period for this supplement has been shortened from 45 to 30 days. (ELR Order No. 80017.)

DEPARTMENT OF DEFENSE, ARMY CORPS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attn.: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Draft

Peachtree and Nancy Creeks Flood Control Study, Fulton, De Kalb, and Gwinnett Counties, Ga., January 5: Proposed is the provision for flood damage reduction in the Peachtree-Nancy Creek Basins in Fulton, De Kalb, and Gwinnett Counties, Ga. Plan implementation calls for the evacuation of two buildings and the floodproofing of 767 additional ones. Adverse impacts include construction-related pollution; the relocation of families; possible destruction of archeological and historical sites; and temporary disturbance of vegetation and wildlife habitat. (Savannah District.) (ELR Order No. 80014.)

Harbor of Refuge Operations and Maintenance, Harbor Beach, Huron County, Mich., January 5: Proposed are operation and maintenance measures including dredging, disposal of dredged material, and renovation of existing structures, at the Harbor of Refuge at Harbor Beach, Mich. Approximately 950,000 cubic yards of sediment are to be dredged and deposited at the proposed disposal site in section 27 of Sand Beach Township, Huron County, Mich. Adverse impacts include the disturbance of water quality, benthic regions of the harbor; macroorganisms inhabiting or using the waterways, and flora and fauna of the upland disposal site; and the acquisition of 65 acres of productive land for the disposal site. (Detroit District.) (ELR Order No. 80010.)

Freeport Harbor Enlargement and Maintenance, Brazoria County, Tex., January 5: Proposed is the enlargement and realignment of an existing Federal navigation project located in Brazoria County, Tex. Plan implementation calls for deepening, widening, and realigning of channels; relocation of a U.S. Coast Guard Station; relocation of an existing jetty; public use facilities; and the relocation of approximately 20 summer homes and one business. Adverse impacts include the destruction or disturbance of benthic communities; localized turbidity; and possible increases in objectionable odors. (Galveston District.) (ELR Order No. 80012.)

Final

Ohio River (438 to 981) Sand and Gravel Dredge, Permit, January 6: Proposed is the issuance of a Department of the Army permit to allow continued commercial sand and gravel dredging from the Ohio River within the jurisdiction of the Louisville District, U.S. Army Corps of Engineers, Ohio River mile 438.0 to 981.0. The project will cause the removal or displacement of benthic fauna and the existing habitat of fish species will be altered. The dredging will cause localized increases in suspended material. (Louisville District.) Comments made by: FPC, DOT, DOI, USDA, EPA, State and local agencies, concerned groups and individuals. (ELR Order No. 80015.)

Supplement

Applegate Lake, Rogue River Basin (S-3), Oregon, January 3: This statement supplements a final EIS originally filed with CEQ in 1972. The statement consists of comment letters on the final EIS and the two previous supplemental statements, and the Corps response to these comments. (Portland District.) (ELR Order No. 80001.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Rio Grande Estates, Puerto Rico, January 3: Proposed is the development of 496.57 cuerdas of land (one cuerda equals 0.97 acres) in the Zarzal Ward of the Rio Grande municipality, Puerto Rico, into residential housing. First stage implementation calls for the construction of 2,343 dwellings (797 in single family units, and 1,546 units in multifamily structures) in a tract covering 197.83 acres. Adverse impacts include elimination of most of the existing flora; increased air, noise, and water pollution; increased surface runoff and erosion; and construction-related pollution. (ELR Order No. 80003.)

Section 104(h)

The following are Community Development Block Grant statements prepared and circulated directly by applicants pursuant to section 104(h) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local chief executive. (Copies are not available from HUD).

Draft

Lechmere Canal and Triangle Development Project, Massachusetts, January 4: Proposed is the Lechmere Canal and Triangle Area Development Project located in the northeastern corner of the city of Cambridge. Plan implementation calls for the restoration of the Lechmere Canal and establishment of a bordering park; conversion of the Cambridge Parkway area to a park along the Charles River; and open-space walkways from the development areas to the new parks; street widening; relocation of the Lechmere Square MBTA Station; and the development of housing, retail and office centers. Adverse impacts include the relocation of 18 to 21 businesses; increased noise and traffic and construction-related pollution. (ELR Order No. 80007.)

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Richard I. Chais, Chief, Section of Energy and Environment, Room 3373, 12th and Constitution Avenue NW., Washington, D.C. 20423, 202-275-7692.

Draft

Northwest Michigan Railroad Abandonment, several counties in Michigan, January 3: Proposed is the abandonment and dismantling of the Chesapeake & Ohio Railway Co.'s branch line rail operations between Bay View and Manistee, a distance of approximately 145.89 miles. Adverse impacts include the elimination of rail service to 27 stations in the northwestern corner of the lower peninsula of Michigan and construction-related pollution due to salvage operations. (ELR Order No. 80006.)

TENNESSEE VALLEY AUTHORITY

Contact: Dr. Peter Krenkel, Director of Environmental Planning, Tennessee Valley Authority, 720 Edney Building, Chattanooga, Tenn. 37401, 615-755-3161, FTS 854-3161.

Final

Maury-Shelby, 500-kV Transmission Line, Tennessee, January 3: The proposed action is the construction and operation of a 500-kV transmission line which will connect the Maury 500-kV Substation, 2 miles north of Columbia, with the Shelby 500-kV Substation, 16 miles north of Memphis, Tenn. The transmission lines will help serve the Memphis area. Project construction will result in the initial clearing and maintenance of 2,117 acres of woodland with associated timber production loss, animal habitat changes, and enhancement measures. Comments made by: EPA, DOI, HEW, FPC, and State agencies. (ELR Order No. 80002.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

Draft

Lafayette Railroad Relocation, Tippecanoe County, Ind., January 5: The proposed action is to relocate and consolidate the N&W and L&N railroad rights-of-way into one corridor through the city of Lafayette and to separate the major highway crossings from the combined railroad facilities. Approximately 4.2 miles of N&W double-track main line and 2.6 miles of L&N single-track main line would be relocated. Adverse impacts include the use of approximately 65 to 87 acres and the displacement of 14 to 61 residential units and 12 to 16 commercial establishments, depending upon the route selected; increased levels of air and noise pollution; and construction-related pollution. (Region 5.) (ELR Order No. 80009.)

IA-518, Lee County, Iowa, January 5: Proposed is the construction of a six-mile segment of Iowa State Arterial 518 in Lee County, Iowa. The proposed construction provides for a four-lane divided highway which would generally follow the present alignment of U.S. 61/218 between U.S. 61 and U.S. 218. Four alternative routes are offered. Adverse impacts include the acquisition of between 63 and 275 acres of land, be-

tween 7 and 29 homes and 4 to 9 businesses, depending upon the alternative selected; construction-related pollution; and increased levels of air and noise pollution. (Region 7.) (ELR Order No. 80013.)

MI-20 Bridges Replacement at Big Rapids, Mecosta County, Mich., January 4: Proposed is the selection of a location and alignment for a bridge to replace the current structure carrying MI-20 (Maple Street) over the Muskegon River in the city of Big Rapids, Mecosta County, Mich. Plan implementation calls for the construction of the bridge and reconstruction of approaches, including widening of up to 2,100 feet (640 meters) of MI-20 in Big Rapids. Adverse impacts include the displacement of 0 to 24 residential units, depending upon the alternative selected, and 7 commercial establishments; increased traffic; and increased noise pollution. (ELR Order No. 80008).

In the notice of availability of Environmental Impact Statements (EIS) published by EPA in the FEDERAL REGISTER dated Friday, December 30, 1977, the Department of Interior statement entitled "O'Neill Unit, Lower Niobrara Division" was listed as having been prepared by the Bureau of Land Management. The statement was actually prepared by the Department of Interior's Bureau of Reclamation. The corrected notice is as follows:

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Building, Department of Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF RECLAMATION

Supplement

O'Neill Unit, Lower Niobrara Division, several counties in Nebraska, December 23: This statement supplements a final EIS originally filed with CEQ in September of 1972; that statement dealt with the construction of a dam and other water resource facilities known as the O'Neill Unit, Lower Niobrara Division, Nebraska, a part of the Pick-Sloan Missouri Basin Program. This supplement addresses four areas of the project judged inadequately considered in the final EIS; (1) geologic stability at the damsite, (2) project effect on groundwater quality, (3) impact upon area wildlife, and (4) assessment of the alternative of researching techniques for improving livestock and crop production without diminishing groundwater reserves. (ELR Order No. 71541.)

[FR Doc. 78-1019 Filed 1-12-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

GAYNAR SHIPPING CORP. AND LATIN AMERICAN SHIPPING CO., INC.

Agreement Filed

Notice of agreement filed by Edward L. Maynard, Vice President, Gaynar Shipping Corp., One World Trade Center, No. 1471 New York, N.Y. 10048.

Agreement No. FF 78-1 between Gaynar Shipping Corp. (Gaynar) (FMC 148) and Latin American Shipping Co., Inc. (Latin American) (FMC 920) provides for the establishment of a Texas corporation, Gaynar Shipping (Texas) Inc., which was formed July 29, 1977 and which is owned 50 percent by Gaynar and 50 percent by Latin American. The purpose of this Texas corporation is to engage in ocean freight forwarding and it has applied for an FMC independent ocean freight forwarder license and has been assigned Application Number B-114.

The parties of the agreement acknowledge that each is in the business of forwarding ocean freight and agree that neither is restricted in any manner from continuing to engage in that business except that freight forwarding for any cargo moving through Texas ports shall be referred to and performed by and through the new Texas corporation and that the parties of the agreement are restricted from engaging in the business of freight forwarding in the State of Texas either directly or through other forwarders.

By order of the Federal Maritime Commission.

Dated: January 9, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-906 Filed 1-12-78; 8:45 am]

[6730-01]

INDEPENDENT OCEAN FREIGHT FORWARDER LICENSE

Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to Section 44(a) of the Shipping Act, 1916 (Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Argent-Cargo, Inc., 5708 N.E. 4th Avenue, Miami, Fla. 33137. Officers: Roberto A. Scalise, President; Alberto H. Pagani, Vice President.

Bethlehem Forwarding Co. (Belen I. Presas/Daniel F. Presas, d.b.a.), Koger Executive Center, Koger Bldg., No. 205, 8675 N.W. 53rd Street, Miami, Fla. 33166.

Astro Maritime Agency Inc., 100 Brannan Street, San Francisco, Calif. 94107. Officers: Basil A. Catachanas, Director/President; Leon Raymondos, Director/Secretary; Criton Coulouthros, Director/Treasurer.

Argus Shipping Co. (Andreas Schuemer, d.b.a.), 2300 E. Higgins Road, Elk Grove Village, Ill. 60007.

La Rama Shipping Co. (Martin Liam Akins and William R. Akins, d.b.a.), P.O. Box 513, Bluffton, S.C. 29910.

Scolari Lopez Inc., 660 East San Ysidro Blvd., San Ysidro, Calif. 92073. Officers: Arthur Scolari, President; J. Socorro Lopez M., Vice President/Treasurer; R. Neal Richards, Secretary.

Beacon International Despatch Inc., P.O. Box 488, 222 Ironton Street, North Tonawanda, N.Y. 14120. Officers: Edward T. Brick, President; Ian McGarrity, Vice President; Rolf Von Fintel, Secretary/Treasurer.

Kaworld Forwarders, Inc., 11 Broadway, Suite 463, New York, N.Y. 10004. Officers: Hung-Yao Kuan, Director; Herbert W. Abbe, President.

Gaynar Shipping (Texas) Inc., One Allen Center, Suite 1000, Houston, Tex. 77022. Officers: Eugene L. Dworkin, President; Claudio R. Lopez, Vice President; Gilberto D. Veliz, Treasurer; Edward L. Maynard, Secretary; Rosa E. Lambert, Manager.

Seamodal Transport Corp., 465 California Street, Suite 815, San Francisco, Calif. 94104. Officers: Nicholas E. Vacakis, Director/President; Derek J. Harrington, Director; Thomas C. J. Calhoun, Director; Robert M. Heian, Secretary.

By the Federal Maritime Commission.

Dated: January 9, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-907 Filed 1-12-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

FIRST STATE BANCORP, INC.

Formation of Bank Holding Company

First State Bancorp, Inc., Oklahoma City, Okla. ("Applicant"), 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 40.6 per cent or more of the voting shares of Admiral State Bank, Tulsa, Okla. ("Bank"). Applicant presently owns 23.5 per cent of the voting shares of 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 February 2, 1978.

Board of Governors of the Federal Reserve system, January 9, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-984 Filed 1-12-78; 8:45 am]

[6210-01]

MEADOWS BANKCORP, INC.

Formation of Bank Holding Company

Meadows Bankcorp, Inc., Rolling Meadows, Ill., has applied for the

Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of Suburban Bank of Rolling Meadows, Rolling Meadows, Ill. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 5, 1978.

Board of Governors of the Federal Reserve System, January 9, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-985 Filed 1-12-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

DELEGATION OF AUTHORITY

Referral of Complaints

Notice is hereby given that, pursuant to Reorganization Plan No. 4 of 1961, the Commission has delegated to the Director of the Bureau of Consumer Protection and to the Director of the Bureau of Competition, with power to redelegate as necessary, the authority to refer complaints to other Federal, State, or local government agencies for appropriate action when the matter complained of or inquired about may come within the jurdisdiction of such other agency.

By direction of the Commission dated December 9, 1977.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-953 Filed 1-12-78; 8:45 am]

[6750-01]

COLEMAN CO., INC.

Denial of Application for Waiver

AGENCY: Federal Trade Commission.

ACTION: Denial of Application for a Waiver of Section 102(c) of the Magnuson-Moss Warranty Act.

SUMMARY: By application dated July 15, 1976, the Coleman Co., Inc. ("Coleman"), a manufacturer of hearing and cooling appliances and associated equipment for mobile homes, requested a waiver of section 102(c) of the Magnuson-Moss Warranty Act, Pub. L. 93-637, 15 U.S.C. 2302(c) (the "Act").

Section 102(c) of the act provides that no warrantor of a consumer product may condition a written or implied warranty of such product on the consumer's using, in connection with such product, an article or service (other than one provided without charge) identified by brand, trade or corporate name, unless a waiver of this provision is granted by the Commission. Coleman proposes to include in its mobile home furnace warranty the following provision:

> This warranty is expressly conditioned upon the use of air-conditioning conversion blowers, gas valves, limit switches, and air conditioning coils that have been certified or approved for use in this furnace by nationally recognized testing laboratories such as Underwriter's Laboratories, Inc. or the American Gas Association, Inc., and use of noncertified or unapproved components will void the warranty.

Coleman applied to the Commission for a waiver of section 102(c) pursuant to that section. As required by section 102(c), the Commission published in the December 8, 1976 FEDERAL REGISTER (41 FR 53708) a call for comment on Coleman's application for a waiver. The public record was open for comment for 60 days and was closed on February 6, 1977. Twelve comments were submitted. In reaching its decision, the commission has carefully considered these comments as well as the evidence submitted by Coleman in support of its application.

The application of the Coleman Co., Inc. for a waiver of section 102(c) is denied for the reasons set forth below.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Alan Rubin, Staff Attorney, Division of Special Statutes, Federal Trade Commission, Washington, D.C. 20580, 202-724-1100.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Magnuson Moss Act provides that no warrantor of a consumer product may condition a written or implied warranty of such product on the consumer's using in connection with the product any article or service identified by brand, trade, or corporate name. Exception is made for an article or service provided free of charge. The Commission is authorized to grant a waiver of this provision if the statutory standards of section 102(c), discussed below, are met.

Coleman requests a waiver of section 102(c) to use a warranty for its mobile home furnaces that is expressly conditioned on the use of air-conditioning conversion blowers, gas valves, limit switches, and air conditioning coils that have been certified or approved for use by nationally recognized testing laboratories such as Underwriter's Laboratories, Inc. or the American Gas Association. Use of non-certified or unapproved components would void the warranty. Coleman points out that its application for waiver does not request permission to condition Coleman's warranty on the use of brand name components but rather on the use of components certified or listed by nationally recognized testing laboratories,[1] and arguably might not fall within the scope of section 102(c). Coleman explains that it would condition its warranty performance upon use of components that were tested by the approval agency when the appliance was submitted for certification.[2] Coleman states that use of components other than those submitted with the furnace and included in the certification of the appliance would render the certification inapplicable to that particular installation and in some instances make the installation violative of HUD's mobile home construction and safety standards.[3]

The Commission believes that section 102(c) is clearly applicable to situations where warranty coverage is tied to the use of products certified or approved by testing laboratories. For purposes of determining whether a waiver must be sought, the Commission sees little basis for distinguishing between direct and indirect (e.g., certification) references to brand, trade or corporate names. Certification may or may not be relevant to the task of analyzing whether a warranted product will function properly in the absence of using specified products or services. But that is for the Commission to decide in the first instance.[4] The Commission, accordingly, concludes that a waiver must be obtained here.

The Magnuson-Moss Warranty Act provides that the Commission may waive the prohibition of section 102(c) if—

(1) The warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) The Commission finds that such a waiver is in the public interest.

Both standards must be satisfied for the Commission to grant a waiver.

Coleman asserts that unless components are used that have been certified

---

[1] Coleman Application, p. 3.
[2] Id., p. 2.
[3] Id., p. 3.
[4] There is some evidence in the present case that certification may not be available to all manufacturers. Since it appears that only those components submitted with the furnace are eligible for certification (Coleman application, p. 3), Coleman is in a position to exercise considerable influence, if not actual control, over the brand name products selected for approval by the testing laboratory.

with its mobile home furnaces, there is no assurance that they will function properly or safely, and that the waiver is therefore in the public interest.[5] The need for safe parts is echoed in the comments submitted by those who support Coleman's waiver request.[6] For example, GAMA states:

> Consumers and the government agencies acting on their behalf today, more than ever before, are insisting that products be safe and function properly. Only by testing the product, mated with principal components, can the safe operation of the product be verified.[7]

The Commission recognizes that potential safety problems arising from use of articles or services other than those sought to be identified in the warranty are a matter of legitimate concern. The Commission believes that products such as Coleman's mobile home furnaces could hardly be said to function properly within the meaning of the statute if they endangered health or safety in a manner or to an extent that would not occur if they were used only in connection with the article or service sought to be required by the warranty. Allegations of safety-related problems caused by articles or services other than those the warranty would identify can properly be considered under the standard set forth in section 102(c)(1). Thus, the Commission has considered fully Coleman's claims about potential safety problems arising from the use of non-certified components in its consideration of whether Coleman has met the standard set forth in Section 102(c)(1).

Coleman has submitted the following materials in support of its application:

(1) Blueprints of the appliances;

(2) Installation and instruction manuals and copies of the proposed warranties;

(3) A directory of Certified Appliances and Accessories issued by the American Gas Association; and

(4) A "case study" of one installation that has been repaired using non-certified components.

The first two items clearly identify the parts and products involved in the waiver request, but do not address the statutory standard. While the third item indicates that Coleman parts are certified and that certified parts not manufactured by Coleman are available, it also does not address the statutory standard.

The case study stands as the sole support for the claim that Coleman furnaces will function properly only with certified parts. The case study includes photographs, and a report of a field investigation that describes the results of the installation of a noncertified motor, capacitor, humidifier, wiring, evaporator coil, condensing unit and various air conditioning components in a Coleman mobile home furnace. The case study includes statements—apparently made by a Coleman agent who inspected the appliance—that the effects of using these parts "could not be determined" (p. 2); or that they "may present an unreasonable hazard, however no determination could be made" (p. 4). Many of the problems described appear to be the result of improper installation by the consumer or by a repair person not an agent or employee of Coleman for which Coleman can, and does, expressly and effectively disclaim all liability[8] and not due to the use of noncertified parts. For these reasons the Commission concludes that this single case history does not support Coleman's claim that certified parts are necessary for the proper operation of Coleman appliances.

Coleman also contends that state building codes and current HUD mobile home construction regulations require the use of certified parts. The implications of this argument are that a waiver is necessary for the Commission to be consistent with those laws and to prevent section 102(c) from halting Coleman's efforts to ensure compliance with these safety regulations.

This argument is not persuasive for several reasons. As Coleman recognizes in its application,[9] any reliance on State law in this regard is misplaced, as the HUD Mobile Home Construction and Safety Standards, 24 CFR Part 280, preempt state law.[10] Furthermore, the HUD regulations on which Coleman relies do not prohibit the use of parts other than those certified by nationally recognized testing laboratories. Although most specific provisions relating to individual components of the mobile home require certified parts to be used,[11] Part 280.1(a), which describes the general scope of the regulations, states:

Thus, as one comment notes,[12] the HUD regulations do contemplate circumstances under which non-certified parts may be used.

Moreover, Coleman's assertion that the proposed warranty provision merely incorporates the requirements of HUD regulations is incorrect. Section 280.2(17) of the regulations defines "mobile home construction"—the focus of the regulations—as "all activities relating to the *assembly and manufacture* of a mobile home * * *." [Emphasis added.] The regulations do not apply to the repair of mobile homes or to their use and maintenance by consumers, as would the warranty provision proposed by Coleman. Thus, the proposed warranty would go beyond the scope of the HUD regulations.

Coleman asserts in the application that there is "no assurance" that noncertified parts will function properly.[13] However, this contention does not address the statutory standard for a waiver. Certification by a nationally recognized testing agency may indicate that the part was designed to function properly in a particular application, but noncertification of a particular part does not indicate that the part will not function properly. Noncertified parts may perform, on the whole, better or worse than certified parts.

The application for a waiver of section 102(c) is denied.

By direction of the Commission.

Dated: December 22, 1977.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-954 Filed 1-12-78; 8:45 am]

[6750-01]

ENFORCEMENT POLICY WITH RESPECT TO MERGERS IN DAIRY INDUSTRY

Criteria for Assessing Future Mergers

The merger activity of the four largest national dairies, which during the 1950's was creating high local concen-

---

[5] Coleman Application, p. 4.

[6] Locke Stove Co.; Gas Applicance Manufacturers Association (GAMA); Motor Wheel Corp. (in part).

[7] Comment of GAMA, p. 1.

[8] The fourth item in the list of "exceptions and exclusions" from coverage under Coleman's mobile home furnace warranty states "This warranty does not cover damage caused by * * * improper installation".

[9] Coleman application, p. 2.

[10] The Mobile Home Construction and Safety Standards Act, 42 U.S.C. 5401 et seq., under which HUD's regulations were promulgated, states: Whenever a Federal mobile home construction and safety standard established under this chapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any mobile home covered, any standard regarding construction or safety applicable to the same aspect of performance of such mobile home which is not identical to the Federal mobile home construction and safety standard. 42 U.S.C. 5403(d).

[11] See, for example, 24 CFR Part 280.714(a), 280.708(a), and 280.611(b)(2).

The Secretary may approve such equipment and installations which are listed or labeled by an approved testing or listing agency. *Equipment and installations not listed or labeled may be approved by the Secretary upon a determination that such equipment and installations are adequate for the protection of health, safety and the general welfare.* 24 CFR 280.1(a) [emphasis added].

[12] Comment of Swankin and Turner, p. 1.

[13] Coleman application, p. 4.

tration and consolidating it into high regional and national concentration through leading firm market extension mergers, was stopped during the last decade by FTC orders. The firms acquired in this movement were often middle-tier dairies whose size permitted them to expand internally most easily into new markets and to offer the greatest potential competition to the largest national dairies.

Following the expiration of these orders, beginning in 1972, the threat of renewed merger activity ruinous to competition in the dairy industry is again a possibility. Indeed, several large dairies not under Commission orders, and ranking just below the top four companies, have been using mergers to expand their market shares. Although the motivating force is a desire to increase sales, the reason large firms prefer making horizontal and market extension mergers rather than expanding internally is that the purchase of additional market shares through acquisition of established firms reduces the risk that competitive bidding for additional sales will cause price reductions and lower profits to all.

The same is true of geographic expansion into concentrated markets. Obtaining a significant position in such market, other than by acquisition of a major established firm, is likely to intensify price competition due to price reactions of other processors unwilling to have their market shares eroded by a new entrant. A merger would not disturb the price structure and would be preferred by both the buyer and seller of the established market position. A resumption of leading firm market extension mergers would again threaten the preservation of a strong middle-tier of independent dairies. The preservation of this tier of viable independent companies is as essential to the competitive health of the dairy industry today as it was when the Commission cited it in its finding in *Beatrice Foods Co.*, FTC Docket No. 6653.

Concentration has remained high in local and regional markets despite the deconcentrating effects of improvements in transportation equipment and the completion of interstate highways linking together previously separate local markets. These deconcentrating forces have been offset by the disappearance of hundreds of very small high-cost processors, other processors serving the rapid declining retail home delivery channel of distribution, and by the continuation of high barriers to new plant entry caused by the difficulty in obtaining distribution outlets, moderate scale requirements, and no growth in industry demand.

The only new plant entry has been by food chains vertically integrating into processing. A food chain with sufficiently large local or regional sales can overcome entry barriers because of its assured markets for the output of a plant. The continued growth of food chains and their success in achieving consumer acceptance for private label milk has caused vertical integration into processing to increse sharply since the early 1960's. Vertical integration is the source of considerable market forceclosure to nonintegrated dairies in many local markets and it may be causing smaller and new entrant food chains in some markets to face a cost disadvantage. Although the threat of food chain integration appears to have had a significant price effect, particularly through the wholesale and retail pricing of private label milk, the actual integration of food chains into processing has not been associated with further intensifications of price competition.

In view of the above facts which indicate a need for continuing to guard against concentration-increasing mergers, the Commission should make abundantly clear, in so far as possible, its future enforcement policy in the dairy industry. In doing so, the Commission wants it to be known that new developments in the dairy industry may cause it to change the enforcement policy as the competitive effects of the new developments become apparent.

Major Criteria for Assessing Future Fluid Milk Product Industry Mergers

The Commission has adopted the following enforcement criteria for initiating investigations of acquisitions which raise significant questions of law or policy under section 7 of the Clayton Act, as amended by the Cellar-Kefauver Act. These criteria are in no way to be considered applicable to acquisitions of companies under outstanding Commission orders requiring prior approval by the Commission with respect to acquisitions.

1. The Commission will focus particular attention on fluid milk company mergers and acquisitions by large dairy companies processing more than 1 billion pounds[1] of class I milk annually (or when combined with an acquired company processes that amount). Investigations will be made when the acquired entity is believed to fall within any of the following categories:

(a) Any fluid milk processing plant, distribution facility, or route (except those serving retail home delivery exclusively) within a 150-mile radius of existing plants or distribution facilities of the acquiring company, unless prior approval of the Commission has been granted.[2]

(b) Any fluid milk processing company or plant located within a radius of between 150 and 500 miles of existing plants or distribution facilities of the acquiring company, and which in any of the three years prior to acquisition processed more than 26 million pounds[1] of class I milk annually (approximately 40,000 quarts a day), unless prior Commission approval has been granted.[2]

(c) Any dairy plant located beyond a 500-mile radius of existing plants or distribution facilities of the acquiring company and which in any of the three years prior to acquisition processed more than 26 million pounds[1] of class I milk, upon determination of possible anti-competitive effects due to an evaluation of the following: (i) The size and market position(s) of the acquired company or plant; (ii) the distance the acquired company's marketing area is separate from the marketing area of the acquiring company; (iii) concentration and entry conditions into the acquired company's markets; and (iv) the overall size and the local and regional market positions held by the acquiring company.

(d) Any company that processes 300 million pounds[1] of class I milk annually.

2. Acquisitions involving companies with combined annual processing of less than 1 billion pounds of class I milk generally pose less of a threat to competition except insofar as they involve the acquisitions by major regional companies of dairy companies ranking in the top 4 in adjacent markets. Mergers which involve such leading firms may pose a threat and will be investigated as will other mergers which exceed the guidelines established by the Department of Justice.[3] The Justice Department's guidelines specify that horizontal mergers or acquisitions will likely be challenged where four-firm concentration is 75 percent or more in any market and the acquiring and acquired firms hold the following market shares:[1]

Acquiring firms (percent)	Acquired firms (percent or more)
4	4
10	2
15	1

If the four-firm concentration is less than 75 percent, the guidelines indicate challenging mergers with these market shares:

Acquiring firms (percent)	Acquired firms (percent or more)
5	5
10	4
15	3
20	2
25	1

See footnotes at end of document.

The above enforcement criteria are not to be construed as an expression of the views of the Commission or any individual Commissioner on the legality of any particular merger or acquisition. Rather, the Commission has chosen quantifiable standards to describe concisely those mergers and acquisitions in the dairy industry which merit special attention.

PREMERGER NOTIFICATION

In order to carry out the above enforcement policy in a fair and expeditious manner, the Commission will require that any company processing more than 300 million pounds[1] of class I milk annually, or when combined with an acquired company processes that amount, notify and provide special reports to the Commission at least 60 days[4] prior to making any acquisition having either of the following characteristics:

(1) A fluid milk processing plant, distribution facility, or route (except those serving retail home delivery exclusively) located within a 500 mile radius of an existing plant or distribution facility of such company.

(2) A dairy company which in any of the three years prior to acquisition made annual fluid milk sales in excess of 26 million pounds or a processing plant which processed 26 million pounds or more of class I milk.[1]

ANALYSIS OF AMENDED FEDERAL TRADE COMMISSION ENFORCEMENT POLICY WITH RESPECT TO MERGERS IN THE DAIRY INDUSTRY

The Federal Trade Commission has issued an amended statement of its "Enforcement Policy With Respect to Mergers in the Dairy Industry," published in the FEDERAL REGISTER on July 3, 1973 (Vol. 38, No. 127). The amended statement is the same as that published on July 3, 1973, in all respects but the four following:

1. The word "merged" in the first sentence of the second paragraph of the statement has been changed to "merger."

2. The elimination of the reference to $2.5 million in paragraph 1(b) under the heading "Major Criteria for Assessing Future Fluid Milk Product Industry Mergers" and in paragraph 2 under the heading "Pre-Merger Notification." In the latter instance the volume figure "26 million pounds," is substituted for "$2.5 million."

3. The elimination of paragraph 3 under the heading "Major Criteria for Assessing Future Fluid Milk Product Industry Mergers."

4. The addition of the words "either of" following the words "acquisition having" and before the words "the following characteristics:" in the first paragraph under the heading "Pre-Merger Notification," so that said paragraph now reads:

> In order to carry out the above enforcement policy in a fair and expeditious manner, the Commission will require that any company processing more than 300 million pounds[1] of class I milk annually, or when combined with an acquired company processes that amount, notify and provide special reports to the Commission at least 60 days prior[4] to making any acquisition having *either of* the following characteristics: [Added words underlined.]

The reasons for the above changes are as follows:

1. The word "merged" in the first sentence of the second paragraph of the original version of the policy statement was a typographical error.

2. The $2.5 million sales figure as used in the original version of the policy statement was intended to be the equivalent of the 26 million pound volume figure also used in these same sections. (See paragraph 1(b) under the heading "Major Criteria for Assessing Fluid Milk Product Industry Mergers.") However, during the period since July 1973 inflationary trends have altered this relationship. This has resulted in two separate standards, rather than the single standard envisioned by the original policy statement. Accordingly, the constant volume figure is retained in the amended version and the dollar figure is eliminated.

3. Paragraph 3 under the heading "Major Criteria for Assessing Future Fluid Milk Product Industry Mergers," dealt with acquisitions involving dairy products other than fluid milk. It referred to a separate Commission policy statement, the Commission's "Enforcement Policy With Respect to Product Extension Mergers in Grocery Products Manufacturing," May 15, 1968, as controlling in such instances. The latter policy statement has since been withdrawn, so this paragraph has been eliminated, accordingly.

4. Finally, the words "either of" have been added to the paragraph under the heading "Pre-Merger Notification" in order to eliminate any possible confusion as to whether the two conditions applied thereunder are in the alternative, or the cumulative, i.e., whether a special report must be filed if either one of the circumstances is present or whether both must be present. The criteria stated prior to this section in the policy statement make it clear that a special report must be filed if either one of these conditions are met. Moreover, the Resolution of the Commission Directing Special Reports on Mergers and Acquisitions in the Dairy Industry and the Commission's Order Requiring Filing of Special Reports, both of which are mailed to dairies required to report hereunder, make it quite clear that these conditions are in the alternative, rather than the cumulative. However, the language of the original statement is not explicit and could possibly be misconstrued. Therefore, the noted phrase "either of" has been added in order to clarify the meaning of the pre-merger notification requirements.

By direction of the Commission.

Dated: December 14, 1977.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-955 Filed 1-12-78; 8:45 am]

FOOTNOTES

[1] Home delivery sales and processing not done in the United States should not be included when computing sales volumes and market shares herein.

[2] Reference to prior approval in this statement should not be interpreted to mean that companies must request Commission approval prior to the consummation of any merger or acquisition. However, the Commission shall continue to provide advisory opinions, as provided by its rules of practice, regarding the legality of particular mergers, and invites those contemplating mergers to avail themselves of this program in any situation where there is uncertainty as to the legality of a prospective merger.

[3] U.S. Department of Justice, Merger Guidelines, May 30, 1968 (mimeograph).

[4] If the time schedule of the acquisition or merger does not permit notification 60 days prior to consummation, the notification and special report should be submitted as promptly as possible.

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on January 6, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FTC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must

be received on or before January 31, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart, of the Regulatory Reports Review Staff, 202-275-3532.

FEDERAL TRADE COMMISSION

The FTC requests clearance of a new, voluntary, single-time questionnaire which will be sent to approximately 100 life insurance companies, selected on the basis of size. The questionnaire will request information about the costs of certain types of life insurace policies and related information such as sales and policy benefits. Information will also be requested about companies' agency systems, such as the number of agents employed, samples of agents' contracts, and how agents are trained to guide consumers in deciding the type and amount of life insurance they should buy. The FTC estimates that reporting time will average 80 hours per response.

NORMAN F. HEYL,
Regulatory Reports,
Review Officer.

[FR Doc. 78-957 Filed 1-12-78; 8:45 am]

[1610-01]

REGULATORY REPORTS REVIEW

Suspension of Review of Proposed Report

A request for clearance of a proposed report intended for use and collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 22, 1977. See 44 U.S.C. 3512(c)(d). The purpose of publishing this notice is to inform the public of the recent action taken by GAO and the consequences it has on a GAO clearance.

INTERSTATE COMMERCE COMMISSION

On December 2, 1977, GAO published a notice in the FEDERAL REGISTER (42 FR 61305) that ICC requested clearance of a new annual report supplement—Corporate Disclosure, in accordance with the order of the ICC in docket No. 36141, Corporate Disclosure regulations decided May 13, 1977. In that notice, GAO noted that although the reporting deadline for the report is March 31, 1978, the ICC expects the reporting companies to apply the new Corporate Disclosure regulations to the entire year ending December 31, 1977. The GAO further noted that this reporting deadline and the effective date for the reporting requirements in these new regulations are contingent upon ICC's compliance with 44 U.S.C. 3512 which precludes the collection of information from ten or more persons until the Comptroller General has had the opportunity to advise that the information is not presently available from other Federal sources and that the proposed reporting requirements are consistent with the provisions of section 3512.

This notice is to advise the public that on January 5, 1978, GAO suspended its review of the Corporate Disclosure reporting requirements because ICC had not fully complied with the GAO rules and regulations and, therefore, GAO has been unable to make a clearance decision. The action was taken pursuant to GAO's rules and regulations, 4 CFR 10.9(a) and the 45-day clearance review period will no longer continue to run. As a consequence, the reporting requirements of the Corporate Disclosure regulations do not currently have a valid GAO clearance.

NORMAN F. HEYL,
Regulatory Reports
Review Officer.

[FR Doc. 78-958 Filed 1-12-78; 8:45 am]

[1505-01]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 75N-0232]

FLAVORING SUBSTANCES

Additional Flavoring Substances in Gras Review; Extension of Effective Date for Compliance with Bulk Flavor Ingredient Declaration Requirements

Correction

In FR Doc. 77-30172, appearing at page 55643 in the issue of Tuesday, October 18, 1977, between the words "ingredients" and "listed" in the "Supplementary Information" paragraph insert a period and the words, "The notice also announced that these reviews would include all flavoring ingredients".

[4110-03]

[Docket No. 77P-0338]

BECTON-DICKINSON AND CO.

Panel Recommendation on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency is issuing for public comment the recommendation of the Clinical Toxicology Device Classification Panel that the AMISAK™ Amikacin Serum Assay Kit be reclassified from class III (Premarket Approval) to class II (Performance Standards). This recommendation was made after review of a reclassification petition filed by Becton-Dickinson and Co., Washington, D.C., under section 513(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)). After reviewing the panel's recommendation and the public comments received, the agency will approve or deny the reclassification by order in the form of a letter to the petitioner. If the device is reclassified, the reclassification will be announced in the FEDERAL REGISTER.

DATES: Comments by February 13, 1978.

ADDRESS: Comments (preferably four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

S. K. Vadlamudi, Food and Drug Administration, Bureau of Medical Devices (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

SUPPLEMENTARY INFORMATION: On February 14, 1977, Becton-Dickinson and Co., Washington, D.C., submitted to FDA a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)), stating that it intended to market a device the manufacturer calls the AMISAK™ Amikacin Serum Assay Kit. After reviewing the information in the premarket notification, the Commissioner determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976, nor is the device substantially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Upon this determination, the device is automatically classified in class III under section 513(f)(1) of the act.

Under section 515(a)(2) of the act, before a device that is in class III under section 513(f)(1) of the act can be marketed, it must either be reclassified under section 513(f)(2) of the act or have an approval of an application for premarket approval under section 515 of the act, unless there is in effect for the device an investigational device exemption under section 520(g) of the act (21 U.S.C. 360j(g)).

On August 16, 1977, Becton-Dickinson and Co. submitted a reclassification petition for the device under section 513(f)(2) of the act. On October 6, 1977, the Clinical Toxicology Device Classification Panel (panel) reviewed the petition and recommended that the device be reclassified into class II.

To determine the proper classification of the device, the panel considered the criteria in section 513(a)(1) of the act.

For the purposes of classification, the panel assigned to the device the name "AMIKACIN Serum Assay". The device is used to detect the levels of amikacin in the serum so that a physician may, if necessary, adjust the dosage prescribed for a patient. Amikacin is an antibiotic used to treat infection; an excess of amikacin can result in kidney damage or loss of hearing. The panel recommended that all devices meeting this description be classified into class II.

SUMMARY OF THE REASONS FOR THE RECOMMENDATION

The panel made the following determinations in support of its recommendation:

1. The device is not an implant, nor is it life-sustaining or life-supporting.
2. The device is not potentially hazardous to life or good health when properly used.
3. The device is used to detect the levels of amikacin in human serum. The device is an in vitro diagnostic product. Step-by-step protocol for the analyst has been included. Performance data on accuracy, quantitation, and interferences have been included. The device has performance characteristics that should be maintained.

SUMMARY OF THE DATA ON WHICH THE RECOMMENDATION IS BASED

To determine the safety and effectiveness of the device, the kit was used in a clinical study on a series of 27 samples of human sera. These same sera samples were run with a currently accepted methodology of radioimmunoassy (RIA). The panel believes that the data show there is a good agreement between the two methods. The coefficient of correlation was 0.91. The data were obtained from a field clinical study and also from in-house studies. The panel believes that these studies adequately support the precision claim of the product.

RISKS TO HEALTH

The panel noted that the failure of the device to produce accurate results could lead to improper treatment or toxicity. The panel also noted that the device could fail because of cross-reactivity with other aminoglycosides. Therefore, the panel recommended that a standard be developed to address these risks and that the development of this standard be a high priority.

The petition and a transcript of the panel meeting are on file in the office of the Hearing Clerk, address noted above.

Dated: January 4, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-624 Filed 1-12-78; 8:45 am]

[4110-03]

[Docket No. 77N-0282]

LICENSING OF LIMULUS AMEBOCYTE LYSATE

Use as an Alternative for Rabbit Pyrogen Test

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice amends the effective date of a previous FEDERAL REGISTER notice on the licensing of Limulus Amebocyte Lysate (LAL) as an alternative to the rabbit test for detecting pyrogens insofar as that notice applies to medical devices. This notice does not affect the application of the notice as it applies to biological products.

DATE: Data required by this notice must be submitted and approved by July 12, 1978.

ADDRESS: Data required by this notice must be submitted to the Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, Md. 20910.

FOR FURTHER INFORMATION CONTACT:

Carl W. Bruch, Bureau of Medical Devices (HFK-400), 8757 Georgia Avenue, Silver Spring, Md. 20910, 301-427-7230.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of November 4, 1977 (42 FR 57749), the Commissioner of Food and Drugs issued a notice stating that manufacturers who use LAL to test for pyrogens in medical devices can do so only upon the written approval of the Director, Bureau of Medical Devices (the Bureau). That notice further stated that approval would be granted to individual manufacturers only after they had submitted data to the Bureau to establish that the LAL test is at least equivalent to the rabbit test. Failure to obtain approval would result in the device being considered misbranded and/or adulterated as to pyrogenicity. The November 4, 1977, FEDERAL REGISTER notice was effective upon publication.

The Commissioner has learned that several manufacturers of medical devices were using the LAL test as the sole test for pyrogenicity prior to publication of the November 4 notice. Such use was not prohibited. Therefore, to require these manufacturers to discontinue using LAL as the test for pyrogenicity pending approval by FDA would be an undue burden on these manufacturers and would possibly cause disruption in the supply of some medical devices. Therefore, the Commissioner has decided that manufacturers who were using the test prior to November 4, 1977 may continue to use the LAL test for a period not to exceed July 12, 1978, during which time they must compile and submit the required equivalency data to the Bureau for approval.

If such data are not recieved and approved by that date, i.e., July 12, 1978, the devices will be considered misbranded and/or adulterated in accordance with the November 4, 1977, notice. Manufacturers of medical devices who are not currently using the LAL test as the sole test for pyrogenicity, but who plan to do so in the future, must submit equivalency data and obtain written approval from the Director of the Bureau before using the test as the sole test for pyrogenicity for medical devices.

Dated: January 5, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-623 Filed 1-12-78; 8:45 am]

[4110-03]

[Docket No. 77P-0340]

SYVA

Panel Recommendation on Petition for Reclassification

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency is issuing for public comment the recommendation of the Clinical Toxicology Device Classification Panel that the EMIT™ Theophylline Assay be reclassified from class III (Premarket Approval) to class II (Performance Standards). This recommendation was made after review of a reclassification petition filed by Syva, Palo Alto, Calif. under section 513(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)). After reviewing the panel recommendation and the public comments received, the agency will approve or deny the reclassification by order in the form of a letter to the petitioner. If the device is reclassified, the reclassification will be announced in the FEDERAL REGISTER.

DATE: Comments by February 13, 1978.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

S. K. Vadlamudi, Bureau of Medical Devices (HFK-440), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, Md. 20910, 301-427-7234.

SUPPLEMENTARY INFORMATION: On April 19, 1977, Syva, Palo Alto,

Calif. submitted to FDA a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)), stating that it intended to market a device the manufacturer calls the EMIT™ Theophylline Assay Kit. After reviewing the information in the premarket notification, the Commissioner of Food and Drugs determined that the device is not substantially equivalent to any device that was in commercial distribution before May 28, 1976; nor is the device substantially equivalent to a device that has been placed in commercial distribution since that date and subsequently reclassified. Upon this determination, the device is automatically classified in class III under section 513(f)(1) of the act.

Under section 515(a)(2) of the act (21 U.S.C. 360e(a)(2)), before a device that is in class III under section 513(f)(1) of the act can be marketed, it must either be reclassified under section 513(f)(2) of the act or have an approval of an application for premarket approval under section 515 of the act, unless there is in effect for the device an investigational device exemption under section 520 (g) of the act (21 U.S.C. 360j(g)).

On August 4, 1977, Syva submitted a reclassification petition for the device under section 513(f)(2) of the act. On October 6, 1977, the Clinical Toxicology Device Classification Panel (panel) reviewed the petition and recommended that the device be reclassified into class II.

To determine the proper classification of the device, the panel considered the criteria in section 513(a)(1) of the act.

For the purposes of classification, the panel assigned to the device the name "Enzyme Immunoassay, Theophylline" and described the device as a kit for enzyme immunoassay of serum or of plasma. The device is used to quantitate the levels of theophylline in human serum or plasma. Theophylline is a drug used for stimulation of the muscles in the cardiovascular, respiratory, and central nervous systems; it is used often for treatment of asthma in children. An excess of theophylline may result in convulsions due to respiratory failure. If use of the device indicates an excess of theophylline, the physician may adjust the dosage prescribed for a patient. The panel recommended that all devices meeting this description, and those substantially equivalent, be classified in class II.

Summary of the Reasons for the Recommendation

The panel made the following determinations in support of its recommendation:

1. The device is not an implant, nor is it life-sustaining or life-supporting.

2. The device is not potentially hazardous to life or good health when properly used.

3. The device is an in vitro diagnostic product used to quantitate the levels of theophylline in human serum or plasma by enzyme immunoassay. A step-by-step protocol for use by the analyst has been included. The type of instrument to be used with the device and performance data on accuracy, precision, and quantitation of interfering substances have been included. The device has performance characteristics that should be maintained at a satisfactory level.

Summary of the Data on Which the Recommendation is Based

To determine the safety and effectiveness of the device, the kit was used in a clinical study on a series of 63 samples of human sera. These sampes were also run using a currently accepted method of high-pressure liquid chromatography (HPLC). The data showed similar results between the two methods (EMIT mean value 12.5 milligrams per milliliter (mg/ml); HPLC mean value 11.5 mg/ml). The data were obtained from a field clinical study and also from in-house studies. These studies adequately supported the precision claim of the product (field study 10.0 mg/ml; in-house study 9.9 mg/ml). The sample-to-sample variation was found to be within an acceptable range: the coefficient of variation ranged from 5 to 9.6 percent. The cross-reactivity with 20 other related xanthine derivatives was adequately quantitated: only 1-methylxanthine (30 mg/ml) and caffeine (100 mg/ml) cross-react with EMIT theophylline assay to give 30 percent error in a calibrator containing 10.0 mg/ml of theophylline.

Risks to Health

Inaccurate analysis from use of the device may result in ineffective treatment or production of toxicities. The panel recommended that the device be classified in class II, that a standard directed toward the specificity and sensitivity of the device be developed, and that the development of this standard be a high priority.

The petition and a transcript of the panel meeting are on file in the office of the Hearing Clerk, address noted above.

Dated: January 4, 1978.

William F. Randolph,
Acting Associate Commissioner for Compliance.

[FR Doc. 77-623 Filed 1-2-77; 8:45 am]

[1505-01]

[Docket No. 77F-0284]

BETZ LABORATORIES, INC.

Notice of Filing of Food Additive Petition

Correction

In FR Doc. 77-29307 appearing on page 54617 in the issue for Friday, October 7, 1977, make the following changes:

(1) In the eighth line of the "SUPPLEMENTARY INFORMATION" section, "Components and paper and paperboard" should read "Components of paper and paperboard".

(2) In the last paragraph, in the sixth line, between the words "impact" and "analysis", insert ". Copies of the environmental impact".

[4110-03]

[Docket No. 78N-0005]

CHLOROFLUOROCARBONS

Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Food and Drug Administration (FDA), and Consumer Product Safety Commission (CPSC) will hold a second public meeting on the nonpropellant uses of fully halogenated chlorofluoroalkanes (chlorofluorocarbons—CFC's). The information obtained at the meeting will aid the agencies in making regulatory decisions on nonpropellant CFC emissions.

DATE: The meeting will be held February 21 through 24, 1978, at 10 a.m.

ADDRESS: The meeting will be held in the Humphrey Auditorium, Humphrey Building (formerly South Portal Building), 200 Independence Avenue SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Larry E. Longanecker, Office of Toxic Substances (WH-557), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-1188.

SUPPLEMENTARY INFORMATION: If you wish to make a presentation at the meeting please contact by phone before February 7, 1978: Joni T. Repasch, Office of Toxic Substances (WH-557), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, phone 202-755-1188.

This meeting is the second in a continuing effort by EPA, FDA, and CPSC to gather information to determine whether there is a need to regu-

late nonpropellant uses of chlorofluorocarbons. FDA views this meeting as an open public meeting held pursuant to 21 CFR 10.65.

The first public meeting on nonpropellant uses of fully halogenated chlorofluoroalkanes was held on October 25-27, 1977, at the Washington, D.C. headquarters of the Environmental Protection Agency. Participants submitted useful information on the use of these substances in refrigeration, air-conditioning, foam-blowing, solvent, and fire-extinguishing applications.

FDA is particularly interested in obtaining information on the nonpropellant uses of CFC's in FDA-regulated products, e.g., as a liquid food freezant, as a food additive in the production of styrofoam for use in food packaging and containers, as a whipped-topping stabilizer, as a local anesthetic, and as a diluent for ethylene oxide used to sterilize medical devices. These and other uses of CFC's not previously addressed should be stressed at this time.

Recovery, recycle, and/or reuse of CFC's are important factors in the agencies' consideration of means to control emissions. Information on the technical feasibility, cost, and present extent of such activities will be of special significance in making regulatory decisions. Participants are also encouraged to submit data on the use of alternatives and emission controls, including research in these areas.

FDA encourages written submissions on nonpropellant uses of chlorofluorocarbons in FDA-regulated products before February 21, 1978, by those interested persons not able to attend the public meeting. Information can be sent to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857 (preferably in quadruplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this notice).

Similar notices about this meeting by EPA and CPSC appear elsewhere in this issue of the FEDERAL REGISTER.

Dated: January 9, 1978.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 78-921 Files 1-12-78; 8:45 am]

[4110-03]

[Docket No. 76C-0345]

GLENN M. W. SCOTT

Withdrawal of Petition for Color Additive

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (CAP 6CP0123) requesting repeal of the listing of FD&C Blue No. 1, requesting, alternatively, submission to an advisory committee of that petition and requesting submission to an advisory committee of the petitions for listing FD&C Green No. 3 and FD&C Red. No. 4.

FOR FURTHER INFORMATION CONTACT:

Gerad L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d), 74 Stat. 402-403 (21 U.S.C. 376(d)), the following notices is issued:

In accordance with paragraph (c)(2) of § 71.6 Extension of time for studying petitions; substantive amendments; withdrawal of petitions without prejudice (21 CFR 71.6(c)(2)), Glenn M. Scott, 6211 Orion Road, Louisville, Ky. 40222, has withdrawn his petition (CAP 6CP0123), notice of which was published in the FEDERAL REGISTER of August 10, 1976 (41 FR 33573), requesting that:

1. The listing of the color additive FD&C Blue No. 1 (21 CFR 74.101 and 74.1101) be repealed.

2. The following petitions be referred to an advisory committee under section 706(b)(5)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376(b)(5)(C)(i)): (i) The petition to repeal the listing of FD&C Blue No. 1; (ii) the petition to list FD&C Green No. 3, notice of filing of which was published in the FEDERAL REGISTER of November 20, 1968 (33 FR 17205); and (iii) the petition to list FD&C Red No. 4, notice of filing of which was published in the FEDERAL REGISTER of November 20, 1968, (33 FR 17205).

Dated: January 5, 1978.

HOWARD R. ROBERTS,
Acting Director Bureau of Foods.

[FR Doc. 78-908 Filed 1-12-78; 8:45 am]

[4110-03]

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested per-

sons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-643, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, and place	Type of meeting, and contact person.
1. Contraceptive and Other Vaginal Drug Products Panel.	February 3 and 4, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (February 3), Holiday Inn, Chevy Chase, Md. (February 4).	Open public hearing, Feb. 3, 9 to 10 a.m.; open committee discussion, Feb. 3, 10 to 4:30 p.m., Feb. 4, 9 to 4:30 p.m.; Armond Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before January 31, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
2. Ophthalmic Panel.....	Feb. 3 and 4, 9 a.m., Conference Room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (February 3), Holiday Inn, Chevy Chase, Md. (February 4).	Open public hearing Feb. 3, 9 to 10 a.m.; open committee discussion, Feb. 3, 10 to 4:30 p.m., Feb. 4, 9 to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-553-6057.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before January 31, 1978, and submit a brief statement of the general nature of the data, information or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
3. Dental Device Classification Panel.	February 9 and 10, 9 a.m., Room 1409, 200 C St. SW., Washington, D.C..	Open public hearing Feb. 9, 9 to 10 a.m.; open committee discussion, Feb. 9, 10 to 4 p.m., Feb. 10, 9 to 4 p.m.; D. Gregory Singleton, D.D.S. (HFK-460), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7536.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present to the executive secretary information pertinent to the classification of polytetrafluoroethylene-vitreous carbon material. Submission of data on tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by January 24, 1978, and submit a brief statement of the general nature of the evidence or

arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The panel will review devices classified in the general controls category and recommend exemptions for these devices from registration, records and reports, or good manufacturing practices.

Committee name	Date, time, and place	Type of meeting and contact person
4. National Advisory Food and Drug Committee.	Feb. 9 and 10, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 9, 9 to 10 a.m.; open committee discussion, Feb. 10, 10 to 4 p.m., Feb. 11, 9 to 1 p.m.; William V. Whitehorn, M.D. (HFG-1), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1547.

General function of the committee. Reviews and evaluates agency programs and advises on policy matters of national significance as they relate to the statutory mission of the Food and Drug Administration in the areas of foods, drugs, cosmetics, medical devices, biological products, and electronic products. Reviews and makes recommendations on applications for grants-in-aid for research projects relevant to the mission of the Food and Drug Administration as required by law.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. State of the agency; food labeling and other food issues; review of research grant applications; concerns of the members.

Committee name	Date, time, and place	Type of meeting and contact person
5. Obstetrical and Gynecological Device Classification Panel.	Feb. 10, 9 a.m., Room 6821, 200 C St. SW., Washington, D.C..	Open public hearing Feb. 10, 9 to 10 a.m.; open committee discussion, Feb. 10, 10 to 4 p.m.; Lillian Yin, Ph.D. (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7555.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present to the executive secretary information pertinent to laser uses and effects in gynecology. Submission of data on tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by February 3, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. Robert Carter, M.D., will discuss "Laser in Gynecology;" Duane Townsend will discuss "Carbon Dioxide Laser, Continuous Wave, in Premalignant Gynecological Diseases;" Adolph Stafl, M.D., will discuss "Advantages and Limitations of Laser Therapy for Cervical and Vaginal Intra-epithelial Neoplasia;" and Melvin Dorin, Product Manager of Coherent Medical Division, will discuss "Recommendations of Classifying Lasers in Gynecological Use Into Class II."

Committee name	Date, time, and place	Type of meeting and contact person
6. Antimicrobial Panel.....	Feb. 10 and 11 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (February 10), Holiday Inn, Bethesda, Md. (Feb. 11).	Open public hearing Feb. 10, 9 to 10 a.m.; open committee discussion, Feb. 10, 10 to 4:30 p.m., Feb. 11, 9 to 4:30 p.m.; Armond Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before February 7, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the

names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, and place	Type of meeting and contact person
7. Neurologic Drugs Advisory Committee.	Feb. 13 and 14, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing Feb. 13, 9 to 10 a.m.; open committee discussion, Feb. 13, 10 to 4:30 p.m., Feb. 14, 9 to 4:30 p.m.; Charles Prettyman (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3810.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in neurologic disease.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of report of OTC Internal Analgesic Panel; caffeine in analgesic mixture; phenacetin in analgesic mixtures; general considerations for analgesic combinations; combination drug policy.

Committee name	Date, time, and place	Type of meeting and contact person
8. Topical Analgesic Panel.....	Feb. 21, 22, and 23, 9 a.m., Conference Room K, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md..	Open public hearing Feb. 21, 9 to 10 a.m.; open committee discussion, Feb. 21, 10 to 4:30 p.m.; Feb. 22, 9 to 4:30 p.m.; Feb. 23, 9 to 4:30 p.m.; Lee Geismar (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6057.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before February 16, 1978, and submit a brief statement of the general nature of the date, information, or views they wish to present, the names and addressed of proposed participatns, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing; (2) an open committee discussion; (3) a closed presentation of data; and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: January 9, 1978.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 78-915, Filed 1-12-78; 8:45 am]

[4110-03]

ADVISORY COMMITTEES

Request for Nominations of Statisticians and Epidemiologists as Members

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document invites nominations of statisticians and epidemiologists as voting members to serve on certain public advisory committees of the Bureau of Drugs. Nominations will be accepted for vacancies that currently exist and vacancies that will or may occur on the committees during the next 12 months.

DATES: Since scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations.

ADDRESS: Nominations should be sent to Bertram D. Litt, Bureau of Drugs (HFD-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Betram D. Litt, Bureau of Drugs (HFD-230), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4594.

SUPPLEMENTARY INFORMATION: Nominations of statisticians and epidemiologists are requested for voting members of committees responsible for the following drug product groups: Cardiovascular and renal, gastrointestinal, arthritis, oncologic, endocrinologic and metabolic, radiopharmaceutical, pulmonary-allergy, peripheral and central nervous system, psychopharmacologic, fertility and maternal health, anti-infective and topical, anesthetic and life support, drug abuse.

The function of the committees is to review and evaluate available data concerning the safety and effectiveness or abuse potential of marketed and investigational prescription drugs for use in the area of medical specialty indicated by the title of the committee, and to make appropriate recommendations to the Commissioner of Food and Drugs.

Persons nominated for membership shall have adequately diversified experience appropriate to the work of the committee in statistical and/or epidemiological applications related to infectious disease, internal medicine, microbiology, pharmacology, psychiatry, dentistry, neurology, obstetrics and gynecology, surgery, ophthalmology, anesthesiology, nuclear medicine, or other appropriate areas of expertise. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in statistics or epidemiology teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Any interested persons may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the drug group for which the nominee is recommended. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by the Food and Drug Administration to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts, in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463; 86 Stat. 770-776) and 21 CFR Part 14, relating to advisory committees.

Dated: January 6, 1978.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 78-918 Filed 1-12-78; 8:45 am]

[4110-03]

HEALTH CARE SERVICES

Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces a forthcoming regional ad hoc professional meeting concerning health care services. The meeting will be chaired by the Regional Food and Drug Director, Region III, Food and Drug Administration (FDA).

DATE: The meeting will be at 8:30 a.m., Wednesday, February 1, 1978.

ADDRESS: The meeting will be held at the Federal Building, 600 Arch Street, Philadelphia, Pa. 19106.

FOR FURTHER INFORMATION CONTACT:

Alan S. Kaplan, Office of Professional Programs (HFG-15), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-5470.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is: (1) To exchange information among health professionals and the regional and district staff offices concerning FDA procedures for eliciting health professional input into the agency's decision-making process, (2) to identify common problems within the sphere of FDA responsibility having an effect on the practitioner and/or the delivery of health services, (3) to seek solutions to those problems, and (4) to conduct other activities of mutual interest and benefit.

Dated: January 9, 1978.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 78-919 Filed 1-12-78 8:45 am]

[4110-03]

OBSTETRICS AND GYNECOLOGY ADVISORY COMMITTEE

Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Obstetrics and Gynecology Advisory Committee meeting scheduled for January 31, 1978, in Conference Room F, Parklawn Building, 5600 Fishers Lane, Rockville, Md. has been expanded to a 2-day meeting (January 30 and 31). On January 30, the agenda will consist of the following subjects: (1) High doses of estrogen and breast cancer, (2) the effectiveness of prescribing diethylstilbestrol for postcoital contraception, and (3) an evaluation of prostaglandins for midtrimester abortions.

FOR FURTHER INFORMATION CONTACT:

A. T. Gregoire, Bureau of Drugs (HFD-130), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301—443-3510.

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 January 3, 1978 (43 FR 38), 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 Obstetrics and Gynecology Advisory Committee scheduled for January 31, 1978, in Conference Room F, Parklawn Building, 5600 Fishers Lane, Rockville, Md, will meet on both January 30 and 31. The open public hearing will begin at 9 a.m. on January 30.

Dated: January 9, 1978.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc. 78-916 Filed 1-12-78; 8:45 am]

[4110-01]

[IRLG-1:003; FRL-842-2]

INTERAGENCY REGULATORY LIAISON GROUP

Testing Standards and Guidelines Work Group; Request for Written Materials

CROSS REFERENCE: For a document announcing agreement of the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, Health, Education, and Welfare Department and the Occupational Safety and Health Administration, Labor Department to work together as the Interagency Regulatory Liaison Group to aid in the development of preliminary drafts of testing guidelines, see FR Doc. 78-901 appearing under Environmental Protection Agency in the notices section of this issue. Refer to the table of contents at the front of this issue under "Environmental Protection Agency" to find the correct page number.

[1505-01]

[Docket No. 76N-0176]

NUCLEAR MEDICINE EVALUATION OF DISEASES OF THE THYROID GLAND

Intent to Propose Voluntary Recommendations

Correction

NOTE.—This document originally appeared mistakenly under the Nuclear Regulatory Commission in the FEDERAL REGISTER for Wednesday, January 11, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See the inside cover of this issue for information about agencies publishing on assigned days of the week.)

In FR Doc. 77-30462, appearing at page 55649 in the issue of Tuesday,

October 18, 1977, the Docket No. should appear as set forth in the headings above.

[4110-35]

Health Care Financing Administration

PHARMACEUTICAL REIMBURSEMENT ADVISORY COMMITTEE

Request for Nomination of Members

The Department of Health, Education, and Welfare requests nominations for membership on the Pharmaceutical Reimbursement Advisory Committee, an advisory committee established under the Department's Maximum Allowable Cost (MAC) program (40 FR 32284). The Committee consists of 15 members not in the full time employ of the United States Government. Members are selected to provide as full a range as possible of knowledge, experience, and judgment in the areas of pharmacy, pharmacology, medicine, pharmaceutical marketing, public health, and consumer affairs.

Members are selected for terms of two years. The terms of seven members will expire on May 31, 1978.

Any interested person may, therefore, nominate one or more qualified persons for membership to fill the seven new positions for two year terms, such terms to run from June 1, 1978 through May 31, 1980. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude committee membership. A complete curriculum yitae on the nominee must be included.

Nominations shall be submitted to Mr. Peter J. Rodler, Acting Executive Secretary, Pharmaceutical Reimbursement Advisory Committee, Room 3614, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. 20201 no later than February 15, 1978.

Dated: January 10, 1978.

PETER J. RODLER,
Acting Executive Secretary, Pharmaceutical Reimbursement Advisory Committee.

[FR Doc. 78-1026 Filed 1-12-78; 8:45 am]

[4110-84]

Health Services Administration

PHS HOSPITALS AD HOC. ADVISORY COMMITTEE

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 January 1978:

Name: PHS Hospitals Ad Hoc Advisory Committee.

Date and time: January 27-28, 1978, 9 a.m.

Place: Room 617 G1, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

Purpose: The Committee will conduct an in-depth examination of each PHS hospital in relation to its principal beneficiaries and the community in which it is located; its health needs and delivery system; and the cost of operation and achievements. It will assist in developing options and recommendations concerning the present and future role of the hospitals in the continuation and improvement of health care delivery.

Agenda: This is the initial meeting of the PHS Hospitals Ad Hoc Advisory Committee. The agenda includes a review of questions to be addressed by the study and discussion of materials describing the current status of the Public Health Service hospitals.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Mr. Jordon Popkin, Office of the Administrator, Health Services Administration, Parklawn Building, Room 14-15, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-2245.

Agenda items are subject to change as priorities dictate.

Dated: January 11, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

NOTE.—Earlier notice of this meeting was not feasible due to the recent establishment of this Committee.

[FR Doc. 78-1054 Filed 1-12-78; 8:45 am]

[4110-08]

National Institutes of Health

CLINICAL CANCER EDUCATION COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Cancer Education Committee, National Cancer Institute, February 22-23, 1978, Building 1, Wilson Hall Conference Room, National Institutes of Health. The meeting will be open to the public on February 22, 1978, from 8:30 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 22, 1978, from 9:30 a.m. to 5 p.m., and on February 23, 1978, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications.

Mrs. Marjorie F. Early, committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will provide summaries of the meeting and roster of committee members, upon request.

Dr. Margaret H. Edwards, Executive Secretary, National Cancer Institute, Westwood Building, Room 10A18, National Institutes of Health, Bethesda, Md. 20014, 301-496-7761, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.398, National Institutes of Health.)

Dated: January 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-791 Filed 1-12-78; 8:45 am]

[4110-08]

DIVISION OF RESEARCH GRANTS STUDY SECTIONS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for February and March 1978 and the individuals from whom summaries and meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 United States Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Richard Turlington, Chief, Grants Inquiries Office of the Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Md. 20014, telephone area code 301-496-7441, will furnish summaries of the meetings and rosters and committee members. Substantive program information may be obtained from each Executive Secretary whose name, room number, and telephone number are listed below each study section. Anyone planning to attend a meeting should contact the Executive Secretary to confirm the exact meeting time.

Study section	February-March 1978 meetings	Time	Location
Allergy and Immunology: Dr. Morton Reitman, Room 320, telephone 301-496-7380.	Mar. 2-4	8:45 a.m.	Holiday Inn, Bethesda, Md.
Applied Physiology and Orthopedics: Mrs. Ileen E. Stewart, Room 318, telephone 301-496-7581.	Mar. 16-18	8:30 a.m.	Room 9, Bldg. 31, Bethesda, Md.
Bacteriology and Mycology: Dr. Milton Gordon, Room 234, telephone 301-496-7340.	Feb. 23-25	8:30 a.m.	Holiday Inn, Bethesda, Md.
Bioanalytical and Metallobiochemistry: Mr. Richard P. Bratzel, Room 310, telephone 301-496-7733.	Mar. 2-4	8 a.m.	Radisson Denver Hotel, Denver, Colo.
Biochemistry: Dr. Adolphus P. Toliver, Room 350, telephone 301-496-7516.	Mar. 1-4	9 a.m.	Embassy Row Hotel, Washington, D.C.
Biophysics and Biophysical Chemistry A: Dr. Irvin Fuhr, Room 236, telephone 301-496-7060.	Mar. 3-5	9 a.m.	Mayflower Hotel, Washington, D.C.
Biophysics and Biophysical Chemistry B: Dr. John B. Wolff, Room 236, telephone 301-496-7070.	Mar. 9-11	8:30 a.m.	Room 7, Building 31, Bethesda, Md.
Cardiovascular and Pulmonary: Dr. Vincent J. Cairoli, Room 339, telephone 301-496-7901.	Feb. 28 to Mar. 4	8 a.m.	DuPont Plaza Hotel.
Cardiovascular and Renal: Dr. Rosemary S. Morris, Room 339, telephone 301-496-7901.	Feb. 22-25	9 a.m.	Holiday Inn.
Cell Biology: Dr. Gerald Greenhouse, Room 2A-04, telephone 301-496-7020.	Mar. 1-4	8:30 a.m.	Room 9, Building 31, Bethesda, Md.
Communicative Sciences: Mr. Frederick J. Gutter, Room 321, telephone 301-496-7550.	Feb. 22-25	8:30 a.m.	Room 9, Building 31, Bethesda, Md.
Developmental Behavioral Sciences: Dr. Bertie H. R. Woolf, Room 232, telephone 301-496-7471.	Mar. 15-18	8:30 a.m.	Ramada Inn, Rosslyn, Va.
Endocrinology: Mr. Morris M. Graff, Room 333, telephone 301-496-7346.	Feb. 27 to Mar. 2	7 p.m.	Sheraton Inn, Silver Spring, Md.
Epidemiology and Disease Control: Mr. Glenn G. Lamson, Jr., Room 205, telephone 301-496-7246.	Feb. 22-24	8:30 a.m.	Room 6, Building 31, Bethesda, Md.
Experimental Psychology: Dr. A. Keith Murray, Room 220, telephone 301-496-7058.	Mar. 15-18	9 a.m.	Shoreham Americana, Washington, D.C.
Experimental Therapeutics: Dr. Anne R. Bourke, Room 319, telephone 301-496-7839.	Mar. 1-4	1 p.m.	Kenwood Country Club, Bethesda, Md.
Experimental Virology: Dr. Eugene Zebovitz, Room 206, telephone 301-496-7474.	Feb. 26 to Mar. 1	2 p.m.	Room 8, Building 31, Bethesda, Md.
General Medicine A: Dr. Harold M. Davidson, Room 354, telephone 301-496-7797.	Mar. 6-8	8:30 a.m.	Room 10, Building 31, Bethesda, Md.
General Medicine B: Dr. William F. Davis, Jr., Room 322, telephone 301-496-7730.	Mar. 1-4	9 a.m.	Embassy Row Hotel, Washington, D.C.
Genetics: Dr. David J. Remondini, Room 349, telephone 301-496-7271.	Mar. 2-4	9 a.m.	Room 6, Building 31, Bethesda, Md.
Hematology: Dr. Clark K. Lum, Room 355, telephone 301-496-7508.	Feb. 22-25	9 a.m.	Holiday Inn, Chevy Chase, Md.
Human Embryology and Development: Dr. Mischa E. Friedman, Room 203, telephone 301-496-7023.	Mar. 8-11	8:30 a.m.	Room 9, Building 31, Bethesda, Md.
Immunobiology: Dr. James H. Turner, Room 233, telephone 301-496-7780.	Mar. 1-3	8:30 a.m.	Embassy Row Hotel, Washington, D.C.
Immunological Sciences: Dr. Lottie Kornfeld, Room 233, telephone 301-496-7179.	Mar. 6-8	8:30 a.m.	Sheraton Inn, Silver Springs, Md.
Medicinal Chemistry A: Dr. Asher A. Hyatt, Room 222, telephone 301-496-7286.	Feb. 23-26	9 a.m.	Holiday Inn, Bethesda, Md.
Metabolism: Dr. Robert M. Leonard, Room 218, telephone 301-496-7091.	Mar. 1-4	8:30 a.m.	Room 10, Building 31, Bethesda, Md.
Microbial Chemistry: Dr. Gustave Silver, Room 357, telephone 301-496-7130.	Feb. 21-24	7:30 p.m.	Linden Hill Hotel, Bethesda, Md.
Molecular Biology: Dr. Donald T. Disque, Room 328, telephone 301-496-7830.	Mar. 2-4	8:30 a.m.	Holiday Inn, Bethesda, Md.
Molecular Cytology: Dr. Wendell H. Kyle, Room 222, telephone 301-496-7149.	Mar. 8-10	8:30 a.m.	Room 4, Building 31, Bethesda, Md.
Neurological Sciences: Dr. Edwin M. Bartos, Room 207, telephone 301-496-7000.	Mar. 9-12	8:30 a.m.	Holiday Inn, Bethesda, Md.

Study section	February-March 1978 meetings	Time	Location
Neurology A: Dr. William E. Morris, Room 326, telephone 301-496-7095.	Feb. 22-25	9 a.m.	Room 4, Building 31, Bethesda, Md.
Neurology B: Dr. Willard L. McFarland, Room 2A-10, telephone 301-496-7422.	Feb. 15-18	8:30 a.m.	Shoreham Americana, Washington, D.C.
Nutrition: Dr. John R. Schubert, Room 204, telephone 301-496-7178.	Feb. 22-24	8:30 a.m.	Room 7, Building 31, Bethesda, Md.
Oral Biology and Medicine: Dr. Thomas M. Tarpley, Jr., Room 325, telephone 301-496-7818.	Feb. 21-24	9 a.m.	Room 10, Building 31, Bethesda, Md.
Pathobiological Chemistry: Dr. Ellen G. Archer, Room 206, telephone 301-496-7432.	Mar. 8-11	8:30 a.m.	Room 8, Building 31, Bethesda, Md.
Pathology A: Dr. Mischa E. Friedman, Room 203, telephone 301-496-7023.	Feb. 22-24	8:30 a.m.	Sheraton Inn, Silver Spring, Md.
Pathology B: Mrs. Barbara S. Bynum, Room 352, telephone 301-496-7244.	Feb. 26 to Mar. 1	7 p.m.	Marriott Motel, Houston, Tex.
Pharmacology: Dr. Joseph A. Kaiser, Room 334, telephone 301-496-7408.	Feb. 14-16	8:30 a.m.	Holiday Inn, Bethesda, Md.
Physiological Chemistry: Dr. Robert L. Ingram, Room 338, telephone 301-496-7837.	Mar. 2-4	9 a.m.	Holiday Inn, Bethesda, Md.
Physiology: Dr. Clara E. Hamilton, Room 209, telephone 301-496-7878.	Feb. 16-18	9 a.m.	Room 9, Building 31, Bethesda, Md.
Radiation: Dr. Robert L. Straube, Room A-10, telephone 301-496-7073.	Mar. 13-15	9 a.m.	Keybridge Holiday Inn, Rosslyn, Va.
Reproductive Biology: Dr. Dharam S. Shindsa, Room 307, telephone 301-496-7318.	Feb. 21-24	8:30 a.m.	Ramada Inn, Bethesda, Md.
Social Sciences and Population (formerly: Population Research): Miss Carol A. Campbell, Room 210, telephone 301-496-7140.	Mar. 2-4	9 a.m.	Shoreham Americana, Washington, D.C.
Surgery, Anesthesiology and Trauma: Dr. Keith Kraner, Room 336, telephone 301-496-7771.	Feb. 24-25	8:30 a.m.	Stouffer's National Center Hotel, Arlington, Va.
Surgery and Bioengineering: Dr. Joe W. Atkinson, Room 348, telephone 301-496-7506.	Feb. 24-25	8:30 a.m.	Stouffer's National Center Hotel, Arlington, Va.
Toxicology: Dr. Rob S. McCutcheon, Room 226, telephone 301-496-7570.	Mar. 10-12	8 a.m.	Sheraton Palace Hotel, San Francisco, Calif.
Tropical Medicine and Parasitology: Dr. Betty June Myers, Room 319, telephone 301-496-7494.	Mar. 2-4	8:30 a.m.	Kenwood Country Club, Bethesda, Md.
Virology: Dr. Claire H. Winestock, Room 309, telephone 301-496-7128.	Mar. 9-11	8:30 a.m.	Room 10, Building 31, Bethesda, Md.
Visual Sciences A: Dr. Orvil E. A. Bolduan, Room 2A-05, telephone 301-496-7180.	Mar. 6-9	9 a.m.	Holiday Inn, Georgetown, D.C.
Visual Sciences B: Dr. Luigi Giacometti, Room 325, telephone 301-496-7251.	Mar. 1-4	9 a.m.	Holiday Inn, Georgetown, D.C.

(Catalog of Federal Domestic Assistance Program Nos. 13.333, 13.337, 13.349, 13.393-13.396, 13.836-13.844, 13.846-13.871, 13.876, National Institutes of Health, HEW.)

Dated: January 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-790 Filed 1-12-78; 8:45 am]

[4110-08]

ETHICS ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the initial meeting of the Ethics Advisory Board in Washington, D.C., on February 3-4, 1978. (This meeting was originally scheduled for November 18-19, 1977, but was subsequently cancelled.) Please contact Dr. Robert C. Backus (address and phone number below) for time and place of meeting. The entire meeting will be open to the public.

The mandate of the committee directs the Board to advise the Secretary with regard to ethical issues involving the programs and missions of the Department. This organizational meeting will be devoted to the development of plans for the accomplishment of this mandate. Attendance by the public will be limited to space available.

Dr. Robert C. Backus, Office for Protection from Research Risks, Westwood Building, Room 303, Bethesda, Md. 20034, phone 301-496-7005, will provide rosters of members, summaries of meetings, and substantive program information.

Dated: January 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-789 Filed 1-12-78; 8:45 am]

[4110-08]

NATIONAL ADVISORY ALLERGY AND INFECTIOUS DISEASES COUNCIL

Amended Meeting

Notice is hereby given of changes in the meeting dates and times of the "closed" and "open" portions of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, which was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65273).

The Council was to have convened on January 25 and adjourned on January 27, 1978, but has been changed to adjourn on January 26, 1978.

This meeting will be open to the public on January 25 from 9 a.m. until 3 p.m., and on January 26 from 8:30 a.m. until 2 p.m., and will be closed to the public on January 25 from 3 p.m. until recess, and on January 26 from 2 p.m. until adjournment.

Dated: January 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc.78-793 Filed 1-12-78; 8:45 am]

[4110-08]

NATIONAL ADVISORY ENVIRONMENTAL HEALTH SCIENCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, National Institute of Environmental Health Sciences, February 6-7, 1978, in Building 18, Conference Room, National Institute of Environmental Health Sciences, Research Triangle Park, N.C.

This meeting will be open to the public on February 6, 1978, from 9 a.m. to approximately 12 noon to discuss program policies and issues, recent legislation, interagency activities, program planning, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, United States Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 6, from 1 p.m. to adjournment on February 7, for review, discussion, and evaluation of individual grant applications.

Leota B. Staff, Committee Management Officer, NIEHS, Westwood Building, Room 340, Bethesda, Md. 20014, 301-496-7483, will provide summaries of the meetings and rosters of Council members.

Dr. Wilford L. Nusser, Associate Director for Extramural Program, National Institute of Environmental Health Sciences, Westwood Building, Room 340, Bethesda, Md. 20014, 301-496-7483, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.872, 13.873, 13.874, 13.875, National Institutes of Health.)

Dated: January 6, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-794 Filed 1-12-78; 8:45 am]

[4110-08]

RECOMBINANT DNA MOLECULE PROGRAM ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Recombinant DNA Molecule Program Advisory Committee at the National

Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Md. 20014, on February 13–14, 1978, from 9 a.m. to 5 p.m.

The entire meeting will be open to the public for discussion of proposed revisions of the NIH Guidelines for Research Involving Recombinant DNA Molecules, safer host-vector systems, alternative host-vector systems, status of risk assessment studies, and other matters requiring necessary action by the Committee. Attendance by the public will be limited to space available.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Molecule Program Advisory Committee, National Instutitues of Health, Building 31, Room 4A52, telephone 301–496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: January 5, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78–788 Filed 1–12–78; 8:45 am]

REVIEW OF CONTRACT PROPOSALS AND GRANT APPLICATIONS

Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301–496–5708, will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Name of Committee: Carcinogenesis Program Scientific Review Committee.
Dates: February 9–10, 1978; 8:30 a.m.
Place: Landow Building, Room 4C18, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open—February 9, 8:30 a.m.–9 a.m.; open—February 10, 8:30 a.m.–9 a.m.; closed—February 9, 9 a.m.–5 p.m.; closed—February 10, 9 a.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Carl E. Smith, Landow Building, Room 8C37, National Institutes of Health, phone 301–496–4141.

(Catalog of Federal Domestic Assistance Number 13.393, National Institutes of Health.)

Name of Committee: Committee on Cancer Immunodiagnosis.
Dates: February 14, 1978; 1 p.m.
Place: Building 10, Conference Room 4B14, National Institutes of Health.
Times: Open—February 14, 1 p.m.–1:30 p.m.; closed: February 14, 1:30 p.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Mrs. Judith M. Whalen, Building 10, Room 4B17, National Institutes of Health, phone 301–496–1791.

(Catalog of Federal Domestic Assistance Number 13.394 National Institutes of Health)

Name of Committee: Developmental Therapeutics Committee.
Dates: February 14–15, 1978; 9 a.m.
Place: Blair Building, Room 110, 8300 Colesville Road, Silver Spring, Md. 20910.
Times: Open—February 14, 9 a.m.–9:45 a.m.; closed—February 14, 9:45 a.m.–5 p.m.; closed—February 15, 9 a.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. J. A. R. Mead, Blair Building, Room 5A03A, National Institutes of Health, phone 301–427–7263.

(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health)

Name of Committee: Combined Modality Committee.
Dates: February 21, 1978; 8:30 a.m.
Place: Landow Building, Room 418C, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open—February 21, 8:30 a.m.–9 a.m.; closed—February 21, 9 a.m.–adjournment.
Closure reason: To review research contract proposals.
Executive Secretary: Dr. Daniel L. Kisner, Landow Building, Room C808, National Institutes of Health, phone 301–496–2522.

(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health)

Name of Committee: Cancer Special Program Advisory Committee.
Dates: February 23–24, 1978; 9 a.m.
Place: Building 31C, Conference Room 8, National Institutes of Health.
Times: Open—February 23, 9 a.m.–10:30 a.m.; closed—February 23, 10:30 a.m.–5 p.m; closed: February 24, 8:30 a.m.–adjournment.
Closure reason: To review research grant applications.
Executive Secretary: Dr. William R. Sanslone, Westwood Building, Room 805, National Institutes of Health, phone 301–496–7565.

(Catalog of Federal Domestic Assistance Number 13.392 National Institutes of Health.)

Name of Committee: Cancer Clinical Investigation Review Committee.
Dates: February 27–28, 1978; 9 a.m.
Place: Building 31C, Conference Room 6, National Institutes of Health.
Times: Open—February 27, 9 a.m.–5 p.m.; open—February 28, 2 p.m.–adjournment.
Agenda/open portion: A discussion of review of cooperative group program; closed: February 28, 8:30 a.m.–2 p.m.
Closure reason: To review research grant applications.
Executive Secretary: Mr. C. W. White, Landow Building, Room 8C09, National Institutes of Health, phone 301–496–4471.

(Catalog of Federal Domestic Assistance Number 13.395 National Institutes of Health.)

Dated: January 3, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78–792 Filed 1–12–78; 8:45 am]

[4110–08]

NATIONAL DIABETES ADVISORY BOARD

Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Diabetes Advisory Board on January 18, 1978, which was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61632).

The location of the meeting has been changed from the HEW-North Building of Health, Education, and Welfare, Conference Room 5051, at 330 Independence Avenue SW., Washington, D.C. to the Twin Bridges Marriott, Commonwealth II Room, U.S. 1 and I95, Washington, D.C. The time of the meeting remains as scheduled, 8:30 a.m. to 5 p.m.

Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Md. 20014, 301–496–6045, will provide summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.847, National Institutes of Health.)

Dated: January 9, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78–1062 Filed 1–12–78; 8:45 am]

[4110–02]

Office of Education

NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Meetings of Committees and Task Forces

AGENCY: National Advisory Council on Vocational Education.

ACTION: Notice of Public Meeting of Committees and Task Forces.

SUMMARY: This notice is an Amendment to Notice of Meeting dated December 16, 1977, for publication in the FEDERAL REGISTER as required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(1)). This document is intended to notify the general public of their opportunity to attend.

DATES: Task Force on Sex Equity in Vocational Education 1-3 p.m.; Task Force on the Administration and Operation of the Bureau of Occupational and Adult Education 3-5 p.m.; Technical Assistance Committee 7-8 p.m.; Chairmen of all Committees and Task Forces 8-10 p.m., all the above in the Olvera North Room of the Hyatt Regency Hotel, 711 South Hope Street, Los Angeles, California, on January 31, 1978. Task Force on the Handicapped, 3-5 p.m., Pico North, same date and location.

Signed at Washington, D.C., on January 9, 1978.

REGINALD E. PETTY,
Executive Director, National Advisory Council on Vocational Education, 425 - 13th Street NW., Suite 412, Washington, D.C. 20004.

[FR Doc. 78-938 Filed 1-12-78; 8:45 am]

[4110-02]

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

1977 Report

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of 1977 Report (Section II).

SUMMARY: This notice announces the availability of the 1977 Report (Section II) of the National Advisory Council on Adult Education. Notice of the availability of this report is required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463). The report includes:

1. Results of Futures & Amendments Legislative Sessions.
2. Survey of State Support of Adult Education, Conclusions and Recommendations.
3. State Data (Overview, Governing Documents, State Adult Basic Education/Secondary Adult Education Descriptors, ABE/SAE Financial Resources, Economic Indicators).
4. State Education Agency Organization Charts.
5. Adult Education State Legislation and Regulations Examples.
6. State Allotment of Federal Funds.
7. The Adult Education Act.

ADDRESS: Requests for the report and further information may be directed to Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th Street NW., Washington, D.C. 20004, 202-376-8892.

Signed at Washington, D.C. on January 6, 1978.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc. 78-969 Filed 1-12-78; 8:45 am]

[4110-02]

NATIONAL ADVISORY COUNCIL ON WOMEN'S EDUCATIONAL PROGRAMS

Meeting

AGENCY: Office of Education, National Advisory Council on Women's Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its Federal policy and practices, legislation, and program committees. It also describes the functions of the Council. Notice of the meeting is required pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). This document is intended to notify the general public of their opportunity to attend.

DATE: January 30, 1978, 8:30 to noon; January 31, 1978, 8:30 a.m. to 5 p.m.; February 1, 8:30 a.m. to 4 p.m.

ADDRESS: 1832 M Street NW., Suite 821, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Kathleen Maurer, National Advisory Council on Women's Educational Programs, 1832 M Street NW., Suite 821, Washington, D.C., 20036 202-653-5846.

The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 93-380, section 408(f)(1). The council is mandated to (a) advise the Commissioner with respect to general policy matters relating to the administration of the Women's Educational Equity Act of 1974; (b) advise and make recommendations to the Assistant Secretary concerning the improvement of educational equity for women; (c) make recommendations to the Commissioner with respect to the allocation of any funds pursuant to section 408 of Pub. L. 93-380, including criteria developed to insure an appropriate distribution of approved programs and projects throughout the Nation; (d) make such reports to the President and the Congress on the activities of the council as it determines appropriate; (e) develop criteria for the establishment of program priorities; and (f) disseminate information concerning its activities under section 408 of Pub. L. 93-380.

The meeting of the Federal Policy and Practices Committee, the legislation committee and the program committee will take place on January 30 and 31 from 8:30 a.m. to 12 noon. The agenda for the Federal Policy and Practices Committee will include discussion of fiscal year 78 plans for Committee investigation of how Federal policies affect women. The agenda for the legislation committee will include discussion of Title IX, the Women's Educational Equity Act and pending legislation and regulations as they affect women. The agenda for the program committee will include discussion of monitoring and evaluation efforts directed toward the WEEA program.

The meeting of the National Advisory Council on Women's Educational Program will take place from 1:30 p.m. to 5 p.m. on January 31 and from 8:30 a.m. to 4 p.m. to February 1, 1978. The agenda will include: (1) report of the executive director; (2) report of the women's program staff; (3) discussion of the annual report; (4) action on committee reports; (5) discussion with HEW officials.

The meeting of the council and the committees will be open to the public. Records will be kept of the proceedings and will be available for public inspection.

Signed at Washington, D.C., on January 10, 1978.

JOY R. SIMONSON,
Executive Director.

[FR Doc. 78-986 Filed 1-12-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Proposed Oil and Gas Lease Sale No. 45]

OUTER CONTINENTAL SHELF, GULF OF MEXICO

Oil and Gas Leasing

In connection with oil and gas leasing on the Outer Continental Shelf, the Secretary of the Interior has established a new policy relating to sale notices to further and enhance consultation with the affected coastal States. That policy includes providing the affected States with the opportunity to review the draft proposed sale notice prior to it's final publication in the FEDERAL REGISTER The following is a draft sale notice for proposed Sale No. 45 in the offshore waters of the Gulf of Mexico area. This notice is hereby published as a matter of information to the public.

A decision has not been reached on the type of bidding system(s) to be used for this sale. The Secretary of

the Interior is considering the possibility of offering some of the tracts on a royalty bid or some other basis, with the remaining tracts to be offered on a cash bonus bid basis. If the royalty bid method is used, special stipulations will be applied which are included in the proposed notice of sale.

ARNOLD E. PETTY,
Acting Director,
Bureau of Land Management.

Approved: January 6, 1978.

CECIL D. ANDRUS,
Secretary of the Interior.

DRAFT SALE NOTICE

1. *Authority.* This notice is published pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. 1331-13430 and the regulations issued thereunder (43 CFR Part 3300).

2. *Filing of Bids.* Sealed bids will be received by the Manager, New Orleans Outer Continental Shelf (OCS) Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, La. 70130. Bids may be delivered, either by mail or in person, to the above address until 4:15 p.m. c.s.t., April —, 1978; or by personal delivery to (sale site in New Orleans, La. to be announced) between the hours of 8:30 a.m., c.s.t., and 9:30 a.m. c.s.t., April —, 1978. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., c.s.t., April —, 1978. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 42 FR 54881, October 11, 1977, as corrected in 42 FR 55280, October 14, 1977.

3. *Method of Bidding.* A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10 a.m., c.s.t., April —, 1978," must be submitted for each tract. A suggested form appears in paragraph 17 of this notice. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one fifth of the cash bonus in cash or by cashier's check, bank draft, certified check, or money order payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 13 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Part 3302. The suggested form for this statement to be used in joint bids appears in paragraph 18. Other documents may be required of bidders under 43 CFR 3302.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. *Royalty Bidding.* Bids on the following tracts must be submitted on a royalty bid basis with a fixed cash bonus as indicated. Leases which may be awarded on a royalty bid basis will provide for a yearly rental or minimum royalty payment of $3 per acre or fraction thereof. All royalty bids must be expressed in a percent to a maximum of five decimal places. Although a percentage could be expressed in other ways, it is requested that it be written as it is in the following example: 21.75698 percent. A suggested royalty bid form is shown in paragraph 17(a).

(a) A fixed cash bonus of ——per acre will be required on tracts 45—
(Tracts and terms to be listed.)
(b) A fixed cash bonus of —— per acre will be required on tracts 45—
(Tracts and terms to be listed.)
(c) A fixed cash bonus of —— per acre will be required on tracts 45—
(Tracts and terms to be listed.)
(d) A fixed cash bonus of —— per acre will be required on tracts 45—
(Tracts and terms to be listed.)

5. *Bonus Bidding.* Bids on the remaining tracts to be offered at this sale must be on a cash bonus bid basis with a fixed royalty of 16⅔ percent. Leases which may be issued will provide for a yearly rental payment or minimum royalty of $3 per acre or fraction thereof. A suggested cash bonus bid form is shown in paragraph 17(b).

6. *Equal Opportunity.* Each bidder must have submitted by 9:30 a.m., c.s.t., April ——, 1978, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

7. *Bid Opening.* Bids will be opened on April —, 1978, beginning at 10 a.m., c.s.t., in the sale site stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, April ——, 1978, that bid will be returned unopened to the bidder as soon thereafter as possible.

8. *Deposit of Payments.* Any cash, cashier's checks, certified checks, bank drafts or money orders submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

9. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

10. *Acceptance or Rejection of Bids.* The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid royalty bid on the designated royalty bid tracts or the highest valid cash bonus bid for the remaining tracts; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof on the tracts designated for cash bonus bidding and 12.50 percent or more royalty on the tracts designated for royalty bidding.

11. *Successful Bidders.* Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR 3304.1 within the time provided in 43 CFR 3302.5.

12. *Protraction Diagrams/Leasing Maps.* Tracts offered for lease may be located on the following official leasing maps/protraction diagrams which are available from the Manager, New Orleans Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf Official Leasing Maps—Texas No. 1 through No. 8. These maps are arranged in two sets, Nos. 1 through 4 (7 maps), which sell for $5 per set, and Nos. 5 through 8 (9 maps), which sell for $7 per set.

(b) Outer Continental Shelf Official Leasing Maps—Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17.

(c) Outer Continental Shelf Official Protraction Diagrams: (1) NH 16-7, Viosca Knoll; (2) NH 16-10, Mississippi Canyon. These maps sell for $2 each.

13. *Tract Descriptions.* The tracts offered for bid are as follows:

NOTE.—There are gaps in the sequence of the numbers of the tracts listed. Some of the blocks identified in the final environmental impact statement are not included in this notice.

OCS OFFICIAL LEASING MAP, SOUTH PADRE ISLAND AREA, TEXAS MAP NO. 1
(Approved July 16, 1954)

Tract	Block	Description	Acreage
45-1	1041	All	5760
45-2	1051	All	5760

OCS OFFICIAL LEASING MAP, NORTH PADRE ISLAND AREA, TEXAS MAP NO. 2
(Approved July 16, 1954)

Tract	Block	Description	Acreage
45-3	956	All	5760

OCS OFFICIAL LEASING MAP, MUSTANG ISLAND AREA, TEXAS MAP NO.3
(Approved July 16, 1954; Revised October 30, 1961)

Tract	Block	Description	Acreage
45-4	765	All	5760
45-5	776	1/	5655
45-6	799	1/	5755
45-7	815	All	5760
45-8	857	All	5760
45-9	866	All	5760
45-10	A-22	All	5760

OCS OFFICIAL LEASING MAP, MUSTANG ISLAND AREA, EAST ADDITION,
TEXAS MAP NO. 3A
(Approved January 23, 1967)

Tract	Block	Description	Acreage
45-11	A-149	All	5760

OCS OFFICIAL LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP NO. 4
(Approved July 16, 1954)

Tract	Block	Description	Acreage
45-12	487	1/	1015
45-13	634	All	5760
45-14	657	1/	5071.18
45-15	666	All	5760
45-16	679	All	5760
45-17	703	All	5760

OCS OFFICIAL LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
45-18	488	1/	4090
45-19	A-29	All	5760

OCS OFFICIAL LEASING MAP, BRAZOS AREA, SOUTH ADDITION
TEXAS MAP NO. 5B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
45-20	A-77	All	5760
45-21	A-104	All	5760

OCS OFFICIAL LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
45-22	212	All	5760
45-23	223	All	5760
45-24	224	All	5760
45-25	225	All	5760
45-26	256	All	5760

GALVESTON AREA (contd.)

Tract	Block	Description	Acreage
45-27	282	All	5760
45-28	327	All	5760
45-29	382	All	5760
45-30	391	All	5760
45-31	392	S½	2880
45-32	393	All	5760
45-33	420	All	5760

OCS OFFICIAL LEASING MAP, GALVESTON AREA, SOUTH ADDITION, TEXAS MAP NO. 6A
(Approved September 24, 1959)

Tract	Block	Description	Acreage
45-34	A-129	All	5760
45-35	A-158	All	5760

OCS OFFICIAL LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
(Approved July 16, 1954; Revised August 1955)

Tract	Block	Description	Acreage
45-36	71	NE¼; W½	4320
45-37	109	All	5760
45-38	196	All	5760
45-39	199	All	5760
45-40	207	All	5760
45-41	228	All	5760
45-42	231	All	5760
45-43	235	All	5760

OCS OFFICIAL LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 7A
(Approved January 23, 1967)

Tract	Block	Description	Acreage
45-44	75	All	2880
45-45	76	All	2926.53

OCS OFFICIAL LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
45-46	A-262	All	5760
45-47	A-287	All	5760
45-48	A-300	All	5760
45-49	A-347	All	5760
45-50	A-374	All	5760
45-51	A-381	All	5760
45-52	A-395	All	5760

OCS OFFICIAL LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
45-53	A-468	All	5760
45-54	A-507	All	5760
45-55	A-512	All	5760
45-56	A-522	All	5760
45-57	A-529	All	5760
45-58	A-551	All	5760

OCS OFFICIAL LEASING MAP, WEST CAMERON AREA,
LOUISIANA MAP NO. 1
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
45-59	21	E½ 2/	1338.22
45-60	70	All	5000
45-61	83	All	5000
45-62	137	All	5000
45-63	138	All	5000
45-64	275	All	5000
45-65	276	All	5000

OCS OFFICIAL LEASING MAP, WEST CAMERON AREA, WEST ADDITION,
LOUISIANA MAP NO. 1A
(Approved November 15, 1955; Revised January 30, 1957)

Tract	Block	Description	Acreage
45-66	359	All	5000
45-67	374	All	5000
45-68	376	All	4514.35
45-69	385	All	5000
45-70	428	All	5000

OCS OFFICIAL LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-71	510	All	5000
45-72	571	All	5000

OCS OFFICIAL LEASING MAP, EAST CAMERON AREA,
LOUISIANA MAP NO. 2
(Approved June 8, 1954; Revised August 1, 1973)

Tract	Block	Description	Acreage
45-73	13	All	5000
45-74	14	W½NW¼; NW¼SW¼; S½S½	2187.50
45-75	143	W½	2500

OCS OFFICIAL LEASING MAP, EAST CAMERON AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 2A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-76	258	All	5000
45-77	259	All	5000
45-78	267	All	5000

OCS OFFICIAL LEASING MAP, VERMILION AREA, LOUISIANA MAP NO. 3
(Approved June 8, 1954; Revised June 25, 1954; July 22, 1954)

Tract	Block	Description	Acreage
45-79	18	2/	2413.71
45-80	37	All	5000

OCS OFFICIAL LEASING MAP, SOUTH MARSH ISLAND AREA,
LOUISIANA MAP NO. 3A
(Approved August 7, 1959)

Tract	Block	Description	Acreage
45-81	20	All	5000

OCS OFFICIAL LEASING MAP, SHIP SHOAL AREA,
LOUISIANA MAP NO. 5
(Approved June 8, 1954)

Tract	Block	Description	Acreage
45-95	61	All	5000
45-96	62	2/	4978.81
45-97	110	All	5000
45-98	118	S½	2500
45-99	136	All	5000
45-100	202	All	5000

OCS OFFICIAL LEASING MAP, SOUTH PELTO AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
45-101	5	All	5000
45-102	15	All	5000
45-103	22	All	5000

OCS OFFICIAL LEASING MAP, SOUTH TIMBALIER AREA, LOUISIANA MAP NO. 6
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954)

Tract	Block	Description	Acreage
45-104	11	2/	1337.45
45-105	104	All	3772.18

OCS OFFICIAL LEASING MAP, GRAND ISLE AREA, LOUISIANA MAP NO. 7
(Approved June 8, 1954)

Tract	Block	Description	Acreage
45-106	83	All	5000

OCS OFFICIAL LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-82	105	All	5000
45-83	106	N½	2500
45-84	133	All	2500

OCS OFFICIAL LEASING MAP, EUGENE ISLAND AREA,
LOUISIANA MAP NO. 4
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
45-85	(9	2/	
	(25	2/	4668.94
45-86	11	2/	523.19
45-87	39	All	5000
45-88	56	All	5000
45-89	92	All	5000
45-90	174	All	5000

OCS OFFICIAL LEASING MAP, EUGENE ISLAND AREA, SOUTH ADDITION,
LOUISIANA MAP NO. 4A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-91	353	All	5000
45-92	363	All	5000
45-93	364	All	5000
45-94	372	All	5000

OCS OFFICIAL LEASING MAP, GRAND ISLE AREA, SOUTH ADDITION, LOUISIANA MAP NO. 7A
(Approved September 8, 1959; Revised March 7, 1961)

Tract	Block	Description	Acreage
45-107	92	All	5000

OCS OFFICIAL LEASING MAP, WEST DELTA AREA, LOUISIANA MAP NO. 8
(Approved June 8, 1954)

Tract	Block	Description	Acreage
45-108	26	2/	3545.82
45-109	33	N½	2500
45-110	47	All	5000

OCS OFFICIAL LEASING MAP, SOUTH PASS AREA, LOUISIANA MAP NO. 9
(Approved June 8, 1954; Revised July 22, 1954; May 11, 1973)

Tract	Block	Description	Acreage
45-111	29	2/	624.83

OCS OFFICIAL LEASING MAP, MAIN PASS AREA, LOUISIANA MAP NO. 10
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
45-114	60	All	4994.55
45-116	102	All	4994.55

OCS OFFICIAL LEASING MAP, VIOSCA KNOLL, NH 16-7
(Approved October 10, 1972; Revised February 15, 1973; August 1, 1973; December 2, 1976)

Tract	Block	Description	Acreage
45-117	944	All	5760
45-118	774	All	4239.69

OCS OFFICIAL LEASING MAP, MISSISSIPPI CANYON, NH 16-10
(Approved February 15, 1973; Revised December 2, 1976)

Tract	Block	Description	Acreage
45-119	267	All	2178.08

OCS OFFICIAL LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
45-121	A-2	All	5760
45-122	A-3	All	5760

OCS OFFICIAL LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
45-123	389	All	5760

OCS OFFICIAL LEASING MAP, WEST CAMERON AREA, LOUISIANA MAP NO. 1
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
45-124	47	NE¼; S½	3750

OCS OFFICIAL LEASING MAP, WEST CAMERON AREA, WEST ADDITION, LOUISIANA MAP NO. 1A
(Approved November 15, 1955; Revised January 30, 1957)

Tract	Block	Description	Acreage
45-125	318	All	5000
45-126	328	All	5000
45-127	329	All	5000

OCS OFFICIAL LEASING MAP, WEST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 1B
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-128	451	All	5000

OCS OFFICIAL LEASING MAP, EAST CAMERON AREA, LOUISIANA MAP NO. 2
(Approved June 8, 1954; Revised August 1, 1973)

Tract	Block	Description	Acreage
45-129	8	2/	270.86
45-130	235	All	1384.67

OCS OFFICIAL LEASING MAP, EAST CAMERON AREA, SOUTH ADDITION, LOUISIANA MAP NO. 2A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-131	279	All	5000
45-132	365	All	5000

OCS OFFICIAL LEASING MAP, VERMILION AREA, LOUISIANA MAP NO. 3
(Approved June 8, 1954; Revised June 25, 1954; July 22, 1954)

Tract	Block	Description	Acreage
45-133	122	All	4699.91

OCS OFFICIAL LEASING MAP, SOUTH MARSH ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 3C
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-134	124	All	5000
45-135	201	All	5000

OCS OFFICIAL LEASING MAP, EUGENE ISLAND AREA, LOUISIANA MAP NO. 4
(Approved June 8, 1954; Revised July 22, 1954)

Tract	Block	Description	Acreage
45-136	80	All	5000
45-137	87	All	5000
45-138	107	All	5000
45-139	108	All	5000
45-140	156	All	5000

OCS OFFICIAL LEASING MAP, EUGENE ISLAND AREA, SOUTH ADDITION, LOUISIANA MAP NO. 4A
(Approved September 8, 1959)

Tract	Block	Description	Acreage
45-141	279	All	5000

OCS OFFICIAL LEASING MAP, SHIP SHOAL AREA, LOUISIANA MAP NO. 5
(Approved June 8, 1954)

Tract	Block	Description	Acreage
45-142	73	All	5000
45-143	166	All	5000
45-144	184	All	5000

OCS OFFICIAL LEASING MAP, GRAND ISLE AREA, LOUISIANA MAP NO. 7
(Approved June 8, 1954)

Tract	Block	Description	Acreage
45-145	30	1/	4234
45-146	54	All	5000

OCS OFFICIAL PROTRACTION DIAGRAM, MISSISSIPPI CANYON, NH 16-10
(Approved February 15, 1973; Revised January 15, 1976; December 2, 1976)

Tract	Block	Description	Acreage
45-147	280	All	5760
45-148	282	All	5760
45-149	325	All	5760
45-150	326	All	5760

1/ That portion seaward of the Three Marine League Line.

2/ That portion of the lease block which is more than 3 geographical miles seaward from the line described in the supplemental decree of the U. S. Supreme Court, June 16, 1975 (United States vs. Louisiana, 422 U.S. 13).

14. *Lease terms and stipulations.* Leases issued as a result of this sale will be on form 3300-1 (December 1976), available from the manager, New Orleans Outer Continental Shelf office, at the address stated in paragraph 2. Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale.

In the following stipulations the term supervisor refers to the Gulf of Mexico area oil and and gas supervisor for operations of the Geological Survey and the term manager refers to the Manager of the New Orleans OCS office of the Bureau of Land Management.

STIPULATION NO. 1

If the supervisor, having reason to believe that a site, structure, or object of historical or archaeological significance, hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure of exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation", the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggestiong the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the supervisor and to the manager, Bureau of Land Management, Outer Continental Shelf office (manager) for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the indentified location: or (2) establish, to the satisfaction of the supervisor, on the basis of further archaeological investigation conducted by a qualified marine surve archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the supervisor, either that such operations will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the supervisor and the manager for their review. Should the Supervisor determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrent protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the Supervisor has given directions as to its disposition.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the Supervisor, and make every reasonable effort to preserve and protect the cultural resource from damage until the Supervisor has given directions as to its disposition.

STIPULATION NO. 2

(To be included in any leases resulting from this sale for the royalty bidding tracts listed in paragraph 4 of this notice.)

(a) The royalty rate on production saved, removed, or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.12(e). The director, Geological Survey, any grant a reduction for only one year at a time. Reduction of royalty rates will not be approved unless production has been underway for one year or more.

(b) Although the royalty rate specified in section 3(b)(1) of the lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16⅔ percent of the production saved, removed or sold from the leased area may be taken as royalty in amount, except as provided in section 6(c); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16⅔ percent may only be taken in value of the production saved, removed or sold from the leased area.

(c) Unless the lessee can demonstrate to the satisfaction of the supervisor that it would not be in the interests of conservation, all reservoirs underlying this lease which extent into one, or more other leases, as indicated by drilling and other information, shall be operated and produced only under a unit agreement including the other lease(s) and approved by the supervisor. Such a unit agreement shall provide for the fair and equitable allocation of production and costs. The supervisor shall prescribe the method of allocating production and costs in the event operators are unable to agree on a method acceptable to him.

STIPULATION NO. 3

(a) To be included only in the leases resulting from this proposed sale for tracts 45-106 and 45-107: Portions of these tracts may be subject to mass movement (slumping) of sediments. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for the production or storage of oil or gas will not be allowed on the portions of the tract which may be subject to mass movement of sediments unless or until the lessee has demonstrated to the Supervisor's satisfaction that the potential for mass movement of sediments does not exist or that exploratory drilling operations, structures (platforms), casing, and wellheads can be safely designed to withstand such mass movement at the proposed location of the structure.

(b) To be included only in the lease resulting from this proposed sale for tract 45-52: Portions of this tract may be subject to mass movement (slumping) of sediments and shallow gas. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for the production or storage of oil or gas will not be allowed on those portions of the tract which may be subject to mass movement of sediments or to shallow gas unless or until the lessee has demonstrated to the Supervisor's satisfaction that the potential for mass movement of sediments or for shallow gas does not exist or that exploratory drilling operations, structures (platforms), casing, and wellheads can be safely designed to withstand such hazards at the proposed location of the structure.

(c) To be included only in the lease resulting from this proposed sale for tract 45-311: All of this tract may be subject to mass movement (slumping) of sediments. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas will not be allowed within the area of mass movement of sediments unless or until the lessee has demonstrated to the Supervisor's satisfaction that the potential for mass movement of sediments does not exist or that exploratory drilling operations, structures (platforms), casing, and wellheads can be safely designed to withstand such mass movement at the proposed location of the structure. This may necessitate all exploration and development of oil or gas be performed from locations off this tract and outside of the area of potential mass movement of sediments.

STIPULATION NO. 4

A. Stetson Bank. (To be included only in the lease resulting from this proposed sale for tract 45-55): Operations within the circle with a radius of 5600 meters around point A, located by X=3,514,656', Y=151,008' (Texas Lambert System) shall be restricted as fol lows: All drill cuttings and drilling fluids must be disposed of by shunting the materi al to the bottom through a downpipe that terminates an appropriate distance but no more than 6 meters from the bottom.

This deep shunting requirement does not apply to mobile drilling units in the zone beyond the circle with a radius of 2000 meters around point A, provided that a monitoring program is implemented for disposals which are not shunted beyond 2000 meters and within 5600 meters of point A. If it is decided that the methods of disposing of the drill cuttings and fluids are not adequate, the Supervisor will require shunting within 5600 meters of point A. If it is decided by the Supervisor that the methods of disposal are adequate, no further monitoring will be required.

Coffee Lump. (To be included only in the lease resulting from this proposed sale for tract 45-51): Operations within the circle with a radius of 6800 meters around point B; located by X=3,646,382', Y=105,624' (Texas Lambert System) shall be restricted as follows: All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance but no more than 6 meters from the bottom.

This deep shunting requirement does not apply to mobile drilling units in the zone beyond the circle with a radius of 3100 meters around point B, provided that a monitoring program is implemented for disposals which are not shunted beyond 3100 meters and within 6800 meters of point B. If it is decided that the methods of disposing of the drill cuttings and fluids are not adequate, the Supervisor will require shunting within 6800 meters of point B. If it is decided by the Supervisor that the methods of disposal are adequate, no further monitoring will be required.

C. East Flower Garden Bank. (To be included only in the lease resulting from this proposed sale for tract 45-50): No structures, drilling rigs, or pipelines will be allowed within the aliquots established for the East Flower Garden Bank (Tract 45-50, High Island Area, East Addition, South Ex-

tension A-374): NW¼SW¼NW¼; S½SW¼NW¼; W½SW¼; SW¼NE¼SW¼; NW¼SE¼SW¼; S½SE¼SW¼.

Outside the above aliquots, exploration and development operations are permitted within the circle with a radius of 6,100 meters around point P; located by X=3,742,875', Y=71,280' (Texas Lambert System), with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal. Disposal sites must be approved by the Oil and Gas Supervisor, United States Geological Survey (Supervisor).

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (work-boats, crew-boats, supply-boats, pipelaying vessels) during exploration and development operations.

No drilling permits will be issued by the Supervisor until he has found that the lessee's exploration and development plan filed under 30 CFR 250.34 is adequate to insure that exploration and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks. As a part of the development plan, a reef monitoring program must be included.

The monitoring program will be designed to assess the effects of oil and gas exploration and development operations on the viability of the coral reefs and associated communities. The development plan should indicate that the monitoring program will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations.

D. Parker Bank. (To be included only in the lease resulting from this sale for tract 45-135):

Operations within the circle with a radius of 8000 meters around point D; located by X=1,775,495', Y=−258,363' (Louisiana Lambert System) shall be restricted as follows: All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance but no more than 10 meters from the bottom.

This deep shunting requirement does not apply to mobile drilling units in the zone beyond the circle with a radius of 4300 meters around point D, provided that a monitoring program is implemented for disposals which are not shunted beyond 4300 meters and within 8000 meters of point D. If it is decided that the methods of disposing of the drill cuttings and fluids are not adequate, the Supervisor will require shunting within 8000 meters of point D. If it is decided by the Supervisor that the methods of disposal are adequate, no further monitoring will be required.

STIPULATION NO. 5

(To be included only in the lease resulting from this sale for Tract 45-146):

A portion of Tract No. 45-146 is situated in and covered by the Anchorage Area for the deepwater port designated as Louisiana Offshore Oil Port, or LOOP, Inc. Said portion is described as follows:

Beginning at the southwest corner, the coordinates which refer to the Louisiana (Lambert) Coordinate System (South Zone) are X=2,442,901.85' and Y=82,229.11', thence N. to X=2,442,901.850' and Y=85,007.610', thence N. 29°35'22.4" E. to X=2,444,634.471' and Y=88,058.864', thence S. 60°24'37.5" E. to X=2,454,901.040' and Y=82,229.110', thence W. to the point of beginning. The portion as described contains 858.2 acres.

No fixed structures, artificial islands or any other installations or devices permanently or temporarily attached to the seabed will be permitted in the above described portion of said tract.

STIPULATION NO. 6

Lessees shall comply with regulations which affect activities under this lease and which are promulgated under applicable statutes by other Federal agencies, including the Department of Energy, the Department of Transportation, and the Environmental Protection Agency.

15. *Information to lessees.* The Department of the Interior will seek the advice of the States of Texas, Louisiana, Mississippi, and Alabama and other Federal agencies, to identify areas of special concern which might require appropriate protective measures for live bottom areas, and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely impacted by the proposed activities, then the supervisor, in consultation with the Regional Director Fish and Wildlife Service (FWS), the manager, BLM and the States, will require the lessee to undertake any measures deemed economically, environmentally, and technically feasible to protect live bottom areas.

If a monitoring program is necessary under Stipulation No. 4, a monitoring team will consist of qualified independent personnel approved by the supervisor. This team will submit its findings to the regional director, U.S. Fish and Wildlife Service (director); Manager, New Orleans OCS office, Bureau of Land Management (manager); oil and gas supervisor, United States Geological Survey (supervisor). This report will be made annually, or immediately in case of imminent danger to the biological community resulting from drilling operations.

Some of the tracts offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes. Corps of Engineers permits are required for construction of any fixed structures or artificial islands located on the Outer Continental Shelf in accordance with section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; U.S.C. 1333 (f)).

Bidders are referred to the Department's proposed regulations on development phase environmental impact statements which were published in 42 FR 49478, September 27, 1977.

In applying safety, environmental and conservation laws and regulations, the Supervisor will require the use of the best available and safest technology which is determined to be economically achievable. To the extent practicable, the Supervisor will consult with the relevant Federal agencies and the affected States(s) in the execution of these responsibilities.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

If nationally recommended routes for boat traffic lanes are established by the Coast Guard, lessees will be required to use them to transport supplies to the lease area.

16. *OCS orders.* Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS orders, as of their effective date, and any other applicable OCS order as it becomes effective.

17. *Suggested bid form.* It is suggested that bidders submit their bids to the manager, New Orleans Outer Continental Shelf office, in the following form:

(a) For the royalty bid tracts as described in Paragraph 4:

OIL AND GAS BID—ROYALTY

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No. .....
Percent royalty bid expressed to maximum of 5 decimals .....
Amount of fixed cash bonus submitted with bid .....

Proportionate interest of company(s) submitting bid

Qualification No. .....
Percent interest .....
....

Company

....

Address

....

Signature

(Please type signer's name under signature.)

(b) All tracts offered for cash bonus bidding:

OIL AND GAS BID

The following bid submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No. .....
Total amount bid .....
Amount per acre .....
Amount of cash bonus submitted with bid .....

Proportionate interest of company(s) submitting bid

Qualification No. .....
Percent interest .....
....

Company .....
....

Address .....
....

Signature .....

(Please type signer's name under signature.)

18. *Required Joint Bidders Statement.* In the case of joint bids, it is suggested that each joint bidder execute the following statement before a notary public and submit it with his bid:

JOINT BIDDER'S STATEMENT

I hereby certify that ———— (entity submitting bid) is eligible under 43 CFR 3302 to bid jointly with the other parties submitting this bid.

Signature ———————————
(Please type signer's name under signature.)
Sworn to and subscribed before me this —— day of ——— 19——.
NOTARY PUBLIC ———————————
State of ———————————
County of ———————————

[FR Doc. 78-778 Filed 1-12-78; 8:45 am]

[4310-84]

[NM 32453, 32454]

NORTHWEST PIPELINE CORP.

Applications

JANUARY 6, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corp. has applied for two 4½-inch natural gas pipeline rights-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 6 W.,
Sec. 24, NE¼NW¼, NW¼SE¼.

These pipelines will convey natural gas across 0.209 miles of public lands in Rio Arriba County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-909 Filed 1-12-78; 8:45 am]

[4310-84]

[NM 32456]

NORTHWEST PIPELINE CORP.

Application

JANUARY 6, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corp. has applied for a cathodic protection station right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 30 N., R. 5 W.,
Sec. 22, NW¼NE¼.

This cathodic protection station will be used in connection with natural gas operations across 0.081 miles of public lands in Rio Arriba County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and, if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, N. Mex. 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-910 Filed 1-12-78; 8:45 am]

[4310-84]

DISTRICT MANAGERS, ARIZONA

Redelegation of Authority To Issue Free Use Permits and Material Sales

Under the provision of Bureau Order No. 701, as amended, authority is hereby redelegated to the District Managers, Arizona, to issue Free Use Permits and Material Sales for material other than forest products not exceeding $5,000 unless authority to make sales in greater amounts is delegated by the State Director (B.O. 701, Part III, sec. 3.9(g)).

Dated January 6, 1978.

ROBERT O. BUFFINGTON,
State Director.

[FR Doc. 78-970 Filed 1-12-78; 8:45 am]

[7020-02]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-35]

CERTAIN MOLDED GOLF BALLS

Notice of Continuance

Notice is hereby given that the prehearing conference and hearing in this matter are continued for ten (10) days until January 20 and January 27, 1978, respectively, pending the presiding officer's consideration of the motion for summary determination. Notice of this investigation was published in the FEDERAL REGISTER on July 6, 1977 (42 FR 34558).

The Secretary shall serve a copy of this notice upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued January 9, 1978.

Judge, MYRON R. RENICK,
Presiding Officer.

[FR Doc. 78-1009 Filed 1-12-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

IMPORTER OF CONTROLLED SUBSTANCES

Notice of Registration

By Notice dated October 28, 1977, and published in the FEDERAL REGISTER on November 3, 1977 (42 FR 57518), Philadelphia Seed Co., Chemical and Gravers Roads, Plymouth Meeting, Pa. 19462, made application to the Drug Enforcement Administration to be registered as an importer of marihuana, a basic class of controlled substance listed in schedule I, for the importation of seed only, to be rendered non-viable for use in feed.

No comments or objections have been received. Also, the criteria of section 1002(a)(2)(B) of the CSA has been met in that there are no registered domestic manufacturers of marihuana seed. Therefore pursuant to section 1008, Title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and in accordance with 21 CFR 1311.42, the above firm is granted registration as an importer of marihuana, as specified above.

Dated: January 9, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-1010 Filed 1-12-78; 8:45 am]

[4410-01]

MANUFACTURE OF CONTROLLED SUBSTANCES

Notice of Registration

By Notice dated November 11, 1977, and published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59562), Hoffmann LaRoche Inc., Kingland Road and Bloomfield Avenue, Nutley, N.J. 07110, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the schedule II controlled substances alphaprodine and levorphanol.

No comments or objections having been received, and pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and 21 CFR 1301.54(e), the Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: January 9, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-1011 Filed 1-12-78; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

Notice of 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 USC 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 facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial 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 applicant.

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 within two weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW. Washington, D.C. 20213

Signed at Washington, D.C. this Sixth day of January 1978.

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

APPLICATIONS RECEIVED DURING THE WEEK ENDING JANUARY 6, 1978

Name of applicant, location of enterprise, and principal product or activity

A. B. Steuart Corp., Fredericksburg, Va., management, consulting and public relations services.

Defender Chemical Co., Richland County, S.C., industrial chemical sales and industrial maintenance services.

Life Care Center of South Pittsburg, South Pittsburg, Tenn., intermediate care nursing services.

Mountain Stuff, Inc., Sneedville, Tenn., manufacture of Sycamore traveler.

Strickland Custom Meat Processors, Marianna, Fla., retail meat sales, packing and processing custom slaughter.

New Palmetto Marina, Palmetto, Fla., marina (water transportation services).

Hunter Heath, M.D., West Onslow Beach, N.C., campground and recreation park.

Caradon Industries, Inc., Chatsworth, Ga., processing of carpet yarn.

Intermatic Inc., Spring Grove, Ill., manufacture of clocks and mechanisms.

Markesan Herald, Markesan, Wis., newspaper publication.

Woods Haven Senior Citizens Home, Inc., Pollock, La., nursing home care.

Singleton Shrimp, Inc., Freeport, Tex., shrimp packing.

MonArk Boat Co., Monticello, Ark., supplier of recreational and industrial marine products.

McClintock's IGA Market, Inc., Neosho, Mo., grocery store.

Consolidated Aluminum Corp., (Tenant of the City of Shelbina), Shelbina, Mo., drawn aluminum tube.

Colonna of Colorado, Canon City, Colo., quarrying, crushing and distribution of decorative aggregate.

Mountain Stuff, Inc., Sneedville, Tenn., manufacture of recreation equipment and wooden furniture.

[FR Doc. 78-848 Filed 1-12-78; 8:45 am]

[4510-26]

Occupational Safety and Health Administration

[IRLG-1:003; FRL-842-2]

INTERAGENCY REGULATORY LIAISON GROUP

Testing Standards and Guidelines Work Group; Request for Written Materials

CROSS REFERENCE: For a document announcing agreement of the Consumer Product Safety Commission, the Environmental Protection Agency, the Food and Drug Administration, Health, Education, and Welfare Department and the Occupational Safety and Health Administration, Labor Department to work together as the Interagency Regulatory Liaison Group to aid in the development of preliminary drafts of testing guidelines, see FR Doc. 78-901 appearing under Environmental Protection Agency in the notices section of this issue. Refer to the table of contents at the front of this issue under "Environmental Protection Agency" to find the correct page number.

[4510-26]

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH, SUBGROUPS I AND II

Meeting

Notice is hereby given that subgroups I and II of the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet on January 30, 1978 in the New Department of Labor Building, 3d Street and Constitution Avenue NW., Washington, D.C. 20210. Subgroup I will meet in Room N-3437 A&B; Subgroup II will meet in Room N-3437 C&D. The meetings will begin at 9:00 a.m. The public is invited to attend.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 (Pub. L. 91-596) to advise the Secretary of Labor and the Secretary of Health, Education, and Welfare on matters relating to the administration of the act.

Subgroup I will develop recommendations concerning the protection of workers under section 11(c) of the act. It will also review the criteria currently in use for evaluating the effectiveness of State plans.

Subgroup II will examine the relationship between the education and training programs of OSHA and NIOSH, and the responsibilities the act assigns to each. It will also discuss the research activities of OSHA and NIOSH and develop recommendations for research priorities.

The two subgroups will hold a joint meeting in the afternoon to consider discriminatory practices in the hiring

and firing of women, older people, and the handicapped, due to occupational safety and health considerations. The two subgroups will also explore the impact of the Toxic Substances Control Act on the responsibilities of OSHA and NIOSH.

For additional information contact:

Stephen Kaffee, Division of Consumer Affairs, Occupational Safety and Health Administration, Department of Labor, Room N-3635, 3d Street and Constitution Avenue NW., Washington, D.C. 20210, telephone: 202-523-8024.

Written data or views concerning these agenda items may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled date of the meetings, preferably with 20 copies, will be presented to the Subgroups and included in the official record of the proceedings.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the subgroup chairpersons, to the extent which time permits.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C., this 10th day of January 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-1086 Filed 1-12-78; 8:45 am]

[4510-28]

Office of the Secretary

[TA-W-2194]

PROFILE INDUSTRIES, INC., PASSAIC, N.J.

Notice of Negative Determination Regarding Application for Reconsideration

On November 23, 1977, the petitioner for workers and former workers of Profile Industries, Inc., of Passaic, N.J., requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance. This determination was published in the FEDERAL REGISTER on October 25, 1977 (42 FR 56377).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

1. If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

2. If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

3. If, in the opinion of the certifying officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The only issue of substance raised by the petitioner in this case is whether or not imports of printed fabric are "likely or directly competitive with" the engraved copper rollers produced by the workers at Profile Industries, Inc.

It is the Department of Labor's position that imports of printed fabric are not "like or directly competitive with" the articles produced by the workers' firm, within the meaning of section 222(3) of the Trade Act of 1974. The Department's determination in this case is consistent with the legislative history of the Trade Act of 1974, decisions of various U.S. courts, and administrative precedents of both the Department of Labor and the United States International Trade Commission.

CONCLUSION

After review of the application and the investigative file I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is therefore denied.

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

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-1004 Filed 1-12-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

SUBCOMMITTEE ON CELL BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Cell Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: February 2, 3, and 4, 1978, 9 a.m. to 6 p.m.

Place: Room 421, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Gertrude Kasbekar, Assistant Program Director for Cell Biology, Room 334-C, National Science Foundation, Washington, D.C. 20550, telephone 202-634-4117.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in cell biology.

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. 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 19, 1977.

Dated: January 10, 1978.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc. 78-979 Filed 1-12-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON MOLECULAR BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Subcommittee on Molecular Biology, Group A, of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: January 30 and 31, 1978, 9 a.m. to 5 p.m., each day.

Place: Room 338, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Frederick I. Tsuji, Program Director, Biochemistry Program, Room 330, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550, telephone 202-632-4260.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Molecular Biology.

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. 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.

Dated: January 10, 1978.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc. 78-977 Filed 1-12-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON PSYCHOBIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Psychobiology of the Advisory Committee for Behavioral and Neural Sciences.
Date and time: February 2 and 3, 1978, 9 a.m. to 5 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. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4264.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in psychobiology.
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. 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.

Dated: January 10, 1978.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc. 78-978 Filed 1-12-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON SYSTEMATIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Systematic Biology of the Advisory Committee for Environmental Biology.
Date and time: February 2 and 3, 1978, 8:30 a.m. to 5 p.m., each day.
Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550
Type of meeting: closed.
Contact person: Dr. Jason A. Lillegraven, Program Director, Systematic Biology Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone 202-632-5846.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in systematic biology.
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. 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.

Dated: January 10, 1978.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc. 78-980 Filed 1-12-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[DOCKET NOS. STN 50-491, STN 50-492, STN 50-493]

DUKE POWER CO., CHEROKEE NUCLEAR STATION, UNITS 1, 2 AND 3

Issuance of Construction Permits

Notice is hereby given that, pursuant to the Partial Initial Decision dated May 21, 1976, Amendment of Partial Initial Decision dated March 17, 1977, Supplemental Partial Initial Decision dated July 26, 1977, unpublished Order dated June 23, 1976, and Partial Initial Decision dated December 30, 1977, of the Atomic Safety and Licensing Board, the Nuclear Regulatory Commission (the Commission) has issued Construction Permits Nos. CPPR-167, CPPR-168, CPPR-169 to Duke Power Co., for construction of three pressurized water nuclear reactors at the applicant's site in eastern Cherokee County, S.C.

The proposed facility is known as the Cherokee Nuclear Station, Units 1, 2 and 3. Each unit is designed for a rated power of 3800 megawatts thermal with a net electrical output of 1280 megawatts.

The Initial Decisions are subject to review by an Atomic Safety and Licensing Appeal Board prior to their becoming final. Any decision or action taken by an Atomic Safety and Licensing Appeal Board in connection with these Decisions may be reviewed by the Commission.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the construction permits. The application for the construction permits complies with the standards and requirements of the Act and the Commission's rules and regulations.

Each construction permit is effective on the date of issuance. The earliest date for completion of Unit 1 is February 28, 1983, and the latest date for completion is May 31, 1984. The earliest date for completion of Unit 2 is August 31, 1985, and the latest date for completion is November 30, 1986. The earliest date for completion of Unit 3 is February 29, 1988, and the latest date for completion is May 31, 1989. The permits shall expire on the latest date for completion of each unit.

A copy of (1) the Initial Decisions dated May 21, 1976, March 17, 1977, July 26, 1977, and December 30, 1977; (2) Construction Permits Nos. CPPR-167, CPPR-168, and CPPR-169, (3) the report of the Advisory Committee on Reactor Safeguards dated april 14, 1977; (4) the Office Nuclear Reactor Regulation's Safety Evaluation Report (NUREG-0189) dated March 1977, and Supplement 1 dated July 1977; (5) the Preliminary Safety analysis Report and amendments thereto; (6) the applicant's Environmental Report dated June 17, 1974 and amendments thereto; (7) the Draft Environmental Statement dated March 1975; (8) the Final Environmental Statement (NUREG-75/089) dated October 1975, are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555, and at the Cherokee County Library, 300 E. Rutledge Avenue, Gaffney, S.C. 29340. A copy of the construction permits may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Copies of the Safety Evaluation Report and supplement, and the Final Environmental Statement may be purchased, at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161.

Dated at Bethesda, Md., this 30th day of December 1977.

For the Nuclear Regulatory Commission.

HARLEY SILVER,
Acting Chief, Light Water Reactors Branch No. 4, Division of Project Management.

[Fr Doc. 78-933 Filed 1-12-78; 8:45 am]

[7590-1]

[Docket No. 50-335]

FLORIDA POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 18 to Facility Operating License No. DPR-67, issued to Florida Power & Light Co. (the licensee), which revised the Technical Specifications for operation of the St. Lucie Plant Unit No. 1 (the facility) located in St. Lucie County, Fla. The amendment is effective as of its date of issuance.

The amendment revised the Technical Specifications to: (a) modify the Offsite Organizational Structure, (b) reduce from 3.3 seconds to 3.0 seconds the Control Element Assembly drop time, (c) modify the transition limit to extend the transition period from 15 minutes to one hour without either a reactor coolant pump or shutdown cooling pump running, and (d) delete conditions F and G of Enclosure 1 to the license since these items (relating to control of water flow in the ultimate heat sink and installation of erosion protection for part of the discharge canal) have been satisfactorily completed.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated June 30, 1977 (as supplemented by letter dated August 4); July 18, September 6 and 30, and October 25, 1977, (2) Amendment No. 18 to License No. DPR-67, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Fla. 33450. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 21th day of December, 1977.

For the Nuclear Regulatory Commission.

DON K. DAVIS,
Acting Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-934 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-321]

GEORGIA POWER CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 48 to Facility Operating License No. DPR-57 issued to Georgia Power Co., Oglethorpe Electric Membership Corp., Municipal Electric Association of Georgia and City of Dalton, Ga., which revised Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1, located in Appling County, Ga. The amendment is effective as of its date of issuance.

The amendment modifies the Technical Specifications to convert the primary source of power to the Low Pressure Coolant Injection (LPCI) system injection valve operators from diesel generators 1A, 1C, or 1B to independent sets of 250 volt DC/600 volt AC inverters which are powered by the station batteries.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 9, 1977, as supplemented by letters dated July 11, August 2, and October 11, 1977, (2) Amendment No. 48 to License No. DPR-57 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. And at the Appling County Public Library, Parker Street, Baxley, Ga. 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 4th day of January 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-935 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 27-39]

NUCLEAR ENGINEERING CO., INC.

Establishment of Atomic Safety and Licensing Board To Rule on Petitions

Pursuant to delegation by the Commission dated December 29, 1972, published in the FEDERAL REGISTER (37 FR 28710) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717, and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to rule on petitions and/or requests for leave to intervene in the following proceeding:

Nuclear Engineering Co., Inc. (Sheffield, Illinois Facility), License No. 12-10042-01.

This action is in reference to a notice published by the Commission on December 5, 1977, in the FEDERAL REGISTER (42 FR 61522) entitled "Availability of Applicant's Environmental Report; Consideration of Proposed Expansion of the Sheffield, Ill., Low-Level Waste Burial Site; and Opportunity for Hearing".

The Chairman of this Board and his address is as follows: Andrew C. Goodhope, Esq., 3320 Estelle Terrace, Wheaton, Md. 20906.

The other members of the Board and their addresses are as follows: Dr. Linda W. Little, Research Triangle Institute, P.O. Box 12194, Research Triangle Park, N.C. 27709. Dr. Forrest J. Remick, 305 E. Hamilton Avenue, State College, Pa. 16801.

Dated at Bethesda, Md., this 6th day of January 1978.

For the Atomic Safety and Licensing Board Panel.

JAMES R. YORE,
Chairman.

[FR Doc. 78-936 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket Nos. 50-171/277/278]

PHILADELPHIA ELECTRIC CO.

Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission has relocated the Local Public Document Room for the Peach Bottom Nuclear Generating Station Units, 1, 2, and 3 from York, Pa. to Harrisburg, Pa. Members of the public can inspect documents and correspondence related to the operation and decommissioning of Peach Bottom Unit No. 1 and the operation of Units 2 and 3 at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth Avenue and Walnut Street, Harrisburg, Pa. 17126. The hours of operation of the State Library of Pennsylvania are as follows: Monday through Friday 8:30 a.m. to 5 p.m. and Saturday by appointment only.

Peach Bottom Units 1, 2, and 3 are owned by the Philadelphia Electric Co. Unit No. 1 is being decommissioned and Units 2 and 3 are operating. All three Units are located in Peach Bottom, York County, Pa.

Copies of documents and correspondence are also available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Dated at Bethesda, Md., this 3rd day of January, 1978.

For the Nuclear Regulatory Commission.

GEORGE E. LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-937 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-549]

POWER AUTHORITY OF THE STATE OF NEW YORK, (GREENE COUNTY NUCLEAR POWER PLANT)

Reconstitution of Board

John F. Wolf, Esq. was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Mr. Wolf is unable to continue his service on this Board.

Accordingly, Frederic J. Coufal, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Md., this 5th day of January 1978.

JAMES R. YORE,
Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 78-912 Filed 1-12-78; 8:45 am]

[7590-01]

REGULATORY GUIDE

Notice of Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series and a draft of a companion report. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.18, "Information Relevant to Ensuring That Occupational Radiation Exposures at Medical Institutions Will Be As Low As Reasonably Achievable," describes methods acceptable to the NRC staff for maintaining occupational exposures as low as reasonably achievable in medical institutions. NUREG-0267, "Principles and Practices for Keeping Occupational Radiation Exposures at Medical Institutions As Low As Reasonably Achievable," provides more detailed information for controlling exposures in these institutions.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 8.18 and NUREG-0267 will, however, be particularly useful in evaluating the need for an early revision if received by March 10, 1978.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides and NUREG reports are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of NUREG-0267 or of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

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

Dated at Rockville, Md., this 4th day of January 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-911 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-206]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO.

Granting of Relief from ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Southern California Edison Co. and San Diego Gas and Electric Co. The relief relates to the inservice inspection (testing) program for the San Onofre Nuclear Generating Station (the facility) located in San Diego County, Calif. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

Relief is granted, on an interim basis, pending completion of a more detailed review, from compliance with certain inservice inspection and testing requirements determined to be impractical for the facility because compliance would result in hardships and unusual difficulties without a compensating increase in the level of quality of safety.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated September 28, 1977, (2) the Commission's letter to the licensee dated December 22, 1977.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Mission Viejo Branch Library, 27851 Chrisanta Drive, Mission Viejo, Calif. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 22nd day of December 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-913 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket Nos. 50-317 and 50-318]

BALTIMORE GAS & ELECTRIC CO.

Issuance of Amendments to Facility Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 27 and 12 to Facility Operating License No. DPR-53, and DPR-69, respectively, issued to Baltimore Gas & Electric Co. (the licensee), which revised the licenses and their appended Technical Specifications for operation of the Calvert Cliffs Nuclear Powerplant Unit Nos. 1 and 2 (the facilities) located in Calvert County, Md. The amendments are effective as of their date of issuance.

The amendments authorize replacement of the existing racks in each side of the two-section spent fuel pool of the facilities with racks of a design capable of accommodating up to 528 fuel assemblies per side. The Commission has determined that storage of either unit's fuel in either side of the shared fuel pool was authorized when the operating licenses were initially issued. The modification and subsequent use of the two-section pool permits a total of 1,056 fuel assemblies to be stored instead of the previously authorized total of 410 assemblies.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Notice of Consideration of Proposed Modifications to Facilities Spent Fuel Storage Pool in connection with this action was published in the FEDERAL REGISTER on September 19, 1977 (42 FR 46963). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an environmental impact appraisal of the action being authorized and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action significantly greater than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility dated April 1973, and the action will not significantly affect the quality of the human environment.

For further details with respect to this action, see (1) the applications for amendments dated August 5, 1977, September 7, 1977, October 7 and 19, 1977, November 1, 4, 16 and 17, 1977, and December 7, 1977, (2) Amendment No. 27 to License No. DPR-53, Amendment No. 12 to License No. DPR-69, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Calvert County Library, Prince Frederick, Md. 20678. A single copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this fourth day of January, 1978.

For the Nuclear Regulatory Commission.

DON K. DAVIS,
Acting Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc.78-924 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-324]

CAROLINA POWER AND LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-62, issued to Carolina Power and Light Co. (the licensee), which revised Technical Specifications for operation of Brunswick Steam Electric Plant, Unit No. 2 (the facility) located in Brunswick County, N.C. The amendment is effective as of the date of issuance.

The amendment changes the Technical Specifications for the facility to establish revised safety and operating limits for operation in Cycle 2 with both 7 x 7 and new 8 x 8 fuel, and includes changes resulting from a reevaluation of Emergency Core Cooling System (ECCS) cooling performance submitted by CP&L on September 22, 1977, in compliance with the Commission's Order for Modification of License dated March 11, 1977. This reevaluation corrected the errors identified in the March 11, 1977 Order and included the effect of other recently approved model changes in the ECCS evaluation models. The CP&L submittal of September 22, 1977, satisfies the action required by the March 11, 1977 Order. Therefore, effective upon issuance of this amendment, the Commission's Order for Modification of License dated March 11, 1977, relative to Facility Operating License No. DPR-62, is terminated.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Facility Operating License in connection with this action was published in the FEDERAL REGISTER on September 26, 1977 (42 FR 48951) and on September 29, 1977 (42 FR 51676). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the applications for amendment dated August 3, August 22, and September 22, 1977, as supplemented on November 10 and 21, 1977, (2) Amendment No. 38 to License No. DPR-62, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Southport-Brunswick County Library, 109 West Moore Street, Southport, N.C. 28461. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 23d day of November 1977.

For the Nuclear Regulatory Commission.

ALFRED BURGER,
Acting Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-925 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-10]

COMMONWEALTH EDISON CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 23 to Facility Operating License No. DPR-2, issued to Commonwealth Edison Co. (the licensee), which revised the license for operation of Dresden Station Unit No. 1 (the facility) located in Grundy County, Ill. The amendment is effective as of its date of issuance and exempts the facility from certain safety requirements.

The amendment: (1) extends by exemption from the requirements of 10 CFR 50.46 the date from December 31, 1977, to October 31, 1978, for the license to modify the Reactor Protection System and Fire Protection System, which was required by the Commission's Order for Modification of License dated June 23, 1976, (2) extends by exemption from the requirements of 10 CFR 50.46 the expiration date of the Commission's August 21, 1975, Emergency Core Cooling System (ECCS) Order from December 31, 1977, to October 31, 1978, (3) adds interim license conditions to the license deemed necessary by the Commission's staff to provide added assurance that the Emergency Core Cooling System will function as required, and (4) formally incorporates the remaining applicable provisions of the June 23, 1976, and August 21, 1975, Order in the license.

The requested exemption by the licensee was for a period ending December 31, 1978; however, the exemption has been issued to expire October 31, 1978, to coincide with the planned shutdown of the facility for decontamination.

The application for the amendment and exemption complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations to 10 CFR Chapter I, which are set forth in the license amendment. In connection with item (1) above, Notice of Proposed Issuance of Amendment to Facility Operating License was published in the FEDERAL REGISTER on November 11, 1977 (42 FR 58801). For item (2) Notice of Request for Extension of ECCS Exemption was published in the FEDERAL REGISTER on November 30, 1977 (42 FR 60989). No requests for hearing or comments were received on items (1) and (2). Prior public notice of items (3) and (4) above was not required, since these actions do not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment and exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment and extension dated July 8, 1977, and supplements thereto dated November 11, 15, and 28, 1977, and December 14, 1977, (2) Amendment No. 23 to License No. DPR-2, and (3) the Commission's related Safety Evaluation. All of these items, including the referenced Orders, are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this sixth day of January, 1978.

For the Nuclear Regulatory Commission.

DON K. DAVIS,
Acting Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-926 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-295]

COMMONWEALTH EDISON CO.

Granting of Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Commonwealth Edison Co. The relief relates to the inservice inspection (testing) program for the Zion Unit 1 (the facility) located in Zion, Ill. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief consists of substitution of alternative inspection requirements where the inspection requirements of ASME Code, section XI have been determined to be impractical due to plant design, geometry, materials of construction and/or would result in high radiation exposure to operators or inspectors.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated May 22, 1977, and (2) the Commission's letter to the licensee dated December 7, 1977.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Waukegan Public Library, 128 North County Street, Waukegan, Ill. 60685. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 7th day of December 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-927 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-304]

COMMONWEALTH EDISON CO.

Granting of Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the

ASME Code, section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Commonwealth Edison Co. The relief relates to the inservice inspection (testing) program for the Zion Unit 2 (the facility) located in Zion, Ill. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief consists of substitution of alternative inspection requirements where the inspection requirements of ASME Code, section XI have been determined to be impractical due to plant design geometry, materials of construction and/or would result in high radiation exposure to operators or inspectors.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazard consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated June 29, 1977, and (2) the Commission's letter to the licensee dated December 7, 1977.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Waukegan Public Library, 128 North County Street, Waukegan, Ill. 60685. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 7th day of December 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-928 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket No. 50-255]

CONSUMERS POWER CO.

Granting of Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Consumers Power Co. The relief relates to the inservice inspection (testing) program for the Palisades Plant (the facility) located in Covert Township, Van Buren County, Mich. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief consists of substitution of alternative inspection requirements where the inspection requirements of ASME Code, section XI have been determined to be impractical due to plant design, geometry, or materials of construction.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated March 1, 1977, and (2) the Commission's letter to the licensee dated December 7, 1977.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Mich. 49006. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 7th day of December 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No.1, Division of Operating Reactors.

[FR Doc. 78-930 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket Nos. 50-329 and 50-330]

CONSUMERS POWER CO.; (MIDLAND PLANT, UNITS NO. 1 AND NO. 2) CONSTRUCTION PERMIT NOS. CPPR-81 AND CPPR-82

Reconstitution of Board

Frederic J. Coufal, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Because of a schedule conflict, Mr. Coufal is unable to continue his service on this Board.

Accordingly, Marshall E. Miller, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Md., this 5th day of January 1978.

JAMES R. YORE,
Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 78-931 Filed 1-12-78; 8:45 am]

[7590-01]

[Docket Nos. 50-269, 50-270 and 50-287]

DUKE POWER CO.

Issuance of Amendments To Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 52, 52, and 49 to Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55, respectively issued to Duke Power Company which revised Technical Specifications for operation of the Oconee Nuclear Station Unit Nos. 1, 2, and 3, located in Oconee County, S.C. The amendments are effective as of their date of issuance.

The amendments revise the Technical Specifications to establish operating limits for Unit 3 Cycle 3 operation.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license

amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated September 6, 1977, (2) Amendment Nos. 52, 52, and 49 to Licenses Nos. DPR-38, DPR-47, and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the Oconee County Library, 201 South Spring, Walhalla, S.C. 29691. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 21st day of November 1977.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-932 Filed 1-12-78; 8:45 am]

[7555-02]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

WORKING GROUP ON BASIC RESEARCH IN THE DEPARTMENT OF ENERGY

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

Name: Working Group on Basic Research in the Department of Energy.
Date: February 2-3, 1978.
Time: 9 a.m. to 4 p.m.
Place: Room 2102, Urey Hall, Revelle Campus, University of California at San Diego, La Jolla, Calif.
Type of meeting: Open.
Contact person: Mr. William J. Montgomery, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, telephone 202-395-4692.
Summary minutes: May be obtained from the Office of Science and Technology Policy, Washington, D.C. 20500.
Purpose of advisory committee: The Office of Science and Technology Policy is conducting a study which will lead to the formulation of policy governing the performance of basic research by or for the mission agencies. Under the guidance of the Steering Committee on Basic Research in Mission Agencies, the Working group on Basic Research in the DOE is to examine the policies and procedures and research programs of that agency for adequacy and balance between near-term and long-term technical objectives.
Agenda: 9 a.m. to 4 p.m. Meeting to discuss results of working subgroup analyses and review of preliminary reports. There also will be briefings on basic research in the DOE National Laboratories.

WILLIAM J. MONTGOMERY,
Executive Officer.

[FR Doc. 78-1174 Filed 1-12-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-10082]

VALUATION OF PORTFOLIO SECURITIES BY MONEY MARKET FUNDS

Public Meeting

The Commission announces that on January 26, 1978, at 2 p.m. in Room 825 at the Commission's offices, 500 North Capitol Street, Washington, D.C. 20549, it will hold a public meeting at which interested persons may express their views concerning the valuation of portfolio securities by money market funds.

On May 31, 1977, the Commission issued an interpretative release (Investment Company Act Release No. 9786) ("Release No. 9786") [42 FR 28999, June 7, 1977], expressing, generally, the view that money market funds should determine the fair value of short-term debt securities for which market quotations are not readily available by reference to current market factors. The release indicated that use of the amortized cost method of valuation did not ordinarily take such factors properly into account, and therefore could be inconsistent with the provisions of Rule 2a-4 [17 CFR 270.2a-4] under the Investment Company Act of 1940 (the "Act") [15 U.S.C. 80a-1 et seq.].

Subsequent to the issuance of Release No. 9786, nine applications were filed on behalf of money market funds seeking exemptions from appropriate provisions of the Act which, if granted, would permit the use of amortized cost valuation under specified circumstances and conditions.[1] In addition, a number of persons have raised questions with regard to the interpretation set forth in Release No. 9786. Although the Commission continues to believe its position on this matter is correct, in view of the aforementioned developments, the Commission believes that it would be appropriate at this time to schedule a public meeting to enable interested persons to present their views orally on the issue of money market fund portfolio valuation to the Commission. The meeting will afford persons affected by the interpretation announced in Release No. 9786 an additional opportunity to bring their views directly to the Commission's attention.

Members of the public are invited to attend the meeting. All persons wishing to speak at the meeting should submit a request in writing by January 20, 1978, to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, indicating the nature of their interest in the matter, a summary of the views they propose to present, and an estimate of how much time they would need to present their views. Written submissions on the subject will also be considered.

To obtain further information, contact Kenneth S. Gerstein at 202-755-0233 or Dianne E. O'Donnell at 202-755-0225.

By the Commission.

Dated: January 5, 1978.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-1008 Filed 1-12-78; 8:45 am]

[1] Notices of the filing of seven such applications have been published in the FEDERAL REGISTER giving interested persons an opportunity to request that hearings be held on them. Certain communications have been received by the Commission which raise questions as to whether hearings should be ordered on these applications. Pending resolution of these matters, the Commission issued an order granting the exemptions requested in the seven applications on a temporary basis subject to certain specified conditions (Investment Company Act Release No. 10027, November 28, 1977).

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

[520059/040518]

MEN'S OR BOYS' COTTON SUITS, NOT KNIT

Tariff Classification Under Doctrine of Entireties; Change of Practice Considered

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed change of practice.

SUMMARY: This document gives notice that the Customs Service is reviewing the current uniform and established practice of classifying men's and boys' cotton suits, not knit, according to the separate components rather than as entireties. The current

practice appears to conflict with the principles announced in a recent court decision and with the uniform practice of classifying all other men's and boys' suits and all women's and girls' suits as entireties.

DATES: Comments must be received on or before February 13, 1978.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Philip L. Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5865).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under a uniform and established practice, the Customs Service classifies importations of men's and boys' cotton suits, not knit, according to the tariff provisions for each separate component, rather than classifying the suits as entireties. However, importations of all other men's and boys' suits and importations of all women's and girls' suits are uniformly classified as entireties.

The United States Customs Court, in *J. C. Penney Purchasing Corp.* v. *United States*, C.D. 4671 (1976), held that certain women's wearing apparel sets are classifiable as entireties for tariff purposes. The court noted that the clothing sets were designed, purchased, imported, and invoiced as a unit. The component pieces of each set were coordinated or matched as to color and size, and were always advertised and sold as sets. The description of these sets appears to describe, for the purpose of classification as entireties, men's and boys' cotton suits, not knit.

In view of the decision in *J. C. Penney Corp.* and the uniform practice of classifying all other suits of clothing as entireties, the practice of classifying men's and boys' cotton suits, not knit, according to the tariff provisions for each separate component appears to be incorrect. The Customs Service proposes to change this practice.

DOCTRINE OF ENTIRETIES

For tariff classification purposes, the Customs Service considers certain articles as "entireties" even though the articles consist of several components for which there are separate provisions in the Tariff Schedules of the United States. If such an article is considered an entirety, the article (consisting of several components) is assessed duty at the time of importation as one complete article under the appropriate tarrif classification.

In general, an article consisting of several components may be considered an entirety if all the components are imported together, designed for use together, and marketed as a unit, and if the article has a use or character different from that of the components as separate items. The fact that the components have commercial value as separate items does not preclude the application of the doctrine of entireties.

PROPOSED CHANGE OF PRACTICE

The Customs Service is considering a change in its practice of classifying men's and boys' cotton suits, not knit, according to the separate components because there is an apparent inconsistency between this practice and the principles announced by the court in *J. C. Penney Purchasing Corp.* The Customs Service proposes to classify men's and boys' cotton suits, not knit, as entireties, which is in accordance with the practice by which all other men's and boys' suits and all women's and girls' suits are classified.

AUTHORITY

Because the proposed change of practice may affect the assessed duties on men's and boys' cotton suits, not knit, the Customs Service is giving this notice and opportunity for comment in accordance with section 315(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1) of the Customs Regulations (19 CFR 177.10(c)(1)).

COMMENTS

Consideration will be given to any written comments submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C.

DRAFTING INFORMATION

The principal author of this notice was John L. Valentine, Regulations and Legal Publications Division of the Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the U.S. Customs Service participated in developing this notice, both on matters of substance and style.

R. E. CHASEN,
Commissioner of Customs.

Approved: January 3, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-981 Filed 1-12-78; 8:45 am]

[4510-29; 4830-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Notice of a Proposal of Exemption Relating to a Transaction Involving the F. W. Harris, Inc. Employees Profit Sharing Trust (D-641)

AGENCIES: Department of the Treasury/Internal Revenue Service, Department of Labor.

ACTION: Proposal for an exemption.

SUMMARY: This notice contains a proposal for an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code (the Code) which regulate employee benefit plans. This exemption, if granted, would permit the F. W. Harris, Inc. Profit Sharing Trust (the Plan) to sell a parcel of real property to F. W. Harris, Inc. (the Employer).

DATE: Written comments and requests for a public hearing must be received by the Internal Revenue Service (the Service) on or before February 13, 1978.

ADDRESS: Written comments and all requests for a hearing (preferably six copies) should be addressed to Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT.

FOR FURTHER INFORMATION CONTACT:

Charles Humphrey of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: E:EP:PT) (202-566-3089). This is not a toll free number.

SUPPLEMENTARY INFORMATION:

REQUESTED EXEMPTION

Notice is hereby given of the pendency before the Department of Labor (the Department) and the Service (hereinafter "the Agencies") of an application filed by the Employer and the Plan for exemption from the restrictions of section 406(a)(1) and 406(b) (1) and (2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code. This application was filed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF REPRESENTATIONS

The application contains representations with regard to the pending ex-

emption which are summarized below. Interested persons are referred to the application and supporting documents on file with the Agencies for a complete statement of the representations of the Applicants.

1. The Employer is a Virginia corporation located in Annandale, Virginia. It is engaged in the plumbing, heating, and air conditioning business. The Employer maintains the Plan which has approximately 29 participants. Floyd W. Harris and Murray A. Parrish are the trustees of the Plan and own 75 and 25 percent of the outstanding shares of the Employer, respectively.

2. The Plan owns a 1.13 acre parcel of property (the Parcel) which is the subject of this request and for which the Employer has agreed to pay $60,000 in cash. The purchase price is equal to the highest appraised value of two independent appraisers. The Parcel is part of 4.52 acres of undeveloped, commercially zoned land located in Loudoun County, Va. The 4.52 acre tract (the Tract) was purchased by the Plan on May 21, 1974, for $135,600. The Tract is identified as Parcel No. 3, Double Circle 4, Loudoun County Tax Assessment Map No. 94, and is recorded in Deed Book 597 at page 781. The nearly rectangular Tract borders on State Route 636, former State Route 634 and State Route 28. State Route 28 is the major north-south route in the Dulles International Airport, Herndon, Sterling Park area. It is approximately 3 miles to arterial highway Route 7, and 1¾ miles to the Dulles International Airport and the Dulles access road to the Washington area, and 6½ miles to arterial highway Route 50.

3. Appraisals of the Tract by two independent appraisers have been submitted by the Applicants. Both appraisers valued the Tract on two occasions separated by approximately six months.

4. On October 25, 1976, Mr. William L. Bryant valued the Tract at $183,000. His second appraisal, dated April 7, 1977, found the fair market value of the Tract to be $200,000. This appraisal fixed the value of the Parcel at $60,000 and the value of the remaining 3.39 acres (the Remainder) at $140,000. Mr. Bryant assigned a greater value to the Parcel ($1.20 per sq. ft.) than to the Remainder ($0.95 per sq. ft.). The latter valuation rate is the same as that used by Mr. Bryant in his October valuation of the Tract.

5. On October 21, 1976, Mr. L. Weidlein valued the Tract at $185,000. This appraisal fixed the value of the Parcel at $55,000 and the value of the Remainder at $130,000. On April 7, April 20, and May 23, 1977, Mr. Weidlein made additional representations concerning the Tract which, along with Mr. Bryant's are detailed below.

6. The Applicants assert that the proposed transaction would be in the best interests of the Plan and its participants and beneficiaries for the following reasons:

(a) The Tract is unproductive. It constitutes 24 percent of the Plan's assets. The trustees believe the sale would be advantageous because the Plan will realize the appreciation in value of the property and will be able to convert a non-liquid asset into cash.

(b) Mr. Weidlein believes that the transaction would increase the value of the Remainder. In the Dulles Airport area, subdivision generally increases the value of undeveloped land because there is a greater demand for small parcels than for large ones.

(c) The Employer's planned construction on the Parcel of a building to house its business activities should enhance the value of the Remainder. Furthermore, Mr. Weidlein believes this activity will enhance all values in the immediate vicinity of the Parcel.

(d) Holders of closely situated undeveloped property have actively attempted to sell their property for more than a year and have not met with success. Mr. Weidlein represents that he has for the last 12 months actively attempted to sell, at $30,000 an acre, 5 acres of property which are located on Route 28 across the street from the Plan's Tract. Currently, this property is not zoned "commercial" but it is on the County Master Plan for commercial and industrial use. According to county authorities it can be zoned "commercial" at any time. It is estimated 120 days would be necessary to accomplish such a change. In addition, the Dorothy K. Winston Company has held on the market for a year and has failed to sell 5 acre parcels of commercially zoned property at $30,000 per acre. The property is located less than 1 mile north of the Parcel on Route 28. The asking price of these properties is $0.70 per square foot, an amount which is $0.50 per square foot less than the Employer is willing to pay for the Parcel.

(e) Mr. Weidlein believes that a willing buyer cannot be found to purchase the Parcel at as high a price as the Employer's offer. Taking into account brokerage commissions, a willing buyer would have to pay at least $66,000 to the Plan to duplicate the Employer's offer of $60,000.

Notification of Interested Parties

Within 10 days after publication by the Service and the Department of this proposal for an exemption, participating employees, officers, directors and any 10 percent shareholders of the Employer will be notified by mailing a copy of this notice of a proposal to grant the exemption.

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 party in interest or disqualified person 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; the proposed exemption does not 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 proposed exemption contained herein does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

3. Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Service and the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of such participants and beneficiaries; and

4. The proposed exemption, if granted, is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

Pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies are required to offer an opportunity for a public hearing where a proposal for an exemption relates to section 406(b) of the Act or section 4975(c)(1) (E) or (F) of the Code. Any interested person may submit a written request that a hearing be held relating to the proposal for an exemption. Such a written request must be received by the Service on or before February 13, 1978, and should state the reasons for such person's request for a hearing and the nature of such person's interest in the proposal for an exemption. All interested persons also are invited to submit written comments on the proposal for an exemption set forth herein. In order to receive consideration, such comments must be received by the Service on or before February 13, 1978. All written comments (preferably six copies) and all requests for a hearing should be addressed to the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: E:EP:PT. All such comments will be made part of the record, and will be

available for public inspection at the Internal Revenue Service National Office Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, D.C. 20224, and at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4677, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216.

PROPOSED EXEMPTION

Based on the representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722, and in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code and the restrictions of section 406(a)(1) and 406(b) (1) and (2) of the Act shall not apply to the sale of the Parcel by the Plan to the Employer for $60,000, provided that this amount is not less than the fair market value of the property.

This exemption, if granted, will be subject to the express conditions that material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 5th day of January, 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator for Pension and Welfare Benefit Programs, Labor Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-728 Filed 1-12-78; 8:45 am]

[4810-22]

Office of the Secretary

WELDED STAINLESS STEEL PIPE AND TUBING FROM JAPAN

Antidumping; Withholding of Appraisement Notice and Exclusion From Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Withholding of appraisement.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a tentative determination that welded stainless steel pipe and tubing from Japan are being sold at less than fair value under the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the prices of merchandise sold for exportation to the United States are less than the prices in the home market. Appraisement for the purpose of determining the proper duties applicable to entries of this merchandise, with the exception of one manufacturer, will be suspended for 6 months. Interested persons are invited to comment on this action.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard Rimlinger, Opertions Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 2, 1977, the U.S. International Trade Commission ("Commission") notified the Secretary of the Treasury that pursuant to sections 334 and 337(b)(3), of the Tariff Act of 1930, as amended (19 U.S.C. 1334 and 1337(b)(3)), a complaint had been filed with the Commission on November 15, 1976, which might involve matters coming under the purview of the Antidumping Act, 1921, as amended (19 U.S.C. 160, *et seq.*) (referred to in this notice as "the Act"). This complaint, which formed the basis of an investigation instituted by the Commission under section 337 on February 1, 1977, concerned stainless steel pipe and tubing entering the U.S. under item 610.3720 of the Tariff Schedules of the United States Annotated. It was filed by counsel acting on behalf of Acme Tube Inc., Somerset, N.J.; Allegheny Ludlum Steel Corp., Pittsburgh, Pa.; Armco Steel Corp., Advanced Material Division, Baltimore, Md.; Bristol Metals, Inc., Bristol, Tenn.; Carpenter Technology Corp., Tube Division, Union, N.J.; Colt Industries, Inc., Trent Tube Division, East Troy, Wis.; Consolidated Metals Corp., Dover, N.J.; and Sharon Steel Corp., Damascus Tubular Products Division, Greenville, Pa.

A previous antidumping investigation concerning welded stainless steel pipe and tubing from Japan had resulted in a "Notice of Discontinuance of Antidumping Investigtion" which was published in the FEDERAL REGISTER of November 22, 1972 (37 FR 24838). On the basis of the information supplied by the Commission, a "Notice of Reopening of Discontinued Investigation" was published in the FEDERAL REGISTER of March 30, 1977 (42 FR 16883), and an investigation has been conducted to enable the Secretary of the Treasury to determine whether there are reasonable grounds to believe or suspect that there are, or are likely to be, sales to the United States at less than fair value, as required by section 153.33(g) of the Customs Regulations (19 CFR 153.33(g)).

The secretary concluded that a tentative determination could not reasonably be made within the usual six-month period and the investigatory period in this case was therefore extended to no more than nine months pursuant to a "Notice of Extension of Investigatory Period" published in the FEDERAL REGISTER on October 6, 1977 (42 FR 54491).

TENTATIVE DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of the information developed in Customs investigation and for the reasons noted below, pursuant to section 201(b) of the act (19 U.S.C. 160(b)), I hereby determine that there are reasonable grounds to believe or suspect that the purchase price or the exporter's sales price of welded stainless steel pipe and tubing from Japan, other than that produced by Toa Seiki Co., Ltd., for export to the United States, is less, or is likely to be less, than the fair value, and thereby the foreign market value, of such or similar merchandise, or the constructed value of such imported merchandise.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

a. *Scope of the investigation.* It appears that 85 percent of imports of the subject merchandise from Japan was manufactured by: Stainless Pipe Industries Ltd., Toa Seiki Co., Ltd., Yamato Industries Co., Ltd., Brasimet Industries Corp., Ltd., Tokyo Nishimura Kogyo Co., Ltd., and Nisshin Steel Co., Ltd. Therefore, the investigation was limited to these six manufacturers.

b. *Basis of comparison.* For the purpose of considering whether the merchandise in question is being, or is likely to be sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between purchase price and the home market price of such or similar merchandise on sales by Stainless Pipe Industries Ltd., Toa Seiki Co., Ltd., Brasimet Industries Corp., Ltd., Tokyo Nishimura Kogyo Co., Ltd., and Nisshin Steel Co., Ltd., and between purchase price or exporter's sales price and the constructed value of the imported merchandise on sales by Yamato Industries Co., Ltd. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for five manufacturers since all export sales by those five companies appear to be made to non-related customers in the United States. Purchase price was also used for certain sales by Yamato Industries Co., Ltd., where the merchandise was purchased by a non-related Japanese trading firm for export to

the United States. Exporter's sales price as defined in section 204 of the Act (19 U.S.C. 163) was used for those sales in which a related importer acted as the seller of the merchandise.

Prices, in the country of exportation as defined in section 153.2, Customs Regulations (19 CFR 153.2), were used for fair value purposes with respect to Stainless Pipe Industries, Ltd., Toa Seiki Co., Ltd., Brasimet Industries Corp., Ltd., Tokyo Nishimura Kogyo Co., Ltd., and Nisshin Steel Co., Ltd., since such or similar merchandise appears to be sold in the home market in sufficient quantities at prices equal to or above the cost of production to provide an adequate basis of comparison. With regard to Yamato Industries Co., Ltd., information indicates that a significant number of sales in the home market are made at prices below the cost of production and that remaining sales, made at prices above the cost of production, provide an inadequate basis for fair value comparisons. Since there do not appear to be sales to third countries of such or similar merchandise, the fair value was based on constructed value as defined in section 206 of the act (19 U.S.C. 165).

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing and cost of production information was obtained concerning export and appropriate home market sales of welded stainless steel pipe and tubing from Japan during the period October 1, 1976, through March 31, 1977.

c. *Purchase price.* For purposes of this tentative determination, purchase price has been calculated on the basis of the f.o.b. port, f.a.s. port, or ex-godown, packed price to the United States, or to the unrelated trading company as appropriate, with deductions for inland freight, insurance, and shipping charges as appropriate.

d. *Exporter's sales price.* For purposes of this Tentative Determination, exporter's sales price has been calculated on the basis of the c.i.f., duty paid, ex-dock, packed price to the unrelated United States customers, with deductions for Japanese shipping charges, ocean freight, insurance, brokerage, wharfage, United States import duties and selling expenses.

e. *Home market price.* For purposes of this Tentative Determination, home market price has been calculated on the weighted average delivered packed price to unrelated purchasers with deductions for inland freight, differences in payment terms, and differences in packing cost. Adjustments were also made for differences in merchandise as appropriate.

In the case of Nisshin Steel Co., Ltd., claims were made for deductions from home market prices for smaller lot sales, shorter lead times, differences in warranty cost and differences in merchandise. All claims have been disallowed at this time due to insufficient supporting evidence.

f. *Constructed value.* For purposes of this Tentative Determination, constructed value for Yamato has been calculated on the basis of the sum of the cost of the materials and of fabrication of the merchandise, as provided by that manufacturer, a statutory minimum amount for general expenses and profit pursuant to section 206(a)(2)(A) and (B) of the act (19 U.S.C. 165(a)(2) (A) and (B)), and the cost of all containers and coverings used to pack the merchandise ready for shipment to the United States.

g. *Result of fair value comparisons.* Using the above criteria, preliminary analysis suggests that purchase price and/or exporter's sales price probably will be lower than the home market price of such or similar merchandise, and/or the constructed value of the imported merchandise. Comparisons were made on approximately 53 percent of the total sales of the subject merchandise to the United States by all manufaturers investigated for the period under consideration. Margins were tentatively found ranging from 0.5 to 20 percent for sales made by Yamato Industries Co., Ltd., on 72 percent of the sales compared, ranging from 0.4 to 17 percent for sales made by Nisshin Steel Co., Ltd., on 22 percent of the sales compared, ranging from 0.4 to 12 percent for sales made by Stainless Pipe Industries Ltd., on 29 percent of the sales compared, and ranging from 0.9 to 42 percent for sales made by Tokyo Nishimura Kogyo Co., Ltd., on 96 percent of the sales compared. Weighted-average margins for each firm's sales compared were approximately 4 percent for Yamato Industries Co., Ltd., 1 percent for Nisshin Steel Co., Ltd., 1 percent for Stainless Pipe Industries Ltd., and 12 percent for Tokyo Nishimura Kogyo Co., Ltd. Tentatively, no margins have been found on sales by Toa Seiki Co. Ltd., and Brasimet Industries Corp. Based upon the absence of margins on over 88 percent of its exports to the U.S. and the fact that Toa Seiki Co., Ltd. appears to be honoring the price assurances it gave in 1972, it has been determined that this firm should be excluded from this Withholding of Appraisement under section 153.38, Customs Regulations (19 CFR 153.38). Insufficient information has been supplied by Brasimet Industries Corp. with regard to home market sales and sales to the U.S. to qualify for an exclusion at this stage in the proceedings.

It is not contemplated at this time that the merchandise subject to this investigation will be covered by the "trigger price mechanism" (TPM) established. The TPM is described in FEDERAL REGISTER notices published on December 30, 1977 (42 FR 65214) and January 9, 1978 (43 FR 1464).

Accordingly, Customs officers are being directed to withhold appraisement of welded stainless steel pipe and tubing from Japan, other than that produced for export to the United States by Toa Seiki Co., Ltd., in accordance with section 153.48, Customs Regulations (19 CFR 153.48).

In accordance with section 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments or request 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 not later than January 23, 1978. Such requests must be accompanied by a statement outlining the issues wished to be discussed, which issues may be discussed in greater detail in a written brief.

All written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received in his office no later than February 13, 1978. All persons submitting written views or arguments should avoid repetitious and merely cumulative material. Counsel for the petitioner and respondents are requested to serve all written submissions on all other counsel and to file their submissions with the Commissioner of Customs in ten copies.

This notice, which is published pursuant to section 153.35(b), Customs Regulations (19 CFR 153.35(b)), shall become effective January 13, 1978. It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 6, 1978.

[FR Doc. 78-939 Filed 1-2-78; 8:45 am]

[4810-22]

Office of the Secretary

CARBON STEEL PLATE FROM JAPAN

Determination of Sales at Less Than Fair Value

AGENCY: U.S. Treasury Department.

ACTION: Determination of Sales at Less Than Fair Value.

SUMMARY: This notice is to advise the public that an antidumping investigation has resulted in a determination that carbon steel plate from Japan is being sold at less than fair value. (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 or the constructed value of the merchandise). This case is being referred to the United States International Trade Commission for a determination concerning possible injury to an industry in the United States.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Mary S. Clapp or Mr. Stephen Nyschot, Operations Officers, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 8, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Oregon Steel Mills, Division of Gilmore Steel Corporation, indicating a possibility that carbon steel plate from Japan is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*) (referred to in this notice as "the Act"). An "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of March 30, 1977 (42 FR 16383), indicating that there was evidence on record concerning injury to or likelihood of injury to, or prevention of establishment of, an industry in the United States. A "Withholding of Appraisement Notice" was published in the FEDERAL REGISTER of October 6, 1977 (42 FR 54489).

For purposes of this notice, the term "carbon steel plate" means hot-rolled carbon steel plate, 0.1875 (3/16) inches or more in thickness, over 8 inches in width, not in coils, not pickled, not coated or plated with metal, not clad, and not cut, pressed or stamped to non-rectangular shape.

FINAL DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of the information developed in the Customs Service investigation and for the reasons noted below, carbon steel plate from Japan, is being or is likely to be sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above determination are as follows:

a. *Scope of the investigation.* It appears that during the period of investigation covering October 1, 1976 to March 31, 1977, over 70 percent of the imports of the subject merchandise from Japan were manufactured by Nippon Steel Corporation (Nippon Steel), Nippon Kokan K.K. (NKK), Sumitomo Metal Industries, Ltd. (Sumitomo), Kawasaki Steel Corporation (Kawasaki), and Kobe Steel, Ltd. (Kobe). Therefore, the investigation was limited to these five manufacturers.

b. *Basis of comparison.* For the purpose of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value, within the meaning of the Act, the proper basis of comparison appears to be between purchase price and home market price of such or similar merchandise on all sales by Nippon Steel, NKK, and Kobe, and on most sales by Sumitomo and Kawasaki. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used for most sales since those export sales were made to unrelated Japanese trading companies. On the remaining sales by Sumitomo and Kawasaki, the proper basis of comparison appears to be between exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), and home market price, since those sales in the United States are made by importers who are related to those manufacturers. Home market price, as defined in § 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities at not less than the cost of production to provide a basis of comparison for fair value purposes.

In accordance with § 153.31(b), Customs Regulations (19 CFR 153.31(b)), home market pricing information was obtained for the period October 1, 1976, through March 31, 1977. Since the question of sales prices below cost was raised, cost information was requested with respect particularly to the period April 1, 1976, through March 31, 1977.

c. *Purchase price.* For the purpose of this tentative determination of sales at less than fair value, purchase price has been calculated on the basis of the f.o.b. or f.a.s. price to the unrelated trading company for export to the United States. A deduction has been made for inland transportation costs included in the price.

d. *Exporter's sales price.* For the purpose of this tentative determination of sales at less than fair value, exporter's sales price has been calculated on the basis of the price to the first unrelated purchaser in the United States. Deductions have been made for ocean freight and insurance, brokerage charges, import duties, and for expenses incurred in selling the merchandise in the United States.

e. *Home market price.* For the purpose of this determination of sales at less than fair value, the home market price has been calculated on the basis of the delivered, not, packed price. Adjustments have been made for interest costs, freight, reimbursements to customers for defective merchandise, and packing cost differentials, as appropriate, in accordance with § 153.10, Customs Regulations (19 CFR 153.10). Adjustments for interest costs relate to extended payment terms granted to customers in the home market.

Additional adjustments were claimed by counsel for differences in circumstances of sale in accordance with section 153.10, Customs Regulations (19 CFR 153.10), for warehousing costs for inventory purposes, salesmen's salaries and office expenses, higher computer costs involved in following orders in the home market, bad debts, and technical services. These expenses do not bear a direct relationship to the sales under consideration and no adjustment has been allowed for these expenses.

Where exporter's sales price was used as the basis of comparison, selling expenses incurred in the home market were deducted from the home market price, up to the amount incurred in the United States, in accordance with § 153.10, Customs Regulations (19 CFR 153.10).

Counsel for petitioner has claimed that sales of this merchandise for home consumption or to third countries have been made in substantial quantities over an extended period of time at prices which are less than the cost of production within the meaning of section 205(b) of the Act and which do not permit recovery of all costs within a reasonable period of time in the normal course of trade. Because some evidence was received indicating that such claims may have been well founded, it was determined that an investigation of respondents' costs of production was warranted.

Respondents sought a hearing to contest the substantiality of the petitioner's claims and to raise alleged conflicts between section 205(b) of the Act and the General Agreement on Tariffs and Trade and the International Anti-Dumping Code. No hearing was deemed necessary, however, since (1) the evidence of possible sales below cost of production was considered sufficiently reliable to warrant a further inquiry which would permit the respondents to provide such facts—as they were by far in the best position to do—to demonstrate their actual costs of production, and (2) the mere inquiry into whether sales in the home market or to third countries fell within the provisions of section 205(b) of the Act gave rise to no conflict with applicable provisions of the GATT or the International Anti-Dumping Code. There is no question that responding to requests for information concerning costs of production may be time-consuming and costly and that its delivery creates a possible risk of its release to competitors or other parties. However, neigher of these factors can be an acceptable basis to the Secretary for declining to investigate allegations based upon a *prima facie* showing as made by the complainant in this case. In that connection, it is imperative to underscore, first, that the mere investigation of the facts does not in any way suggest that the outcome of the inquiry has been predetermined; on the contrary, an effort is made to obtain the most complete factual picture necessary to reach the required decisions within the time constraints of the law. Second, the respondents are generally best able to provide the type of information requested. However, their refusal to provide it cannot prevent the Secretary from applying the Act on the basis of whatever evidence he has

available, including that furnished solely by the complainant. And, third, serious effort is made by the Department to assure to all parties submitting information that may properly be considered confidential that its confidentially is preserved.

The respondents in this case nevertheless declined to provide any information concerning their costs of production prior to the publication of the Tentative Determination. Under those circumstances, relying on § 153.31(a) of the Customs Regulations, the best evidence of costs of production was utilized in an effort to determine whether § 205(b) of the Act was applicable. Using the information described in that Determination, including the financial statements filed by the respondents with the Japanese Ministry of Finance, it was tentatively determined that virtually all sales in the home market during the period of investigation were below what appeared to be the cost of producing carbon steel plate. Accordingly, those sales were disregarded in establishing "fair value." No evidence of third country sales having been submitted, weighted average margins of 32 percent were then found between the constructed value of the merchandise and the applicable purchase or exporter's sale prices of the five respondents

Following publication of the Tentative Determination, the respondents decided that they would furnish some information regarding their costs of production. Claiming the effort would be complex and time-consuming, they requested an extension of the date by which a Final Determination in this case would be made. The suggestion was made that, analogizing to § 201(b)(2) of the Act, dealing with investigations preceding the publication of a Tentative Determination, a three-month extension should also be possible in the making of the Final Determination. However, the applicable section 201(b)(3) is mandatory in fixing three months as the maximun time within which a Final Determination must be made following publication of a Tentative Determination. Accordingly, the request for an extension was denied.

The information furnished by the respondents concerning their costs of production was not identical in each case. Some have provided some data concerning costs of raw materials, labor and similar elements of costs of production, claimed to be drawn from the books and records of the companies that are maintained in the ordinary course of their business. However, due to the shortness of time between the submission of this data and the date by which a Final Determination was due, it has not been possible for Customs Service personnel to "verify" that data pursuant to standards and procedures normally followed and developed over many years of experience both under the Antidumping Act and other customs laws. Such verification normally includes a comparison of the submissions made to the Customs Service with the actual books and records of the companies, a comparison of such books and records with underlying source documents (such as suppliers' invoices, payroll checks and delivery receipts), and a review of the accounting practices used to keep the company books for conformity with generally accepted accounting principles. However, it has not been the past practice of the Customs Service—nor, indeed, would it be possible in view of the time restrictions imposed by the law and the resources available for investigating antidumping complaints—to conduct what an accountant would regard as an "audit" of respondents' operations. And the Antidumping Act imposes no such obligation on the Treasury Department in implementing the law. However, it was not possible to follow even the normal procedures for verification in this case.

The complainant has urged that because of their belated submission and the lack of opportunity for normal verification, all of the respondents' submissions be totally disregarded. As the Treasury Department has no authority to require respondents to furnish information and to submit to verification, the Secretary has generally declined to consider incomplete or unverified information, since to do otherwise may discourage cooperation in the submission and verification of data considered essential in administering the law. However, it would be patently self-denying to disregard information not verified by the methods normally used by the Customs Service if other relevant evidence available to the Secretary tends to corroborate a respondent's submission. There are, in fact, instances in which the best "verification" of cost information may be available from sources external to the books and records of a particular respondent. Therefore, the complainant's suggestion has not been followed.

A further problem is presented by other data submitted which was even further removed from the facts, based on the books and records of the companies, normally used to calculate cost of production. This data was derived by using as a starting point a company's published financial statements, apparently audited by independent certified public accountants and submitted under local law to the Japanese Ministry of Finance, and applying a series of allocations to the aggregate cost data there reflected to arrive at a cost of production of the merchandise relevant to these proceedings. The use of this technique can, of course, lend itself to manipulation and abuse. Most fundamentally, if a company, as a whole, is profitable as a result of the sale of all products and services, and cost allocations are based solely on sales revenues, then no single product will be shown as having been sold at a loss. A company deriving significant income from wholly unrelated activities, for example, the sale of securities held in portfolios, could thereby purport to demonstrate that no losses were experienced in steel plate operations even if more traditional cost accounting practices would clearly demonstrate a contrary result.

Nevertheless, as with "unverified" cost data submitted, the Secretary is not required to disregard information submitted in this form, if it can be corroborated from other sources. And, indeed, it would be anomalous to disregard it entirely and, at the same time, use the same financial statements submitted to the Ministry of Finance as the "best available evidence" of costs—as was done at the time of the Tentative Determination.

The present case is unique in that at the very time it has been under consideration, the Treasury Department has been establishing a "trigger price mechanism" (TPM) to monitor the prices of imported steel mill products. As reflected in FEDERAL REGISTER notices published on December 30, 1977 (42 FR 65214) and January 9, 1978 (43 FR 1464), this mechanism is based upon determinations of the costs of producing steel in Japan, including the carbon plate that is the subject of these proceedings. The cost of production has been calculated on the basis of submissions made by the six largest steel companies in Japan, including the five respondents in this case, to the Japanese Ministry of International Trade and Industry and transmitted, in aggregate form, to the U.S. Treasury Department. These cost figures were analyzed and corroborated by the staff of the Council on Wage and Price Stability.

It has been concluded that the information developed in the context of establishing the "trigger prices" for the TPM, appropriately adjusted for the time period under investigation in this case, constitutes the "best available evidence" of the cost of producing the subject merchandise by respondents. Information submitted by respondents has been examined and has also been taken into consideration to the extent it is not inconsistent with the information from which the "trigger prices" were calculated. The company data was used primarily in determining the appropriate relationship between the cost of producting finished steel products and the cost of producing the merchandise subject to this investigation by all the firms in the aggregate.

The cost of production thus established has been compared with the

home market prices of each of the five companies under investigation. Any sale made at a price less than such cost of production has been disregarded and the remaining sales, made at not less than the cost of production, have been utilized in determining the appropriate home market price for each company. In each instance, the remaining, above-cost sales representing at least 10% of all sales during the period, were deemed adequate for the purpose of establishing a foreign market value for that respondent.

Counsel for petitioner has claimed that possible additional dumping margins may have been created by sales below the cost of acquisition by trading companies which export carbon steel plate from Japan and also sell this merchandise to ultimate users and other home market purchasers. Information relevant to this claim was collected from trading companies accounting for more than 60 percent of the subject merchandise exported to the United States by the respondent manufacturers. Examination of this information indicated that in virtually all instances sales to unrelated United States buyers were made at prices equal to or greater than the cost of acquisition plus the relevant selling, shipping and other related expenses. It has therefore been determined that no basis exists to deviate from the normal practice of examining pricing behavior at the primary level of trade. Therefore for purposes of this determination, prices of the five respondent manufacturers in the home market and for export to the U.S. have been utilized for fair value comparison purposes.

1. Result of Fair Value Comparisons. Using the above criteria, purchase price or exporter's sales price was found to be lower than the home market price of such merchandise. Comparisons were made on a significant portion of the subject merchandise sold to the United States during the investigative period. Weighted average margins over the total sales compared for each firm were approximately 9.1 percent for Nippon Steel, 7.3 percent for NKK, 18.5 percent for Sumitomo, 5.4 percent for Kawasaki, and 13.9 percent for Kobe.

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The U.S. International Trade Commission is being advised of this determination.

This determination is being published pursuant to section 201(d) of the Act (19 U.S.C. 160(d)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

JANUARY 6, 1978.

[FR Doc. 78-973 Filed 1-12-78; 8:45 am]

[8320-01]

VETERANS' ADMINISTRATION

VETERANS EDUCATION

Policies and Procedures

AGENCY: Veterans' Administration.

ACTION: Request for Public Comment.

SUMMARY: The Veterans' Administration is publishing for public comment new and revised statements of policy and procedures which have been adopted by the Agency to implement the G.I. Bill Improvement Act of 1977. These policy and procedural Statements will better acquaint veterans, eligible persons, educational institutions, and the public at large with the way in which this Act will be administered.

DATES: Comments must be received on or before February 13, 1978.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (271A), Veterans' Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Comments will be available for inspection at the address shown above during normal business hours until February 21, 1978.

FOR FURTHER INFORMATION CONTACT:

June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans' Benefits, Veterans' Administration, Washington, D.C. 20420, 202-389-2092.

SUPPLEMENTARY INFORMATION: This publication contains DVB Circular 20-77-97. This deals with the policy and procedures as to adjustments for increased educational allowance; revised requirements for offsetting institutional reporting fees against amounts for which the institution may be liable; the prohibition against requiring institutions of higher learning from keeping daily attendance records for students in courses leading to a standard college degree; limited relief from power-of-attorney and check negotiability restrictions; notification requirements to claimants when the Veterans' Administration discontinues educational benefits; State approving agency reimbursement; revised requirements for measuring courses not leading to a standard college degree; and the requirement that at least 15 percent of the students in a course be nonveterans. The circular also sets forth provisions of the Act for which more detailed policy and procedural statements will be published later. These provisions include an extension of the delimiting date for certain incapacitated veterans and spouses for using educational allowance; establishing eligibility for Veterans' Administration educational loans after the delimiting date; more extensive counseling services; eligibility of Women's Air Force Service Pilots for Veterans' Administration benefits; accelerated payment of educational allowance (loan forgiveness); revised criteria for obtaining a Veterans' Administration education loan; the requirement that a school have operated a course for a minimum of two years; modification of the prohibition of payments of educational allowance to an eligible person not making satisfactory progress toward his or her objective; and the requirement that catalogs and bulletins not in compliance with the standards of appropriate accrediting or licensing bodies be forwarded to those bodies. This circular has been implemented and has or will be distributed through normal channels to interested persons.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding this document to the Administrator of Veterans' Affairs (271A), Veterans' Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), until February 21, 1978. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to a VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and room number.

Approved: December 30, 1977.

By direction of the Administrator.

JOHN J. LEFFLER,
Associate Deputy Administrator.

[DVB Circular 20-77-97]

NOVEMBER 30, 1977.

DEPARTMENT OF VETERANS' BENEFITS,
VETERANS ADMINISTRATION,
Washington, D.C. 20420.

PUBLIC LAW 95-202, GI BILL IMPROVEMENT ACT OF 1977

1. *General.* H.R. 8701 was enacted as Pub. L. 95-202 on November 23, 1977. Major provisions of this law are an increase in educational assistance benefits for all types of training under chapters 31, 34 and 35; creation of a limited program for accelerated payment of benefits; an increase in the maximum amount of education loans along with liberalized loan requirements; a delimiting date extension under limited conditions; a program for providing education loans after a veteran's or spouse's delimiting date if any unused entitlement remains; authorization to transfer VCIP (Veterans' Cost of Instruction Program) from OE

(Office of Education), DHEW (Department of Health, Education, and Welfare), to the VA (Veterans Administration); and other changes to existing programs. Provisions of the new law are arranged by their effective dates, except where otherwise noted. Those provisions for which more detailed instructions will be issued later are clearly indicated.

2. *Provisions Effective October 1, 1977*—a. *Rates.* Chapters 31, 34 and 35 benefit rates have been increased approximately 6.6 percent. The charge against entitlement for correspondence training will be at the rate of $311 per month. The charge against entitlement for flight training will be at the rate of $288 per month. The new rates are shown in paragraph 7 of this circular. The following sections of title 38, U.S.C. have been amended to reflect the new rates:

(1) Section 1504(b)—chapter 31 rates.

(2) Sections 1682 (a), (b) and (c); 1787(b)—chapter 34 rates.

(3) Section 1732 (a) and (b) and 1742(a)—chapter 35 rates.

(4) Section 1696(b)—chapter 32 PREP (Predischarge Education Program) rates.

(5) Section 1786(a)(2)—correspondence rates.

(6) Section 1677—flight rates.

(b) *Other Provisions Effective October 1, 1977.* (1) Tutorial Assistance is increased to $69 per month with a maximum of $828. Payments for tutoring provided on or after October 1, 1977, will be computed at the higher rate (38 U.S.C. 1692(b)).

(2) The aggregate education loan amount is increased to $311 multiplied by the number of months of remaining entitlement (38 U.S.C. 1798(b)(3)).

(3) 38 U.S.C. 1685 has been amended to set the work-study allowance equal to the hourly minumum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938, as amended, or $2.50 per hour, whichever is higher. On January 1, 1978, the minimum wage will be raised to $2.65 per hour, thus increasing the hourly rate of work-study allowance. Notwithstanding the fact that work-study hours have been contracted at a lower rate, any hours of work performed on or after the effective date of a minimum wage increase (January 1, 1978 in this instance) will be paid at the higher rate. Section 1685 was also amended to provide that once the veteran has been selected for the work-study program, and has signed and returned the work-study agreement, an advance payment of 40 percent of the total amount of the work-study allowance in the agreement shall be made.

(4) The reporting fee is increased from $5 to $7, and the fee for veterans and eligible persons receiving advance payment is increased from $6 to $11 (38 U.S.C. 1784(b)). This adjustment will be made automatically by DPC Hines; however, if a station makes an out-of-system payment to a school, the increase must be added by the station prior to payment.

3. *Provisions Effective May 31, 1976*—a. *Extended Delimiting Date.* Provision is made to extend delimiting dates for certain veterans and eligible spouses (38 U.S.C. 1662(a) and 1712(b)).

(1) The veteran or spouse must have been prevented from initiating or completing his or her chosen program of education within the original delimiting period because of a physical or mental disability not resulting from his or her own willful misconduct.

(2) Any extension will be for the length of time it is determined that the veteran or spouse was prevented from initiating or completing the chosen program of education.

(3) Detailed instructions covering extended delimiting dates will be issued later.

b. *Loans After Delimiting Date.* Subject to certain limitations, veterans and eligible spouses are permitted to use any unused entitlement to benefits to establish eligibility for an education loan after their delimiting date has passed (38 U.S.C. 1662(a)(2) and 1712(f)).

(1) All loans requirements of 38 U.S.C. 1798, including the liberalizations described below in paragraph 5b, apply to applications for loans after a delimiting date.

(2) In addition, the veteran or spouse must have been pursuing an approved program of education full time when his or her delimiting date was reached, and be enrolled full time in that same program. The person will be considered enrolled on the delimiting date if the delimiting date occurs during a scheduled school break and he or she was enrolled full time in the term immediately preceding. Enrollment in a summer term is not required.

(3) Loan entitlement continues after the delimiting date until the earliest of the following occurrences:

(a) The amount of aggregate loan entitlement based on unused benefit entitlement is exhausted; or

(b) The expiration of 2 years after the date of enactment of this provision, November 23, 1977, or the expiration of 2 years after the individual's delimiting date, whichever is later; or

(c) The veteran or spouse completes the program of education in which he or she was enrolled when the delimiting date was reached.

(4) Further instructions regarding loans after delimiting dates will be issued later.

4. *Provisions Effective November 23, 1977, Date of Enactment of Pub. L. 95-202.*—a. *Citation of Authority.* 38 U.S.C. 210(c)(1) is amended to require that any rule, regulation, guideline or published instruction issued by the VA contain the citation to the particular section of sections of statutory law, or other legal authority, upon which it is based. The requirement applies to any and all VA issuances, not solely to education matters. In addition, every rule, regulation, guideline, bulletin, or other published interpretation or order which amends a current VA issuance or publication shall include a citation for each substantive provision which is being amended.

b. *Counseling Services.* 38 U.S.C. 1663 is amended to provide more extensive VA counseling services to eligible veterans, including employment counseling. Counseling services shall be made available, upon request, to any eligible veteran. Vocational or educational counseling and testing will be provided to aid the veteran in selecting:

(1) An educational or training objective and an educational institution or training establishment appropriate for the attainment of the veteran's objective, or

(2) An employment objective likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances.

(3) The VA is required to carry out an effective outreach program, including individual notification where feasible, to acquaint all eligible veterans with the availability and advantages of VA counseling service.

(4) Further instructions will be issued on these counseling provisions.

c. *PREP Report Elimination.* The requirement that the Department of Defense submit a progress report on PREP to the Congressional Committees on Veterans' Affairs is eliminated (38 U.S.C. 1698(b)).

d. *Reporting Fees Offset.* 38 U.S.C. 1785 is amended to prohibit in general the VA from collecting any administratively determined institutional liability for overpayments by offsetting reporting fees to which the institution is entitled. Offset is permitted, however, in cases where the institution does not contest the liability or the liability has been upheld by a court of appropriate jurisdiction. Because of the present moratorium on school liability cases, no offset will be made for 1977.

e. *IHL Attendance Records.* 38 U.S.C. 1784 is amended to state that neither section 1984 nor any other provision of title 38 is to be construed as requiring IHL's to maintain daily attendance records for any course leading to a standard college degree. This provision does not diminish the responsibility of the institution to report in accordance with current instructions the enrollment, interruption or termination of any veteran or eligible person enrolled in the school.

Limited Relief From Pub. L. 94-502 Power-of-Attorney and Negotiability Restrictions. The Administrator is provided the authority in Pub. L. 95-202 to grant equitable relief under specified conditions to certain schools which are holding VA educational assistance checks mailed to the schools under previous power-of-attorney arrangements. This authority is delegated to station Directors.

(1) Such relief may be granted to an educational institution if:

(a) The course(s) for which the checks were paid were offered outside of the United States or under the former chapter 34 PREP program; and

(b) The course was commenced by the veteran or eligible person before December 1, 1976, and completed no later than June 30, 1977; and

(c) The school holds a power of attorney signed before December 1, 1976, authorizing the school to negotiate the veteran's or eligible person's VA educational assistance checks; and

(d) It is found that undue financial hardship results for the school because it is prohibited from neogitiating the checks under the provisions of 38 U.S.C. 3101(a).

(2) Relief may also be granted to accredited correspondence schools if:

(a) The checks in question were mailed to the school for lessons completed and serviced before January 1, 1977; and

(b) The veteran or eligible person taking the course for which the check is paid resided in the United States; and

(c) The same conditions found in subparagraphs (c) and (d) above are fulfilled.

(3) Schools desiring relief under this provision should apply to the appropriate regional office Director. The application must be a notarized statement including all of the folowing elements:

(a) The type of course(s) (i.e., PREP, foreign IHL, or correspondence) for which the checks in question were issued.

(b) A statement that in each case the training was begun before December 1, 1976, and in case of PREP or foreign IHL the checks are for training furnished no later than June 30, 1977. In case of correspondence courses, the statement must show that checks to be negotiated are for lessons serviced prior to January 1, 1977, and are

for students who were residing in a State at the time the training was furnished.

(c) A statement that a power of attorney agreement signed and valid before December 1, 1976, is held by the school authorizing it to negotiate each check in question.

(d) A statement that the veteran or eligible person owes the full proceeds of the check to the school for tuition or fees.

(e) A brief statement outlining the undue financial hardship the school will experience if unable to negotiate the checks.

(f) A certification that if authority to negotiate the checks is granted, that only checks covered by statements under subparagraphs (a), (b), (c) and (d) will be negotiated by the school.

(4) If the school's application contains all of the above elements, establishes undue financial hardship and it is properly certified as to the truth of all statements and notarized, the station Director is authorized to grant relief for negotiation of the checks. Relief will be granted in a letter to the school president or other appropriate school official. This letter must specify the type of courses and the periods for which relief is granted under the law, and that no other checks may be lawfully negotiated by the school.

(5) If relief is not granted to the school, the Director will state the reasons and inform the school it may request administrative review by Central Office. If such a request is received, it will be forwarded to the appropriate Field Director (225B) with all pertinent information available at the station.

g. *Notification Requirements.* 38 U.S.C. 1790 has been amended to add subsection (b) which requires that any action to discontinue (terminate or suspend) educational assistance shall be based upon evidence that there is no entitlement to such assistance, and that written notification shall be provided pursuant to any action to discontinue educational assistance.

(1) When benefits are terminated, veterans, or eligible persons must be notified of the specific reasons for the termination. They must also be provided a statement of procedural and appellate rights. These rights as they are printed on VA Form 1-4107 and on the reverse of computer letters are sufficient to meet this requirement.

(2) When benefits are suspended, veterans and eligible persons must be notified by dictated letter of the reason for the suspension. This notification must also inform the claimant as follows: "You have the right to present written evidence or meet with a VA representative to show why your benefits should not be suspended."

(a) If a meeting with a VA representative is requested, the Adjudication Officer will designate a person to review the case informally with the claimant. The designated VA representative should be prepared to explain the suspension action and answer the claimant's questions.

(b) After the meeting, the claimant will be informed as to the whether the suspension will be continued, lifted, or changed to a termination. If the suspension is continued, the claimant will be advised of the evidence or information required to lift the suspension. If benefits are terminated, full procedural and appellate rights will be furnished to the claimant.

(c) The substance of the meeting, including specifically the information imparted to the claimant under subparagraph (b) above, will be recorded on VA Form 119, Report of Contact, and filed in the claims or chapter 35 folder. The claimant will be provided a copy of the completed VA Form 119.

h. *Vocational Rehabilitation Study.* Pub. L. 95-202 directs the Administrator to conduct a study in regard to the provisions of chapter 31. The study is to include recommendations for legislative or administrative changes, recommendations for utilizing other chapters of title 38 to help meet the needs of chapter 31 veterans, and recommendations with regard to the need for the services of vocational rehabilitation specialists to provide job development and job placement services. This study will also analyze and compare vocational rehabilitation assistance provided under chapter 31 with vocational rehabilitation services provided under the Rehabilitation Act of 1973 (29 U.S.C. 701). The report of the study is to be submitted to the President and Congress not later than March 1, 1978.

i. *Veterans Readjustment Appointments Report.* 38 U.S.C. 2014(b) is amended to require a report from the Chairman of the Civil Service Commission, due within 6 months, on the need for continuation after June 30, 1978, of the authority for veterans readjustment appointments under this section.

j. *Technical Amendments.* (1) 38 U.S.C. 101(29) is amended to reflect May 7, 1975 as the ending date of the Vietnam era.

(2) 38 U.S.C. 2007(c) is amended to delete "section 2001" from and add "section 2004" to requirements for the Secretary of Labor's annual report on job counseling, training and placement service for veterans.

k. *VCIP Transfer Authority.* Pub. L. 95-202, provides authority to transfer VCIP to the VA. The Administrator is granted the authority to administer VCIP pursuant to an interagency agreement which may be entered into between the Administrator and the Commissioner of Education, with the approval of the Secretary of Health, Education, and Welfare. Effective the date of such transfer, 38 U.S.C., chapter 3, will be amended to incorporate all provisions concerning VCIP which are currently contained in section 420 of the Higher Education Act of 1965.

l. *Women's Air Forces Service Pilots.* Pub. L. 95-202 provides that service as a member of the Women's Air Forces Service Pilots (WASP) or service in any other similarly situated group may qualify that person to receive a discharge from active military service and thereby become eligible for veterans' benefits. The Secretary of Defense, pursuant to regulations the Secretary will provide, shall determine whether the service of such groups constitutes active duty service. In the case of affirmative determinations, a discharge under honorable conditions will be issued to those whose service warrants such a discharge. Further instructions concerning this provision will follow.

5. *Provisions Effective January 1, 1978*—a. *Accelerated Payment.* A new accelerated program is established by 38 U.S.C. 1682A for certain veterans and eligible persons enrolled in high cost educational institutions. An accelerated VA payment may be made only if it is matched dollar for dollar by the State (or local governmental unit) in which the institution is located. This matching payment would be combined with the accelerated VA payment to partially cancel any outstanding VA education loans under 38 U.S.C. 1798 upon satisfactory completion of the student's program of education. A general outline of the accelerated payment program is given below. Detailed instructions will be issued at a later date.

(1) *Eligibility.* A veteran or other eligible person may apply for accelerated payment at the end of his or her program of eduction if any entitlement is remaining. A student who applies for accelerated payment in connection with a particular school term shall be eligible if all of the following are met:

(a) The student was enrolled under the law full time throughout such school term;

(b) The student was entitled to educational assistance allowance during such school term;

(c) The student received a VA Education Loan after January 1, 1978, for such school term;

(d) The tuition and fees of the educational institution in which the student was enrolled exceed $700 for such school term;

(e) The educational institution where the student last attended certifies that the student has satisfactorily completed his or her program of education;

(f) The application for accelerated payment is received within 180 days after the date on which the degree, diploma or certificate is awarded the student showing completion of the entire approved program, or on which the appropriate State or local governmental unit establishes a matching program as described in subparagraph (h) below, whichever date is later;

(g) The educational institution certifies for such school term that 35 percent or less of all students (computed separately for the main campus and any branch or extension) were receiving VA educational benefits under chapters 31, 32, 34, 35, and 36 of title 38 U.S.C.; and

(h) The State (or local governmental unit) in which the educational institution is located pays to the VA on the student's behalf an amount not to exceed the maximum accelerated payment which the VA is authorized to make. The State or local matching funds program must be established within five years of the enactment of this law.

(2) *Definition of "School Term."* As used in the accelerated payment program, the term "school term" means:

(a) Three consecutive quarters for institutions of higher learning (IHL's) operating on a quarter system;

(b) Two consecutive semesters for IHL's operating on a semester system;

(c) A time division to be determined by the Administrator for IHL's not operating on a semester or quarter system and for schools which are not institutions of higher learning.

(3) *Amount of Accelerated Payment.* The amount of accelerated payment for any school term will be the lesser of:

(a) An amount equal to the educational assistance allowance payable for such school term;

(b) An amount equal to ½ of the amount by which the expenses of tuition and fees exceed $700 for such school term;

(c) An amount equal to ½ of the amount by which any outstanding VA Education Loan obligation exceeds $700; or

(d) The amount which the State (or local governmental unit or both) pays to the VA to match the accelerated payment.

b. *Education Loans.* (1) The maximum amount of a loan for any one regular academic year is increased to $2,500 (38 U.S.C. 1798(b)(3)).

(2) The Administrator is given the authority to waive the requirement that NCD and professional-objective students must be en-

rolled in a program requiring six months or more to complete in order for a loan to be granted. Such waivers may be granted in the interest of the eligible veteran and the Federal Government pursuant to regulations issued by the Administrator (38 U.S.C. 1798(c)(1)(B)). Pending the issuance of such regulations, no loans will be made for programs less than 6 months in length.

(3) The requirement that VA loan applicants seek and be unable to obtain HEW-guaranteed loans before receiving a VA education loan is deleted from the law (38 U.S.C. 1798(c)).

(4) Since the loan program is integral to the new provisions for accelerated payment of benefits, the Administrator's annual report on default experience and rates will be made separately for loans repaid by accelerated payment and other loans (38 U.S.C. 1798(a)(3)).

(5) Also in conjunction with accelerated payment, at the time of application for any education loan, the veteran or eligible person must assign any amount of accelerated payment which he or she may receive to the VA for repayment of the loan. Matching contributions from State and local governments must also be assigned to repayment of the loan (38 U.S.C. 1798(f)(1)).

(6) Payments of all education loans will be made out to the veteran or eligible person but mailed to the educational institution in which the student is enrolled. The institution must deliver the payment to the student as soon as possible and certify the delivery to the VA. For purposes of reporting fee payment, such a delivery will be considered as an advance payment (38 U.S.C. 1798 (f) (2)). More detailed instructions on loan provisions will follow.

6. *Provisions Effective February 1, 1978.* (NOTE: Some portions of provisions under the following subject headings are effective on different dates. They are included here with the major subjects for clarity. Differing effective dates are clearly identified.)

a. *SAA Reimbursement.* (1) 38 U.S.C. 1774 has been amended to increase the allowance for administrative expenses paid to State approving agencies by 5 percent. The new allowances range from $630 to $13,608 base. The administrative allowances for expenses incurred on or after February 1, 1978, will be computed on the basis of the following rate chart:

Total salary cost reimbursable	*Allowance for administrative expenses*
$5,000 or less	$630
Over $5,000 but not exceeding $10,000.	$1,134
Over $10,000 but not exceeding $35,000.	$1,134 for the first $10,000 plus $1,050 for each additional $5,000 or fraction thereof.
Over $35,000 but not exceeding $40,000.	$6,862
Over $40,000 but not exceeding $75,000.	$6,862 for the first $40,000 plus $908 for each additional $5,000 or fraction thereof.
Over $75,000 but not exceeding $80,000.	$13,608
Over $80,000	$13,608 for the first $80,000 plus $793 for each additional $5,000 or fraction thereof.

Note that SAA administrative expenses incurred before February 1, 1978, the effective date of this provision, will be paid according to the chart in DVB Circular 20-76-84, paragraph 2b(6).

(2) 38 U.S.C. 1774(c) has been added to require a report at least annually on approval and supervision activities by each State and local agency with which the VA contracts or enters into an agreement.

(3) More detailed instructions concerning this reporting requirement and the allowance computations will be issued later.

b. *NCD Course Measurement.* (1) One change limits to 5 the number of hours of supervised study which nonaccredited institutional courses measured on a clock-hour basis are allowed to count in the hours per week required for full-time benefits. A ¾-time course may include no more than 3¾ hours of supervised study; 2½ hours of supervised study may be included in half-time training; and 1¼ hours may be included in less than half-time but greater than ¼-time training. No supervised study may be included in hours counted for ¼-time or less training (38 U.S.C. 1788(a)(1)).

(2) Also, the number of clock hours of attendance required for full-time training in accredited institutional trade or technical courses is reduced. When classroom or theoretical instruction predominates, the net hours of instruction required are reduced from 22 to 18 excluding supervised study; when shop practice predominates, the required hours of attendance are reduced from 27 to 22 excluding supervised study (38 U.S.C. 1788(a)). More detailed instructions covering revised course approvals and award adjustments will be issued later.

	Accredited courses		Nonaccredited courses	
Training time	Theory	Shop	Theory	Shop
	Hours		*Hours*	*Hours*
Full time	18	22	25	30
¾ time	14-17	16-21	18-24	22-29
½ time	9-13	11-15	12-17	15-21
Less than ½, more than ¼	5-8	6-10	7-11	8-14
¼ or less	1-4	1-5	1-6	1-7

c. *Study of operation of chapter 34.* Pub. L. 95-202 requires the VA to conduct an independent study of the extent to which veterans have used their entitlement under the Post-Korean Conflict GI Bill. This study will examine the rates of successful completion of educational or vocational programs and the extent of veterans' successful readjustment to civilian life. The report of the results of this study is to be made to the President and the Congress by September 30, 1979.

d. *Waiver authority for two-year rule.* The Administrator is given the authority to waive the requirements of the 2-year rule in whole or in part, if in the interest of the veteran and the Federal Government, pursuant to VA regulations (38 U.S.C. 1789). The waiver provisions apply to:

(1) A course offered under contract with the Department of Defense on or adjacent to a military base, and open only to active duty military personnel and their dependents (38 U.S.C. 1789(b)(6)).

(2) A course offered by a branch or extension of:

(a) Public or tax-supported institutions located outside the institution's taxing jurisdiction, and

(b) Proprietary or nonprofit institutions where the branch or extension is located beyond normal commuting distance from the institution (38 U.S.C. 1789(c)).

(3) More detailed instructions on 2-year rule waivers will be published.

e. *Modified 85-15 percent ratio requirements. (38 U.S.C. 1673(d)).* (1) Language is added to the law to show that waivers of 85-15 percent requirements will be granted pursuant to regulations which the Administrator shall prescribe.

(2) The general authority delegated to station Directors to waive 85-15 percent requirements for schools with 35 percent or less of their enrollment receiving VA educational assistance is now incorporated into the statute. The statutory language further provides that a limiting figure other than 35 percent may be prescribed by the Administrator in regulations. The VA may require an 85-15 percent computation for any individual course of study, even in a school generally exempt under the 35 percent waiver, if there is reason to believe that 85 percent or more of the students in the course receive VA benefits. No change in current instructions is required to apply this provision of the law.

(3) A study is ordered to determine the desirability of counting recipients of grants from the Federal Government into the 85 percent (supported) portion of the ratio. The study is to provide an adequate system for making such computations if they are needed. A report to Congress is due no later than September 30, 1978. Until the expiration of 6 months after this report is submitted, the VA may not count any Federal grants other than VA benefits for 85-15 percent purposes. This extends with statutory force the current waiver of counting BEOG (Basic Educational Opportunity Grant) and SEOG (Supplementary Educational Opportuity Grant) recipients; other Federal grant recipients were covered in a previous waiver. Provisions for the study and suspension of counting Federal grants are effective November 23, 1977, date of enactment of this law.

f. *Amended satisfactory progress provisions (38 U.S.C. 1674 and 1724).* (1) Pub. L. 94-502 tied satisfactory progress to graduation "* * * within the approved length of the course * * *". The new law adds a provision allowing the VA to determine a reasonable alternate length of time for graduation exceeding the approved length of the course. Further instructions concerning this satisfactory progress provision will be published.

(2) The VA is directed to conduct a study for two purposes. This study provision is effective November 23, 1977, date of enactment of this law.

(a) One purpose of the study is to investigate the need for legislative or administrative action concerning satisfactory progress provisions of the law and regulations. A report on this portion of the study, including recommendations, is to be submitted to the President and Congress no later than September 30, 1978.

(b) Another purpose of the study is to investigate methods of improving the process of approving postsecondary institutions and courses for VA purposes. The report covering this portion of the study must be submitted to the President and Congress no later than September 30, 1979.

(3) Provision is made to suspend for certain schools the implementation of Pub. L. 94-502 satisfactory progress amendments, including the provision described above in subparagraph (1) above until September 30, 1978, when the first portion of the study is due. The suspension of Pub. L. 94-502 satisfactory progress requirements will be granted for accredited schools which submit to the VA a course catalog or bulletin with a certification that institution policies and

regulations regarding satisfactory progress and conduct are being enforced. Such a suspension will be withheld if the VA finds that institution policies are not fully and clearly stated in the catalog or bulletin. This provision is effective November 23, 1977, date of enactment of this law. Further instructions will follow concerning this suspension provision.

(4) The VA is directed to forward to COPA (Council on Post-secondary Accreditation) and other appropriate accrediting or licensing bodies, copies of catalogs, bulletins, or certifications submitted as described above which do not appear to be in compliance with the standards of such bodies. This provision is also effective November 23, 1977, date of enactment of this law, and will be explained in additional instructions.

7. Payment Tables

a. New Monthly Rates - GI Bill

	No Deps.	1 Dep.	2 Deps.	Each Add. Dep.
Institutional:				
Full Time.....	$311	$370	$422	$26
Three-Quarter Time	233	277	317	19
Half Time.....	156	185	211	13
Cooperative.....	251	294	334	19
Apprenticeship/OJT				
1st 6 Months...	226	254	277	12
2nd 6 Months...	169	197	221	12
3rd 6 Months...	113	141	164	12
4th and Any.... Succeeding 6 Mos.	56	84	108	12
Farm Cooperative:				
Full Time.....	251	294	334	19
Three-Quarter Time	188	221	251	15
Half Time.....	126	147	167	10
Active Duty, Or Less Than Half Time....	Tuition Cost, Not To Exceed Rate Of $311 For Full Time, $233 For 3/4 Time, $156 For 1/2 Time Or Less But More Than 1/4 Time, $78 For 1/4 Time Or Less.			
Correspondence....	Entitlement Charged At Rate Of 1 Month For Each $311 Paid.			
Flight.....	Entitlement Charged At Rate Of 1 Month For Each $288 Paid.			

b. New Monthly Rates - Dependents Educational Assistance Program.

	FULL TIME	THREE QUARTER	HALF TIME
INSTITUTIONAL. . . .	$311	$233	$156
LESS THAN HALF TIME	Tuition Cost, Not to Exceed Rate of $156 for 1/2 Time and $78 for 1/4 Time		
COOPERATIVE.	$251	(Full Time Only)	
FARM COOPERATIVE. .	$251	$188	$126
CORRESPONDENCE - Same Rates as Shown on Chart 7a.			
OJT/APP - Same as "No Deps." Rates Shown on Chart 7a.			

SPECIAL RESTORATIVE TRAINING.... (Full Time Only)	$311
ACCELERATED CHARGE Cost of Tuition and Fees in Excess of....	$98 per mo.
Entitlement Reduced 1 Day for Each.....	$10.40

c. NEW MONTHLY RATES - VOCATIONAL REHABILITATION - CHAPTER 31

TYPE OF TRAINING	NO DEPS.	1 DEP.	2 DEPS.	EACH ADD. DEP.
INSTITUTIONAL: FULL TIME.....	$241	$298	$351	$26
THREE-QUARTER TIME.	181	224	263	19
HALF TIME.....	120	149	176	13
SHELTERED WORKSHOP, TRAINING IN THE HOME, INDEPENDENT INSTRUCTOR (FULL TIME ONLY).....	241	298	351	26
ON-FARM, APPRENTICESHIP OR OTHER ON-THE-JOB TRAINING (FULL TIME ONLY).....	210	254	293	19
COMBINATION (INST. AND OJT) (FULL TIME ONLY)				
INST. 1/2 TIME OR MORE.....	241	298	351	26
INST. LESS THAN 1/2 TIME.....	210	254	293	19
COOPERATIVE (FULL TIME ONLY				
INST. FULL TIME.....	241	298	351	26
BUSINESS/INDUSTRY FULL TIME.....	210	254	293	19

8. Detailed instructions, as required, will follow in separate appendixes and circulars.

DOROTHY L. STARBUCK,
Chief Benefits Director.

[FR Doc. 78-796 Filed 1-2-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[No. 565]

ASSIGNMENT OF HEARINGS

JANUARY 10, 1978.

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-F 13305, *Freightways Express, Inc.* v. *Dodds Truck Line, Inc.*, et al. and MC 79434 Bennett Truck Line, Inc., now being assigned January 23, 1978 (1 week), for hearing at Little Rock, Ark., will be held in the Internal Revenue Service, Hearing Room 3406, 3rd Floor, 3700 West Capitol Avenue.

MC 121664 Sub-No. 23, G. A. Hornady, Cecil M. Hornady & B. C. Hornady, d.b.a. Hornady Brothers Truck Line now being assigned February 7, 1978, for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 95876 Sub-No. 206, Anderson Trucking Service, Inc., MC 59150 Sub-No. 109, Ploof Truck Lines, Inc., MC 109397 Sub-No. 373, Tri-State Motor Transit Co., MC 60014 Sub-No. 59, Aero Trucking, Inc., MC 139615 Sub-No. 9, D.R.S. Transport, Inc., MC 119552 Sub-No. 35, McLain Trucking, Inc., 61592 Sub-No. 407, Jenkins Truck Lines, Inc., MC 124947 Sub-No. 63, Machinery Transport, Inc., and MC 116915 Sub-No. 39, Eck Miller Transportation Corp. now being assigned January 31, 1978, for prehearing conference at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC-F 13182, Newman Bros. Trucking Co.—Purchase—E. M. Keller and Co., Inc., and MC 120761 Sub-No. 21 Newman Bros. Trucking Co., now assigned January 23, 1978 at Dallas, Tex., is postponed indefinitely.

MC 138104 Sub-No. 49, Moore Transportation Co., Inc., now being assigned February 22, 1978 (1 day), for hearing at Dallas, Tex., in a hearing room to be later designated.

MC 135797 Sub-No. 76, J. B. Hunt Transport, Inc., now being assigned February 23, 1978 (1 day), for hearing at Dallas, Tex., in a hearing room to be later designated.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-992 Filed 1-12-78; 8:45 am]

[7035-01]

[Rule 19, Ex Parte No. 241, Exemption No. 121, Amdt. No. 5]

EXEMPTION UNDER PROVISION OF MANDATORY CAR SERVICE RULES

To: The Baltimore and Ohio Railroad Co., The Chesapeake and Ohio Railway Co., Norfolk and Western Railway Co., and Western Maryland Railway Co.

Upon Further consideration of Revised Exemption No. 121 issued November 23, 1976.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 121 to the Mandatory Car Service Rules ordered in Ex Parte No. 241, is amended to continue in effect until further order of this Commission.

This amended shall become effective December 31, 1977.

Issued at Washington, D.C., December 27, 1977.

For the Interstate Commerce Commission.

JOEL E. BURNS,
Agent.

[FR Doc. 78-988 Filed 1-12-78; 8:45 am]

[7035-01]

[Rule 19, Ex Parte No. 241, Exemption No. 127, Amdt. No. 7]

EXEMPTION UNDER PROVISION OF MANDATORY CAR SERVICE RULES

To: Bessemer and Lake Erie Railroad Co., The Baltimore and Ohio Railroad Co., The Chesapeake and Ohio Railway Co., and Western Maryland Railway Co.

Upon further consideration of Exemption No. 127 issued June 29, 1976.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 127 to the Mandatory Car Service Rules ordered in Ex Parte No. 241 is amended to continue in effect until further order of this Commission.

This amendment shall become effective December 31, 1977.

Issued at Washington, D.C., December 27, 1977.

For the Interstate Commerce Commission.

JOEL E. BURNS,
Agent.

[FR Doc. 78-989 Filed 1-12-78; 8:45 am]

[7035-01]

[Rule 19, Ex Parte No. 241, Exemption No. 95, Amdt. 12]

EXEMPTION UNDER PROVISION OF MANDATORY CAR SERVICE RULES

To: Bessemer and Lake Erie Railroad Co. and Norfolk and Western Railway Co.

Upon further consideration of Exemption No. 95 issued February 5, 1975.

It is ordered, That, under authority vested in me by Car Service Rule 19, Exemption No. 95 to the Mandatory Car Service Rules ordered in Ex Parte No. 241, is amended to continue in effect until further order of this Commission.

This amendment shall become effective December 31, 1977.

Issued at Washington, D.C., December 27, 1977.

For the Interstate Commerce Commission.

JOEL E. BURNS,
Agent.

[FR Doc. 78-987 Filed 1-12-78; 8:45 am]

[7035-01]

[Rule 19, Ex Parte No. 241, Revised Exemption No. 141]

EXEMPTION UNDER PROVISION OF MANDATORY CAR SERVICE RULES

To all railroads: It appearing, That the railroads named below own numerous plain gondola cars less than 61-ft.; that under present conditions there are surpluses of these cars on its lines; that return of these cars to the owner would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owner; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain gondola cars, less than 61-ft. in length, described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 405, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "GB," which are less than 61-ft. in length, and which bear the reporting marks listed below, may be used without regard to the requirements of Car Service Rules 1 and 2.

Chicago, West Pullman & Southern Railroad Co., Reporting Marks: CWP-CWP&S.[1]

Maryland and Delaware Railroad Reporting Marks: MDDE.

Effective January 1, 1978, and continuing in effect until further order of this Commission.

[1] Addition.

Issued at Washington, D.C., December 20, 1977.

For the INTERSTATE COMMERCE COMMISSION.

JOEL E. BURNS,
Agent.

[FR Doc. 78-990 Filed 1-12-78; 8:45 am]

[7035-01]

[Amendment No. 2 to I.C.C. Order No. 31 Under Service Order No. 1252]

REROUTING TRAFFIC

To all railroads: Upon further consideration of I.C.C. Order No. 31 (Western Maryland Railway Company) and good cause appearing therefor:

It is ordered, That: I.C.C. Order No. 31 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1978, unless otherwise modified, changed or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1977, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that a summary be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 31, 1977.

For the INTERSTATE COMMERCE COMMISSION.

JOEL E. BURNS,
Agent.

[FR Doc. 78-991 Filed 1-12-78; 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).

CONTENTS

	Item
Civil Aeronautics Board	1, 2, 3, 4, 5, 6
Commodity Futures Trading Commission	7, 8
Federal Deposit Insurance Corporation	9
Federal Election Commission	10
Federal Energy Regulatory Commission	11
Federal Home Loan Bank Board	12
Federal Maritime Commission	13
Federal Reserve System (Board of Governors)	14
Federal Trade Commission	15, 16
International Trade Commission	17
National Science Board	18
Occupational Safety and Health Review Commission	19

[6320-01]

1

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 2:30 p.m., January 9, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: "Home-Free" fares in 10 markets proposed by Braniff (Memo No. 7700 BFR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The tariffs in question were filed on December 12, 1977, for effect January 26, 1978. No complaints were filed. The Board's staff analyzed the tariff filings, and all other relevant matters, and submitted its recommendation to the Board on January 5, 1978. If the Board desires to suspend the tariff pending investigation, it must act by January 10, 1978, or lose the authority to do so under section 1002(g) of the Federal Aviation Act of 1958. This is the first filing under the new law which requires the Board to provide 15 days advance notice. Accordingly, the following Members have voted that agency business requires the consideration of "Home-Free" fares in 10 markets proposed by Braniff on January 9, 1978 and that no earlier announcement of this meeting was possible:

Chairman Alfred E. Kahn
Acting Vice Chairman G. Joseph Minetti
Member Richard J. O'Melia
Member Lee R. West
Member Elizabeth E. Bailey

[S-75-78 Filed 1-11-78; 9:27 am]

[6320-01]

2

CIVIL AERONAUTICS BOARD.

NOTICE OF ADDITION OF ITEMS TO THE JANUARY 11, 1978 MEETING AGENDA

TIME AND DATE: 10 a.m., January 11, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 3b. Amendment of Part 263 of the Board's Economic Regulations (Memo No. 7702, OGC).

3c. Docket 13959; Dallas-Fort Worth Regional Airport Investigation (Memo No. 4038-C, OGC).

3d. Restrictions on U.S. Air Taxis Serving Northwest Ontario, Canada (Memo No. 7701, BIA).

8a. Dockets 21070 and 31462, Application of Eastern Air Lines, Inc. for renewal and modification of temporary suspension of service at Binghamton, N.Y.; application of Eastern Air Lines, Inc., for deletion of Binghamton, N.Y. (Memo No. 7703, BOR).

8b. Docket 29658, Application of ATC for prior Board approval of an agreement concerning interpretive opinions of ATC regulations affecting travel agents Agreement CAB 26066 (Memo No. 7245A, BOR, OGC).

8c. Docket 31014, Agreement CAB 26708, ATC Resolution providing for an intercarrier automated ticketing services agreement (Memo No. 7699, BOR, BFR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: These items are now ready for Board consideration. The Chairman, who will not be able to meet with the Board between January 13 and 18 has expressed an interest in participating in the discussion of them. In order, therefore, to permit the Board to discuss them without unnecessary delay the following Members have voted that agency business requires the addition of these items to the agenda of January 11, 1978 and that no earlier announcement of these items was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Lee R. West
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-74-78 Filed 1-11-78; 9:27 am]

[6320-01]

3

CIVIL AERONAUTICS BOARD.

NOTICE OF DELETION OF ITEMS FROM THE JANUARY 11, 1978 MEETING

TIME AND DATE: 10 a.m., January 11, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 7. Dockets 30693 and 30723, Standard and Transocean—Exemptions to engage in supplemental air transportation (Memo No. 7690, BOR, OGC).

10. Proposal to increase fares to/from/within the Pacific Trust Territory by Continental/Air Micronesia (BFR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The Board's staff has requested some additional time to examine options that might be provided the applicants other than the broad exemption relief they request. This examination will take about three weeks. Rescheduling of the item is anticipated in about three weeks. Accordingly, the following Members have voted that agency business requires the deletion of Item 7 from the January 11, 1978 agenda and that no earlier announcement of this deletion was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Lee R. West
Member Elizabeth E. Bailey

After placing the item on the calendar, the Board's staff encountered a data deficiency in the carrier's justification and had to request additional information which took about one week to receive. In addition, a complaint was filed to which the answer is

not due until January 13. For these reasons the staff requested that Item 10 be deleted from the January 11, 1978 agenda. Accordingly, the following Members have voted that agency business requires the deletion of Item 10 from the January 11, 1978 agenda and that no earlier announcement of this deletion was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Lee R. West
Member Elizabeth E. Bailey

[S-73-78 Filed 1-11-78; 9:27 am]

[6320-01]

4

CIVIL AERONAUTICS BOARD.

NOTICE OF ADDITION OF ITEM TO THE JANUARY 11, 1978 MEETING

TIME AND DATE: 10 a.m., January 11, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 2a. Docket 30851, Discretionary Review on Board Initiative of the Initial Decision in *Patricia Kennedy* v. *Pan American World Airways, Inc., Enforcement Proceeding.*

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: This item involves discretionary review on Board initiative of the Initial Decision in *Patricia Kennedy* v. *Pan American World Airways, Inc., Enforcement Proceeding.* Unless the Board acts on January 11, under section 302.27 of the regulations, the initial decision becomes the order of the Board on January 12, nine days after the respondent could have sought review. So that the Board can discuss this item and reach a decision, the following Members have voted that agency business requires the addition of this item to the agenda of January 11, 1978 and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Lee R. West
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-72-78 Filed 1-11-78; 9:27 am]

[6320-01]

5

CIVIL AERONAUTICS BOARD.

NOTICE OF DELETION OF ITEM TO THE JANUARY 11, 1978 MEETING

TIME AND DATE: 10 a.m., January 11, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 13. General fare increase proposed by Alaska (BFR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: After placing the item on the calendar the Board's staff has had time to review the proposal and has determined that the justification submitted by Alaska does not satisfy the Board's tariff filing requirement in Part 221 of its Economic regulations. Accordingly, the proposal has been rejected by the staff and there is no need for the Board to consider it at this time. Accordingly, the following Members have voted that agency business requires the deletion of this item from the January 11, 1978 agenda and that no earlier announcement of this deletion was possible:

Chairman Alfred E. Kahn
Member G. Joseph Minetti
Member Lee R. West
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-71-78 Filed 1-11-78; 9:27 am]

[6320-01]

6

CIVIL AERONAUTICS BOARD.

NOTICE OF ADDITION OF ITEMS TO THE JANUARY 11, 1978 MEETING AGENDA

TIME AND DATE: 10 a.m., January 11, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 1a. Docket 25908 Supplemental Opinion and Order in the Transatlantic Route Proceeding (Memo #7492-D, OGC). 15. Petition of Pan American World Airways for review and reversal of action taken under delegated authority by the Chief, Tariffs Section, Passenger and Cargo Rates Division, Bureau of Fares and Rates, regarding disapproval of an application for permission to furnish reduced-rate transportation (Memo No. 7572, BFR).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, The Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: On December 21, 1977 the President returned the Board's decision of October 21, 1977 in the Transatlantic Route Proceeding and directed the Board to submit as expeditiously as possible a revised order. The staff submitted a revised order for the Board's consideration on January 4, 1978 after the agenda for the January 11, 1978 meeting had been released. In order that the Board can consider expeditiously the staff's recommendation and so that the Board's decision could be transmitted to the President as soon as possible, the following Members have voted that agency business requires the addition of the Transatlantic Route Proceeding, Docket 25908, on less than seven days' notice and that no earlier announcement of the addition was possible:

Chairman Alfred E. Kahn
Acting Vice Chairman G. Joseph Minetti
Member Richard J. O'Melia
Member Lee R. West
Member Elizabeth E. Bailey

Because of a clerical error, item 15 was inadvertently omitted from the agenda for the January 11, 1978 meeting and the Chairman's office had indicated that this item should be on the January 11, 1978 meeting for consideration. Accordingly, the following Members have voted that agency business requires the addition of item 15 on the January 11, 1978 meeting on less than seven day's notice and that no earlier announcement of this addition was possible:

Chairman Alfred E. Kahn
Acting Vice Chairman G. Joseph Minetti
Member Richard J. O'Melia
Member Lee R. West
Member Elizabeth E. Bailey

[S-70-78 Filed 1-11-78; 9:27 am]

7

[6351-01]

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 am, January 17, 1978.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Judicial.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-80-78 Filed 1-11-78; 2:24 pm]

[6351-01]

8

COMMODITY FUTURES TRADING COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: FR 43, p. 1431, January 9, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: January 12, 1978, 10 a.m.

CHANGES IN THE MEETING: Canceled.

[S-81-78 Filed 1-11-78; 2:24 pm]

[6714-01]

9

FEDERAL DEPOSIT INSURANCE CORPORATION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENTS: 43 FR 1669 through 1670.

PREVIOUSLY ANNOUNCED TIMES AND DATE OF THE MEETINGS: 10:30 a.m. (closed) and 11 a.m. (open), January 11, 1978.

CHANGES IN THE MEETINGS: Notice is hereby given that the two meetings of the Federal Deposit Insurance Corporation's Board of Directors scheduled for 10:30 a.m. (closed) and 11 a.m. (open) have been scheduled to be reconvened on Friday, January 13, 1978 at 11 a.m. and 11:30 a.m. respectively. The agenda for each meeting shall remain the same.

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-82-78 Filed 1-11-78; 2:32 pm]

[6715-01]

10

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, January 18, 1978 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit reports. Compliance matters. Personnel.

DATE AND TIME: Thursday, January 19, 1978 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 IN OPEN SESSION: (I) Future meetings. (II) Correction and approval of minutes. (III) Advisory opinions: AOR 1977-67. AOR status report. (IV) Appropriations and budget—budget execution report. (V) Pending legislation. (VI) Pending litigation—litigation status report. (VII) Classification actions. (VIII) Liaison with other Federal agencies. (IX) Routine administrative matters.

MATTERS TO BE CONSIDERED IN CLOSED SESSION: All matters not concluded at the executive session of Wednesday, January 18, 1978.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, press officer, 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-87-78 Filed 1-11-78; 3:53 pm]

[6740-02]

11

FEDERAL ENERGY REGULATORY COMMISSION.

NOTICE OF MEETING.—JANUARY 11, 1978

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. 552b:

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: January 18, 1978, 10 a.m.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda. (NOTE.—Items listed on the agenda may be deleted without notice.)

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone 202-275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Office of Public Information, room 1000.

POWER AGENDA, 48TH MEETING—JANUARY 18, 1978, REGULAR MEETING

I. ELECTRIC RATE MATTERS

ER-1.—Docket Nos. ER77-590, 592, 597, 598, 602-606, 608-610, 625, and ER78-13, Northern States Power Co.
ER-2.—Docket No. ER77-551, Carolina Power & Light Co.
ER-3.—Docket No. ER77-264, Detroit Edison Co.

POWER AGENDA, 48TH MEETING—JANUARY 18, 1978, REGULAR MEETING

CAP-1.—Docket No. ER77-394, West Texas Utilities Co.
CAP-2.—Docket No. ER77-424, Southwestern Public Service Co.
CAP-3.—Docket No. ES-78-6, Montana-Dakota Utilities Co.
CAP-4.—Docket No. ES78-12, El Paso Electric Co.
CAP-5.—Docket No. ID-1649, David M. Monroe.
CAP-6.—Docket No. DA-601—Idaho Bureau of Land Management, lands withdrawn in power site reserve No. 498 and project No. 406.
CAP-7.—Docket No. DA-509—Colorado Federal Highway Administration lands withdrawn in power site reserve Nos. 116, 244 and 253 and power site classification No. 89.
CAP-8.—Project No. 137—California Pacific Gas & Electric Co.
CAP-9.—Lands withdrawn in project Nos. 347 and 418—Colorado.
CAP-10.—Lands withdrawn in project No. 847—Oregon.
CAP-11.—Project No. 2334, Western Massachusetts Electric Co.
CAP-12.—Project No. 5, Montana Power Co.

MISCELLANEOUS AGENDA, 48TH MEETING—JANUARY 18, 1978, REGULAR MEETING

M-1 (A).—Docket No. RM76-15, regulation of small producers; (B) Docket No. CS77-767, Emon A. Mahony.

MISCELLANEOUS AGENDA, 48TH MEETING—JANUARY 18, 1978, REGULAR MEETING

CAM-1.—Interstate Power Co.

GAS AGENDA, 48TH MEETING—JANUARY 18, 1978, REGULAR MEETING

I. PIPELINE RATE MATTERS

A. *Pipeline rates*

RP-1.—Docket No. RP77-136-1, Southern Natural Gas Co.
RP-2.—Docket No. RP78-3, Southern Natural Gas Co.; Docket No. RP78-4, East Tennessee Natural Gas Co.; Docket No. RP78-9, Tennessee Gas Pipeline Co.
RP-3.—Docket No. RP76-99, Tennessee Natural Gas Lines, Inc.
RP-4.—Docket No. RP73-97, Kentucky West Virginia Gas Co.

II. PRODUCER MATTERS

A. *Offshore pipeline certificate*

CI-1.—Docket No. CI77-329, Texaco Inc.; Docket No. CP77-304 and Docket No. CP64-97, Sabine Pipe Line Co.
CI-2.—Reserved.
CI-3.—Reserved.
CI-4.—Reserved.

B. *Special relief*

CI-5.—Docket No. RI77-106, Marine Contractors & Supply Inc.
CI-6.—Docket No. RI77-115, Art Machin & Associates, Inc.

III. PIPELINE CERTIFICATE MATTERS

A. *Pipeline certificates*

CP-1.—Docket No. CP77-52, Trunkline Gas Co.
CP-2.—Reserved.
CP-3.—Reserved.
CP-4.—Reserved.

B. *Pipeline storage*

CP-5.—Docket No. CP77-313, Texas Eastern Transmission Corp.; Docket No. CP77-392, Texas Eastern Transmission Corp., Transcontinental Gas Pipe Line Corp.; Docket No. RP78-28, Algonquin Gas Transmission Corp.
CP-6.—Reserved.
CP-7.—Reserved.
CP-8.—Reserved.

C. *Order No. 533—Authorizations*

CP-9.—Docket No. CP78-87, Tennessee Gas Pipeline Co., a division of Tenneco, Inc.

IV. OIL PIPELINE MATTERS

OR-1.—Docket No. OR78-1, Trans Alaska Pipeline System: investigation and suspension.

GAS AGENDA, 48TH MEETING—JANUARY 18, 1978, REGULAR MEETING

CAG-1.—Docket No. RP72-134 (PGA No. 78-2), Eastern Shore Natural Gas Co.
CAG-2.—Docket No. RP72-149 (PGA Nos. 78-1a and 78-1b), Mississippi River Transmission Corp.
CAG-3.—Docket Nos. CI77-702 and CI77-703, Pennzoil Louisiana & Texas Offshore Co., Inc., et al.
CAG-4.—Docket No. CI77-406, McCulloch Oil & Gas Corp.
CAG-5.—Docket No. CP78-30, Columbia Gas Transmission Corp.; Docket No. CP78-74, Texas Gas Transmission Corp.
CAG-6.—Docket No. CP78-29, Kansas-Nebraska Natural Gas Co., Inc.
CAG-7.—Docket No. CP76-492, Natural Fuel Gas Supply Corp.

KENNETH F. PLUMB,
Secretary.

[S-85-78 Filed 1-11-78; 3:53 pm]

[6720-01]

12

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 5, page 1431, January 9, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., January 11, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open and closed meetings.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Robert Marshall, 202-377-6679.

CHANGES IN THE MEETING: The meetings previously scheduled for this date have been cancelled. All items will be rescheduled for a later date.

No. 123, January 10, 1978.

[S-69-78 Filed 1-11-78; 9:27 am]

[6730-01]

13

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., January 12, 1978.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open meeting.

MATTER TO BE CONSIDERED: Docket No. 77-22—Action to Adjust or Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States with Guatemala—Petition for Postponement of Effective Date.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5727.

[S-86-78 Filed 1-11-78; 3:58 pm]

[6210-01]

14

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 10 a.m., Wednesday, January 18, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Possible amendment to Regulation Y (Bank Holding Companies) to make underwriting and dealing in Federal Government securities and general obligations of States or their subdivisions (municipal securities) a permissible activity for bank holding companies (Proposed earlier for public comment; docket Nos. R-0001 and R-0090. Action was deferred on this proposal pending rule writing by the Municipal Securities Rulemaking Board).
2. The Board's 1978 Equal Employment Opportunity Affirmative Action Program.
3. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

JANUARY 11, 1978.

[S-76-78 Filed 1-11-78; 10:16 am]

[6750-01]

15

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, January 17, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission has not yet scheduled any matters for discussion at this meeting. If no item is placed on the agenda by 10 a.m., on Tuesday, January 17, 1978, the meeting will automatically be cancelled. Any item that is placed on the agenda before that time will be announced in accordance with the Additional Information procedures posted with Commission Meeting Notices outside Room 130 of the Federal Trade Commission Building.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; recorded message, 202-523-3806.

[S-78-78 Filed 1-11-78; 12:24 pm]

[6750-01]

16

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, January 18, 1978.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has not yet scheduled any matters for discussion at this meeting. If no item is placed on the agenda by 10 a.m., on Wednesday, January 18, 1978, the meeting will automatically be cancelled. Any item that is placed on the agenda before that time will be announced in accordance with the Additional Information procedures posted with Commission Meeting Notices outside Room 130 of the Federal Trade Commission Building.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; recorded message, 202-523-3806.

[S-79-78 Filed 1-11-78; 12:24 pm]

[7020-02]

17

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 9:30 a.m., Friday, January 27, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary): (a) Electric slow cookers; (b) luggage.
5. C.B. transceivers (Inv. TA-201-29)—vote on remedy (if necessary).
6. Request by former Commissioner Will E. Leonard to enter his appearance in Investigation TA-201-31 (Unalloyed Unwrought Iron) (if necessary).
7. Generalized system of preferences (Inv. 332-89)—consideration of staff report.
8. Toy vehicles (Inv. 337-TA-31)—consideration of the procedures for post-hearing briefs and oral argument.
9. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary 202-523-0161.

[S-77-78 Filed 1-11-78; 10:16 am]

[7555-01]

18

NATIONAL SCIENCE BOARD.

TIME AND DATE: January 19, 1978—Open Session: 1 p.m. to 5 p.m. January 20, 1978—Closed Session: 8:30 a.m. to 4 p.m.

PLACE: Room 540, 1800 G Street NW., Washington, D.C. 20550.

STATUS: Change in Agenda.

MATTERS TO BE CONSIDERED: Portions open to the Public: Item Eight, Presentation by Ambassador Jean Wilkowski has been deleted.

CONTACT PERSON FOR MORE INFORMATION:

Miss Vernice Anderson, Executive Secretary, 202-632-5840.

[S-83-78 Filed 1-11-78; 2:32 pm]

[7600-01]

19

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., January 19, 1978.

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.

Dated: January 11, 1978.

[S-84-78 Filed 1-11-78; 3:52 pm]

federal register

FRIDAY, JANUARY 13, 1978
PART II

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

■

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Base Flood Elevation Determinations for Various Communities

[4210-01]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-3374]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Corona, Riverside County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Corona, Riverside County, Calif.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Corona, Calif.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Corona, are available for review at City Hall, 815 West 6th Street, Corona, Calif.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Corona, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Arlington Channel	Parkridge Ave	629
	Atchison, Topeka and Santa Fe RR.	659
	McKinley St	667
Main Street Channel.	6th St	629
	Circle City Dr	653
	Rimpou Ave	675
	Fullerton Ave	737
	Kellogg Ave	801
	Garretson Ave	862
	Chase Ave	1,035
	Access Rd	1,120
	Access Rd	1,202
Mangular Channel.	Kroonen Ave	853
	Ontario Ave	887
North Norco Channel.	Country Club La	569
Oak Street Channel.	Ontario Ave	879
	Chase Dr	1,042
South Norco Channel.	Lincoln Ave. (Goodwin St.).	567
	River Rd	579
Temescal Wash	Lincoln Ave. (Goodwin St.).	567
	Cota St	576
	River Rd	591
	Main St	593
	Joy St	600
	Atchison, Topeka and Santa Fe RR.	615
	Riverside Freeway.	616
	Quarry St	620
	Sixth St	626
	El Sobrante Ave	629
	Compton Ave	639
	Pacific Electrical RR.	641
	Magnolia Ave	649
Temescal Wash Breakout.	Cota St	583
South Norco Channel Tributary A.	River Rd	579
	Parkridge Ave	582
	Hamner Ave	593
West Norco Channel.	River Rd	566

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-663 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3532]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Imperial Beach, San Diego County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Imperial Beach, San Diego County, Calif.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Imperial Beach, Calif.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Imperial Beach, are available for review at City Hall, Imperial Beach, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Imperial Beach, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
TIJuana River.....	Eastern Corporate Limits.	17
	Western Corporate Limits.	3

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-664 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3218]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Sunnyvale, Santa Clara County, Calif.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Sunnyvale, Santa Clara County, Calif.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Sunnyvale, Calif.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Sunnyvale, are available for review at City Hall, 456 West Olive Street, Sunnyvale, Calif.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Sunnyvale, Calif.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Calabazas Creek....	Mountain View-Alviso Road.	8
	Bayshore Freeway.	18
	Central Expressway.	37
	Southern Pacific RR.	47
	Lochinvar Avenue	128
Sunnyvale East Channel.	Caribbean Drive...	8
	Mountain View-Alviso Road.	11
	Ahwanee Avenue.	25
	Wolfe Road.....	45
	Kifer Road.....	62
	Southern Pacific RR.	74
	Iris Avenue.....	109
	Dunholme Way....	163
Sunnyvale West Channel.	Caribbean Drive...	8
	Mathilda Avenue.	13
	Mountain View-Alviso Road.	24
	Bayshore Freeway.	26

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-665 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3125]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for City of Aurora, Arapahoe County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Aurora, Arapahoe County, Colo.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Aurora, Arapahoe County, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the city of Aurora, are available for review at the Engineering Department, City Hall, Building 2, Second Floor, 1470 South Havana, Aurora, Colo. 80012.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Aurora, Arapahoe County, Colo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a

period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sand Creek	At the downstream face of Peoria St.	5,310
	At the downstream face of I-225.	5,338
	150 ft upstream of Sable Blvd.	5,351
	Chambers Rd.	5,371
	At the downstream face of Colfax Ave.	5,426
	3,000 ft upstream from Colfax Ave.	5,436
	8,000 ft upstream from Colfax Ave.	5,457
	At the corporate limit.	5,488
Toll Gate Creek	At the confluence with Sand Creek.	5,319
	At the confluence with Sable Ditch.	5,343
	At the downstream face of Potomac St.	5,360
	At the downstream face of Colfax Ave.	5,365
	At the downstream face of I-225.	5,380
	At the downstream face of 6th Ave.	5,400
	At the confluence with East and West Toll Gate Creeks.	5,408
West Toll Gate Creek.	At the downstream face of Chambers Rd.	5,424
	At the east branch Highline Canal.	5,449
	At the downstream face of Drop Structure, 2,250 ft downstream of East Mississippi Ave.	5,455
	At the upstream face of Drop Structure, 2,250 ft downstream of East Mississippi Ave.	5,460
	At the downstream face of Drop Structure, 160 ft downstream of East Mississippi Ave.	5,466
	At the downstream face of East Mexico Ave.	5,498
	At the confluence with Cherry Creek.	5,508
	At the confluence with West Toll Gate Tributary.	5,522
	At the downstream face of Buckley Rd.	5,532
	At the downstream face of dirt road.	5,565
	3,600 ft upstream from dirt road.	5,588
	At the downstream face of East Hampden Ave.	5,606
	At the downstream face of East Quincy Ave.	5,653
East Toll Gate Creek.	1,600 ft upstream from confluence with West Toll Gate Creek.	5,410
	At the downstream face of Chambers Rd.	5,413
	50 ft downstream of Highline Canal.	5,446
	At the upstream side of East Branch Highline Canal.	5,449
	1,200 ft upstream from East Branch Highline Canal.	5,450
	1,350 ft upstream from East Branch Highline Canal.	5,454
	6,350 ft upstream from East Branch Highline Canal.	5,471
	3,000 ft downstream from the East Edge of sec. 16, T45, R66W.	5,497
West Toll Gate Tributary below Yale St.	East Iliff St.	5,536
	100 ft upstream from Yale St.	5,571
	150 ft upstream from Hampton Ave.	5,647
	At the downstream face of dirt road.	5,657
	1,000 ft upstream from dirt road.	5,661
	At the downstream face of Quincy Ave.	5,704
Cherry Creek Spillway Drain.	500 ft upstream from confluence with West Toll Gate Creek.	5,510
	Downstream of the Drop Structure, 700 ft downstream of Iliff Ave.	5,531
	Upstream of the Drop Structure, 700 ft downstream of Iliff Ave.	5,536
	Downstream of the Drop Structure, 400 ft downstream of Iliff Ave.	5,540
	Upstream of the Drop Structure, 400 ft downstream of Iliff Ave.	5,545
	At the downstream face of Iliff Ave.	5,555
	Upstream of the Drop Structure, 950 ft upstream of Iliff Ave.	5,589
	Downstream of Drop Structure, 60 ft from Yale Ave.	5,604
Unnamed Creek	1,050 ft upstream from confluence with West Toll Gate Creek.	5,568
	2,500 ft upstream from confluence with West Toll Gate Creek.	5,578
	At the downstream face of Flanders extension.	5,620
	At the downstream face of culvert.	5,628
Westerly Creek below Lowry Air Force Base.	At the corporate limits.	5,306
	700 ft downstream from East Montview Blvd.	5,306
	60 ft downstream from East Montview Blvd.	5,312
	At the downstream face of 17th Ave.	5,318
	At the downstream face of Alton St.	5,323
	380 ft downstream from Colfax Ave.	5,325
	At the downstream face of 14th Ave.	5,334
Westerly Creek above Lowry Air Force Base.	At the downstream face of Havana St.	5,435
	540 ft upstream from Havana St.	5,441
	1,350 ft upstream from Havana St.	5,449

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	260 ft downstream from Pond A-B Spillway.	5,460
	At the Pond A-B Spillway.	5,469
	280 ft downstream from Mississippi Ave.	5,469
Sable Ditch	520 ft upstream from I-225.	5,347
	60 ft downstream from Sable Blvd.	5,362
	At the downstream face of Eagle St.	5,376
	At the downstream face of Montview Blvd.	5,393
	420 ft upstream of Montview Blvd.	5,394
	At the downstream face of Chambers Rd.	5,404
	At the downstream face of Helena St.	5,409
	At the downstream face of 17th Ave.	5,413
	At the downstream face of Batavia Rd.	5,419
	At the downstream face of dirt road.	5,423
Granby Ditch	At the downstream face of Billings St.	5,347
	At the downstream face of Evergreen St.	5,361
	At the downstream face of Colfax Ave.	5,387
	At the downstream face of 13th St.	5,407
	110 ft downstream from Highline Canal.	5,432
	From Highline Canal to 60 ft downstream from Laredo St.	5,445
Sable Ditch Overflow.	At the confluence with Sand Creek.	5,340
	At the confluence with Sable Ditch.	5,346

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-666 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-2876]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Hayden, Routt County, Colo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Hayden, Routt County, Colo.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Hayden, Colo.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Hayden, are available for review at Town Hall, Hayden, Colo.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Hayden, Colo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Dry Creek	Highway 40	6,334
	3d St	6,341
	County Road (South).	6,345

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-667 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-2822]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Stratford, Fairfield County, Conn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Stratford, Conn.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Stratford, Conn.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Stratford, are available for review at Town Hall, 2725 Main Street, Stratford, Conn.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Stratford, Conn.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bruce Branch	Hollister Ave	11
	I-95	11
	Stratford Ave	14
	Penn Central RR	22
	Barnum Ave. and Sage Ave.	24
	Boston Ave	31
	Clover Ave	44
	Benjamin St	51
	Light St	60
	Broadbridge Ave	78
	Andrew St	84
	Greenfield Ave	91
	Albright Ave	93
	Nichols Ave	95
	Quail St	96
	Spring St	99
Long Branch	Broad St	11
	Ferry Blvd	11
	Fill Rd	13
	Penn Central RR	18
	Longbrook Ave	19
	Hurd Ave	19
Tanners Branch	Broadbridge Ave	20
	Catherine St	30
Pumpkin Ground Branch	Route 110	26
	Whippoorwill La	61
	Chapel St	76
	Merritt Parkway	80
	Circle Dr	102
	Beaver Dam Rd	178

(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: October 3, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-668 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3219]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Belle Glade, Palm Beach County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Belle Glade, Palm Beach County, Fla.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Belle Glade, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Belle Glade, are available for review at City Hall, 110 Southwest Avenue East, Belle Glade, Fla.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Belle Glade, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Okeechobee	Area west of Herbert Hoover Dike.	25

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-669 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3220]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Briny Breezes, Palm Beach County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Briny Breezes, Palm Beach County, Fla.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood

elevations, for the town of Briny Breezes, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Briny Breezes, are available for review at Town Hall, 5000 North Ocean Boulevard, Boynton Beach, Fla.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Briny Breezes, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Intracoastal Waterway at coast.	Marine Way & Dock Dr.	7
	West end of North and South Heron Dr.	7
	West end of Mallard Dr.	7
Inland	Bayan Blvd. and Cardinal Dr.	7
	Bayan Blvd. and Flamingo Dr.	7
	Bayan Blvd. and Mallard Dr.	7
Atlantic Ocean	Shoreline north and south corporate limits.	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-670 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3277]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Glen Ridge, Palm Beach County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Glen Ridge, Palm Beach County, Fla.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Glen Ridge, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Glen Ridge, are available for review at Town Hall, 1300 Glen Road, West Palm Beach, Fla.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Glen Ridge, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
West Palm Beach Canal.	South end of Glen Rd.	12
Rainfall and ponding.	Intersection of Gem Lake Dr. to Island Rd.	12

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-671 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3261]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Village of Hacienda, Broward County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Hacienda, Broward County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood

elevations, for the Village of Hacienda, Fla.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Hacienda, are available for review at Village Office, 3841 State Road 84, Fort Lauderdale, Fla.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Village of Hacienda, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
North New River Canal.	Entire city.....	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-672 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3222]

ART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Hypoluxo, Palm Beach County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Hypoluxo, Palm Beach County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Hypoluxo, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Hypoluxo, are available for review at Town Hall, 7450 South U.S. Highway 1, Hypoluxo, Fla.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Hypoluxo, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Worth at coast.	East end of Park Lane East.	7
Inland.....	Neptune Dr.....	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-673 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3223]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Pahokee, Palm Beach County, Fla.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Pahokee, Palm Beach County, Fla. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Pahokee, Fla.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Pahokee, are available for review at City Hall, 171 North Lake Avenue, Pahokee, Fla.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Pahokee, Fla.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Okeechobee..	Stuckey Rd.[1]	23
	Rock Pit Rd.[1]	23
	Kismet Ave.[1]	23
	Juniper Ave.[1]	23

[1] Extended.

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-674 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3280]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Tifton, Tift County, Ga.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Tifton, Tift County, Ga. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Tifton, Ga.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Tifton, are available for review at City Hall, Central and Second Streets, Tifton, Ga.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Tifton, Ga. This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Channel A	Interstate 75	327
	Lake Dr	338
Channel B	Interstate 75	304
	Magnolia Dr	311
Channel B-1	2d St	327
	4th St	328
Channel C	College Ave	331
	11th St	336
Channel D	Maple St	318
	13th St	327
Channel D-1	Seaboard Coast Line RR.	327
	Main St	332
Channel E	Love Ave	350
	Hall Ave	361
Channel F	Pineview Ave	329
	U.S. 41 (downstream side).	336
	Love Ave	337
	U.S. 41 (upstream side).	338
Channel G	Lee Ave	332
	Tift Ave	339
New River	Elizabeth Circle	342

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-675 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-2675]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Bettendorf, Scott County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Bettendorf, Scott County, Iowa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of Bettendorf, Scott County, Iowa.

ADDRESSES: Maps and other information showing the detailed outlines

of the flood-prone areas and the final elevations for the city of Bettendorf, Scott County, Iowa, are available for review at the City Hall in the Council Chambers, 16009 State Street, 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 his final determinations of flood elevations for the city of Bettendorf, Scott County, Iowa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Mississippi River	8th St.(extended)	571
	U.S. Highway 6	571
	23d St. (extended).	572
	35th St.(extended).	573
	Fenno Rd. (extended).	575
Duck Creek	Davenport, Rock Island and Northwestern RR.	578
	U.S. Route 67	581
	Devils Glen Rd	590
	23d St	601
	18th St	607
	Middle Rd	612
	Interstate 74	617
West Fork Pigeon Creek.	U.S. Highway 67	583
	Valley Dr	598
	Crow Creek Rd	638
	Surrey Dr	663
Crow Creek	Davenport, Rock Island and Northwestern RR.	577
	U.S. Highway 67	580
	Valley Dr	588
	Tanglewood Rd	612
	Middle Rd	623
	Devils Glen Rd	659
	Field Sike Ave	664
East Fork Pigeon Creek.	U.S. Highway 67	583
	Valley Dr	599
	Crow Creek Rd	606
East Branch West Fork Pigeon Creek.	Crow Creek Rd	637
	Briarwood Lane	641

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-676 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3578]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Council Bluffs, Pottawattamie County, Iowa

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Council Bluffs, Pottawattamie County, Iowa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Council Bluffs, Pottawattamie County, Iowa.

ADDRESS: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the city of Council Bluffs are available for review at the Planning Department, City Hall, 209 Pearl Street, Council Bluffs, Iowa 51501.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll free line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Council Bluffs, Pottawattamie County, Iowa.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Missouri River	700 ft downstream of confluence of Mosquito Creek.	975
	2,900 ft upstream of confluence of Indian Creek.	976
	U.S. Highways 92 and 275 Bridge.	979
	500 ft upstream of Interstate Highway 80 Bridge.	981
	At Interstate Highway 480 Bridge.	983
	At Illinois Central Gulf RR Bridge.	985
	7,000 ft upstream of Illinois Central RR Bridge.	987
Indian Creek	At confluence with Missouri River.	976
	1,800 ft downstream of U.S. Highway 275 Bridge.	976
	At intersection of South 19th St. and 8th Ave.	981
	At intersection of South 11th St. and 15th Ave.	982
	At intersection of North 16th and Avenue M.	984

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	At Broadway	990
	At intersection of Mynster St. and Main St.	1,008
	At North 2d St	1,020
	At entrance to conduit, 300 ft upstream of Frank St.	1,029
	At Oak St. Bridge	1,038
	1,100 ft. upstream from Hunter Ave. Bridge.	1,041
	At Ivy Dr	1,044
	600 ft upstream from Orchard Ave.	1,050
	4 ft upstream of Sylvan Dr.	1,055
	At a driveway, 850 ft upstream from Sylvan Dr.	1,061
	At North Broadway.	1,065
Mosquito Creek	At confluence with Missouri River.	975
	1,800 ft upstream of the road to Iowa Power & Light Power Plant.	975
	200 ft south of intersection of Chicago, Burlington and Quincy RR and 35th Ave.	975
	800 ft north of intersection of Interstate 29 and Burlington and Quincy RR at corporate limits.	975
	200 ft west from intersection of Norfolk and Western RR and 29th Ave.	979
	100 ft upstream of Madison Ave. Bridge.	999
	200 ft downstream of College Rd.	1,006
	600 ft upstream of Yellow Pole Rd.	1,021

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-677 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3403]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Columbia, Caldwell Parish, La.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Columbia, Caldwell Parish, La.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Columbia, Caldwell Parish, La.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Columbia, Caldwell Parish, La., are available for review at City Hall, Columbia, La.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Columbia, Caldwell Parish, La.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ouachita River	Intersection of Kentucky St. (U.S. Highway 165) and the Northeastern corporate limits.	73
Lower sump	East Pearl St.	57
Upper sump	West Pearl St	65
	Intersection of Boyd and Wall Sts.	65

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-678 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3283]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Sorrento, Ascension Parish, La.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Sorrento, Ascension Parish, La.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Sorrento, Ascension Parish, La.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Sorrento, Ascension Parish, La., are available for review at Town Hall, Sorrento, La.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Sorrento, Ascension Parish, La.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bayou Conway	Intersection of Wilfred St. and Conway St.	6
	Intersection of Brittany and Robert Sts.	7
Bayou Francois	Intersection of Vivyan and Amant 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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-679 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3406]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Brewer, Penobscot County, Maine

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Brewer, Penobscot County, Maine.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Brewer, Penobscot County, Maine.

ADDRESS: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the city of Brewer are available for review at the City Clerk's Office, City Hall, 80 North Main Street, Brewer, Maine 04412.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Brewer, Penobscot County, Maine.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Penobscot River	Downstream corporate limits.	14
	Downstream of State Route 1A.	17
	Downstream of State Route 9.	18
	Downstream of Bangor waterworks dam.	21
	Upstream of Bangor waterworks dam.	30
	Upstream corporate limits.	32
Felts Brook	317 ft upstream from confluence with Penobscot River.	21
	At State Route 9..	32
	2,720 ft upstream from State Route 9.	38
	80 ft downstream of Eastern Ave.	76
	200 ft upstream from Eastern Ave.	79
	5,300 ft upstream from Eastern Ave.	82
	Downstream of State Route 1A.	83
	Downstream of Maine Central RR.	84
Sedgeunkedunk Stream.	At State Route 15 culvert.	14
	55 ft downstream from Maine Central RR.	17
	50 ft upstream from Maine Central RR.	23
	Upstream of Elm St.	24
	Downstream of concrete dam.	27
	Upstream of concrete dam.	40
	At the upstream corporate limits.	41
Eaton Brook	At the confluence with Penobscot River.	31
	At State Route 9..	31
	2,244 ft upstream of State Route 9.	33

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-680 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3170]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the County of Frederick, Unincorporated Areas, Md.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the County of Frederick, Unincorporated Areas, Md.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the County of Frederick, Unincorporated Areas, Md.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the County of Frederick, Unincorporated Areas, Md., are available for review at the Second Floor, West Wing, Winchester Hall, East Church Street, Frederick, Md.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the County of Frederick, Unincorporated Areas, Md.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet above mean sea level
Tributary No. 36: Sabillasville, Northwest Frederick County.	Harbaugh Valley Rd.	1,036.0
	Old Sabillasville Rd.	1,100.0
	Sabillasville	1,107.0
	Western Maryland RR.	1,143.0
	Fort Ritchie Rd	1,155.0
Tributary No. 38: Sabillasville, Northwest Frederick County.	Sabillasville Rd	1,107.0
	Downstream Western Maryland RR	1,142.0
	Upstream Western Maryland RR.	1,149.0
Tributary No. 40: Emmitsburg, Northeast Frederick County.	Confluence with Flat Run.	395.0
	Emmitsburg corporate limits	399.0
	do	407.0
	Irish Town Rd	410.0
Tributary No. 41: Emmitsburg, Northeast Frederick County.	Confluence with Flat Run.	391.0
	Route 15	436.0
	Limit of study	477.0
Flat Run: Emmitsburg, Northeast Frederick County.	Confluence with Toms Creek.	374.0
	Route 15	385.0
	Emmitsburg corporate limits	387.0
	Route 97	388.0
	Confluence with tributary 41.	391.0
	Route 15	394.0
	Emmitsburg corporate limits and confluence with tributary No. 40.	395.0
High Run: Thurmont, North Frederick County.	Confluence with Hunting Creek.	417.0
	Abandoned railroad	424.0
	Frederick Rd	506.0
Tributary No. 74: Thurmont, North Frederick County.	Confluence with Muddy Run.	469.0
	Downstream Route 806	510.0
Tributary No. 76: Thurmont, North Frederick County.	Confluence with Hunting Creek.	362.0
	Moser Rd	395.0
	Thurmont corporate limits.	467.0
Fishing Creek: Lewistown, North Frederick County.	Lewistown Rd	365.0
	Maryland Route 806	377.0
Little Tuscarora Creek: Indian Springs, West Frederick County.	Starhill Dr	396.0
	Route 73	419.0
	Abandoned railroad bridge	434.0
Tributary No. 96: Shookstown, Southwest Frederick County.	Bowers Rd	408.0
	Lakeview Dr	558.0
	Oakmont Dr	580.0
Tributary No. 99	Confluence with Monogacy River.	271.0
	Gashouse pike	271.0
Tuscarora Creek: Tuscarora, Central West Frederick County.	Confluence with Monogacy River.	279.0
	Penn Central RR.	279.0
	Maryland Route 15	280.0
	Willowbrook Rd	294.0
	Downstream Bloomfield Rd.	308.0
Glade Creek: Tuscarora, Central West Frederick County.	Confluence with Monogacy River.	284.0
	Fountain Rock Rd	284.0
	Biggs Ford Rd	289.0
	Goldsboro Pl	292.0
Tributary No. 102: Libertytown, Central East Frederick County.	Confluence with Townbranch.	462.0
	Confluence with tributary No. 101	469.0
	Mill St	469.0
	South St.	473.0
	Maryland Route 26.	475.0
	North St	476.0
Tributary No. 106: Unionville, East Frederick County.	Confluence with North Fork.	419.0
	Dirt road	431.0
	Confluence with tributary No. 107	436.0
	Unionville Rd	437.0
	Maryland Route 26.	448.0
Tributary No. 107: Unionville, East Frederick County.	Confluence with tributary No. 106.	436.0
	Woodville Rd	439.0
	Unionville Rd	441.0
Rocky Fountain Run: Buckeystown, Southwest Frederick County.	Route 85	247.0
	Horsehead Run	247.0
	Keller lime plant	248.0
	Downstream B. & O. RR.	256.0
	Upstream B. & O. RR.	263.0
Tributary No. 126: Buckeystown, Southwest Frederick County.	Confluence with tributary No. 125.	269.6
Tributary No. 125: Buckeystown, Southwest Frederick County.	Confluence with Horsehead Run.	254.5
	Downstream B. & O. RR.	264.5
	Upstream B. & O. RR.	269.0
Horsehead Run: Buckeystown, Southwest Frederick County.	Confluence with Rocky Fountain Run.	247.0
	Downstream Route 80	257.0
	Upstream Route 80.	259.0
Tributary No. 124: Buckeystown, Southwest Frederick County.	Confluence with Horsehead Run.	261.4
	Downstream B. & O. RR.	275.5
	Upstream B. & O. RR.	279.3
Tributary No. 127: Buckeystown, Southwest Frederick County.	Pipe outlet	245.0
	Downstream dam.	252.0
	Upstream dam	257.0
Tributary No. 129: Buckeystown, Southwest Frederick County.	Old Route 80	247.0
	Downstream Old Route 80	273.0
	Upstream Old Route 80	278.0
Bush Creek: Monrovia, Southeast Frederick County.	Route 75	400.0
	Confluence with tributary No. 113	401.0

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator (34 FR 2680, February 27,

1969), as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-681 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3265]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Auburn, Worcester County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the town of Auburn, Worcester County, Mass.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the town of Auburn, Mass.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the town of Auburn, are available for review at Town Hall, 104 Central Street, Auburn, Mass.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the town of Auburn, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Kettle Brook	Rockland St.	497
	Sword St.[1]	488
Dark Brook (from Kettle Brook to Auburn Pond).	Southbridge St. Bridge[1].	498
	Auburn St. Bridge[1].	493
Dark Brook (Auburn Pond to Central St.).	Church St. Bridge.	516
	Auburn Mall	504
Stone Brook (Swanson Rd. to Washington St.).	Mill Terrace Bridge.	510
	Central St.-Massachusetts Turnpike I-90.	503
Stone Brook (Pondville Pond to South St.).	South St. Bridge[2].	545
	Elm St. Bridge[1]	519
Unnamed tributary from Rockland St. to Leesville Pond.	Sword St.	496
Dark Brook (Stoneville Pond to Leicester St. Bridge).	Leicester St. Bridge.	607
	Inwood St. Bridge[1].	560
	Rochdale St. Bridge[1].	521

[1]Upstream.
[2]Downstream.

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-682 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3543]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Braintree, Norfolk County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Braintree, Norfolk County, Mass.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Braintree, Mass.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Braintree, are available for review at Town Hall, 1 John F. Kennedy Memorial Drive, Braintree, Mass.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Braintree, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Monatiquot River	Jefferson St	104
	Route 37-ConRail	102

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Plain St	101
	ConRail (downstream of Lower Armstrong Dam).	74
	Pearl St	66
	Route 3	65
	Union St	65
	River St	63
	ConRail (near River and Vine Sts.).	58
	Middle St	55
	Upper Adams St	53
	Lower Adams St	50
	ConRail (near Commercial and Front Sts.).	39
	McCusker Dr	30
	Pedestrian bridge.	25
	Commercial St	15
	ConRail (near Shaw St.).	11
	Shaw St	11
	Quincy Ave	11
Farm River	West St	121
	Upper Lundquist Dr.	120
	Lower Lundquist Dr.	119
	Granite St	117
	Old Sluiceway	116
	Pond St	110
Cochato River	ConRail (both crossings of a river loop downstream of the confluence with Tumbling Brook).	108
	ConRail (upstream of Cranberry Brook).	107

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-683 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-2690]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Town of Hadley, Hampshire County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Hadley, Hampshire County, Mass.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Town of Hadley, Mass.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Hadley, are available for review at Town Hall, 52 Middle Street, Hadley, Mass.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Hadley, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Connecticut River.	At confluence with Fort River.	123
	Route 9 and Penn Central RR.	125
	At confluence with Mill River.	127

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-684 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3542]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Lexington, Middlesex County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Lexington, Middlesex County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the town of Lexington, Middlesex County, Mass.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the Town of Lexington are available for review at Planning Office, Town Hall, 1625 Massachusetts Avenue, Lexington, Mass. 02173.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Town of Lexington, Middlesex County, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Beaver Brook	Route 2	196
	Barrett Rd	202
Kiln Brook	Route 128	120
Mill Brook	Bow St	158
	Fottler Ave	172
	Boston & Maine RR.	173
Munroe Brook	Lilian Rd	165
	Bryant Rd	168
North Lexington Brook.	Hartwell Ave	119
	Route 128 Interchange.	121
Vine Brook	North St	180
	Emerson Rd	183
	Brookwood Rd	184

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-685 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3544]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Newton, Middlesex County, Mass.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Newton, Middlesex County, Mass. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the City of Newton, Mass.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the City of Newton, are available for review at City Hall, 1000 Commonwealth Avenue, Newton, Mass.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Newton, Mass.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Charles River	Nahanton St	92
	Route 128 Bridge	65
	Concord St	40
	Bridge St	18
	Corporate limits	7

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-686 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-2936]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Benton Harbor, Berrien County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Benton Harbor, Berrien County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Benton Harbor, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Benton Harbor, are available for review at City Hall, 200 Wall Street, Benton Harbor, Mich.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Benton Harbor, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Paw Paw River	ConRail near St. Joseph River.	584
	Klock Rd. to North Shore Dr.	585
	Paw Paw Ave	587
St. Joseph River	Main St	584
Ox Creek	Eighth St. to North Shore Dr.	585
	Just upstream of Water St.	588
	East Main St	589
	Highland Ave	589
	Britain Ave	591
	Just upstream of Empire Ave.	597

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-687 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3547]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Township of Clay, St. Clair County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Township of Clay, St. Clair County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Township of Clay, Michigan.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Township of Clay, are available for review at Township Hall, 4710 Pointe Trembell Road, Algonac, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Township of Clay, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake St. Clair	Strawberry Island	578.5
	Shoreline from northern corporate limits to Flamingo Rd.	578.5
St. Clair River	Open water—Lake St. Clair.	578.5
	Northern corporate limits, at St. Clair River Rd.	579.5

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-688 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3192]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Village of Michiana, Berrien County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Village of Michiana, Berrien County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the Village of Michiana, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Village of Michiana, are available for review at Village Hall, 4000 Cherokee, New Buffalo, Mich.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the Village of Michiana, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
White Creek.....	Chickagami Trail.	599

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-689 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3021]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Township of Onekama, Manistee County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the township of Onekama, Manistee County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the township of Onekama, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the township of Onekama, are available for review at Township Office, 8547 Mill Street, Onekama, Mich.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the township of Onekama Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Portage Lake	Lake Park Dr. south of its intersection with Seymour Ave., 2,400 feet east of the intersection with South Portage Point Dr. Flooding begins 270 feet south of Seymour Ave.—entire road south of that point is flooded.	584

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-690 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3284]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the Village of Pentwater, Oceana County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the village of Pentwater, Oceana County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the village of Pentwater, Mich.

ADDRESS: Maps and other information showing the detailed outlines of

the flood-prone areas and the final elevations for the village of Pentwater, are available for review at Village Hall, 327 Hancock Street, Pentwater, Mich.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION:

The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the village of Pentwater, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pentwater Lake.....	One Lake Rd., starting 105 feet east of Bean Rd. and extending west to the lake.	584
	On Sixth St., starting at its intersection with Hancock extending to 150 feet east of Wythe St.	584

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-691 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3291]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Wyandotte, Wayne County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Wyandotte, Wayne County, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Wyandotte, Mich.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Wyandotte, are available for review at City Hall, 3131 Biddle Avenue, Wyandotte, Mich.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Wyandotte, Mich.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Sexton-Kilfoil Drain.	Emmons St.....	579.3
	Harrison St.....	581.0
Ecorse Creek.....	Jefferson Ave.....	577.0
	Detroit-Toledo Shoreline RR.	577.0

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, February 27, 1969, as amended (39 FR 2787, January 24, 1974).)

Issued: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-692 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3227]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Plymouth, Hennepin County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Plymouth, Hennepin County, Minn.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Plymouth, Minn.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Plymouth, are available for review at City Hall, 3025 Harbor Lane, Plymouth, Minn.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Plymouth, Minn.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Bassett Creek	County and State Aid Highway 18.	887
	Exit ramp	888
	Minnesota Highway 55.	888
	Entrance ramp	888
	6th Ave	888
	Chicago & Northwestern RR.	889
	South Shore Dr.	889
Plymouth Creek	Medicine Lake Rd	891
	26th Ave	928
	Xenium Ave	931
	Interstate Highway 494.	937
	Fernbrook Lane	949
	Field crossing (running east to west).	954
	Field crossing (running north to south).	957
	Vicksburg Lane	963
	Dunkirk Lane	980
	Minnesota Highway 55.	981

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-693 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3168]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for Wright County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in Wright County, Minn.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for Wright County, Minn.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for Wright County, are available for review at Wright County Courthouse, Buffalo, Minn.

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 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for Wright County, Minn.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mississippi River	Minnesota 101	863
Crow River—main stem.	County and State Aid Highway 36.	856
	Minnesota 101	869
	Interstate 94	873
	County and State Aid Highway 116.	876
Crow River—North Fork.	Township Rd. 258	919
	Minnesota 25	920
	Township Rd. 296	921
	County and State Aid Highway 12.	921
	County and State Aid Highway 9.	927
	Township Rd. 87	934
	County and State Aid Highway 8.	937
	Old County and State Aid Highway 8.	940
Crow River—South Fork.	Township Rd. 258	922
	Township Rd. 276	931

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-694 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3196]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATIONS AND JUDICIAL REVIEW

Final Flood Elevation Determinations for the City of Drew, Sunflower County, Miss.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of Drew, Sunflower County, Miss.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain

qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the city of Drew, Miss.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of Drew, are available for review at City Hall, 130 West Shaw Avenue, Drew, Miss.

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 7th Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the city of Drew, Miss.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Tributary 1	Upstream side U.S. Highway 49W.	138
	Downstream side U.S. Highway 49W.	137
	East Park Ave	136
	Bridge Ave	134
Lutken Bayou	West Park Ave	134
	South Blvd	134
Powell Bayou	Unnamed road	133

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-695 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3286]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for City of Bragg City, Pemiscot County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Bragg City, Pemiscot County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Bragg City, Pemiscot County, Mo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for City of Bragg City, are available for review at Napier Supermarket, Main Street, Bragg City, Mo.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581, or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Bragg City, Pemiscot County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ditch No. 72	At Main St. and Ditch No. 72.	257
	At intersection of St. Louis & San Francisco RR and Clay Roost Bayou.	260
Clay Roost Bayou	At Cypress St. and Third St.	261
	At Main St. and Second St.	261

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-696 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3287]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Commerce, Scott County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Commerce, Scott County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Commerce, Scott County, Mo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the City of Commerce are available for review at the home of Mayor Ann Huck, Corner of St. Mary's and Tywapity, Commerce, Mo. 63742.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Commerce, Scott County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Mississippi River...	State Highway E and Missouri St.	343
	Washington St. and Water St.	343
	At confluence of Commerce Creek.	343
Commerce Creek...	940 ft upstream of Water Street Bridge.	343
	At corporate limit	362

(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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-697 Filed 1-12-78; 8:45 am]

[4210-01]

[Docket No. FI-3229]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of Holland, Pemiscot County, Mo.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the City of Holland, Pemiscot County, Mo. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the City of Holland, Pemiscot County, Mo.

ADDRESSES: Maps and other information showing the detailed outlines of the flood prone areas and the final elevations for the City of Holland are available for review at City Hall, Main Street, Holland, Mo. 63853.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202-755-5581 or toll free line 800-424-8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of his final determinations of flood elevations for the City of Holland, Pemiscot County, Mo.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Pemiscot Bayou.....	At northeast corporate limit near intersection of 1st St. and St. Louis-San Francisco RR.	256
	At Field Access 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: November 29, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc. 78-698 Filed 1-12-78; 8:45 am]

federal register

FRIDAY, JANUARY 13, 1978
PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

RESEARCH INVOLVING CHILDREN

Report and Recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

[4110-08]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

PROTECTION OF HUMAN SUBJECTS

Research Involving Children: Report and Recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notice of report and recommendations for public comment.

SUMMARY: This report finds that research involving children is important for the health and well being of children but recommends that such research be conducted only if it is scientifically sound, will contribute significantly to generalizable knowledge, risks are minimized, and the research performed in connection with necessary diagnosis and treatment wherever possible. Adequate provisions must be made to obtain the assent of the child and the consent of the parents or guardians.

DATES: Written comments on the Commission's recommendations are requested and should be received on or before March 14, 1978 if they are to receive full consideration.

ADDRESSES: Send comments to: Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014. Additional copies of this Report and Recommendations may be obtained from the same address. All comments received will be available for inspection at Room 303, Westwood Building, 5333 Westbard Avenue, Bethesda, Md., weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT:

D. T. Chalkley, Ph. D., Director, Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, 301-496-7005.

SUPPLEMENTARY INFORMATION: On July 12, 1974, the National Research Act (Pub. L. 93-348) was signed into law, thereby creating the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. One of the charges to the Commission was to study the nature of research involving children, the purposes of such research, the steps necessary to protect children as subjects, and the requirements for the informed consent of children, their parents or guardians, and to recommend to the Secretary of Health, Education, and Welfare policies defining any circumstances under which research with and for children might be appropriate. The Secretary is required to publish any such recommendation of the Commission in the FEDERAL REGISTER, which he does herewith, and to provide an opportunity for interested persons to submit written comments, views, arguments, and data with respect to these recommendations. Comments should be identified by the number of the recommendation (1-10).

The Secretary is further required to consider the Commission's recommendations and any relevant comments or other matter submitted to him and, on or before (a date 180 days from publication of this notice), to (1) determine whether the administrative action proposed by such recommendation is appropriate to assure the protection of human subjects of biomedical and behavioral research conducted or sponsored under programs administered by him, and (2) if he determines that such action is not so appropriate, publish in the FEDERAL REGISTER such determination together with an adequate statement of the reasons for his determination. Since the Department has not yet completed its own review of this report, the views set forth in it are not necessarily those of the Department of Health, Education, and Welfare. The Department will be evaluating the report during the comment period.

Dated: December 6, 1977.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: December 29, 1977.

JOSEPH A. CALIFANO, Jr.,
Secretary.

THE NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

RESEARCH INVOLVING CHILDREN: REPORT AND RECOMMENDATIONS

Members of the Commission

Kenneth John Ryan, M.D., Chairman, Chief of Staff, Boston Hospital for Women.
Joseph V. Brady, Ph.D., Professor of Behavioral Biology, Johns Hopkins University.
Robert E. Cooke, M.D., President, Medical College of Pennsylvania.
*Dorothy I. Height, President, National Council of Negro Women, Inc.
Albert R. Jonsen, Ph.D., Associate Professor of Bioethics, University of California at San Francisco.
Patricia King, J.D., Associate Professor of Law, Georgetown University Law Center.
Karen Lebacqz, Ph.D., Associate Professor of Christian Ethics, Pacific School of Religion.
*David W. Louisell, J.D., Professor of Law, University of California at Berkeley.

*Deceased August 21, 1977

Donald W. Seldin, M.D., Professor and Chairman, Department of Internal Medicine, University of Texas at Dallas.
Eliot Stellar, Ph.D., Provost of the University and Professor of Physiological Psychology, University of Pennsylvania.
Robert H. Turtle, LL.B., Attorney, Vom Baur, Coburn, Simmons and Turtle, Washington, D.C.

Commission Professional Staff

Michael S. Yesley, J.D., Staff Director.
Barbara Mishkin, M.A., Assistant Staff Director.
Duane Alexander, M.D., Pediatrics.
Tom L. Beauchamp, Ph.D., Philosophy
Lee A. Calhoun, M.D., Political Science.
Bradford H. Gray, Ph.D., Sociology.
Miriam Kelty, Ph.D., Psychology.
Bonnie M. Lee, Administrative Assistant.
James J. McCartney, M.A., M.S., Research Assistant.
Betsy Singer, Public Information Officer.

Commission Support Staff

Pamela L. Driscoll, Arlene Line, Marie D. Madigan, Coral M. Nydegger, Erma L. Pender.

Commission Special Consultants

Robert J. Levine, M.D., Francis Pizzulli, M.D., Stephen Toulmin, Ph.D.

Introduction
Definitions
Recommendations
Chapter:
1. Why Children are Involved as Research Subjects
2. Nature and Extent of Research Involving Children
3. Survey of Review and Consent Procedures
4. Views Presented by the National Minority Conference on Human Experimentation
5. Views Presented at Public Hearings
6. Psychological Perspective
7. Legal Issues
8. Ethical Issues
9. Deliberations and Conclusions

INTRODUCTION

The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research was established in 1974 under Pub. L. 93-348 to develop ethical guidelines for the conduct of research involving human subjects and to make recommendations for the application of such guidelines to research conducted or supported by the Department of Health, Education, and Welfare (DHEW). The legislative mandate also directs the Commission to make recommendations to Congress regarding the protection of human subjects in research not subject to regulation by DHEW. Classes of subjects that must receive the Commission's particular attention include children, prisoners and the institutionalized mentally infirm.

The duties of the Commission with regard to research involving children are as follows:

"The Commission shall identify the requirements for informed consent to participation in biomedical and behavioral research by children * * *. The Commission shall investigate and study biomedical and behavioral research conducted or supported under programs administered by the Secretary [DHEW] and involving children * * * to determine the nature of the consent obtained from such persons or their legal representatives before such persons were involved in such research; the adequacy of the information given them respecting the nature and purpose of the re-

search, procedures to be used, risks and discomforts, anticipated benefits from the research, and other matters necessary for informed consent; and the competence and the feedom of the persons to make a choice for or against involvement in such research. On the basis of such investigation and study the Commission shall make such recommendations to the Secretary as it determines appropriate to assure that biomedical and behavioral research conducted or supported under programs administered by him meets the requirements respecting informed consent identified by the Commission."

This responsibility is broadened by the provision that the Commission make recommendations to congress regarding the protection of subjects (including children) involved in research not subject to regulation by DHEW.

To discharge its duties under this mandate, the Commission studied the nature and extent of research involving children, the purposes for which such research is conducted, and the issues surrounding the participation of children in research. Representatives from professional societies, federal agencies and public interest groups, as well as parents and other members of the public, presented their views to the Commission at a public hearing. The National Minority Conference on Human Experimentation, convoked ty the Commission to assure that viewpoints of minorities would be expressed, made recommendations to the Commission on research involving children. The Commission also reviewed papers and reports prepared under contract, including papers on informed consent and a survey of actual practices in research involving children. Finally, the Commission conducted extensive deliberations in public and developed recommendations on the participation of children in research.

The Commission's recommendations are set forth at the outset of this report, followed by chapters presenting background information, summaries of reports and views presented to the Commission, an analysis of the law with respect to research involving children, critiques of various ethical arguments, and statements of members of the Commission regarding the recommendations. An appendix to this report contains the text of reports and papers prepared under contract, other materials reviewed by the Commission in the course of its study and deliberations, and a selective bibliography.

* * * * *

Definitions. For the purpose of this report:

1. Children are persons who have not attained the legal age of consent to general medical care as determined under the applicable law of the jurisdiction in which the research will be conducted.

Comment: Pub. L. 93-348 defines children as "individuals who have not attained the legal age of consent to participate in research as determined under the applicable law of the jurisdiction in which the research is to be conducted." The Commission notes that the legal age of consent to participate in research is not specifically defined in local jurisdictions. For the purposes of this report, therefore, the Commission has used the age of consent to general medical care (as distinguished from age of consent for treatment of specific conditions, such as pregnancy, drug addiction, or veneral disease).

2. Research is a formal investigation designed to develop or contribute to generalizable knowledge.

Comment: A research project generally is described in a protocol that sets forth explicit objectives and formal procedures designed to reach those objectives. The protocol may include therapeutic and other activities intended to benefit the subjects, as well as procedures to evaluate such activities. Research objectives range from understanding normal and abnormal physiological or psychological functions or social phenomena, to evaluating diagnostic, therapeutic, or preventive interventions and variations in services or practices. The activities or procedures involved in research may be invasive or noninvasive and include surgical interventions; removal of body tissues or fluids; administration of chemical substances or forms of energy; modification of diet, daily routine, or service delivery; alteration of environment; observation; administration of questionnaires or tests; randomization; review of records, etc.

3. Minimal risk is the probability and magnitude of physical or psychological harm that is normally encountered in the daily lives, or in the routine medical or psychological examination, of healthy children.

Comment: In any assessment of the degree of risk to children that is presented by proposed research activities, the age of the prospective research subjects should be taken into account. The possible effects of disruption of normal routine, separation from parents, or unusual discomfort should be considered, as well as more obvious physical or psychological harms. Examples of medical procedures presenting no more than minimal risk would include routine immunization, modest changes in diet or schedule, physical examination, obtaining blood and urine specimens, and developmental assessments. Similarly, many routine tools of behavioral research, such as most questionnaires, observational techniques, noninvasive physiological monitoring, psychological tests and puzzles, may be considered to present no more than minimal risk. Questions about some topics, however, may generate such anxiety or stress as to involve more than minimal risk. Research in which information is gathered that could be harmful if disclosed should not be considered of minimal risk unless adequate provisions are made to preserve confidentiality. Research in which information will be shared with persons or institutions that may use such information against the subjects should be considered to present more than minimal risk.

4. Institutional Review Board (IRB) is: (1) A committee required under Pub. L. 93-348 and approved by the Department of Health, Education, and Welfare to review research involving human subjects at an institution receiving support for such research under the Public Health Service Act, or (2) any substantially similar committee which reviews research involving human subjects that is conducted, supported, or regulated by a Federal agency or department.

Recommendations

The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research makes the following recommendations for research involving children to:

The Secretary of Health, Education, and Welfare, with respect to research that is subject to his regulation, i.e., research conducted or supported under programs administered by him and research reported to him in fulfillment of regulatory requirements; and

The Congress, with respect to research that is not subject to regulation by the Secretary of Health, Education, and Welfare.

Recommendation (1). Since the Commission finds that research involving children is important for the health and well-being of all children and can be conducted in an ethical manner, the Commission recommends that such research be conducted and supported, subject to the conditions set forth in the following recommendations.

Comment: The Commission recognizes the importance of safeguarding and improving the health and well-being of children, because they deserve the best care that society can reasonably provide. It is necessary to learn more about normal development as well as disease states in order to develop methods of diagnosis, treatment and prevention of conditions that jeopardize the health of children, interfere with optimal development, or adversely affect well-being in later years. Accepted practices must be studied as well, for although infants cannot survive without continual support, the effects of many routine practices are unknown and some have been shown to be harmful.

Much research on childhood disorders or conditions necessarily involves children as subjects. The benefits of this research may accrue to the subjects directly or to children as a class. The Commission considers, therefore, that the participation of children in research related to their conditions should receive the encouragement and support of the Federal Government.

The Commission recognizes, however, that the vulnerability of children, which arises out of their dependence and immaturity, raises questions about the ethical acceptability of involving them in research. Such ethical problems can be offset, the Commission believes, by establishing conditions that research must satisfy to be appropriate for the involvement of children. Such conditions are set forth in the following recommendations.

Recommendation (2). Research involving children may be conducted or supported provided an institutional review board has determined that: (A) The research is scientifically sound and significant; (B) where appropriate, studies have been conducted first on animals and adult humans, then on older children, prior to involving infants; (C) risks are minimized by using the safest procedures consistent with sound research design and by using procedures performed for diagnostic or treatment purposes whenever feasible; (D) adequate provisions are made to protect the privacy of children and their parents, and to maintain confidentiality of data; (E) subjects will be selected in an equitable manner; and (F) the conditions of all applicable subsequent recommendations are met.

Comment: This recommendation sets forth general conditions that should apply to all research involving children. Such research must also satisfy the conditions of one or more of recommendations (3) through (6), as applicable; recommendation (7); recommendation (8), if permission of parents or guardians is not a reasonable requirement; recommendation (9), if the subjects are wards of the state; and recommendation (10), if the subjects are institutionalized.

Respect for human subjects requires the use of sound methodology appropriate to the discipline. The time and inconvenience requested of subjects should be justified by the soundness of the research and its design, even if no more than minimal risk is involved. In addition, research involving children should satisfy a standard of scientific significance, since these subjects are less capable than adults of determining for themselves whether to participate. If necessary, the IRB should obtain the advice of consultants to assist in determining scientific soundness and significance. (The Commission will consider problems related to the determination of scientific soundness and significance in a future report on the performance of IRBs.)

Whenever possible, research involving risk should be conducted first on animals and adult humans in order to ascertain the degree of risk and the likelihood of generating useful knowledge. Sometimes this is not relevant or possible, as when the research is designed to study disorders or functions that have no parallel in animals or adults. In such cases, studies involving risk should be initiated on older children to the extent feasible prior to including infants, because older children are less vulnerable and they are better able to understand and to assent to participation. In addition, they are more able to communicate about any physical or psychological effects of such participation.

In order to minimize risk, investigators should use the safest procedures consistent with good research design and should make use of information or materials obtained for diagnostic or treatment purposes whenever feasible. For example, if a blood sample is needed, it should be obtained from samples drawn for diagnostic purposes whenever it is consistent with research requirements to do so.

Adequate measures should be taken to protect the privacy of children and their families, and to maintain the confidentiality of data. The adequacy of procedures for protecting confidentiality should be considered in light of the sensitivity of the data to be collected (i.e., the extent to which disclosure could reasonably be expected to be harmful or embarrassing).

Subjects should be selected in an equitable manner, avoiding overutilization of any one group of children based solely upon administrative convenience or availability of a population living in conditions of social or economic deprivation. The burdens of participation in research should be equitably distributed among the segments of our society, no matter how large or small those burdens may be.

In addition to the foregoing requirements, research must satisfy the conditions of the following recommendations, as applicable.

Recommendation (3). Research that does not involve greater than minimal risk to children may be conducted or supported provided an institutional review board has determined that: (A) The conditions of recommendation (2) are met; and (B) adequate provisions are made for assent of the children and permission of their parents or guardians, as set forth in recommendations (7) and (8).

Comment: If the IRB determines that proposed research will present no more than minimal risk to children, the research may be conducted or supported provided the conditions of recommendation (2) are met and appropriate provisions are made for parental permission and the children's assent, as described in recommendations (7) and (8) below. If the IRB is unable to determine that the proposed research will present no more than minimal risk to children, the research should be reviewed under recommendations (4), (5) and (6), as applicable.

Recommendation (4). Research in which more than minimal risk to children is presented by an intervention that holds out the prospect of direct benefit for the individual subjects, or by a monitoring procedure required for the well-being of the subjects, may be conducted or supported provided an institutional review board has determined that:

(A) Such risk is justified by the anticipated benefit to the subjects;

(B) The relation of anticipated benefit to such risk is at least as favorable to the subjects as that presented by available alternative approaches;

(C) The conditions of recommendation (2) are met; and

(D) Adequate provisions are made for assent of the children and permission of their parents or guardians, as set forth in recommendations (7) and (8).

Comment: The Commission emphasizes that the purely investigative procedures in research encompassed by recommendation (4) should entail no more than minimal risk to children. Greater risk is permissible under this recommendation only if it is presented by an intervention that holds out the prospect of direct benefit to the individual subjects or by a procedure necessary to monitor the effects of such intervention in order to maintain the well-being of these subjects (e.g., obtaining samples of blood or spinal fluid in order to determine drug levels that are safe and effective for the subjects). Such risk is acceptable, for example, when all available treatments for a serious illness or disability have been tried without success, and the remaining option is a new intervention under investigation. The expectation of success should be scientifically sound to justify undertaking whatever risk is involved. It is also appropriate to involve children in research when accepted therapeutic, diagnostic or preventive methods involve risk or are not entirely successful, and new biomedical or behavioral procedures under investigation present at least an equally favorable risk-benefit ratio. The IRB should evaluate research protocols of this sort in the same way that comparable decisions are made in clinical practice. It should compare the risk and anticipated benefit of the intervention under investigation (including the monitoring procedures necessary for care of the child) with those of available alternative methods for achieving the same goal, and should also consider the risk and possible benefit of attempting no intervention whatsoever.

To determine the overall acceptability of the research, the risk and anticipated benefit of activities described in a protocol must be evaluated individually as well as collectively, as is done in clinical practice. Research protocols meeting the criteria regarding risk and benefit may be conducted or supported provided the conditions of recommendation (2) are fulfilled and the requirements for assent of the children and for permission and participation of their parents or guardians, as set forth in recommendations (7) and (8), will be met. If the research also includes a purely investigative procedure presenting more than minimal risk, the research should be reviewed under Recommendation (5) with respect to such procedure.

Recommendation (5). Research in which more than minimal risk to children is presented by an intervention that does not hold out the prospect of direct benefit for the individual subjects, or by a monitoring procedure not required for the well-being of the subjects, may be conducted or supported provided an institutional review board has determined that:

(A) Such risk represents a minor increase over minimal risk;

(B) Such intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, psychological or social situations, and is likely to yield generalizable knowledge about the subjects' disorder or condition;

(C) The anticipated knowledge is of vital importance for understanding or amelioration of the subjects' disorder or condition;

(D) The conditions of recommendation (2) are met; and

(E) Adequate provisions are made for assent of the children and permission of their parents or guardians, as set forth in recommendations (7) and (8).

Comment: An IRB must determine that three special criteria are met in order to approve research presenting more than minimal risk but no direct benefit to the individual subjects. First, the increment in risk must be no more than a minor increase over minimal risk. The IRB should consider the degree of risk presented by the research from at least the following four perspectives: a common-sense estimation of the risk; an estimation based upon investigators' experience with similar interventions or procedures; any statistical information that is available regarding such interventions or procedures; and the situation of the proposed subjects. Second, the research activity must be commensurate with (i.e., reasonably similar to) procedures that the prospective subjects and others with the specific disorder or condition ordinarily experience (by virtue of having or being treated for that disorder or condition). Finally, the research must hold out the promise of significant benefit in the future to children suffering from or at risk for the disorder or condition (including, possibly, the subjects themselves). If necessary, the advice of scientific consultants should be obtained to assist in determining whether the research is likely to provide knowledge of vital importance to understanding the etiology or pathogenesis, or developing methods for the prevention, diagnosis or treatment, of the disorder or condition affecting the subjects.

The requirement of commensurability of experience should assist children who can assent to make a knowledgeable decision about their participation in research, based on some familiarity with the intervention or procedure and its effects. More generally, commensurability is intended to assure that participation in research will be closer to the ordinary experience of the subjects. The use of procedures that are familiar or similar to those used in treatment of the subjects should not, however, be used as a major justification for their participation in research, but rather as one of several criteria regarding the acceptability of such participation.

In addition to these special criteria, the IRB should assure that the conditions of recommendation (2) are fulfilled and the requirements for assent of the children and permission and participation of their parents or guardians, as set forth in recommen-

dations (7) and (8), will be met. If the proposed research includes an intervention or procedure from which the subjects may derive direct benefit, it should also be reviewed under recommendation (4) with respect to that intervention or procedure.

Recommendation (6). Research that cannot be approved by an institutional review board under recommendations (3), (4), and (5), as applicable, may be conducted or supported provided an institutional review board has determined that the research presents an opportunity to understand, prevent or alleviate a serious problem affecting the health or welfare of children and, in addition, a national ethical advisory board and, following opportunity for public review and comment, the secretary of the responsible Federal department (or highest official of the responsible Federal agency) have determined either: (A) That the research satisfies the conditions of recommendations (3), (4), and (5), as applicable, or (B) the following:

(I) The research presents an opportunity to understand, prevent or alleviate a serious problem affecting the health or welfare of children;

(II) The conduct of the research would not violate the principles of respect for persons, beneficence and justice;

(III) The conditions of recommendation (2) are met; and

(IV) Adequate provisions are made for assent of the children and permission of their parents or guardians, as set forth in recommendations (7) and (8).

Comment: If an IRB is unable for any reason to determine that proposed research satisfies the conditions of recommendations (3), (4), and (5), as applicable, the IRB may nevertheless certify the research for review and possible approval by a national ethical advisory board and the Secretary of the responsible department. Such review is contingent upon an IRB's determination that the research presents an opportunity to understand, prevent or alleviate a serious problem affecting the health or welfare of children. Thereafter, the research should be reviewed by the national board and Secretary, with opportunity for public comment, to determine whether the conditions of recommendations (3), (4), and (5), as applicable, are satisfied, or, alternatively, the research is justified by the importance of the knowledge sought and would not contravene principles of respect for persons, beneficence and justice that underlie these recommendations. In the latter instance, commencement of the research should be delayed pending Congressional notification and a reasonable opportunity for Congress to take action regarding the proposed research.

The provision for national review and approval under recommendations (3), (4), and (5) is intended to fit the situation where an IRB has difficulty in applying those recommendations but considers the research of sufficient importance to warrant national review. Such difficulty may be resolved by a determination on the national level pursuant to recommendation (6)(A) that the research does satisfy the conditions of the applicable earlier recommendations. Alternatively, the national review may determine either that the research satisfies the conditions of recommendation (6)(B) or that it should not be conducted.

The Commission believes that only research of major significance, in the presence of a serious health problem, would justify the approval of research under recommendation (6)(B). The problem addressed must be a grave one, the expected benefit should be significant, the hypothesis regarding the expected benefit must be scientifically sound, and an equitable method should be used for selecting subjects who will be invited to participate. Finally, appropriate provisions should be made for assent of the subjects and permission and participation of parents or guardians.

Recommendation (7). In addition to the determinations required under the foregoing recommendations, as applicable, the institutional review board should determine that adequate provisions are made for: (A) Soliciting the assent of the children (when capable) and the permission of their parents or guardians; and, when appropriate, (B) monitoring the solicitation of assent and permission, and involving at least one parent or guardian in the conduct of the research. A child's objection to participation in research should be binding unless the intervention holds out a prospect of direct benefit that is important to the health or well-being of the child and is available only in the context of the research.

Comment: The Commission uses the term parental or guardian "permission," rather than "consent," in order to distinguish what a person may do autonomously (consent) from what one may do on behalf of another (grant permission). Parental permission normally will be required for the participation of children in research. In addition, assent of the children should be required when they are seven years of age or older. The Commission uses the term "assent" rather than "consent" in this context, to distinguish a child's agreement from a legally valid consent.

Parental or guardian permission, as used in this recommendation, refers to the permission of parents, legally appointed guardians, and others who care for a child in a reasonably normal family setting. The last category might include, for example, stepparents or relatives such as aunts, uncles or grandparents who have established a continuing, close relationship with the child. Recommendation (8) describes circumstances in which the IRB may determine that the permission of parents or guardians is not appropriate because of the nature of the subject under investigation (e.g., contraception, drug abuse) or because of a failure in the relationship with the child (e.g., child abuse, neglect).

Parental or guardian permission should reflect the collective judgment of the family that an infant or child may participate in research. There are some research projects for which documented permission of one parent or guardian should be sufficient, such as research involving no more than minimal risk (as described in recommendation (3)), or research in which risks or discomforts are related to a therapeutic, diagnostic, or preventive intervention (as described in recommendation (4)). In such cases, it may be assumed that the person giving formal permission is reflecting a family consensus. For research that is described in recommendations (5) and (6), the permission of both parents should be documented unless one parent is deceased, unknown, incompetent or not reasonably available, or the child has a guardian or belongs to a single-parent family (i.e., when only one person has legal responsibility for the care, custody and financial support of the child). The IRB should determine for each project whether permission of one or both parents should be required, a substitute mechanism may be used, or the provision may be waived. In making such determination, the IRB should consider the nature of the activities described in the research protocol and the age, status and condition of the subjects.

The IRB should assure that children who will be asked to participate in research described in recommendation (5) are those with good relationships with their parents or guardians and their physician, and who are receiving care in supportive surroundings. Projects approved under recommendations (4) and (6) may also require scrutiny of this sort. The IRB may wish to appoint someone to assist in the selection of subjects and to review the quality of interaction between parents or guardian and child. A member of the board or a consultant such as the child's pediatrician, a psychologist, a social worker, a pediatric nurse, or other experienced and perceptive person would be appropriate. The IRB should be particularly sensitive to the difficulties surrounding permission when the investigator is the treating physician to whom the parents or guardian may feel an obligation.

Because of the dependence of infants, the traditional role of parents as protectors, and the general authority of parents to determine the care and upbringing of their children, the IRB may determine that small children should participate in certain research only if the parents or guardians participate themselves by being present during some or all of the conduct of the research. This role will vary according to the nature of the research, the risk involved, the extent to which the research entails possibly disturbing deviations from normal routine, and the age and condition of the children. As a general rule, when infants participate in research that may cause physical discomfort or emotional stress and involves a significant departure from normal routine, a parent or guardian should be present. However, if discomfort arises only as a result of therapeutic interventions that must continue over a considerable period of time, the continual presence of parents need not be required. Parental presence during the conduct of much behavioral research may not be feasible or warranted, especially with older children. Generally, parents or guardians should be sufficiently involved in the research to understand its effects on their children and be able to intervene, if necessary.

The Commission believes that children who are seven years of age or older are generally capable of understanding the procedures and general purpose of research and of indicating their wishes regarding participation. Their assent should be required in addition to parental permission. However, if any child over six years of age is incapacitated so that he or she cannot reasonably be consulted, then parental permission should be sufficient, as it is for infants. The objection of a child of any age to participation in research should be binding except as noted below.

If the research protocol includes an intervention from which the subjects might derive significant benefit to their health or welfare, and that intervention is available only in a research context, the objection of a small child may be overridden. Such would be the case, for example, with a new drug that is not approved by the Food and Drug Administration for general distribution until safety and efficacy have been

demonstrated in controlled clinical trials. Access to a drug under investigation generally requires participation in the research. Similar restrictions may be placed on other innovative therapies as a precaution. As children mature, their ability to perceive and act in their own best interest increases; thus, their wishes with respect to such research should carry increasingly more weight. When school-age children disagree with their parents regarding participation in such research, the IRB may wish to have a third party discuss the matter with all concerned and be present during the consent process. Although parents may legally override the objections of school-age children in such cases, the burden of that decision becomes heavier in relation to the maturity of the particular child.

Disclosure requirements for assent and permission are the same as those for informed consent. Similarly, children and parents or guardians should be free from duress. In order to assure understanding and freedom of choice, the IRB may determine that there is a need for an advocate to be present during the decision-making process. The need for third-party involvement in this process will vary according to the risk presented by the research and the autonomy of the subjects. The advocate should be an individual who has the experience and perceptiveness to fulfill such a role and who is not related in any way (except in the role as advocate or member of the IRB) to the research or the investigators.

Finally, the IRB should pay particular attention to the explanation and consent form, if any, to assure that appropriate language is used.

Recommendation (8). If the Institutional Review Board determines that a research protocol is designed for conditions or a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects, it may waive such requirement provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted. The choice of an appropriate mechanism should depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, status and condition.

Comment: Circumstances that would justify modification or waiver of the requirement for parental or guardian permission includes: (1) research designed to identify factors related to incidence or treatment of certain conditions in adolescents for which, in certain jurisdictions, they legally may receive treatment without parental consent; (2) research in which the subjects are "mature minors" and the procedures involved entail essentially no more than minimal risk that such individuals might reasonably assume on their own; (3) research designed to understand and meet the needs of neglected or abused children, or children designated by their parents as "in need of supervision"; and (4) research involving children whose parents are legally or functionally incompetent.

There is no single mechanism that can be substituted for parental permission in every instance. In some cases the consent of mature minors should be sufficient. In other cases court approval may be required. The mechanism invoked will vary with the research and the age, status and condition of the prospective subjects.

A number of states have specific legislation permitting minors to consent to treatment for certain conditions (e.g., pregnancy, drug addiction, venereal diseases) without the permission (or knowledge) of their parents. If parental permission were required for research about such condition, it would be difficult to develop improved methods of prevention and therapy that meet the special needs of adolescents. Therefore, assent of such mature minors should be considered sufficient with respect to research about conditions for which they have legal authority to consent on their own to treatment. An appropriate mechanism for protecting such subjects might be to require that a clinic nurse or physician, unrelated to the research, explain the nature and the purpose of the research to prospective subjects, emphasizing that participation is unrelated to provision of care.

Another alternative might be to appoint a social worker, pediatric nurse, or physician to act as surrogate parent when the research is designed, for example, to study neglected or battered children. Such surrogate parents would be expected to participate not only in the process of soliciting the children's cooperation but also in the conduct of the research, in order to provide reassurance for the subjects and to intervene or support their desires to withdraw if participation becomes too stressful.

Recommendation (9). Children who are wards of the State should not be included in research approved under Recommendations (5) or (6) unless such research is: (A) related to their status as orphans, abandoned children, and the like; or (B) conducted in a school or similar group setting in which the majority of children involved as subjects are not wards of the state. If such research is approved, the Institutional Review Board should require that an advocate for each child be appointed, with an opportunity to intercede that would normally be provided by parents.

Comment: It is important to learn more about the effects of various settings in which children who are wards of the state may be placed, as well as about the circumstances surrounding child abuse and neglect, in order to improve the care that is provided for such children by the community. Also, it is important to avoid embarrassment or psychological harm that might result from excluding wards of the State from research projects in which their peers in a school, camp or other group setting will be participating. Provision must be made to permit the conduct of such studies in ways that will protect the children involved, even though no parents or guardians are available to act in their behalf.

To this end, the IRB reviewing such research should evaluate the reasons for including wards of the state as research subjects and assure that such children are not the sole participants in a research project unless the research is related to their status as orphans, abandoned children, and the like. The IRB should require, as a minimum, that an advocate for each child be appointed to intercede, when appropriate, on the child's behalf. The IRB may also require additional protections, such as prior court approval.

Recommendation (10). Children who reside in institutions for the mentally infirm or who are confined in correctional facilities should participate in research only if the conditions regarding research on the institutionalized mentally infirm or on prisoners (as applicable) are fulfilled in addition to the conditions set forth herein.

NOTE.—The foregoing recommendations were adopted unanimously with the exception of Recommendation (5), from which Commissioners Cooke and Turtle dissented.

CHAPTER 1. WHY CHILDREN ARE INVOLVED AS RESEARCH SUBJECTS

The argument in favor of conducting research involving children rests on a combination of two factors: the absence, in numerous instances, of a suitable alternative population of research subjects, and the consequences of not conducting research involving children in those instances. Such consequences might include the perpetuation of harmful practices, the introduction of untested practices, and the failure to develop new treatments for diseases that affect children.

The lack of an alternative population. Possible alternative populations for research involving children are animals and adult humans, but there are limitations to both. No animal model has been found for a number of diseases that affect children or adults, such as cystic fibrosis and Down's syndrome. Furthermore, animal models are inappropriate for studying certain processes that are uniquely human, such as development of speech and cognitive functions. The amount of brain development that occurs in humans after birth has no parallel in the animal world, and studies of such development must be done in humans. Even normal biological measures or functions in animals, such as blood sugar levels or drug metabolism, are not consistent from one animal species to another and cannot be extrapolated to humans; thus, it eventually becomes necessary to examine the function in human subjects.

There are also no adult models for disorders that are unique to childhood, such as hyaline membrane disease, erythroblastosis fetalis, and infantile autism. Studies of normal development and of such phenomena as the "critical period" and child-parent interaction, by their very nature, can be conducted only in children. Research involving children is important, also, because both in sickness and in health, the child is not a small adult, and, consequently, results of studies on adults cannot be directly extrapolated to children. For example, administration of intravenous fluids to infants or children based on adult requirements would be disastrous, providing either too much or too little of various substances. It was only by studying normal constituents of body fluids and their metabolism in normal infants and children that requirements for specific age groups could be identified and intravenous fluid therapy could be utilized. A more obvious difference between children and adults is in their food requirements, not only in type and nutrients but in calories—an infant provided calories based on adult requirements would soon starve. An assumption that drugs which are useful and safe in adults are effective and safe in children, and that it is necessary only to adjust dosage on the basis of body weight or surface area, is likewise not only fallacious but also dangerous, as exemplified by the examples of chloramphenicol and sulfisoxazole cited below.

Just as children are not small adults, it is also erroneous to consider all children as a homogeneous category. A child is a developing and constantly changing organism: the newborn infant, in its body composition and metabolism as well as its response to drugs and stimuli, differs from the toddler; the

early school-age child differs from the pubertal adolescent. Growth imposes its own special set of constraints and challenges. Consequently there is a need not only for research on children, but across the full spectrum of childhood.

The consequences of not involving children in research. Prohibiting children's participation in research would impede innovative efforts to develop new treatments for diseases that affect children, while research to prevent or treat adult diseases would continue. Even research efforts on adult diseases would be hampered, as many of the most common and serious diseases that affect adults, such as atherosclerosis, probably have their origins in childhood. Many adults with cystic fibrosis or juvenile diabetes mellitus would not be alive today without the benefit of research that involve children.

Prohibiting children's participation in research would also result in the introduction of innovative practices without benefit of research or evaluation. The history of misadventures from such untested and unvalidated innovation argues as strongly for research as does the failure to innovate that would result from impeding research. For example, introduction of the practice of supplying oxygen in high concentrations to premature infants with hyaline membrane disease to enable them to survive was successful in many cases. However, the price paid for this course of action was the blinding of thousands of children due to retrolental fibroplasia before it was found that high oxygen levels had a toxic effect on the blood vessels supplying the retina in premature infants.

Another iatrogenic disease whose cause went undetected for years was the "gray-baby syndrome," which resulted in the death of many newborn infants until a research project (terminated early because the results were so clear) demonstrated that the drug chloramphenicol was responsible. This drug was an effective and generally safe antibiotic in adults, and it had been extended to use in children and infants without special study. The use of chloramphenicol for newborn infants was quickly abandoned when research demonstrated that poisoning occurred from the toxic levels of the drug that accumulated, because the enzyme system that metabolizes the drug is inadequately developed in the newborn. Another antibacterial agent, sulfisoxazole, was also abandoned for use in newborn infants after it was shown to cause severe neural injury (kernicterus) and cerebral palsy by binding to serum albumin so that bilirubin could not be bound and was free to damage nerve cells. Use of Vitamin K to prevent hemorrhagic disease of the newborn was a major advance, but its use in excessive doses also produced many cases of kernicterus due to its destruction of red blood cells with resultant increase in bilirubin levels, until research demonstrated this danger and established a safe and effective dose.

Even such a seemingly simple matter as feeding and hydrating a newborn infant has, without proper research, been subject to faddism and untested innovation. Because premature infants tend to look edematous, for years it was routine practice to give them no food or water for 48 to 72 hours after birth, with a high inicidence of brain damage ensuing from an excessive amount of sodium in the blood of the few who survived the drying out procedure. Despite abandonment of such practices and conduct of much research, there still exists no general agreement on when to begin feedings for premature infants and how much of what to give.

Another standard treatment, whose adverse effects continue to be manifested 20 to 30 years later in the form of radiation-induced thyroid cancer, was prophylactic radiation to the neck and chest, used in the 1940's to shrink an infant's thymus. This treatment was administered on the hypothesis that it would prevent the sudden infant death syndrome, with no basis in fact other than the observation that many victims of the syndrome had an enlarged thymus at autopsy.

Nonmedical practices also may have harmful effects, and be equally ill-founded but firmly entrenched, and modifiable only by research. For example, only when research was conducted were the ill effects of the routine practices of institutionalization on child development demonstrated, and changes in practices initiated.

There are other standard practices whose effects remain matters of speculation. For example, concern is currently being expressed over the practice of isolating premature infants from their parents in intensive care nurseries, based on evidence from research that shows the importance of very early physical contact between the mother and infant for the establishment of parental bonding, and the significantly higher incidence of child abuse of premature infants.

In sum, there is historical evidence of undesirable consequences resulting from the introduction of innovations in pediatric practice without adequate research, and there are many areas of inquiry that are important for improving the health and well-being of children (and adults), and for which there is no research population other than children.

Chapter 2. The Nature and Extent of Research Involving Children

Children participate as subjects in a wide variety of research undertakings. A survey of government agencies' research activities involving children during fiscal year 1975 provides an indication of the diversity of these projects, and may be considered a reflection of nongovernment-supported research with children as well. This survey is based on reports provided to the Commission by components of DHEW and on information compiled by the Social Research Group of George Washington University. It should be noted that the definitions of "child" vary among agencies (sometimes including individuals through age 25); similarly, some agencies include conferences, literature searches and training projects as research involving children, while others use a narrower definition, referring only to projects involving children directly as subjects. Thus, the data are not compatible.

Of the numerous departments and agencies conducting or supporting research with children, DHEW supports the largest amount (see pages 38 and 39). Within DHEW, the largest dollar amount for biomedical research involving children is provided by the National Institutes of Health; the largest amount of nonbiomedical research supported by DHEW is funded by the Education Division. Although the National Institute of Child Health and Human Development (NICHD) is identified most closely with research on children, virtually all the institutes have research programs that directly involve them.

Much of the research conducted and supported by NICHD, in contrast to the categorical disease institutes, involves the study of normal and abnormal physical, cognitive, behavioral and social development. Examples of such research include studies of normal and abnormal development of cellular immunity, developmental pharmacology research to identify age-related changes in metabolism of endogenous substances and drugs by infants and children, evaluations of mental development of malnourished children, attempts to develop or improve methods for predicting mature stature from assessment of skeletal maturity at various ages, analyses of learning patterns of children and the impact of preschool educational experiences, intense studies of acquisition and development of language skills, and studies of the relation of parental authority style to development of responsibility and independence in children. Other research focuses on determining the causes and prevention of such conditions as mental retardation, the sudden infant death syndrome, low birth weight, and accidents. Research of this type supported by NICHD has included evaluation of the effects of differing types of intervention on mental retardation associated with malnutrition, attempts to prevent mental retardation in children of retarded mothers by infant stimulation and developmental programs, development of continous positive airway pressure ventilation as treatment for newborns with respiratory distress syndrome, studies of the incidence of congenital infections in newborn infants and their role as a cause of low birth weight and mental retardation or death, and assessments of the relation of sleep disturbance or cardio-respiratory dysfunction as well as viral infection to the sudden infant death syndrome.

Research supported by the National Institute of Dental Research and involving children consists primarily of clinical trials, usually in schools, of techniques to reduce tooth decay. Such techniques include fluoride mouthrinses, mechanical plaque removal from teeth, and sealants. Other studies range from those involving children only as sources of biologic materials for study (saliva, plaque), or comparing behavioral responses to an initial visit to the dentist after various means of orientation and preparation, to developing new surgical and orthodontic rehabilitative procedures for cleft palate and other craniofacial birth defects.

Examples of child research supported by the National Institute of General Medical Sciences include follow-up studies of children given various drugs as newborns or whose mothers received certain drugs during pregnancy, developing new methods of instrumentation for procedures such as cardiac catheterization, devising noninvasive techniques of sampling or monitoring (salivary drug levels, skin oxygen electrode), and conducting eye exams and constructing pedigrees to ascertain the genetics of refractive errors.

The focus of research involving children that is conducted and supported by the National Institute of Neurological and Communicative Disorders and Stroke is on perinatal factors associated with cerebral palsy and mental retardation, discovering the enzymatic basis of hereditary disorders of the nervous system and in certain instances attempting enzyme replacement therapy, and determining the causes and evaluating treatments of such conditions as learning disability, dyslexia, stuttering and aphasia.

Children are also involved with adults in NINCDS studies of the etiology and treatment of the various epilepsies, investigations of slow virus infections of the central nervous system, management of spinal cord injuries, and development of improved sensory aids for the handicapped.

The National Cancer Institute does not target its programs toward children as a group, but many children are included in the research protocols for particular cancers. The research involves testing of various therapies to develop improved treatment, and evaluating new diagnostic methods.

The National Eye Institute conducts and supports a number of studies of eye disorders involving children. These include evaluation of medical and surgical treatments for congenital and juvenile glaucoma, development of improved diagnostic procedures for juvenile macular degeneration and retinitis pigmentosa, use of new techniques to evaluate eye movements, use of color TV for color vision screening, and research on the perceptual components of reading.

A large number of studies of the National Heart, Lung and Blood Institute involve children. Some involve minor intervention, such as studies of blood pressure and blood lipids in large populations of school children to obtain information on prevalence of hypertension and of certain risk factors (hyperlipidemia). Other noninterventional studies include evaluating risk factors in children whose parents have heart disease, obtaining longitudinal information on blood pressure determinations of children, and studying the long term natural history of congenital heart defects by following the status of children with the defects over many years. The Institute also supports studies of effective therapy for pediatric lung disorders, including respiratory distress syndrome, cystic fibrosis, and bronchiolitis. Blood disorder research involving children includes study of Factor VIII inhibitors in hemophilia (using a sample of the child's blood obtained at routine clinic visits), recording the incidence and source of infection in children with sickle cell disease, assessing the mental and emotional development of children with sickle cell disease, recording sexual maturation of sickle cell patients compared to their unaffected siblings, identifying the effects of a tutoring program on school attendance and performance of sickle cell patients, and evaluation of prophylactic penicillin to reduce the incidence of infection in patients with sickle cell disease.

Children's research programs supported by the National Institute of Allergy and Infectious Diseases focus on asthma and allergic conditions, immunodeficiency states, and infectious diseases. Included in the broad range of activities are studies designed to develop or improve tests to specifically diagnose allergy to various agents at different ages; a double-blind clinical trial of use of transfer factor as therapy for certain immunodeficiency states; development and clinical testing in infants and children of vaccines against Hemophilus influenza type B, meningococcus, pneumococcus, streptococcus, and several viruses; identification from stool samples of the virus responsible for a large portion of the cases of infant diarrhea; and epidemiologic studies of a wide variety of infections.

Children are usually involved with adults in studies of the National Institute of Arthritis, Metabolism, and Digestive Diseases, although some of the disorders studied (such as juvenile rheumatoid arthritis or juvenile diabetes) strike first during childhood. Examples of the studies which include children are comparisons of new drugs or various schedules of administration in treating lupus nephritis, evaluation of dietary modification as therapy for certain genetic defects (such as galactosemia) or for uremia or deficiency diseases, comparison of growth and sexual development as well as psychosocial function with peritoneal dialysis as opposed to hemodialysis in chronic renal failure, and evaluation of the physical and behavioral effects of hypertransfusion to maintain hemoglobin level at 12 grams rather than 9 grams in patient with Cooley's anemia.

The National Institute of Environmental Health Sciences supports a variety of research on methods of diagnosing, treating and preventing lead poisoning in children, as well as the extent and consequences of the condition. Similar types of studies are supported for other environmental hazards, such as mercury, cadmium, sulfur dioxide, and various pollutants. These studies involve such procedures as developing assays to measure lead in one drop of blood or one hair and applying them in large screening programs, developing and studying the effects of various treatments to remove lead from the body, correlating lead levels in shed teeth with neuropsychologic test performance of children, or longitudinal testing of pulmonary function of school children in cities with different levels of pollutants. A number of epidemiologic studies have examined the relation of such factors as prenatal x-ray exposure to the development of childhood cancer, pesticide exposure to chromosome damage, or exposure to various known toxins to mental retardation.

The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), through its three component institutes (NIMH, NIDA, NIAAA), serves as the focus of DHEW behavioral research, although many of its activities are biomedical as well. The National Institute of Mental Health conducts or supports studies of developmental processes of the children and the family, child abuse, early diagnosis of dysfunction, and intervention programs to promote healthy emotional and cognitive growth. Examples include longitudinal studies of mother-infant interactions, studies of the effect of obstetric medication on infant perceptual functioning, effects of maternal behavior on infant learning, behavioral identification of the hyperkinetic syndrome, effects of methylphenidate and amphetamine on hyperactive children and their influence on urinary dopamine metabolites, genetic studies of the offspring of schizophrenics, studies of the delivery of psychiatric screening and services to children, and investigation of factors contributing to juvenile delinquency.

The National Institute on Drug Abuse targets a significant portion of its research program toward children. Much of this research involves development and evaluation of education programs for children regarding drug abuse, with special attention to appealing to elementary school children and minorities. Other research involves study of attitudes among children toward drug use, investigation of the extent of drug use by children, and assessment of the effects of maternal narcotic addiction on the fetus and newborn infant. Studies comparing various treatment methods and the efficacy of treatment for the young drug abuser are also supported.

The National Institute on Alcohol Abuse and Alcoholism supports some research involving children. These projects generally involve experimental education programs for children on alcohol use and abuse, study of the social and cultural antecedents of alcoholism, evaluation of treatment programs for the very young alcoholic, studies of the effects of maternal alcohol use during pregnancy on the newborn and on family health, and surveys of the nature and extent of alcohol use among children of various ages and socioeconomic groups.

Other agencies within the Public Health Service also conduct or support research involving children. Although its primary mission is providing health services, the Maternal and Child Health Service of the Bureau of Community Health Services, Health Services Administration, devotes considerable effort to research related to its programs. In addition to studies of pregnancy and childbirth, the MCHS supports studies of means of improving patient compliance with physicians' directions, the impact of improved health insurance coverage of maternity care on infant mortality, disability outcomes for childhood amputees, using a trained mother as therapist in cerebral palsy therapy, and numerous evaluation of MCHS programs and projects. The largest portion of research involving children that is conducted or supported by the Center for Disease Control is the development, testing, and evaluation of vaccines. Epidemiologic studies of the CDC often involve children, such as in studies of the incidence of childhood cancer in relation to arsenic levels near a smelter, or analysis of interpersonal contacts among patients with Hodgkin's disease as a possible factor in its epidemiology. Surveillance activities may involve children, as in the study indicating that an outbreak of Reye's syndrome closely followed an epidemic of influenza B virus infections, and in the birth defects monitoring program (which involves children only by utilizing newborn infants' hospital discharge summaries). Within the Food and Drug Administration, the Bureau of Biologics supports some research involving testing of vaccines in children; pharmaceutical testing in children is regulated but not conducted or supported by the FDA.

Some DHEW components outside the Public Health Service also conduct or support research involving children. Three divisions of the Office of Human Development (Office of Child Development, Office of Youth Development, and Rehabilitation Services Administration), have child research programs. Research in the OCD Head Start program includes studies of the effects of different ratios of caregivers to children in child care centers, evaluation of progress made by children in different types of Head Start programs, and analysis of a family oriented "Home Start" program in rural areas. OCD also supports studies related to determining causes of child abuse and neglect and developing intervention programs to assist parents of such children, studies of attempts to improve the interface of parents with schools and social institutions to assist the developing child, and research on the impact of residential institutional experiences on child development. The research supported by OYD focuses on analysis of causes and various support services for runaway youths. The RSA supports research on rehabilitative techniques for children with cerebral palsy, mental retardation, or other disabling conditions.

Another DHEW component, the Social and Rehabilitation Service, supports research with children related to child welfare services, child support, and health services. Studies involved developing methods to identify early warning signals of child abuse and neglect, assessing the cost-effectiveness of different types of day care, developing alternative approaches to foster care and adoptions, evaluation of income maintenance programs and their effect on children, assessing the impact of family planning services on reducing the number of unwanted births (especially to teenagers), and evaluating the cost-effectiveness of various methods of providing Early and Periodic Screening, Diagnosis and Treatment services. (In 1977 a departmental reorganization abolished the Social and Rehabilitation Service, and most of its programs have been transferred to the Office of Human Development or the Health Care Financing Administration.)

The largest amount of research involving children in DHEW, both in terms of funds and number of projects, is conducted and supported by the Office of Education and the National Institute of Education. This research is intended to improve the quality of education by developing and demonstrating the effectiveness of new approaches to education. To the extent that changes in education techniques or practices are considered behavior research, these activities fall within the mandate of the Commission. Examples of the types of research supported include studies of the multiunit school system as a means to reorganize elementary schools to provide more individual attention, evaluation of a program combining on-the-job experience with academic learning, developing improved methods for acquisition of basic skills as well as better means to assess achievement, evaluation of various primary education programs (Project Follow Through) for their ability to maintain gains achieved by children in Project Head Start, developing improved techniques for early childhood education and teaching handicapped children, and research in the Right-To-Read program designed to develop effective remediation procedures for children who are functionally illiterate.

Departments of the federal government other than DHEW also conduct or support research involving children. The Department of Agriculture supports research through land grant institutions and the Agriculture Extension Service on childhood nutrition and growth, education, and child development. The Department of Justice, through the Law Enforcement Assistance Administration and its Office of Juvenile Justice and Delinquency Prevention, conducts and supports research relating to juvenile delinquency and rehabilitation of young offenders. The Department of Labor supports experimental programs to improve vocational education and job opportunities for adolescents, with emphasis on minorities, the disadvantaged and the handicapped. Finally, physicans and other personnel in the military hospitals of the Department of Defense conduct a wide variety of biomedical and behavioral research involving children.

Figures 1 and 2 show the number and proportion of federally sponsored research projects supported by the various departments and agencies.

FISCAL 1975
FEDERALLY SUPPORTED RESEARCH PROJECTS INVOLVING CHILDREN AS SUBJECTS AS REPORTED BY FEDERAL AGENCIES[1]

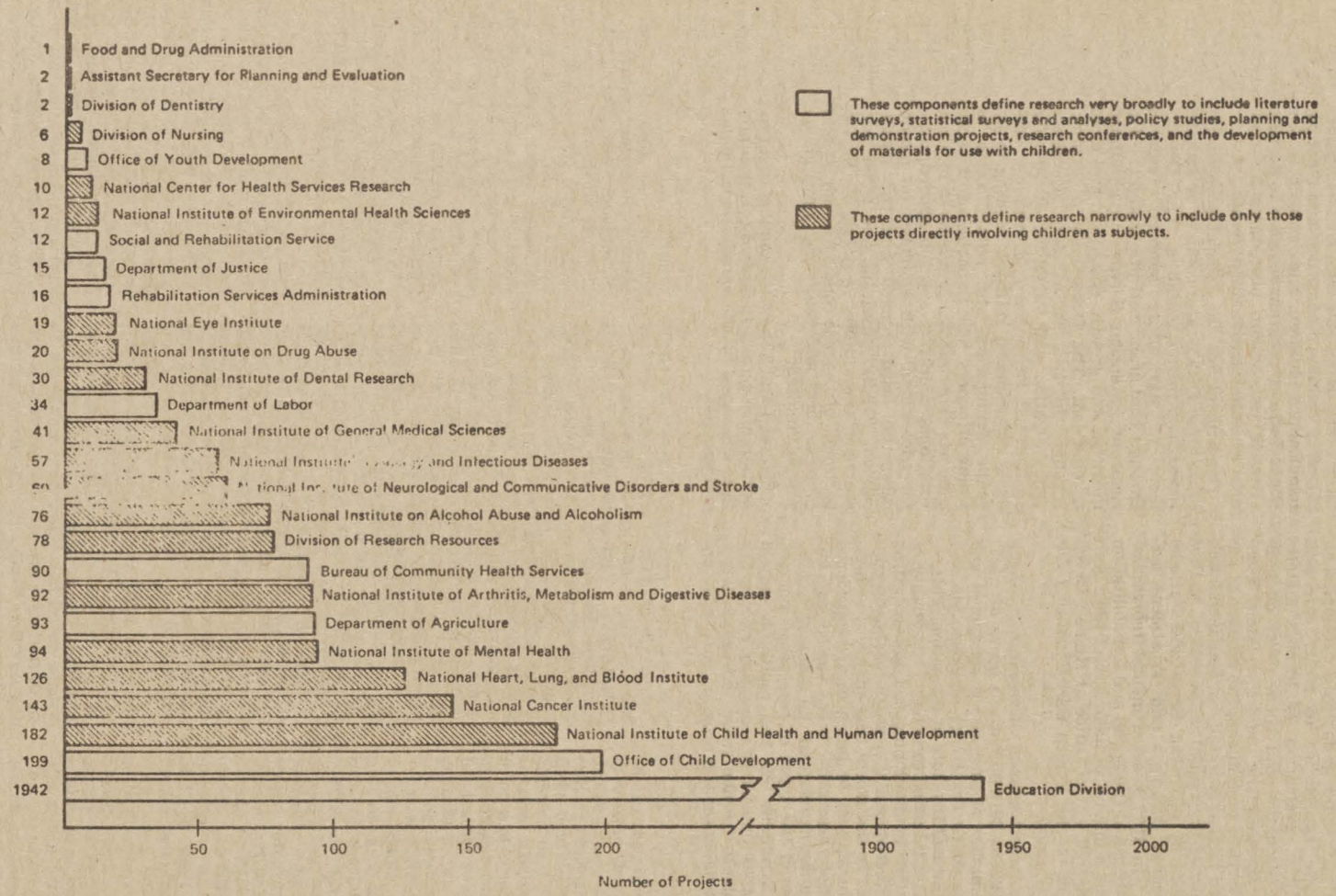


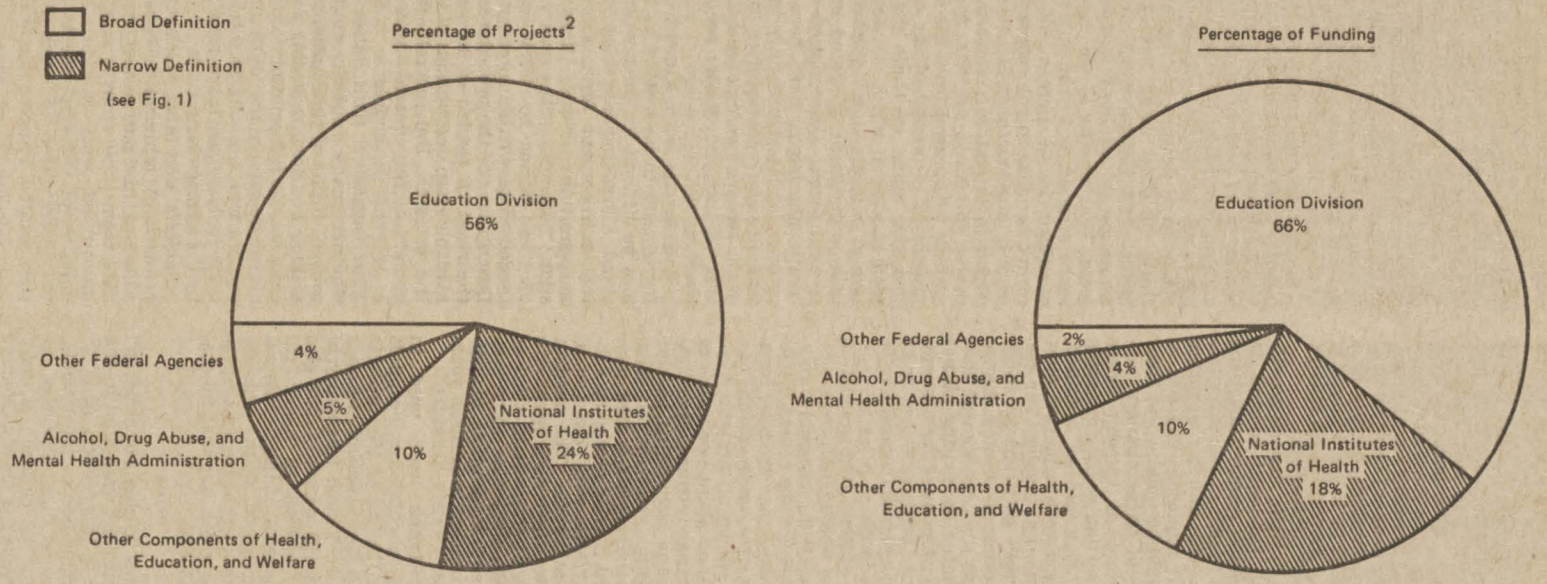
FIG. 1

[1] Compiled from information supplied by the Chief, Research Documentation Branch, Division of Research Grants, NIH and by the Social Research Group, The George Washington University.

Fig. 2

FISCAL 1975

FEDERALLY SUPPORTED RESEARCH PROJECTS INVOLVING CHILDREN AS REPORTED BY FEDERAL AGENCIES[1]



Number of Projects

Education Division	1942
National Institutes of Health	840
Other Components of Health, Education, and Welfare	346
Alcohol, Drug Abuse, and Mental Health Administration	190
Other Federal Agencies	142
TOTAL	3460

Amount of Funding

Education Division	$256,667,573
National Institutes of Health	72,113,441
Other Components of Health, Education, and Welfare	38,019,816
Alcohol, Drug Abuse, and Mental Health Administration	17,129,033
Other Federal Agencies	7,179,620
TOTAL	$391,109,483

[1]Compiled from information supplied by the Chief, Research Documentation Branch, Division of Research Grants, NIH and by the Social Research Group, The George Washington University.

[2]Percentages do not add up to 100% due to rounding.

Chapter 3. Survey of Review and Consent Procedures

Information about informed consent, risks and benefits, and review procedures in research involving children was obtained in the Commission's larger survey of review and consent procedures for research involving human subjects. The survey, which was conducted under the direction of Robert A. Cooke, Ph.D., and Arnold S. Tannenbaum, Ph.D., of the Survey Research Center at the University of Michigan, focused on review procedures and research at a probability sample of 61 institutions drawn from the more than 420 institutions with Institutional Review Boards (IRBs) approved by DHEW.* Research projects in which more than 25 percent of the subjects were children constituted more than one-fourth of all projects approved by sample IRBs during the period under study, July 1974 to June 1975. The Survey Research Center's report on research involving children was based primarily on interviews with 471 investigators whose research involved children, analyses of consent forms used in this research, and interviews with 144 subjects or third parties who consented on their behalf.

Research involving children was reviewed in many types of institutions, most frequently in medical schools (almost half of the research) and to a lesser extent in universities, hospitals, and institutions for the mentally retarded and mentally ill. Overall, slightly more biomedical than behavioral research involving children was conducted. In most of the biomedical research projects involving children, the subjects were identified by investigators as patients with diseases to which the research was related. The most common biomedical studies involved drug administration or examination of tissue or bodily fluids. Subjects in behavioral research were selected most frequently because of a behavioral or educational problem they were experiencing. Most of the behavioral research involved observation, testing, interviews or questionnaires; about one-fourth of the behavioral research involved the study of a behavioral intervention.

Risks and benefits of research involving children. Investigators provided assessments of the probability and magnitude of the risks and benefits of their research. Most risks to subjects were described as pertaining to minor psychological stress, embarrassment, or minor medical complications, and most risks were indicated to be of a "very low" probability. Higher probabilities of medical or psychological harm were reported in only about five percent of the studies involving children.

In analyzing investigators' responses to questions regarding risk, studies expected to benefit subjects were compared to studies not expected to benefit subjects. Projects expected to benefit subjects were defined as those which were reported (a) to conducted for the primary purpose of benefiting subjects or (b) to have a medium or high probability of benefiting subjects. So defined, these "beneficial projects" made up 57 percent of the total.

Investigators' assessments of the probability of psychological stress or medical complications were substantially lower for research not expected to benefit subjects. For example, in studies expected to benefit subjects, investigators reported a very low probability of "serious medical complications" in 18 percent of the studies, and a higher probability in an additional five percent of the studies. In studies not expected to benefit subjects, comparable figures for the risk of serious medical complications were six percent and zero percent. The only risks for which there was no difference between these types of studies were those in which a breach in confidentiality might result in embarrassment (a factor in about one-fourth of all studies involving children, usually at a "very low" probability) or in legal jeopardy (a factor in about 10 percent of all studies, usually at a "very low" probability).

*Informed consent.*** IRBs showed considerable concern with informed consent in their review of proposed research involving children. About one-fourth of the investigators doing research with children reported that their IRB had requested changes in the way consent would be obtained in their studies. Almost all of these changes pertained to the content of consent forms rather than to the setting or circumstances under which consent would be obtained. Consent modifications were requested most frequently in projects that involved the secondary use of materials gathered for other purposes; the most common consent change in such research was the requirement that consent be documented in writing rather than obtained orally. Among other biomedical and behavioral projects, the most common consent change was the addition of materials to consent forms.

Oral or written consent was sought in almost all projects in which children participated, the exceptions being projects involving questionnaires (where the return of the questionnaire was seen as implying consent), routine treatment, or research presenting no risk. In almost all projects from children's hospitals and about two-thirds of the projects from other settings, investigators requested consent from third parties, usually from parents, relatives or legal guardians. Most investigators felt that such involvement of third parties protected subjects "very well" or "fairly well," but a small number indicated otherwise. The median age of subjects above which no consent was obtained from a third party was 18 years of age, while the median age below which consent was not obtained from subjects, in addition to third-party consent, was seven years of age.

Written consent forms were used in almost all research in children's hospitals and in about three-fourths of the projects in other institutions. Oral consent, without consent forms, occurred most frequently in behavioral research (18 percent), but also occurred in seven percent of biomedical studies. About 10 percent of the behavioral researchers and two percent of the biomedical researchers reported that consent forms were used in their studies, but that no oral explanation was provided.

The consent forms themselves were frequently incomplete in terms of six consent elements mentioned in DHEW regulations (45 CFR 46.103(c))—the purpose of the research, the procedures involved, the risks, the benefits, a statement that subjects are free to withdraw from the research, and an invitation to ask questions. Only 20 percent of the consent forms from children's hospitals and other biomedical institutions, and only five percent of the consent forms from other institutions, contained as many as five of these six elements. Descriptions by investigators of the topics covered in oral explanations added only negligibly to the report of information transmitted to subjects.

Some elements appeared much less frequently than others in consent forms. There was no description of the purpose of the research in 30 percent of the consent forms, and no description of the research procedures in 18 percent. Risks were not discussed in 54 percent of consent forms. Two-thirds of these cases were in studies described by investigators as entailing at least a very low probability of minor harm to subjects. The benefits of the research (or absence of benefits to the subjects) were not described in 64 percent of the consent forms; benefits to subjects were mentioned in only one-fourth of the forms in studies which investigators described as being expected to benefit subjects. A statement regarding withdrawal from the study was not present in 14 percent of the consent forms; however, many of these may have been from studies in which the active participation of subjects ended quickly. An offer to answer questions appeared in half of the consent forms. A description of alternative treatments might have been expected in projects designed primarily to benefit subjects. However, alternatives to participation in the research were not mentioned on more than 80 percent of the consent forms in these studies.

The survey also showed that consent forms tend to be written in language that may be difficult for the lay person to understand. A "reading ease score" was computed for each consent form, using a standard measure, the Flesch Readability Yardstick.*** In spite of the review and approval of these forms by IRBs, consent forms tended to be written in scientific language. Descriptions of the procedures to be used in the research tended to be somewhat more readable than descriptions of the purpose of the research. But, overall, fewer than 15 percent of the consent forms were written in language as simple as is found, e.g., in Time magazine. This raises doubt about whether many subjects would find these consent forms of substantial use to them in making decisions regarding participation in research. No information is available on the degree to which the difficult language of consent forms is mitigated by oral explanations in language more readily understood by the average lay person.

Subjects' and third parties' perceptions of research. A representative sample of subjects and third parties was not obtained, and data from these sources must therefore be interpreted with caution. Almost three-quarters of the respondents reported that they were given as much information as they wanted; 19 percent said that they were

*The study was confined to institutions from which DHEW had accepted a "general assurance" of compliance with DHEW regulations for protection of human subjects.

**Because the terms "consent of children" and "third-party consent" were used in the survey, they appear in this section. As is explained in the Commission's recommendations, the Commission has generally referred to the "assent" of children in order to distinguish this from the legally effective informed consent that an adult can give, and to third-party "permission," which it believes to be a more accurate term than third-party "consent."

***Rudolph Flesch, A New Readability Yardstick, *Journal of Applied Psychology*, Vol. 18, No. 3, June 1948, pp. 221-233.

given less than they wanted. Almost all said the information was clear and understandable and that the researchers were willing to answer any questions, but 17 percent reported that they did not understand, prior to the subject's participation, that the subject "was to be involved in research." The most frequent reason given for participation in a research project was some anticipated medical or psychological benefit. Ninety-six percent of the respondents reported no unexpected difficulties, and the four percent who did report difficulties felt that they were not very serious. Sixty percent felt that the subject benefited from the research.

IRB impact on proposals involving children. IRBs requested modification in about 60 percent of the research proposals involving children, usually during the formal review process but occasionally through informal contacts prior to review. The most frequent modifications, occurring in about one-third of the proposals, were for clarification or additional information. As discussed above, modifications related to informed consent were required in one-fourth of the proposals. Changes pertaining to reduction of risk or discomfort were required in about five percent of the proposals.

Investigators' attitudes toward the IRBs were, for the most part, more favorable than unfavorable. Nonetheless, half of the investigators offered suggestions for improvement or expressed concern about such problems as the time-consuming nature of the review process and the failure of IRBs to discriminate between research involving high risk and research involving minimal or no risk. Their suggestions included elimination of parts of the review process (e.g., regarding research with minimal or no risk or research using previously gathered materials), elimination of written consent procedures for studies with minimal or no risk, changes in IRB composition (some want more lay representation, while others want less), and better information about the expectations of the IRB.

Summary. This survey indicated that IRBs give considerable attention to their review of research involving children and that significant risks, to the limited extent to which they are present in such research, are found in studies that are expected to be of benefit to the subjects. However, the survey also provided evidence of shortcomings in the obtaining of informed consent. Although oral or written consent was generally reported to have been obtained whenever appropriate, a small percentage of investigators indicated that no oral explanation had been provided, and consent forms were frequently incomplete and tended to be written in language that the lay person might find difficult to understant. Despite this, the survey provided no indication that there is widespread dissatisfaction among children or parents regarding their experience in research, although a significant minority of respondents indicated that they had not understood, prior to the subject's participation, that research was to be involved.

Chapter 4. Views Presented by the National Minority Conference on Human Experimentation

In order to assure that minority viewpoints would be heard, the Commission contracted with the National Urban Coalition to organize a conference on human experimentation. The conference was held on January 6-8, 1976, at the Sheraton Conference Center, Reston, Va. Attended by over 200 representatives, it provided a format for presentations of papers and workshop discussions from which a set of recommendations emerged. Two sections of the Minority Conference focused on children as research subjects.

Henry W. Foster, Jr., M.D., in a background paper, suggested that children not be excluded from participation in "nontherapeutic" research, since "there clearly exists the need to continue the search for better therapies and cures for the many childhood diseases that are so prevalent and devastating." However, he urged that a proper balance between risks and benefits be maintained, and that definitions of childhood take into account social and ethnic differences in age of maturation. He recommended that parental consent for the participation of children in research be accepted as legally and ethically valid, and that no socio-economic groups participate disproportionately as research subjects.

Crystal A. Kuykendall, Ph.D., spoke about institutionalized children, emphasizing the disproportionate numbers of minority children who are labeled mentally retarded or mentally disabled and placed in institutions. She indicated that these children are most vulnerable to the effects of institutionalization. Citing a 1975 study on the Futures of Children, by Vanderbilt University, she noted that there are currently 200,000 individuals in public institutions who are diagnosed as mentally retarded, and thirty percent of these are children. She urged the development of alternatives to institutionalization for all but the most severely disabled individuals, better criteria for diagnosis, and better educational methods to develop the capacities of each person as fully as possible.

The Conference Workshops on Children submitted recommendations which included: (1) A prohibition of the exploitation of any one segment of the child population; (2) an exclusion of institutionalized children from research, except that which is designed to improve their conditions; (3) a prohibition of the use of psychosurgery on children; (4) the consent of a children's advocate in addition to that of parents; and (5) the consent of children over age seven when their participation in "nontherapeutic" research is solicited.

Chapter 5. Views Presented at Public Hearings

On April 9, 1976, the Commission conducted a public hearing on the issue of research involving children. Summaries of the testimony follow.

William Charlesworth, Ph.D. and Julius Richmond, M.D. (Society for Research in Child Development) presented the results of a survey in which a sample of the Society's members were polled regarding their research practices. The sample included investigators involved in a wide variety of pediatric research, although it is almost entirely behavioral rather than biomedical. A majority of the investigators were funded by DHEW or other federal agencies. All of the investigators reported that they followed a specific code of ethics, and 80 percent reported that their research is reviewed by an ethics committee. Ninety-six percent reported that they had worked at one time with normal subjects, 31 percent had worked with handicapped or retarded subjects, and 25 percent had worked with institutionalized persons.

A third of those studying preschoolers obtained consent from the children as well as from parents (or, in a very few cases, from school officials). From that age group on, there was a greater tendency to obtain consent from the subjects. Eighty-three percent mentioned that they informed the subjects that they may refuse to participate or withdraw from the study at any point without prejudice. Deception was employed by 23 percent of the investigators if they felt it necessary for research purposes, and approximately 40 percent reported that they used various kinds of inducements or compensation to persuade or reward subjects or parents to participate in the research. (The offer of compensation for participating is often viewed as an inducement to persuade.)

Respondents were asked to answer questions about risks involved in their own studies and to identify any occurrences of injury. Physical risks were a possibility in only four of the 3,400 studies represented in the sample, and psychological/social risks were reported in less than 2 percent of the sample (60 studies). None of the physical risks led to any known undesirable consequences, but in about 13 cases, subjects reportedly experienced some consequences of the psychological/social risks, most of which appeared to be short-term. Thus, in only ¼ of 1 percent of the 3,400 studies were children placed at any risk, and no serious or long-term injury was reported. The questionnaire also inquired about the risks posed by studies not conducted by the respondents but about which they had first-hand knowledge. The survey revealed that 9 respondents were familiar with a total of 16 studies involving some sort of physical risk and with 173 studies involving psychological/social risk. Dr. Charlesworth believes that this survey indicates that the overwhelming majority of investigators maintain a high level of research ethics. The Society recommends that the potential dangers involved in the use of deception (e.g., the child's losing trust in adults) be studied further, that there be increased education about the importance of research ethics, that review procedures be improved and that, if necessary, professional sanctions be invoked in cases of proven violations.

Edward F. Zigler, Ph. D. (Division of Development Psychology, American Psychological Association), suggested that investigators should educate the public about the nature and benefits of behavioral studies involving children in order to dispel suspicion and disrust. In addition, they should develop enlightened informed consent procedures which respect the child's wishes as much as possible, although Dr. Zigler acknowledged that it is difficult to determine when a child is possessed of sufficient understanding that he or she should be consulted. He urged that investigators turn their attention more frequently to applied science to enrich both the theoretical structure of their field and the quality of life in our society. He further suggested that the Commission develop guidelines which protect both the rights of subjects and the rights of behavioral scientists, so that the latter may continue their exploration of human behavior. Should the task of the behavioral scientist ever become impossible, the ultimate loser will be society. Dr. Zigler believes that increased parent involvement in the research process, especially in institutional settings, is a crucial step in resolving the problems of distrust which, he believes, threaten research activities.

Frank Oski, M.D. (Society for Pediatric Research), presenting the testimony of Frederick C. Battaglia, M.D., described a variety of major contributions arising from pediatric research. He urged the Commission not to try to distinguish, in all cases, between "therapeutic" and "nontherapeutic" research, but rather, to focus on evaluation of risks. He suggested that the proper protection of children involved in long-term studies of development, maturation and aging could be accomplished without a cumbersome review mechanism. In cases where child abuse is present or likely, however, as well as in adoption and juvenile delinquency programs, he suggested there may be a need for an advocacy system. Dr. Battaglia expressed concern that the government's continued diversion of training funds from research to primary care will further reduce the pool of investigators who may be best qualified to judge the merits of research involving children. He suggested two review mechanisms: (1) For "therapeutic" research protocols where "parenting" is adequate and parental consent appropriate, the review should be conducted by the IRB which should include experts in pediatrics and child psychiatry; (2) for all "nontherapeutic" research protocols and any "therapeutic" research where the question of adequate "parenting" is raised, an "Ethical Review Group" at NIH would be responsible for review and no local review would be required. In no case should the investigator also serve as the child's physician. Long-term studies requiring normal controls and involving procedures of minimal risk should be permitted without burdensome review.

Alvin M. Mauer, M.D. (St. Jude's Children's Research Hospital), testified primarily about research involving children with cancer. He emphasized the importance of random assignment of children to different treatment programs in order to evaluate the efficacy of the new therapies. Further, he views the random assignment of subjects as preferable to asking parents to choose which treatment their child should have. Dr. Mauer warned that if local protection committees are required to review each patient's consent form, committee review might become a rubber stamp operation. In addition, he prefers local review to national review since IRB members are closer to the issues and bureaucratic problems are avoided. The consent of both parents should not always be required for "therapeutic" research, nor should a child's formal consent be a prerequisite for all "therapeutic" research procedures. Dr. Mauer proposed that about five percent of the children and parents involved in a particular research protocol be questioned to determine whether they understood the consent forms.

Sheridan Neimark, Esq. (National Society for Autistic Children), indicated that the Society is deeply concerned that federal legislation may inhibit research of potential benefit to children and severely impaired adults. They believe that existing regulations are sufficient and suggest that certain provisions be reconsidered (e.g., requiring incompetent children and both parents to consent to a research protocol). The consent of both parents should not be required if one parent has legal custody or if the other parent cannot be located after a reasonable effort has been made. While the Society does not approve of the use of patients as research subjects before appropriate or adequate animal studies have been conducted, it believes that careful and discriminating investigators should be supported. Studies involving high-risk drugs should be permitted as long as there is strong evidence that they may benefit the patient. Parents should have the option of vetoing their child's participation in any research they feel would be detrimental. Information on the risks, benefits, and any known side effects of experimental programs should be provided whether or not the parents request such information; and parents should be free to refuse their child's participation in any experiments which are not an integral part of their overall treatment program without prejudice.

Bertrand G. Winsberg, M.D. (State of New York Department of Mental Hygiene), expressed his concern about two major issues: minority group participation in research and the appropriateness of obtaining informed consent from children. He stated that the assertion that the poor and ethnic minorities are being exploited by researchers has only partial validity. Much of the research data collected from these populations contributed significantly to their health care and, in many instances, only to theirs (e.g., nutrition studies). To inhibit research involving minorities will reduce the quality of resources and services available to them, and to restrict "nontherapeutic" research will handicap efforts to understand the nature of many disease processes. Dr. Winsberg sees no way in which to present research protocols to children so that meaningful consent can be obtained; in addition, he believes that subjecting children with physical or behavioral disabilities to such consent procedures may be harmful since it would expose them to requests which characterize them as abnormal. He further believes that the biomedical research establishment could be regulated effectively, like any other business, through federal and state agencies, although he would like to avoid a complex and unworkable bureaucracy. In the last analysis, he said, various responsible and knowledgeable agents of society must determine whether the risks and discomforts of any procedure are justified in the case of given children, taking into consideration the needs of both the research subject and the social system. Finally, Dr. Winsberg urged that a mechanism be incorporated in any new regulation to assess its effectiveness. In response to a question, Dr. Winsberg indicated that he viewed the problem of distinguishing between "therapeutic" and "nontherapeutic" research as insoluble.

Norman Kretchmer, M.D. Ph. D. (National Institute of Child Health and Human Development), stated that since any biological or behavioral event which occurs in children is intertwined with their growth and development, two conclusions follow: (1) Children must be studied in order to advance pediatric medicine, and (2) the long-term effects of any procedures which are performed on a child must be considered. Dr. Kretchmer offered the following recommendations: (1) Children with no natural or adoptive parents, children detainerd by court order in a residential facility, and institutionalized handicapped children should be excluded from participation in "nontherapeutic" research involving risk; (2) a list of clinical procedures deemed to be without risk (e.g., collecting blood, urine and stool samples) should be exempted from the review process, but not from the informed consent requirement; (3) minors should be given the opportunity to refuse to participate in "nontherapeutic" research, and such a refusal should be honored (children might be more inclined to express their fears or objections to research if placed in a discussion group of three or four peers); and (4) panels reviewing protocols involving the use of children should include among their members a child advocate from outside the research community. It is extremely important, he added, that parents participate in the research process on a continuing basis.

Jean A. Cortner, M.D. (Association of Medical School Pediatric Chairmen), described many advances in pediatric care which have reduced infant mortality and profoundly affected child health. Dr. Cortner believes that basic and applied research are both necessary and should not compete with each other. A middle ground must be cultivated between children's right to a better tomorrow (through the acquisition of new knowledge) and their right to a safe today. Dr. Cortner believes that safety can be assured through proper peer review. Since young children cannot give informed consent, their parents or guardians, who bear responsibility for their welfare, must give consent. Research which will place children at unnecessary risk must not be allowed, but research which promises to improve the health of everyone should be encouraged.

Elizabeth J. Levinson, PH. D. (Psychologist, Orono, Maine), expressed concern about three issues: (1) The "Buckley law" which places restrictions on the release of data from school records to outsiders, (2) the entry into these records of certain types of data, and (3) restrictions on the administration of tests to children without "fully informed" parental consent. These restrictions conflict with state laws requiring that children be evaluated to determine the presence or absence of certain handicaps and they interfere with the research aims of the Office of Child Development and the National Center on Child Abuse and Neglect. Dr. Levinson has found that parents who abuse their children, who are emotionally unstable or are mentally retarded, are least likely to consent to studies of family interactions, I.Q., or psychological status. By informing the parents, the children, or both, of the purpose of such studies, there is a real danger of introducing anxieties and other harmful effects. Hence, there is an urgent need to modify the disclosure requirements for such research projects. Dr. Levinson suggested obtaining informed consent from the parents but not necessarily providing them with a full description of the study. She suggested further that giving parents complete control over their children and an almost absolute right to privacy appears to be based on an assumption either that all parents are good and wise or that children have no rights. Dr. Levinson has discovered, however, that some parents are unwise and may invoke privacy to veil child abuse and neglect. She urged the Commission to resolve this conflict between the rights of parents and the rights of children.

Mr. Robert A. Bogorff (Candlelighters, South Florida Chapter), explained that the Candlelighters are especially interested in pediatric cancer research. They advocate careful monitoring of institutional review committees and suggest the IRB composition include more nonbiomedical members. Both the chairman and co-chairman of these committees should be required to demonstrate their knowledge of policies and laws regulating research. Further, since patients' advocates are essential and must be

free to devote as much time as necessary to their duties, the Candlelighters recommend that funding agencies provide salaries for them. They should be well read in medicine, law and ethics and be able to work on a professional, full-time basis. They believe further that it is unrealistic to assume that parents of young cancer patients will comprehend a full statement of research procedures after one reading, while surrounded by hospital personnel and by other family members under similar stress. Rather, they say "parents will sign anything when confronted with cancer." They question the prevailing practice of random assignment to treatment groups and urge the Commission to give careful consideration to this problem. Finally, they are concerned about the inherent conflict in the doctor's dual role of physician/investigator, and about the lack of provisions for compensation for injury.

Joseph A. Bellanti, M.D. (American Pediatric Society), stressed the importance of research involving children for improving pediatric medicine, the distinction between "therapeutic" and "nontherapeutic" research in children, the varying levels of potential risk in "nontherapeutic" research in children, the role of the child and the parent in the consent process, and the equitable allocation of the risks and benefits of research. Dr. Bellanti suggested that children should be involved as much as possible with the consent process depending upon their level of understanding. A child's refusal to participate in a "therapeutic" procedure need not be respected if the parents or the courts are in disagreement, but for "nontherapeutic" research, the child's wishes should govern. He recommended that a detailed description of the research protocol be given to the parents and that the results of investigations be made available to them unless they specifically request not to be told. To avoid conflicts of interest when the attending physician is part of the research team, someone else should be prepared to serve as the child's and parent's advocate.

George G. Graham, M.D. (American Institute of Nutrition), noted that our knowledge of pediatric nutrition is limited, and we lack even a definition of desirable growth rates for infants and children. Most of our knowledge about nutrition derives from research with animals; at some point, it must be confirmed in humans. Well over 50 percent of all nutritional research is conducted outside of the United States, primarily because in poor countries the question is one of survival. In this country, however, evidence is increasing that infant and child feeding practices may influence degenerative vascular disorders and other diseases which occur in adults. Longitudinal nutritional studies involving normal infants and children must be conducted if progress is to be made in determining proper levels of nutrients and ideal growth rates, or in developing alternative ways of meeting nutritional requirements which can be proven safe for children of varying ages, health status and heredity. Subjects of nutrition research should be followed for as long as one's resources permit; and nutritional supplements should not be withdrawn abruptly at the end of a research project. (This is a major source of concern when conducting research on food supplements in impoverished areas.) Dr. Graham was not aware of any experimental feeding programs for the institutionalized mentally retarded, though there have been studies correlating nutrient intakes with the development of institutionalized children. Generally, institutions are not desirable sites for these studies. Negotiations for conducting research overseas generally involve community representatives.

Richard B. Stuart, D.S.W. (Association for Advancement of Behavior Therapy), spoke about behavior therapy and the development of innovative services for youth. Generally, these programs utilize the least intrusive technology available to enhance social functioning. According to Dr. Stuart, if research means monitoring the effect of an intervention, then behavioral research and therapy are indistinguishable. He identified three stages of research: (1) The evaluation of existing services; (2) the development of innovative methods; and (3) the large scale testing of methods which have withstood developmental evaluation. The omission of any stage, he said, would seriously hinder proper delivery of services. Dr. Stuart recommended that research be founded upon an explicit contract between the investigator and the participant, and he took the view that parents have the right to offer informed consent on behalf of their children. The point at which children are able to act as their own agents is difficult to define. Requiring participants to give written answers to questions about the research is one method suggested for determining the adequacy of informed consent. Dr. Stuart urged the Commission to endorse the following principles: (1) That all children have the right to carefully evaluated programs; (2) that children must have the opportunity to participate in the development and evaluation of programs of which they are the beneficiaries; and (3) that the rights of children as research participants can be protected through the development of precise standards which are strengthened by the addition of behavioral tests of compliance.

Marvin Cornblath, M.D. (the Endocrine Society), stated that advances in pediatric endocrinology and metabolism depend upon knowledge of normal values; this requires the study of normal infants and children. The goal of research must include discovering the etiology of diseases in order to prevent them. Dr. Cornblath urged that a subcommittee of the IRB should monitor all research involving children and that it should include child advocates among its members. Further, he recommended that consent of one parent be deemed adequate, and suggested that review boards develop a sliding scale for consent based on the age of subjects and the procedures involved. He noted that the parents have the final say about their child's participation in research, but that the protocol should be fully explained to the child. Any effort to establish a specific age of discretion would be unnecessarily restrictive. He questioned the morality of depriving infants and children of the potential benefits of well supervised and controlled clinical research.

Sanford Cohen, M.D. (American Academy of Pediatrics), stated that reliance upon pharmacological data obtained in animal models and adults has been proven inadequate; further, infants and children must participate in the testing of drugs because adult counterparts to pediatric conditions do not always exist. The Academy believes that clinical investigations in pediatric pharmacology must continue, but under stringent requirements for review and monitoring. Studies should not be conducted, even if they entail minimal risk, if no benefits are anticipated. If "nontherapeutic" investigations are to be conducted in children, only agents that are generally regarded as safe in the dose to be administered should be used; further, if such studies involve pain or discomfort in excess of that associated with usual hospital procedures or clinic visits, they should be done only in children mature enough to offer their own consent (in addition to that obtained from their parents or guardians). In general, when children are conscious and neurologically competent, consent should be obtained from those who have reached the age of thirteen; and assent should be obtained from children aged seven or older after their legal guardian has consented but before the child is enrolled in the study. Dr. Cohen supported the inclusion of patient advocates on the review committee.

James J. Gallagher, Ph. D. (Frank Porter Graham Child Development Center), highlighted three major research issues: confidentiality, informed consent and the protection from harm and exploitation. He urged the inclusion of child advocates along with members of the public on institutional review committees. IRBs should have unrestricted access to records and the power to approve or disapprove research on institutionalized children. In addition, parents should be continuously involved in the consent process, particulary if their child is institutionalized. Dr. Gallagher believes that observing normal procedures (e.g., observing interactions in a classroom) is not an intervention requiring informed consent. Dr. Gallagher emphasized the great risks in severely restricting research, urging that future generations have the right to a better chance for full growth and normal development.

Annina M. Mitchell, Esq. (Michigan Legal Services), charged that institutionalized children are exploited for research purposes (especially by drug companies) because they are cheap, accessible and out of the public's eye. Her position is that institutionalized minors cannot constitutionally be used as subjects in biomedical or behavioral experimentation because the politics of institutionalization preclude valid third party consent, and the children are in no position to give adequate consent because of the coerciveness of the institutional setting. Recently, she said, the Michigan State Department of Mental Health adopted administrative rules which prohibit the use of recipients of department services as subjects in medical research if they are under 18 years old. She urged the Commission to adopt a similar position. Ms. Mitchell is concerned that some experimentation in the name of mental health raises the spectre of increasing classification of children as deviant, and that such labeling will take its toll in later years. She asked the Commission to impose a moratorium on research involving children until it can determine whether and under what conditions, such experimentation should be sanctioned.

Judson Van Wyk, M.D., and Maria New, M.D. (the Lawson Wilkins Pediatric Endocrine Society), stated that studies in adults or in experimental animals are not adequate to understand, diagnose and treat abnormalities which occur during childhood. Further, Dr. Van Wyk said, the subjects of research benefit from their participation by receiving more attention and consideration than those treated solely in a therapeutic context. He recommended that local committees have the primary responsibility for

continuing review of research, and that they be empowered to approve no-risk projects. In addition, a National Clinical Research Advisory Board should establish policy and review all questionable research. Restraint should be exercised before inflexible standards are imposed, for we should not exclude children, as a class, from the benefits of new knowledge. In some instances, he added, it is difficult to distinguish between "therapeutic" and "nontherapeutic" research; and often, there can be no "therapeutic" research without "nontherapeutic" research.

Donald F. Klein, M.D. (Long Island Jewish-Hillside Medical Center), suggested that the biomedical investigator cannot claim the privileges of the medical practitioner when research is aimed at generating new knowledge rather than providing service. Experimentation involving nonpatient: (1) Should entail low risk to the subject and society, (2) should be likely to benefit society, and (3) should be founded upon well established procedures for experimental intervention. In addition, the experimental effect should be easily reversed and temporary, and there should be no other alternative procedure which can yield the information. The subject or the subject's guardian should be able to comprehend the nature of the experiment. Dr. Klein believes that the protection necessary for "therapeutic" research has been exaggerated, especially since research often occurs under the rubric of professional services. He suggested that the social trust in researchers could be bolstered by certification of investigators. Institutional Review Boards should be composed of certified investigators, along with lay members and ethicists, with an opportunity for appeal to a board of biomedical research. Dr. Klein argued that to prohibit the use of sick children and the mentally ill as experimental subjects, when no feasible alternatives are available, is to condemn them to continued suffering. He suggested that instead of a contract model of consent, the IRB assist in determining the appropriate participation of children and the incompetent.

Robert Reichler, M.D. (American Academy of Child Psychiatry), believes that when the needs of suffering individuals conflict with community priorities, the individual should come first. However, this is not always the case. He described the diversity of pediatric mental health problems in this country to emphasize the enormity of the challenge to science, adding that the clinician is often characterized as warm and compassionate, while the investigator is viewed as cold and unfeeling. As a result, poor clinical treatment is more readily tolerated than good research because it is assumed that children in behavioral research projects are at a greater risk than those receiving no treatment, or poorly evaluated drugs. Dr. Reichler believes that obtaining fully informed consent from children is unrealistic and legally impossible, whether they participate in research or in treatment. Whenever parental protection is inadequate or unavailable, additional review mechanisms should be invoked. When normal controls are required for a study, and samples of substances have been obtained for some other appropriate purpose, the samples might be utilized in such studies if no additional burden or risk is placed on the child. The rights of children include the right to better, safer, and more adequate treatment as well as protection from unnecessary risks and exploitation. While additional guidelines for review committees may be useful, Dr. Reichler urged that rigid barriers to research involving children not be imposed.

Robert L. Sprague, Ph. D. (Institute for Child Behavior and Development), urged the Commission to view research on children from the standpoint of social costs and benefits. The parents of handicapped children often expect the development of new information and new techniques to help them with their problems, and Dr. Sprague considers that expectation to be reasonable. He challenged the assumption that accepted clinical practice always involves less risk than an experimental procedure, citing several experimental programs for retarded and handicapped children which proved more beneficial than standard practice. He urged the Commission to weigh the cost, in humanitarian terms, of whatever regulations for human experimentation they may recommend.

Mrs. Gladys Kazyak (National Coalition for Children) is particularly concerned about behavior modification programs which are offered in schools under the guise of compulsory education. She views the school system as a form of involuntary institutionalization, and challenged both the methodology and objectives of behavior modification programs in such settings. In addition, she feels that any behavioral research involving deception is dishonest and should be eliminated. The consent of both parents should be required, and there should be no substitutions. All research protocols should include an evaluation of the potential effect they will have on the subjects, and investigators should accept responsibility for the outcome of their investigations. Unethical research should be eliminated by withdrawing public funding; ethically acceptable research should continue.

Marian R. Yarrow, Ph. D. (National Institute of Mental Health), emphasized the need for "nontherapeutic" behavioral research involving children. She made four comments about informed consent: (1) It has many levels of meaning for different kinds of children; (2) it is a continuing process and not a one time affair; (3) it is improper and meaningless to propose an age at which a child may give informed consent, since there can be no single criterion; (4) we must question the purpose of informed consent. Dr. Yarrow suggested that the issues of informed consent are different for medical studies involving risk than for behavioral studies without risk. Occasionally, fully informed consent may pose an additional hazard to the subject, or full disclosure may result in biased findings. Complete parental control of the consent process assumes that parents always act with both good will and good sense. Since this may not always be true, the child's wishes should be respected. In long-term studies, one should reinstate and reevaluate consent from time to time. When an investigator uncovers some potentially serious problems during the course of research, the investigator's responsibility is unclear, particularly with regard to confidentiality. The investigator should allay the fears and anxieties of the subjects after the study is completed, and provide additional information when necessary. To assure that scientific objectives do not overshadow an evaluation of the effects of a study on children, the investigator should be knowledgeable about their vulnerabilities and capacities, always attending to the social and psychological child as well as the biological child.

Chapter 6. Psychological Perspective

Lucy Rau Ferguson, Ph. D., a developmental psychologist, wrote a paper for the Commission on "The Competence and Freedom of Children to Make Choices Regarding Participation in Biomedical and Behavioral Research." She emphasizes, first and foremost, that the child is a person and parental consent should therefore be a necessary, but not sufficient, condition for children's participation in research: "Investigators should conduct research so as not only to respect but to enhance the child's developing capacity for informed choice." An important aspect of research involving children, she suggests, is that they can learn from the experience that the generation of knowledge is, in itself, a good; in addition, the most legitimate motive for involving children in research is an appeal to their intrinsic curiosity and their developing sense of altruism.

Investigators should never offer incentives which are so great as to overcome a child's reluctance to participate, nor should pressure be brought to bear on peers, parents or others in authority. The child should be given as much information as he or she is capable of understanding; and this will vary with the nature of the research, and the maturity of the individual child. In general, according to Ferguson, informed consent of the parents should be sufficient for infants and toddlers; but pre-school and primary age children should be given explicit information about what participation in research will mean and about the purpose of the research, since children of this age can understand considerably more than they can articulate. (It is important to keep in mind that the investigators should have experience and competence in working with children.) For the pre-adolescent (school age) child, participation should be based upon the same principles of informed consent as apply to adult subjects (including, if appropriate, signing a consent form), although parental consent should be obtained as well. At this age, children are quite capable of understanding what is involved in most studies, if the problem is stated in nontechnical language. Investigators, according to Ferguson, should never underestimate the curiosity or the capacity of school-age children for making informed choices; and participation in research which is an informative and positive experience can have the function of strengthening a child's scientific curiosity. The adolescent should be treated as an adult so far as "nontherapeutic" research is concerned (although parental consent should be obtained as well for those who are still legal minors), for it is particularly important to adolescents that their autonomy and competence be respected.

Ferguson believes that children of all ages should be treated with honesty; therefore, research that involves deception should not be undertaken, for children will only learn from such experiences that scientists are not to be trusted. Incomplete disclosure is acceptable, in some instances, so long as the children are given a fair explanation of what their participation will involve. Privacy should be protected; and parents of young children should be informed of any conditions which warrant attention. Parents, and children who are old enough to understand, should be given reports of the findings of the research.

Chapter 7. Legal Issues

There is currently a legal trend toward enunciation and expansion of children's

rights. Considerable tension remains, however, between emerging rights of children to exercise self-determination, on the one hand, and the traditionally-held rights of parents and the state, on the other hand, to protect children from their own judgment and to insist that their behavior conform to what is determined to be in their own best interests, in the best interest of the family unit, or in the best interest of the state.

According to the common law, as in the philosophy of Hobbes, Locke and Mill, children are chattels of their parents and wards of the state, owing obedience in return for necessary care. Parents have the authority to control their children, to educate them, and generally to provide for them, with the state reserving the right, as parens patriae, to intervene when parents fail in their duty to provide and protect, or when discipline oversteps into the realm of cruelty. Children have no right to liberty, but only to custody; and the underlying presumption is that parents and society act in the best interests of the child.[1]

Children's rights as against their parents or the state have been enunciated recently in several broad areas: education, divorce and custody proceedings, juvenile delinquency and civil commitment. The notion that parent's interests always coincide with those of their children, or that the state will always act in the best interest of its ward, has been challenged and at times has yielded to a determination that the rights of children may not always be properly represented by their parents or the state.[2] In the area of consent to biomedical and behavioral research, however, there has been little development of a judicial or statutory body of law. Before examining these few articulated rules, it would be appropriate to review the capacity of children and the authority of parents to consent to related and other interventions.

The primary issue with respect to the applicability of the doctrine of informed consent is the capacity of the child to comprehend and weigh the benefits and risks of proposed research. Although a child may be conclusively presumed to lack the capacity to consent in certain contexts (e.g., to contract for non-necessary items or to make a will), there are other situations in which capacity is an issue of fact to be decided on a case-by-case basis.

For example, in certain circumstances a child may be precluded from recovering damages for negligent acts toward the child if the defendant can prove that the child "assumed the risk." The assumption of risk defense is a question of fact which depends on finding that the child was aware of, and appreciated, the known risks in his or her conduct and nevertheless engaged in it. Thus, in a suit by a 15-year-old high school student against his school system for severe injury (broken neck) sustained in a football game, the court stated that an athlete may be taken to consent to physical contact consistent with the understood rules of the game.[3] On the other hand, children at a very young age may be conclusively presumed to be unable to assume all types of risks.[4]

The area of law most pertinent to the issue of consent to research for the direct benefit of the minor is that involving consent to medical treatment. The issue of consent usually arises in one of three situtations. First, in a suit by a minor against a physician for assault and battery, the physician will attempt to argue that the minor's consent is a sufficient defense. Second, a state legislature may create exceptions to the general rule of incapacity of minors to consent to medical treatment by permitting consent to specific treatment without reference to parental consent. Third, a constitutional right of the minor may be violated where the state reinforces parental authority to consent to certain treatments of a minor without the latter's consent.

The area of law having relevance to issues of research not involving direct benefit to the minor concerns consent by a minor-donor to be involved in skin, kidney or bone marrow tranplantation. Finally, there is one reported case specifically dealing with participation of minors in research.

Direct Benefit to the Minor: Law of Treatment. The law in most states is that parental consent is necessary and sufficient for treatment of persons under 18 years of age (see Table 1).[5] Three exceptions to this general rule have been incorporated to various degrees. First, courts have implied legally valid consent on behalf of the minor when there was an emergency condition threatening the child's life or serious bodily harm and the parents could not be reached quickly.[6] Legislatures in a number of states have expanded the definition of emergency to include immediate danger to the "health" or "mutual well-being" of a child.[7]

Second, courts and legislatures have found "emancipated minors" to be capable of giving legally valid consent to medical treatment. The definitions of emancipation have varied somewhat among the states, but usually refer to minors who are married or maintain their own residence and manage their financial affairs.[8]

Third, a minority of courts and legislatures have adopted the so-called "mature minor" rule. The rule originated in several decisions holding a doctor not liable for assault and battery where the consenting minor patient (between 17 and 19 years of age) was sufficiently intelligent to comprehend the nature and consequences of a proposed treatment.[9] A few legislatures have enacted such a rule, thereby making capacity to consent primarily an issue of fact.[10]

Another method for carving out exceptions to the general rule of exclusive parental authority to consent has been legislation of age limitations on an ad hoc basis. The conditions meriting the attention of the legislature have involved public health problems with high social costs (e.g., venereal disease and drug abuse) and other sex-related health care (e.g., contraception and pregnancy, excluding abortion). Some states have set a minimum age floor with respect to certain treatments while other statutes permit VD treatment to any consenting minor. (See Table 1.)

While many recent pronouncements of children's rights are articulated in an affirmative manner, several court decisions have expanded such rights by striking down statutory restrictions on the autonomy of children. In so doing the courts have limited the authority of parents to act as primary protector and judge of their children's best interest.

A leading case is *Planned Parenthood of Central Missouri* v. *Danforth*,[11] Where the United States Supreme Court invalidated a state statute requiring parental consent to an abortion on a minor. Building upon Supreme Court cases which had found minors to possess protectible constitutional rights,[12] the court held, in a sharply divided decision, that the statute, which reflected an interest in the safeguarding of the family unit and of parental authority, impermissibly infringed upon the "competent" minor's constitutional rights of privacy.[13] Vigorous dissents from this opinion supported the right of parents to guide their children and right of the state to protect the immature from imprudent decisions.

The *Planned Parenthood* decision, however, does not provide clear-cut answers for determining the scope of a minor's right of privacy with respect to other medical treatments. While the Court exphasized that not every minor, regardless of age or maturity, could legally consent to an abortion, it did not set out a test for "competency." Moreover, only an absolute parental veto over the abortion decision was invalidated. In a companion case the court left open the possibility that requiring parental consultation or a court order authorizing an abortion if in the minor's best interests may not "unduly burden" the minor's constitutional right.[14] Furthermore, the Court expressly reserved the issue of whether different consent requirements may be maintained for different medical procedures.[15]

In *Carey* v. *Population Services International*[16] the Supreme Court recently struck down a statute banning the sale of nonprescription contraceptives to minors under the age of 16 years, but only four justices relied on the *Planned Parenthood* holding on abortion as the a fortiori rationale for extending minors' rights to the area of contraceptives.[17] Two justices joined the result, on the grounds inter alia that the statute prohibited parents from distributing contraceptives to their children, thereby infringing their constitutional interests in the rearing of their children.[18] Thus the issue of the unit of autonomy at stake (and also the standard of judicial review to be utilized in evaluating restrictions on a minor's access to treatments) remains to be decisively settled. Moveover, even the four-man plurality failed to elaborate upon the statement in *Planned Parenthood* that not all minors, "regardless' of age or maturity, may give effective consent."[19]

With respect to treatment of mental illness, a three-judge federal district court has limited parental authority by striking down a statute permitting civil commitment of children to state mental institutions by virtue of parental consent. The court enunciated various due process rights to which a minor is entitled, including a hearing, right to counsel and to confront witnesses, and requiring the state to prove the need for institutionalization by clear and convincing evidence. (The case was appealed to the Supreme Court, which vacated the result and remanded the case for reconsideration by the three-judge court, on the grounds that the facts of the case had changed and required a new review.[20] The California Supreme Court has also invalidated procedures for admitting minors, if 14 years or older, to state mental hospitals upon parental consent where the minor has not voluntarily acquiesced in the decision and thereby waived his or her due process rights to a commitment hearing.[21]

The state may also limit parental authority in another sphere of medical treatment decision-making: the decision to refuse medical treatment. The state may override the parent's refusal to seek treatment by resort to its parens patriae authority, as

complemented by "neglect" statutes. When the child's life is in immediate danger, a court can clearly authorize treatment. The more difficult cases involve a state claimed need of a minor for elective surgery that is at odds with the parents' own system of values. Some decisions superimpose the state's interest in providing a more "normal" psychological environment over the parents' judgment.[22] Other courts, however, have upheld parental authority to refuse elective surgery,[23] especially where the child's desires have been taken into account.[24]

In conclusion, a reasonable inference from the law of consent to medical treatment is that consent to research holding out the prospect of direct benefit is probably similar enough to bring the same doctrines into play. Nevertheless, consent to research has been virtually unanalyzed by courts and legislatures. It is possible that age floors for consent to various types of research might be as uneven as age floors for various types of treatment. For example, state statutes authorizing minors to consent to venereal disease or drug abuse treatment are silent with respect to consent to behavioral research, e.g., survey questionnaires regarding minors' need for such treatment. It is reasonable for a court to construe such legislation as providing for an identical age limit with respect to research on such treatment; answers to such a survey questionnaire would enable state authorities to design better methods for effectuating the public health purposes embodied in the statutes. Thus, a national research policy must be flexible enough to allow for the varying consent standards among the states for biomedical and behavioral interventions that hold out the prospect of direct benefit to the child.

No Direct Benefit to the Minor: Law of "Donation." The only area of authority in a related context bearing upon the issue of consent to research interventions that are not for the direct benefit of minor subjects is that involving donation by minors of kidneys, skin grafts and bone marrow. In these cases, the donors are undergoing medical procedures that are not for their direct benefit but rather for the purpose of saving the lives of relatives. *Bonner* v. *Moran*[25] is the leading case on the necessity (but not necessarily the sufficiency) of parental consent for an intervention that involves risk and no direct benefit to the minor. Bonner was a 5-year-old who was persuaded by his aunt to donate skin for a graft to his seriously burned cousin. Bonner's mother did not know of the first operation beforehand. She was later advised that her son was returning to the hospital to be "fixed up," and she did not protest. Subsequently, an action for damages for assault and battery was brought. Evidence was presented that the mother had publicly expressed pride in her son's courage. At issue was whether parental consent was necessary and whether the mother had given consent by implication or ratification. The trial court instructed the jurors that if they believed the boy was capable of understanding the nature and consequences of the operation and had actually consented, parental permission was not necessary. The jury so found. On appeal, the court held that the jury should have been instructed that parental consent was necessary, because the operation was not for the benefit of the child in question and involved "sacrifice on the part of the infant of fully two months of schooling, in addition to serious physical pain and possible results affecting his future life."[26] Thus, the trial court's reliance on a mature minor exception to the requirement for parental consent was rejected on the ground that such exceptions apply only when the procedures in question will provide direct benefit to the minor. The issue of whether concurrent consent on the part of the child was necessary was not decided.

A series of three Massachusetts cases that approved kidney donations by teen-age donors to their identical twins focused on the "grave emotional impact" that the healthy twins would suffer if they did not donate to save their brothers' lives.[27] In all three cases, consent was given by the parents as well as the minors (one was nineteen years old, two were fourteen years old), and the court found psychological benefit for the donors. A subsequent Connecticut case involving seven-year-old twins differed in that there was no possibility of consent by a mature minor, although the court found that the young donor had been informed of the operation and "insofar as she may be capable of understanding" desired to donate her kidney.[28] Noting that the proposed operation would be life-saving to the donee, "of some benefit to the donor," and of "negligible risk" to both, the court found that it would be inequitable to prohibit parental consent when such consent was favorably reviewed by a guardian ad litem and by community representatives including a court of equity.[29]

By contrast, a Louisiana court denied authority to a parent to permit a 17-year-old mentally retarded boy to donate a kidney to his 33-year-old sister.[30] There, the court reasoned that the closest analogy in Louisiana law was that of donation of a minor's property, and that:

"Since our law affords this unqualified protection against intrusion into a comparatively mere property right, it is inconceivable that it affords less protection to a minor's right to be free in his person from bodily intrusion to the extent of loss of an organ unless such loss be in the best interest of the minor."

The court found benefit to the donor to be "not only highly speculative but * * * highly unlikely," and concluded that the operation would be against his best interest.[31]

In a case more relevant to the research context, where the proposed procedure involved donation of bone marrow rather than permanent loss of an organ, a Massachusetts court observed that the evidence did not permit a finding that the procedure would be of any benefit to the 6-year-old donor.[32] The court permitted the operation nonetheless, saying it did "not believe that a finding of benefit to the donor is essential, or that the absence of such a finding is fatal, to the allowance of such a transplant," and noting that risks to the donor were "minimal." The court found that the parents had authority to consent for the operation, but that their consent should be subject to court review because of the possibility of conflict between their responsibility for the care and custody of the donor, and their similar responsibility for the donee.

Merriken v. *Cressman*[33] is virtually the only relevant case involving consent for the participation of children in research (other than the bone marrow cases).[34] In *Merriken*, a suit brought by a junior high school student and his mother, a federal district court enjoined implementation of an experimental drug abuse prevention program. The program required students responses to questionnaires that asked highly sensitive questions concerning their home life, an area protected by Supreme Court decisions,[35] and also asked students to identify classmates whose behavior was unusual or inappropriate. On the basis of such information, compulsory remediation was the instituted by teachers who lacked proper training in psychological therapy. Further, the results of the questionnaires were to be made available to individuals not involved in the program, such as athletic coaches, administrators, and members of the PTA and school board. When the suit was filed, the defendants had planned what the court called a "book-of-the-month-club" approach to obtaining parental consent, in which silence would be construed as acquiescence. (They later offered to change that approach and require written parental consent, and also to give students notice that they were free to return a blank questionnaire.)

The court found that the program infringed on the child's constitutional right of privacy, and further that "there probably is no more private a relationship, excepting marriage, which the Constitution safeguards than that between parent and child."[36] Finding defects in the procedures for parental consent, which precluded knowledgeable waiver of their children's rights, the court raises but did not resolve the issue of a requirement for consent of the children. It did conclude, however, that the program would be administered "without the knowing, intelligent, voluntary and aware consent of parents or students."[37]

This case, then, supports the necessity (but not necessarily the sufficiency) of parental consent for participation of children in research, just as *Bonner* did with respect to medical interventions for the benefit of others. Whether courts would require the assent of children, in addition, remains unclear.

TABLE I

CONDITIONS DEFINING ABILITY TO CONSENT TO MEDICAL CARE (BY STATE STATUTE)

Chart prepared by Commission staff in June 1976 (revised June 1977)

(Source: Hospital Law Manual)

	General Conditions Defining Ability to Consent				Specific Treatments Which May be Obtained by Minors without Parental Consent				
		Overriding Circumstances							
STATE	Age	Married or emancipated	Pregnant or parent	Other	V.D.	Addiction	Pregnancy	Contraception	Other
Ala.	14	X	X	high school graduate	X	X	X		emergency or any reportable disease
Alaska	19	X	X		X		X		
Ariz.	18	X			X	12			rape victim (over 12 yrs.)
Ark.	18	X*		"of sufficient intelligence"	X		X[a]		
Cal.	18	X		in armed services	12		X	X	reportable communicable disease (over 12 yrs.)
Colo.	18	X*			X	X		p or parent	
Conn.	18				X	X			
Dela.	18	X			12		12[a]		communicable disease (over 12 yrs.)
D.C.	18				X	X	X	X	psychological disturbance
Fla.	18	X			X		X[a]	p or parent	blood donation (over 17 yrs.) or emergency
Ga.	18	X			X	X	X	X	
Hawaii	18				14		14		
Idaho	18				14	16			infectious or communicable disease (over 14 yrs.)
Ill.	18	X	X		12		X	m, p or parent	emergency or referred for treatment by physician, clergy, or planned parenthood agency
Ind.	18	X			X	X			
Iowa	18	X			16				

X may consent at any age under such circumstances or for such treatment

a except abortion
m married
p pregnant
* unmarried, emancipated minors must be over 15 yrs.

CONDITIONS DEFINING ABILITY TO CONSENT TO MEDICAL CARE (BY STATE STATUTE)

	General Conditions Defining Ability to Consent				Specific Treatments Which May Be Obtained by Minors without Parental Consent				
		Overriding Circumstances							
STATE	Age	Married or emancipated	Pregnant or parent	Other	V.D.	Addiction	Pregnancy	Contraception	Other
Kan.	18			no parent or guardian available (over 16 yrs.)	X	X	X**		
Ky.	18	X	X		X	X	X		
La.	18				X	X			actual or believed illness including but not limited to V.D. and drug addiction
Me.	18				X	X			
Md.	18	X	X		X	X	X	X	emotional disorders (over 16 yrs.)
Mass.	18	X	X		X	12	X		emergency or disease "dangerous to the public health"
Mich.	18	X		in armed services	X	X			kidney donation to parent, sibling, or child w/court approval (over 14 yrs.)
Minn.	18	X	X		X	X	X		blood donation (over 17 yrs.)
Miss.	21	X		"of sufficient intelligence"	X		X		
Mo.	21				X	X	X[a]		
Mont.	18	X	X	high school graduate	X	X	X	X	acute psychological disturbance and no parent or guardian available
Neb.	19	X			X				
Nev.	18	X			X	X			
N.H.	18				14	12			
N.J.	18	X			X		X		
N.M.	18	X			X		X		

X may consent at any age under such circumstances or for such treatment

a except abortion
m married
p pregnant
** no parent or guardian available

CONDITIONS DEFINING ABILITY TO CONSENT TO MEDICAL CARE (BY STATE STATUTE)

		General Conditions Defining Ability to Consent			Specific Treatments Which May Be Obtained by Minors without Parental Consent				
		Overriding Circumstances							
STATE	Age	Married or emancipated	Pregnant or parent	Other	V.D.	Addiction	Pregnancy	Contraception	Other
N.Y.	18	X	X		X		X		
N.C.	18	X			X				
N.D.	18				14	14			
Ohio	18				X	X			
Okla.	18	X[a]	X[a]	in armed services[a]	X		X[a]		
Ore.	15	X			12	X		X	
Pa.	18	X	X	high school graduate or professing competency	X		X		any reportable disease or emergency
R.I.	18				X				emergency (over 16 or m)
S.C.	16[o]	X			X				"necessary services"
S.D.	18				X				
Tenn.	18				X			m, p, parent, or referred	
Texas	18	X		in armed services	X	13	X[a]		any reportable communicable disease
Utah	18	X			X				
Vt.	18				12	12			
Va.	18				X	X	X	X	
Wash.	18	X[s]			14				
W.Va.	18				X	X			
Wisc.	18	X							
Wyo.	19				X				

X may consent at any age under such circumstances or for such treatment

a except abortion
m married
p pregnant
o except operations
s spouse must be of legal age

REFERENCES

1. Kleinfeld, The Balance of Power Among Infants, Their Parents and the State, Parts II and III, 4 Fam. L.Q. 409 (1970), and 5 Fam. L.Q. 63 (1971); see also Rodham, Children Under the Law, 43 Harvard Educational Review 487 (1973).
2. See generally id.
3. See *Vendrell* v. *School District*, 233 Ore. 1, 376 P.2d 406 (1962).
4. E.g., *Greene* v. *Watts*, 210 Cal. App. 2d 103, 26 Cal. Rptr. 334 (1962) (3½ year old).
5. Some States set a lower standard, e.g., Alabama (14 years); South Carolina (16 years).
6. W. Prosser, Torts 103 (4th ed. 1971).
7. Ga. Code Ann. § 88-2905 (1971).
8. See, e.g., Colo. Rev. Statute § 13-22-103 (1973).
9. *Younts* v. *St. Francis Hospital*, 205 Kan. 292, 469 P.2d 330 (1970) (17 year old consent to skin transplant for damaged finger); *Lacey* v. *Laird*, 166 Ohio 12, 139 N.E.2d 25 (1956) (18 year old consent to plastic surgery on nose); *Bakker* v. *Welsh*, 144 Mich. 632, 108 N.W. 94 (1906) (17 year old consent to surgery to remove tumor).
10. E.g., Miss. Code Ann. § 41-41-3(h) (1972); see N.H. Rev. Stat. Ann. § 318-B, 12-a (Supp. 1975).
11. 428 U.S. 52 (1976).
12. *Goss* v. *Lopez*, 419 U.S. 565 (1975) (procedural due process in context of school discipline); *Tinker* v. *Des Moines School District*, 393 U.S. 503 (1969) (freedom of expression in school); *In re Gault*, 387 U.S. 1 (1967) (right to counsel at delinquency proceeding).
13. 428 U.S. at 72-75.
14. *Bellotti* v. *Baird*, 428 U.S. 132, 147-50 (1976).
15. Id. at 857; see Cal. Welf. & Inst'ns. Code § 5325 et seq. (prohibition of psychosurgery on persons under 18 years of age); *Aden* v. *Younger*, 57 Cal. App. 3d 662, 129 Cal. Rptr. 535 (1976) (constitutional issues raised in regulation of experimental psychosurgery; prohibition on minors not directly considered).
16. 52 L. Ed 2d 675 (1977).
17. Id. at 689-94 (Brennan, J.) (plurality opinion).
18. Id. at 699 (Powell, J., concurring); id. at 702-03 (Stevens, J., concurring).
19. Id. at 690 n. 16 (Brennan, J.) (plurality opinion).
20. *Bartley* v. *Kremens*, 402 F. Supp. 1039 (E.D. Pa. 1975), vacated and remanded, 45 U.S.L.W. 4451 (1977).
21. 19 Cal. 3d 655 (Crim. No. 19558, July 18, 1977).
22. E.g., *Matter of Sampson*, 65 Misc. 2d 658, 317 N.Y.S.2d 641 (1970), aff'd, 37 App. Div. 2d 668, 323 N.Y.S.2d 253 (1971), aff'd per curiam, 29 N.Y.2d 900, 328 N.Y.S.2d 686 (1972) (state imposed cosmetic surgery on face of 15-year-old boy).
23. *In re Hudson*, 13 Wash. 2d 673, 126 P.2d 765 (1942) (parental refusal to permit amputation of deformed arm of 11-year-old daughter upheld).
24. *Matter of Seiferth*, 309 N.Y. 80, 127 N.E.2d 820 (1955) (parental refusal to permit corrective surgery of 14-year-old boy's harelip and cleft palate upheld where minor in accord with parents' desires).
25. 126 F.2d 212 (D.C. Cir. 1941).
26. Id. at 123.
27. *Masden* v. *Harrison*, No. 68651 Eq. (Mass. Super. Ct., June 12, 1957); *Huskey* v. *Harrison*, No. 68666 Eq. (Mass. Super. Ct., August 20, 1957); *Foster* v. *Harrison*, No. 68674 Eq. (Mass. Super. Ct., November 20, 1957); discussed in Louisell and Williams, Medical Malpractice ¶19.14 (1976).
28. *Hart* v. *Brown*, 29 Conn. Supp. 368, 289 A.2d 386 (1972).
29. Id. at 391.
30. *In re Richardson*, 284 So. 2d 185 (La. App. 1973).
31. Id. at 187.
32. *Nathan* v. *Farinelli*, Civ. No. 74-87 (Mass. Super. Ct., July 13, 1974).
33. 364 F. Supp. 913 (E.D. Pa. 1973).
34. *Nielsen* v. *The Regents of the University of California*, No. 665-049 (Cal. Super. Ct., County of San Francisco, filed Sept. 11, 1973).
35. See *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925); *Meyer* v. *Nebraska*, 262 U.S. 390 (1923).
36. 364 F. Supp. at 918.
37. Id at 922.

CHAPTER 8. ETHICAL ISSUES

The general purpose of research involving children is to obtain scientific information about them. Often the research provides some direct benefit to the subjects involved in the research. However, some research may produce benefits only for other children, and frequently it is quite uncertain whether the subjects themselves will ultimately benefit from the research. In some cases benefits are long-range or unpredictable, and the major objective is to develop a body of knowledge. Ethical issues about the involvement of children arise because of competing answers to the following question: Under what conditions (if any) are these various types of research justified? When the objective of procedures is that of directly benefiting the subjects, the research is generally agreed to be justifiable, under certain limiting conditions, if there is a reasonable prospect that the subjects will benefit. However, research in which procedures present no prospect of direct benefit to the subjects raises a variety of ethical problems about the protection and the rights of children and about the authority of parents. Although only alluded to in classical ethical codes and regulations, these problems have received extensive attention in recent ethical literature.

Codes and regulations. The Nuremberg Code (1949) has seemed to some to preclude the participation of children in research. The first principle of that code states explicitly:

"The voluntary consent of the human subject is absolutely essential. This means that the person involved should have the legal capacity to give consent, * * * [1]"

The apparent clarity of this statement, however, is clouded by the written statements of two individuals who participated in the drafting of the Code. Leo Alexander, whose first draft of principles formed the basis of the Code, has written that the original draft contained provisions for consent by next of kin on behalf of incompetent patients, but that the judges omitted those provisions in the final version "probably because they did not apply in the specific cases under trial." [2] Similarly, Andrew Ivy, chief medical consultant to the War Crimes Trials, wrote (in the same year the Code was published) that:

"The ethical principles involved in the use of the mentally incompetent are the same as for mentally competent persons. The only difference involves the matter of consent. Since mental cases are likened to children in an ethical and legal sense, the consent of the guardian is required. [3]"

The record does not show whether the judges at Nuremberg disagreed with their medical consultants on this matter or whether, as Alexander suggests, they simply followed judicial custom by limiting their opinion to the facts of the case at bar.

The Medical Research Council of Great Britain took the position in 1963 that young children should not be subjects of "nontherapeutic" research if that research "may carry some risk of harm." [4] Their general rule is that if a child is under 12 years of age:

"Information requiring the performance of any procedure involving his body would need to be obtained incidentally to and without altering the nature of a procedure intended for his individual benefit. [5]"

If the child is over age 12, his or her consent should be obtained, and its validity would depend upon a showing that the child understood the implications of the procedures involved.

The Declaration of Helsinki,[6] published by the World Medical Association in 1964, provides, with respect to "nontherapeutic" research, that "if [the subject] is legally incompetent the consent of the legal guardian should be secured."* The acceptance of this code by the American Society for Clinical Investigation, the American College of Physicians, the American College of Surgeons, and particularly the American Medical Association[7] resulted in the general acceptance throughout this country of third-party permission for research employing interventions that are not for an incompetent subject's direct benefit.

The 1971 Institutional Guide to DHEW Policy for the Protection of Human Subjects required the consent of a subject "or his authorized representative." It did not define "authorized representative," but cautioned that:

"The review committee should consider the validity of consent by next of kin, legal guardians, or by other qualified third parties representative of the subjects' interests. In such instances, careful consideration should be given by the committee not only to whether these third parties can be presumed to have the necessary depth of interest and concern with the subjects' rights and welfare, but also to whether these third parties will be legally authorized to expose the subjects to the risks involved.[8]"

DHEW invited comments in 1973 on the proposal that parental or guardian consent be supplemented both by the judgment of a consent committee and by requirements for the assent of the child or incompetent.[9] The following approach was taken regarding the refusal and consent of children:

"Although children might not have the capacity to consent on their own to participate in research activities, they must be given the opportunity (so far as they are able) to refuse to participate. The traditional requirement of parental consent for medical procedures is intended to be protective rather than coercive. Thus, while it was held to be unlawful to proceed merely with the consent of the child, but without consent of the parent or legal guardian, the reverse should also hold.[10]"

This proposal to require assent of the child was adopted for intramural research

*The 1975 revision states, as a basic ethical principle, that: "When the subject is a minor, permission from the responsible relative replaces that of the subject in accordance with national legislation."

by the NIH Clinical Center on July 14, 1975.[11]

Current DHEW regulations provide that consent may be obtained from an individual's "legally authorized representative," which is defined as "an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to such subject's participation in the particular activity or procedure."[12] Strictly construed, this provision would permit third-party permission only in those jurisdictions which specifically authorize a third party to consent for another's participation in research. While parental authority to consent for medical care is clear, there is no statute or judicial decision granting such authority for nonbeneficial procedures. (See the discussion in Chapter 7 of this report.)

Ethical positions in recent literature. At least five different positions on the involvement of children in research can be found in recent literature.

(1) The most restrictive position is found in the writings of Paul Ramsey. He argues that research which does not directly benefit individual children is always ethically impermissible. His argument rests on the general viewpoint that "nontherapeutic" research should never be performed without the informed consent of the subject. Since young children are not capable of giving informed consent, it is a short step to the conclusion that no research ought to be performed on them unless the research holds out the possibility of direct benefit. In his book, The Patient as Person, Ramsey argues as follows:

"A parent's decisive concern is for the care and protection of the child, to whom he owes the highest fiduciary loyalty, even when he also appreciates the benefits to come to others from the investigation and might submit his own person to experiment in order to obtain them.

"This is simply the minimum claim of childhood upon the adult community, whose members may make themselves joint adventurers or partners in the enterprise of medical advancement at cost to themselves if they will.[13]"

Ramsey distinguishes "beneficial research," for which parental consent is a proper fulfillment of the fiduciary duty, from "nonbeneficial research," for which he considers third-party permission a breach of the fiduciary duty. It is not merely the exposure to possible risk that he finds unacceptable. Rather, it is the abrogation of "the right of each of us to determine for ourselves, not alone the extent to which we will share ourselves with others, but the timing and the nature of any such sharing."[14] It is thus a claimed violation of respect for persons (by treating others as a means to one's own end) which is morally unacceptable to Ramsey: "where there is no possible relation to the child's recovery, a child is not to be made a mere object in medical experimentation."[15] Still, Ramsey is concerned with the risk of harm as well as with the violation of autonomy. He argues that the imperative to avoid evil has a moral primacy in biomedical research over the imperative to do good, and he takes this priority as one more support for his general position.[16] Nonetheless, it is the alleged use of human beings merely as means to others' ends that most deeply informs Ramsey's polemic against "nontherapeutic" research.

Ramsey proposes to give ethical primacy to the protection of nonconsenting subjects against wrongful treatment. While this general position must be commended, Ramsey's views are subject to a number of objections. First, it is important to distinguish those who refuse to consent to participation in research from those who are not fully qualified to consent to participation. It would be generally conceded that children who refuse to agree to participate in "nonbeneficial" research should not be involved. But it appears to be increasingly the case that most children are willingly involved in research and give their assent (when capable). Second, Ramsey neglects discussion of the low level of risk involved in most research involving children. His conclusions (though not his actual arguments) would be more supportable if there were a widespread risk of serious harm. In fact, however, much biomedical and behavioral research involves no more risk to children than those risks encountered in their daily lives. Ramsey's proposals for curbing research in general, if acted upon, would render impermissible research that is only observational, or merely uses questions, or involves only paper and pencil tests or procedures of a routine medical examination. While everyone would agree that the line specifying permissible risk must be drawn somewhere, Ramsey's absolute prohibition seems too restrictive. Ramsey's argument is internally consistent on these matters, in that he would prohibit all research without regard to risk or to the assent of children. It is his treatment of these relevant factors (risk and assent) as irrelevant which is unacceptable.[17]

Third, Ramsey's position rests on a false dichotomy between research intended to benefit subjects directly—which he concedes is permissible—and research intended to develop more knowledge. Much research does not fit neatly into either category, since the outcome is uncertain and the research may or may not benefit the subjects involved. Research on chronic diseases, for example, may or may not directly benefit those involved in the research, contingent upon the results of the research. Indeed, the possibility of (even remote) future benefits for the subjects can seldom be ruled out from the beginning.[18]

This problem introduces a further problem about the meaning and scope of the term "research," as Ramsey employs it. Research, by definition, is intended to develop general knowledge. Therepy, by definition, is for the benefit of an individual and therefore does not inherently involve any generalizable component. The term "therapeutic research" thus mixes together two quite different ingredients, and it remains unclear what "therapeutic research" could mean. There are dangers in this unclarity. On the one hand, there is the danger that simply because a benefit (therapy) is included in a "therapeutic" research protocol, all sorts of additional interventions not germane to the therapeutic intervention but useful for general knowledge can be regarded as justified (under Ramsey's scheme). On the other hand, if a quite narrow but nonetheless reasonable interpretation of "research" is accepted, then one literally could never do any "research" at all, because the research itself (e.g., data analysis) is not therapeutic. Ramsey can perhaps introduce further distinctions to handle some of these problems—for example by arguing that "therapeutic research" is a certain kind of mixture of controlled studies of alternative therapies, when all treatments are thought to be equally efficacious. But as his work now stands there remain conceptual unclarities which introduce needless confusion.

Ramsey at one point acknowledges that even if there were powerful moral reasons for doing "nontherapeutic research with uncomprehending subjects" such as children, "it is better to leave [this] research imperative in incorrigible conflict with the principle that protects the individual human person from being used for research purposes without either his expressed or correctly construed consent."[19] Ramsey argues that it would be "immoral" either to do or not to do the research, but he maintains that one should "sin bravely" in the face of this dilemma by sinning on the side of avoiding harm rather than attempting to promote welfare. But why must a calculation of benefits and harms always fall on the side of preventing research? In those cases where potentially great therapeutic benefits may well result from research and only minimal risk is involved, it may be reasonably argued that the calculus of morally right actions has shifted.

Ramsey attempts to support his view by appeal to the Kantian maxim that persons ought to be treated as ends only, and never merely as means. But what is it, in the context of research, to be treated merely as a means? When a soldier is conscripted, he is treated as a means (even against his will, in some cases). But he is not treated merely as a means, for none in the military hierarchy is free to do anything with a soldier he wishes. Similarly, a child involved in research may be used as a means, but not merely as a means; for no investigator is free to use a child in any way he wishes. The question remains whether the child is being used in such a way that the treatment qualifies as immoral treatment. And if the child is exposed only to minimal risk (with judicious parential permission and the child's agreement), while substantial benefit may accrue to others, it is far from obvious that any immoral treatment is present. If there were some reason for supposing that children would regard themselves as being violated or as being used as mere means, Ramsey's argument would be strengthened; but in a world where many adults feel themselves morally obliged to help those in need, there is no reason to attribute an unduly selfish attitude to children, as Ramsey's argument often seems to presuppose. Moreover, as Benjamin Freedman has argued, even if children occupy a dependent, morally different status from that of adults—as Ramsey contends—it does not follow that parents are derelict in their duty in consenting for children to participation in research. Even though children has some claims upon use for protection, participation in research does not seem to violate their rights unless such participation constitutes a harmful invasion.[20]

(2) The fact that some research on children involves minimal risk and holds out the prospect of benefit for the class of children (but presumably not direct benefit to the research subjects themselves) has been the decisive factor in motivating some writers to accept less stringent criteria than Ramsey's. One example is Richard McCormick, who has written in opposition to Ramsey from the perspective that children have obligations to participate in research. McCormick employs a natural law foundation for his arguments. He maintains that a child ought to do something if that action is expressive of basic values of human nature or purposes of human life. In the case of

therapy, for example, it is a reasonable presumption that the child would consent because (in light of the normative ideal of health) the child ought to promote his own health. Similarly in the "nontherapeutic" case, according to McCormick, it is a reasonable presumption that the child would consent because (in light of the normative ideal of contributing to the health of others) the child ought to choose to participate in research. There is a general moral obligation to help others when there is little cost to oneself. Because children (like all individuals in society) ought to benefit others by their actions and would so act if they had a proper moral perspective, it is legitimate to involve them in research (provided it is of no more than minimal risk). McCormick's presumption is not that someone would actually act in a certain way but only that another may validly presume consent because the act is right. Parental consent is said to be morally valid for both "therapeutic" and "nontherapeutic" contexts, because it is based on a reasonable presumption of the child's obligations:

"* * * there are things we ought to do for others simply because we are members of the human community * * *. If it can be argued that it is good for all of us to share in these experiments, and hence that we ought to do so (social justice), then a presumption of consent where children are involved is reasonable and proxy consent becomes legitimate.[*21*]"

In sum: the parent is the vehicle for choosing what the child should rightly choose if we were so situated that he knew what he ought to do.

McCormick's position is subject to a variety of objections. There are at least two possible problems with his claim that we can presume consent because a child ought to consent. First, natural law arguments have been subjected to sharp criticism in ethical theory. In particular, one common objection to natural law theory is that it does not follow from the wide or even universal sharing by human beings of certain values or purposes (e.g., health, happiness, etc.) that human beings ought to promote those values or purposes. For example, from the value human beings place on propagation of the species it does not follow that all persons ought to propagate at will or even that they should propagate at all. It does not follow even if such a value is basic to human nature. This apparent deficiency in McCormick's position is important, since if his natural law foundation is unsupportable, the entire position on children is groundless.

A second possible problem with McCormick's position resides in the claim that consent may validly be presumed where there is an underlying obligation. There are probably numerous activities in which adults ought to participate, but to which many would not consent. The whole point of obtaining a person's consent is to protect his autonomy. What one person will consent to may vary significantly from what another will consent to because of basic differences of value. To respect persons is to respect their right to their own evaluative choices, including their right not to perform certain actions which other persons believe, with some justification, that they ought to perform. While we have a moral right to demand that individuals fulfill their obligations, some obligations are created only by an individual's own commitments, and we often have no right to demand the commitment itself. Consent is such a commitment, and absent the commitment no valid consent can be presumed (this must is true in Ramsey's position).

Accordingly, it seems certain that we could never validly presume consent on the part of a competent adult subject merely because the person ought to consent. How, then, can consent of the child be validly presumed? As Ramsey has argued, McCormick's position "amounts to the destruction of the protections consent-language was designed to afford."[*22*] Consent can rarely be presumed, and there seems no way it can be presumed on the part of a child. In short, perhaps the gravest deficiency in McCormick's position is its very core: the notion that the child's consent can be validly presumed.

Ramsey has generalized this conclusion in the following way: if McCormick's standard is used,

"* * * then anyone—and not only children—may legitimately be entered into human experimentation without his will or unwillingly * * *. If a child may be treated as an adult who would will what he should, then any other nonvolunteer may be treated simply as a child who * * * would will what he should. Any nonvolunteer may be treated as a child who does not will as he ought. [*23*]

Ramsey's point is that if consent can validly be presumed because of what persons ought to do, then: (1) It is hard to find a principled basis for the claim that there is any morally relevant difference between adults and children, and (2) it would follow that the general conscription of adults is permissible. Ramsey's argument does not constitute an objection to McCormick, from one perspective, since McCormick actually favors the conscription of adults. The pertinent point, however, is about consent, not about conscription. The form of McCormick's argument is: if one ought to do it, then consent may be validly assumed. But consent is precisely what may not be assumed even if one ought to do it. One reason why the requirement of informed consent has become so important in recent years is that the consent of some subjects was never solicited, because a prior judgment had been made that they ought to participate.

Moreover, it is not even clear, based on McCormick's arguments, that consent should be a relevant consideration. If a child ought to do something and the obligation justifies the child's doing that thing, then the consent of his parents could neither validate nor invalidate his participation. Parental consent is simply irrelevant to the justification for involving the child in research. To put this point another way, McCormick operates with two levels for the justification of involving children: natural law and consent by third parties. If the natural law justification is correct, it actually undermines the consent model by rendering it gratuitous.

A possible response by McCormick to some of these arguments is considered at the end of the next section (3). But it is worth mentioning at this point that an alternative interpretation of McCormick's arguments to the one presented above might be offered. In his later writings McCormick's major conclusions appear anchored in the argument that all members of society, including children, have minimal obligations to benefit other members of society. These obligations are created by social circumstances (rather than by some general property of human nature). Among these obligations is that of participating in minimal risk biomedical or behavioral research. Because of these social obligations the child should be willing to participate in research; and parents may be empowered to consent for the child's participation whenever the child should be willing to be involved in the research if the child could comprehend and consent. On this alternative interpretation, "proxy consent" is merely a device to protect the child, and plays no more substantive role in the argument. That is, the obligations children have justify using them, and consent is merely a protective device that plays no role in the justification. McCormick's position is thus turned into a "presumed duty" rather than a "presumed consent" position. If this alternative reading of McCormick is preferable, then his position is perhaps closer to the one that is presented in section (5), below.

(3) A variant of McCormick's stance might be developed along lines proposed by Stephen Toulmin[*24*] in the course of considering the justification of fetal research. He suggests that instead of beginning with what children ought to do, we might ask whether it may be presumed that they could not reasonably object if they were capable of understanding what is at stake and of making a decision in their own right. This strategy is thought by Toulmin to free the theory of the objection of imputing obligations to children and to reconcile McCormick's approach with common public policy judgments about the validity of involving children in research. Toulmin's proposal is distinguishable from the two positions previously outlined by its philosophical basis. Rather than using a theory of informed consent or natural law, Toulmin makes an appeal to what the reasonable person would agree to choose—or, as he states it negatively—what the child could not reasonably object to.

A roughly parallel view, but with an emphasis on the problem of consent, has been advanced by Victor Worsfold.[*25*] As is common, he distinguishes between those children who have attained the age of reason and those who have not. For those who have not—the class discussed by Toulmin—Worsfold suggests that the absence of the ability to make judgments justifies decisions by others (parents), although these must "be guided by the individual's own settled preferences and interests insofar as they are not irrational, or failing one's knowledge of these, by [some] theory of primary goods."[*26*] In judging the right course, he says, "We must be able to argue that with the development or the recovery of his rational powers the individual in question will accept our decision on his behalf and agree with us that we did the best thing for him."[*27*] This position is the positive side of the one proposed by Toulmin. Rather than holding that the child could not reasonably object, Worsfold's criterion is that the reasonable child would approve, in retrospect, an invitation to be involved in research. Additionally, Worsfold holds that children of sufficient understanding have the right to make their own decisions; and he proposes that younger children who are incapable of making judgments entirely on their own nevertheless should be listened to and their preferences taken into account by those who decide on their behalf.

Several possible responses to these theories may be mentioned. In a paper written

for the Commission on "Rights, Duties, and Experimentation on Children: A Critical Response to Worsfold and Bartholome," Stanley Hauerwas challenges the current preoccupation with the notion of children's rights. The language of "rights," Hauerwas suggests, is not entirely appropriate to, and in fact is misleading for, an ethical analysis of the place of children as research subjects, although such language may facilitate a formulation of appropriate policy. He argues that "rights language," as applied to the family, inclines us to conceptualize the family as a contractual society of individuals—which he believes it is not. As a substitute, Hauerwas proposes that the idea of parental duties and responsibilities toward their children (i.e., to love, protect and educate them) provides a better ethical framework on which to base such policy. He focuses on the historical view that being a parent involves an obligation to care for and to educate one's child in a manner appropriate to making the child a full participant in the community. His central argument is that the child ought to be conceptualized as a family member, and because of this special position the consent and guidance of parents is relevant to the participation of children. For Hauerwas, accordingly, making a case for children's "rights" as Worsfold does runs the risk of destroying what being a child means, by ignoring that a child's need is not for "rights," but rather for trust, love and care.

Whatever the merits of Hauerwas' arguments, perhaps the major problem with the reasonable consent theory resides in the flexible and ambiguous term "reasonable." The reasonableness of nonparticipation in an activity that is primarily charitable or for the benefit of others can be judged only by reference to a person's reasons for nonparticipation. In the case of children, possible reasons for nonparticipation must be projected by others, and a decision about the reasonableness of these reasons must be made by others. This judgment does not centrally involve inferring what a child would do if he could consent. It is a judgement of reasonableness based on a standard that is not the child's, and hence is external to the standard of what the child would do if he could choose. But what precisely is that standard? Is it reasonableness in light of the importance of the knowledge to be gained? Reasonableness in light of the values of the research community? Reasonableness in the eyes of the parents?

Even more problematic is the very justification of the use of children by appeal to reasonableness. Many things might be done to nonconsenting subjects which they cannot reasonably (in the eyes of most) object to, and yet we would not permit such actions to be performed. The mere lack of a reasonable objection does not justify appropriating others. It seems, moreover, that the reasonable consent position encounters some of the same problems as McCormick's position because it is too broad in scope. If lack of a reasonable objection or reasonable presumption of a later agreement justifies appropriation, then it justifies drafting adults as well as children.

Presumably Toulmin, McCormick and others would argue that the morally relevant difference between a competent adult and a child is that the adult can informedly consent and the child cannot. But why should refusals to consent by adults override drafting them if their refusal is not "natural" or reasonable? The answer must be that we would be exhibiting a lack of respect for them by violating their autonomy and that this disrespect is not being exhibited toward the child, because he cannot express autonomy. While this reply is no doubt correct, it fails to exhibit why mere absence of a reasonable objection justifies any use of another person. Or, to put the point another way, it may be that the absence of a reasonable objection by another person is a necessary condition of using the other person for research, but it is not sufficient. And if it is an insufficient reason then the reasonable consent position only tells us one condition that must be satisfied if we are to do research on children. It does not tell us that we may do the research if there is an absence of a reasonable objection; yet this conclusion is what is primarily desired in a principled justification.

(4) Some writers have attempted to mediate between Ramsey's entire exclusion of the class of children and McCormick's (and others') apparent entire inclusion of the class. These writers have suggested that children old enough to be educated can be aided in their education by participation in research, but not at earlier ages. The justification for participation, then, is moral development; and if there can be no moral development through participation, the justification is lost. Perhaps the first to suggest this approach was Henry Beecher. In *Research and the Individual* he suggested, without further elaboration, that

"Parents have the obligation to inculcate into their children attitudes of unselfish service. One could hope that this might be extended to include participation in research for the public welfare, when it is important and there is no discernible risk.[28]"

This kind of position has been defended in a paper written for the Commission by William Bartholome.[29] He discusses the involvement of children from age five to seven through age 14 to 16 in research activities. He criticizes Ramsey's total exclusion of children from "nontherapeutic" research as harsh, and suggests that to focus exclusively on informed consent (as Ramsey does) as the moral basis for including subjects in research is to prejudge the answer to the question whether children may participate in "nontherapeutic" research. At the same time Bartholome agrees with Ramsey that interventions in the lives of children can be justified only if they are to benefit the child. These two authors largely differ over what shall count as a benefit. While Ramsey considers only therapy to be beneficial, Beecher and Bartholome consider improved moral character to be a benefit.

Bartholome criticizes McCormick for presuming that adults are able to know what a child should want and rejects McCormick's suggestion that there are certain things a child "ought to do." Children are not morally "transparent," he argues, and thus no adult can know what a particular child should choose. And since it cannot be asked what they would choose, only their needs should be considered in asking about their participation in research. Even if there are certain things that a child ought to want to do for others, Bartholome claims, no one has the right to determine how, when and in what manner such obligations should be fulfilled. Bartholome also disputes what he takes to be McCormick's argument that we owe to future generations the cure or prevention of certain diseases and that, in general, involvement in "nontherapeutic" research is obligatory for everyone. Bartholome prefers to see such rewards for future generations as "gifts" rather than as obligations required by justice or by social need.

To resolve the conflict between the two polar positions exemplified by the writings of Ramsey and McCormick, Bartholome suggests that children may be assisted in their moral education by participating in "nontherapeutic" research, once (at age five to seven) they are able to appreciate the importance of helping others. As part of their general obligation to enhance the moral development of such children, parents should encourage them to take advantage of opportunities for moral growth; and Bartholome contends that involvement in research is one of many activities which parents might select to this end. He distinguishes between the parental duty to encourage such behavior and McCormick's notion that parents have a right to force children to engage in charitable acts. Bartholome disagrees both with Ramsey's position that "children are not capable by nature or grace of charitable acts" and with McCormick's position that parents have a right to see that their children undertake such acts. Instead, Bartholome considers the parental obligation to be one of moral instruction, which may include encouragement but also requires that the child be a willing participant. Assent by the child should be mandatory, he maintains, and parents should be involved in the process both by deciding whether or not participation in research would be a beneficial learning experience for their child and by participating with their child as "joint-subjects" when the experimental design provides an opportunity for such collaboration.

In an accompanying paper on "The Infant as Person," Bartholome takes the position that infants (i.e., children below the age of understanding) have a right to be treated as persons but, because they have no awareness even of themselves, do not have a moral obligation to the human community. For this reason he would reject "nontherapeutic" research involving infants below the age of five, at least where research requires serious invasive procedures.

In the aforementioned paper by Hauerwas, Bartholome's position is criticized in two respects: first, because informed consent is taken as a primary issue and a necessary ingredient in respect for persons, and second, because it is thought necessary that children be "persons" in order to have rights and to merit protection. Hauerwas argues that third-person consent, which Bartholome regards as an attempt to protect the child, might more correctly be viewed as an attempt to protect the integrity of the family unit by ensuring that whatever is done to a child is consistent with the moral convictions and traditions of the child's family. Hauerwas argues that children are deserving of care not because they are "persons," but because they are children with a special position in a family unit. Their rights, if they can be said to have rights, are claims against parents and society for the provision of such care. For Worsfold and Bartholome to insist that children be "persons" in order to participate in research, he contends, is to make the mistake of requiring them to be adults in order to be respected, which is to fail to treat them for what they are—children.

Hauerwas' argument, however, fails to appreciate either the merit or the central problem in the moral instruction position promoted by Beecher and Bartholome. The

merit of the position on moral instruction proposed by Bartholome is that it attempts a justification of research by appeal to an actual contribution made to children. It is not implausible to suppose that altruism can be cultivated in children by such "instruction," and these arguments are useful reminders that psychological and moral benefits may be derived from participation in research (a type of benefit apparently overlooked by Ramsey). On the other hand, these positions (Bartholome's, anyway) seem subject to the objection that whenever it could not reasonably be said that a child would be instructed, the research could not be justified. This position seems objectionable for some of the reasons already mentioned in discussing Ramsey, since the argument partially resembles Ramsey's highly restrictive position. Ramsey argues against allowing research unless there is "therapeutic" benefit, whereas this position stands against doing research unless there is moral benefit to the child. As Bartholome correctly points out, even his own position would exclude the entire class of "uninstructable" children. Unfortunately, his contentions leave unanswered why it would be immoral or otherwise wrong to involve uninstructable children such as infants. In short, while this position may have merit by providing at least a partial justification for certain research, it fails to show that some research on classes of children such as infants cannot be justified on a different basis.

(5) A position with a conclusion similar to the presumed consent and reasonable consent positions, but with a somewhat different theoretical foundation, is that some research on children is justified because of the beneficial consequences to the class of children in general. If this position were stated in extreme form, it would be the unqualified utilitarian position that such research ought to be done whenever it maximizes social welfare to do so (whether or not the subjects assent or dissent). While no writer seems to hold this unqualified position, two papers done for the Commission give weight to the consideration of benefit to others as the theoretical justification for research. The first paper was done by H. Tristram Engelhardt, Jr.,[30] and the second by Robert Veatch.[31] (Neither paper, however, deals solely or even primarily with research involving children.)

Engelhardt recognizes the absolutely fundamental character of both the principle of respect for individual human subjects and the principle of beneficence (which involves the concern to maximize benefits for society in general), though he considers the protection of autonomy and promotion of individual self-determination to be primary. Accordingly, he rejects the involvement of unwilling subjects in research, even if the results of the research would be of considerable utility.[32] With respect to children clearly too young to consent, he argues that "infants, though often willful, have no free will and are not the object of respect as adults are." Since infants are nonautonomous, there is no obligation to respect autonomy; there is only an obligation to protect them from harm. He further contends that the function of third-party consent in such contexts is not to respect the child as an autonomous moral agent but to safeguard the child's best interest by preserving his or her physiological and psychological integrity. But he regards the notion of third-party consent to be less appropriate than other substitute language might be, since the third-party feature contravenes the purpose of consent. The point of informed consent, he argues, is to respect the freedom of individuals by asking their permission before involving them in research, yet for many children such treatment is impossible and inappropriate.

Engelhardt advances two sorts of arguments bearing on the use of children in research. He first argues that research is nonallowable if it would leave a residual amount of damage to the child. This argument stakes out his restraining conditions on appeals to beneficial consequences. Although his argument justifies research by appeal to beneficial consequences, Engelhardt also advances one consequentialist argument which actually restricts research. He contends that investigators and parents should always act in the best interest of children in order to provide general support for social practices of attention and kindness to the defenseless and powerless (a larger class than the class of children). Nonetheless, Engelhardt concludes that experiments which may involve minor discomforts but which would not expose children to physical or psychological risks greater than "in the usual ambience," are justifiable "in terms of an appeal to the minimal duties that each of us owe(s) to society."[33] In this argument, his usually strong emphasis on individual self-determination does not apply, and his argument turns on the duties owed to society. These duties are grounded in beneficence rather than respect for persons.[34]

Veatch agrees that "for the most part, it is a mistake to speak of proxy consent for experiments in children";[35] however, parents may approve a child's participation in "therapeutic" research because, as guardians, they rightly serve to protect the best interests of the child, and as parents they are given limited authority to exercise their own self-determination about their offspring, to the extent that their determination does not substantially deviate from the social consensus.[36] He argues that parents may also encourage their children to make minor contributions to the general welfare or to the welfare of specific others. He further maintains that if "the individual is seen as a member of the social community, then certain obligations to the common welfare may be presupposed even in cases where consent is not obtained."[37] This formulation expresses the common thread of argument from beneficence running through the positions of McCormick, Engelhardt and Veatch. This condition would apply, he says, only in very special cases where there would be no risk or only minimal risk to the subject and when the information to be obtained would be of great social value and could be obtained in no other way. The subject's participation in such research is justified, he contends, because of the substantial contribution to the general welfare which may be made—a contribution which, even without consent, the "reasonable person would find required."[38] (Veatch, however, adds that proceeding without consent is valid only in the case of very young children where self-determination is impossible. And he is always careful to add that his position does not entail that social benefits can be used to justify a cancellation of individual rights.) Veatch also argues in favor of retaining age 18 as the age of consent for medical treatment, and favors adjudicating on a case-by-case basis when, in the case of "therapeutic" research, children and their parents disagree. Finally, he proposes that a national committee review all research protocols involving children, using the same review criteria applied by IRBs.[39]

The qualified beneficial consequences position taken by Veatch and Engelhardt would obviously be found deficient by Ramsey and Bartholome, for example, on grounds that it justifies too much. In particular they would argue that it fails to respect persons by subjecting them to risk without consent and without obvious beneficial consequences for the subjects. However, perhaps the largest potential deficit in the positions taken by Veatch and Engelhardt rests in the lack of specificity concerning the scope of research justified by their principles. For example, how much research (if any) which involves more than minimal risk is acceptable in "nontherapeutic" cases? It is hard to see how an answer could be derived from their theory. Without further argument minimal risk seems a purely arbitrary cut-off point when, in very special cases, substantial benefit for others is in prospect. Both Veatch and Engelhardt are appropriately engaged in the attempt to balance the obligation to protect individuals against the obligation to provide substantial social benefits. While this balancing must be done, it is doubtful that their theories satisfactorily show how and at what point the individual rights of children properly limit their social obligations. Relatedly, it is one thing to argue that some research on infants may be allowed, and another to develop the precise conditions under which it is justified. Neither Veatch nor Engelhardt delineates a rigorous set of such conditions.

Among the well known dangers of social benefit approaches is that they may justify so much on grounds of the principle of beneficence that the principle of respect for persons fails to be applied.[40] That is, the obligation to benefit others (perhaps by developing therapies which avoid harm to them) might be employed in such a way that the obligation to protect subjects is not fulfilled. Both Veatch and Engelhardt attempt to guard against this possibility, because, as Veatch puts it, there are such "great dangers" in unqualified appeals to the benefit of others. Accordingly, what must be said to be lacking in the Veatch and Engelhardt papers is not that they make no appeal to the principle of respect for persons. What seems in need of development is an explanation of the proper balance to be struck between the competing obligations to respect persons and to benefit those in need of help.

References

1. *Trials of War Criminals Before the Nuremberg Military Tribunals, U.S. v. Karl Brandt,* vol. II, U.S. Government Printing Office, 1949, p. 181.

2. Leo Alexander, Psychiatry: Methods and Processes for Investigation of Drugs, 169 *Annals N.Y. Acad. Sci.*, 1970, p. 347.

3. Andrew Ivy, The History of the Use of Human Subjects in Medical Experiments, 108 *Science* 1948, p. 1. For an extended discussion of this matter see Beecher, *Research and the Individual: Human Studies,* Little, Brown & Co., Boston, 1970, p. 277.

4. Medical Research Council, Great Britain, Responsibility in Investigations on Human Subjects (1963) in Beecher, *op. cit.,* pp. 262, 265.

5. *Ibid.*

6. World Medical Association, Declaration of Helsinki, 1964, in Beecher, *op. cit.*, p. 277.
7. *Ibid.*, p. 279.
8. DHEW, *The Institutional Guide to DHEW Policy on Protection of Human Subjects*, DHEW Publication No. (NIH) 72-102, December 1, 1971, p. 7.
9. DHEW, Protection of Human Subjects, Policies and Procedures, 39 *Federal Register* 31742, November 16, 1973.
10. *Ibid.*
11. *Policy and Communications Bulletin*, The Clinical Center, No. 75-5 (July 14, 1975).
12. 45 CFR § 46.103 (1975).
13. Paul Ramsey, *The Patient as Person*, Yale University Press, New Haven, 1970, p. 25.
14. *Ibid.*, p. 39 (quoting Oscar M. Ruebhausen, Experiments with Human Subjects, 23 *Records of N.Y. Bar Association*, Feb., 1968, p. 93).
15. *Ibid.*, p. 12.
16. Ramsey, Children as Research Subjects: A Reply, *Hastings Center Report*, April 1977, p. 40f.
17. See Chapter 3 of this report.
18. Ramsey does say, however, that benefits are sometimes unclear and would make a difference in emergency situations. *Cf. The Patient as Person*, p. 15.
19. Ramsey, The Enforcement of Morals: Nontherapeutic Research on Children, *Hastings Center Report*, August 1976, p. 21.
20. Benjamin Freedman, A Moral Theory of Informed Consent, *Hastings Center Report* 5, August 1975, pp. 29-39. *Cf.* esp. p. 38.
21. Richard McCormick, Experimentation on the Fetus: Policy Proposals, Report Submitted to the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1975. In *Appendix: Research on the Fetus*, DHEW Publication No. (OS) 76-128, 1976, pp. 5-3 and 5-4. For a fuller discussion be the same author, see Proxy Consent in the Experimentation Situation, 18 *Perspectives in Biology and Medicine*, Autumn, 1974, and Experimentation in Children: Sharing in Sociality, *Hasting Center Report*, December 1976.
22. Children as Research Subjects: A Reply, p. 40.
23. The Enforcement of Morals: Nontherapeutic Research on Children, p. 24.
24. Stephen Toulmin, Fetal Experimentation: Moral Issues and Institutional Controls, Report to the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, 1975. In *Appendix: Research on the Fetus*, DHEW Publication No. (OS) 76-128, 1976, pp. 10-7 and 10-8.
25. Victor Worsfold, A Philosophical Justification of Children's Rights, *Harvard Educational Review*, vol. 44, No. 1, February 1974.
26. *Ibid.*, p. 154 quoting Rawls, *A Theory of Justice*, Harvard University Press, 1971, p. 249.
27. *Ibid.*
28. Boston: Little, Brown & Co., 1970, p. 63. Cf W. J. Curran and H. K. Beecher, Experimentation with Children, *JAMA* 10 (October 10, 1969), pp. 77ff.
29. The Ethics of Non-Therapeutic Clinical Research on Children.
30. Basic Ethical Principles in the Conduct of Biomedical and Behavioral Research Involving Human Subjects (December 1975).
31. Three Theories of Informed Consent: Philosophical Foundations and Policy Implications (Febuary 2, 1976).
32. Engelhardt, p. 7.
33. *Ibid.*, pp. 36-37.
34 *Ibid.*, pp. 35-37.
35 Veatch, p. 35.
36. *Ibid.*, p. 36.
37. *Ibid.*, p. 37.
38. *Ibid.*, p. 38.
39. *Ibid.*, p. 49.
40. This form of reply to the Veatch and Engelhardt type of approach is found in Hans Jonas' essay, Philosophical Reflections on Experimenting with Human Subjects, in Paul A. Freund, ed., *Experimentation with Human Subjects*, George Braziller, Inc., New York, 1970. He construes such research as a duty only in emergency situations.

Chapter 9. Deliberations and Conclusions

The Commission's recommendations on research involving children were adopted unanimously with the exception of Recommendation (5), from which Commissioners Cooke and Turtle dissented. Various members of the Commission preferred different statements (or supported more than one statement) of the rationale for their recommendations, and three such statements are included below. Statements explaining the two dissents are also included.

Statement of Commissioners Height, King, Louisell, Ryan and Seldin

The Commission has identified three ethical principles that should underlie the conduct of biomedical and behavioral research involving human subjects: beneficence, respect for persons and justice. In the case of research involving children, as in other difficult cases, the challenge is to find a proper balance in applying these principles and to establish priorities among the principles when they appear to be in conflict.

Beneficence. Beneficence requires both the provision of benefit and the avoidance of harm. This principle is applied to research involving children in several ways. The promotion of health, by improving methods to prevent or treat a disease or abnormal condition and to foster optimal growth and development, is a benefit that serves as a general justification of research. Similarly, the imperative to avoid harm may serve as a justification for research designed to evaluate the safety and efficacy of procedures in standard practice. Avoidance of harm also requires that risk to human subjects be reduced or eliminated in the actual conduct of research.

In order to promote the health of both children and adults, the participation of children in research is needed. In many cases, children are the only possible subjects for research designed to study the nature of childhood disorders, some precursors of adult disorders, and the normal physiological, psychological and social development of children. The benefits from such research may accrue to the individual research subjects or to children as a class.

Research also makes possible the avoidance of harm that may result from the application of routine practices. This benefit is illustrated dramatically in the case of infants, who cannot survive without the intervention of others and for whom some previously accepted procedures have been proven dangerous. Research has been required, for example, to learn the correct levels of oxygen, fluids and nutriments that are necessary to sustain the life of newborns without harming them. On grounds of beneficence, therefore, the Commission considers the conduct of certain research involving children to have strong ethical justification (Recommendation (1)).

The conclusion that research involving children may generally be justified on the grounds of beneficence does not mean that all such research is therefore justifiable. The principle of beneficence also requires that those who conduct or sponsor such research protect children from harm by limiting the risk to which children may be exposed as research subjects. In Recommendation (2) the Commission applies the principle of beneficence by delineating general conditions that all research involving children should meet. In Recommendations (3), (4), (5) and (6), the Commission addresses the problem of determining the proper balance between the importance of conducting research in order to promote health and the imperative to avoid harm to the children who are subjects of that research. These considerations are reflected in provisions regarding the nature of anticipated benefit that may justify the involvement of children in research.

The Commission has concluded that problems related to two kinds of research are comparatively straightforward. Where the risk of harm presented to children by a research project is no more than minimal (Recommendation (3)), no particular problems are presented so long as general provisions are fulfilled (Recommendation (2)), and so long as appropriate provisions are made for soliciting and receiving both parental permission and the assent of the children who may be asked to participate (Recommendation (7)).

The second kind of research that presents relatively few ethical problems is that in which the risk is related to an intervention that holds out a reasonable promise of benefit for the individual subjects. The acceptability of the risk presented by such an intervention should be determined in the same way that the acceptability of risk is determined for interventions that are applied in standard practice. Risk may be justified by an avoidance of greater harm or by the provision of an important anticipated benefit to the individual exposed to risk. Thus, if the anticipated benefit to the children for whom the intervention is proposed is greater than the attendant risk, the intervention is justified; and if the risk-to-benefit ratio of the proposed intervention is at least as good as that of other available approaches (including refraining from any intervention), then the study of that intervention is ethically acceptable even if the risks are more than minimal (Recommendation (4)). The benefits that are expected to be derived from a therapeutic, diagnostic or preventive intervention, however, justify only the risk associated with that intervention (including such procedures as may be necessary, for reasons of safety, to monitor the effects of the intervention). Risk associated with other procedures, performed purely for the purpose of acquiring generalizable knowledge, cannot be justified merely by inclusion in a protocol that also includes procedures from which subjects may derive direct benefit.

The most difficult ethical issues for the Commission arose with respect to research presenting more than minimal risk but no immediate prospect of direct benefit to the individual children involved. Some members of the Commission urged that the limit for such research remain at the level of minimal risk; others pointed out that such a

limit might eliminate much research that has great scientific significance and the promise of substantial long-term benefit to children in general, while possibly avoiding only minor additional risk to the research subjects. Much of the Commission's later debate was focused on this class of research projects. The Commission was seeking to determine the circumstances (if any) under which such research might be ethically acceptable, and, if so, what review procedures would be appropriate to assure proper protection of the research subjects.

In their resolution of this question, the Commission relied largely upon two considerations. It noted, first, that the scope of parental authority routinely covers a child's participation in many activities in which risk is more than minimal, and yet benefit is questionable. (Involvement in skiing and contact sports are two examples among many.) The Commission was also impressed by reported examples of diagnostic, therapeutic and preventive measures that might well have been derived from research involving risk that, while minor, would be considered more than minimal.

Ultimately, the Commission decided (with two members dissenting) that if three additional conditions are satisfied, research in this most difficult class of cases could be justified (Recommendation (5)). First, the risk involved must be only a minor increment beyond minimal. In addition, the procedures to be used must be reasonably commensurate with (similar to) those with which prospective subjects have had experience. Further, the research must be likely to yield generalizable knowledge important for the understanding or amelioration of the subjects' specific disorder or condition. Thus, foreseeable benefit in the future to an identifiable class of children may justify a minor increment of risk to research subjects.

In exceptional situations, dangers to children or the community resulting from a failure to involve children in research might exceed whatever risk is presented by that research. For instance, the threat of an epidemic that could be offset by developing a safe and effective vaccine might justify research involving risk greater than otherwise acceptable to establish safety, efficacy and dosage levels for children of different ages. The outright prohibition of such research on grounds of risk might constitute an exception to the general rules enunciated above, however, the decision to permit its conduct should be made at the national level, with opportunity for public participation. In Recommendation (6), the Commission suggests procedures by which this goal may be accomplished. The same procedures should be invoked to review any research that cannot be approved by an IRB under the guidelines set forth in this document, whenever a review board considers that for urgent or unique reasons the research should be permitted.

Respect for persons. This principle requires that the choices of autonomous individuals be respected. It is applied in the conduct of research by asking permission of autonomous individuals before involving them as subjects of research. Problems arise, however, regarding individuals with diminished autonomy and thus diminished capacity to consent; and objections to the involvement of children in research have been based on children's incapacity, or less capacity, to give valid consent to their participation as subjects. Indeed, most of the literature has focused on this problem, and the most restrictive position (exemplified by Ramsey) is that children should not be involved in any research unless it is reasonably expectable that they will derive some direct benefit from their participation.

The Commission considered seriously the arguments presented by those engaged in the current debate about the legitimacy of third-party consent (see Chapter 8 of this report). The Commission concluded that the incapacity of children to consent is one aspect of a more general condition of dependency on adults who are responsible for their care. The permission that parents give for children's participation in research can be accepted as an exercise of their general role, as caretakers, to guide decisions affecting their children's lives and activities. Although some critics have challenged the right of parents to make decisions for their children to participate in research, the Commission is persuaded that the practical need for parents to manage the details of the child's life legitimately extends to such decisions.

One consideration that does justify the placing of limits on parental or guardian authority is respect for the developing autonomy of children. The Commission has concluded that any child capable of some degree of understanding (generally, a child of seven or older) should participate in research only if the child assents. Even the objection of a very young child should be binding except for situations in which the research involves a therapeutic intervention that is unavailable outside the research context. This conclusion is consistent with a recent trend in both law and philosophy to respect the rights of children and to encourage their development toward assuming responsibility for their decisions. It is also consistent with the reported ability of children of school age to make decisions concerning their activities (see Chapter 6), and with the practice of investigators in pediatric research who commonly seek the assent of children at seven years of age and older before accepting them as research subjects (see Chapter 3).

Recognition of the capacity and the right of children to make their own determination regarding participation in research resolves important ethical problems about third-party consent. By respecting the developing autonomy and moral responsibility of children (as proposed by Worsfold and Bartholome and to some extent by Engelhardt and Veatch), the problem of involving children in research against (or without) their will is avoided. This conclusion does not resolve the considerable difficulties that may arise in determining how informed and responsible some children are, and thus is not to be construed as an unrealistic application of the principle of respect for persons. One unresolved area concerns the involvement of infants and children who are incapable of assenting or of objecting to their participation. For this class of children, the Commission believes (as anticipated by Veatch and Engelhardt) that benefits either to the subjects or to the class of children may justify the involvement of children who are unable to indicate willingness or unable to object, provided their parents (or some other appropriate third party) protect their physical and psychological integrity throughout the research project, and provided further that strict limitations are placed on the risk to be permitted.

It must be recognized that there may be occasions when parental or guardian interests are at odds with the best interests of their children. When parental permission cannot be relied upon as a protective mechanism (as in cases of child abuse, for example), alternative mechanisms should be set in place to protect the health and welfare of the children. In other instances (for example, when the research involves treatment of conditions such as venereal disease or drug abuse) a requirement for parental permission may actually jeopardize the health or welfare of a child. In the latter cases, the assent of the child should be sufficient as it now is in those jurisdictions where children may consent on their own to treatment of such conditions. (The Commission's conclusions regarding consent are reflected in Recommendations (7) and (8).)

There are several additional conditions that respect for persons requires in the conduct of research: e.g., that the time and inconvenience requested of subjects be justified by the importance of the research and by the soundness of its design, even if no more than minimal risk is involved; that the privacy of children and their families be protected; and that the confidentiality of data be maintained. (These conditions are set forth in Recommendation (2).)

Justice. Justice is a moral principle that requires a fair distribution of burdens and benefits in a given population. In research contexts this principle requires that the burdens of being involved in research should be fairly distributed and that the benefits produced by the research also should be fairly allocated. There are at least two dangers of injustice that might result from the involvement of children in research. First, certain groups of children may be overutilized as research subjects due to their ready availability. For example, there are manifest dangers that children living in orphanages or in special training facilities might be exploited for purposes of research. Given their dependent status and their diminished capacity to consent, it is important that children be protected against selection solely because of administrative convenience or because their illness or socioeconomic condition render them especially vulnerable. It does not follow that such groups of children can never be involved in research. The point is that since there is a relevant inequality in their situation, they should not be treated in the same way all other children are treated; rather, they should be afforded additional protection. However, it may be justified to involve that class of children in research concerning their specific condition. This conclusion is an application of the formal principle of justice that equals should be treated equally, while those unequal in morally relevant respects may be treated unequally.

Second, wherever appropriate, animal and adult studies should be conducted prior to the involvement of children in a research project. Studies on older children should also be conducted prior to the involvement of younger children and infants. This distributive principle is itself justified by certain conclusions already derived from the principles of respect for persons and beneficience. Respect for persons requires obtaining informed consent whenever possible. Since informed consent is far more likely to be obtained in a meaningful way from the adult population, and since older children can be more easily informed than younger ones, respect for persons dictates that adults and older children be respectively first and second in the order of persons se-

lected as subjects of research. Beneficence also plays a role because it is easier to avoid doing harm to adults and older children than to younger ones. Young children often do not accurately report their feelings or physiological responses, and investigators are thus not likely to know if something unusual occurs. Accordingly, infants might be at greater risk than adults participating in the same research. In short, beneficence and respect for persons provide a dual justification for the claim that, as a matter of distributive justice, research risks should be allocated to adults rather than to children whenever feasible. Justice also requires that special classes of children not be inequitably selected as research subjects—no matter how significant the research may be (Recommendations (2), (9) and (10)).

STATEMENT OF COMMISSIONERS BRADY, JONSEN, LEBACQZ, LOUISELL, RYAN AND STELLAR

During the course of its deliberations, the commission has recognized that biomedical and behavioral research brings about certain benefits for individuals and society. Discovery of new information, improved understanding of the human condition and the environment, better treatment of disease or other disorders: these are the obvious benefits to individual subjects and to society that have resulted and continue to result from research. Insofar as research is directed to these goods, it manifests the ethical principle of conferring benefit and avoiding harm. This is the first of the ethical principles that the commission has identified as underlying the conduct of research.

In the case of research with children, it is obvious that significant benefits for individual subjects and for society have been produced. Participation of children in research has led to many discoveries that have improved the health of children. Children are often the only possible subjects in those investigations studying the normal physiological, psychological and social development of children, the nature of diseases peculiar to children, and the childhood precursors of disorders that are manifest only during adult years. In addition, research uncovers, and makes it possible to prevent, harm that results from some common and routine practices of dealing with children. This benefit is dramatically illustrated in the care of infants, who cannot survive without the intervention of others and for whom some standard medical procedures have been proved dangerous. Research has been required, for example, to learn the correct levels of oxygen, fluids and nutriments that are necessary to sustain the life of newborns without harming them. In the light of such evidence, it is obvious that biomedical and behavioral research involving children conforms to one essential ethical principle: it contributes to the good of individuals and, consequently, to society while also contributing to the avoidance of harm.

However, it is also obvious that research involving children encounters major ethical objections, for, while much of such research involves nothing more than observing and recording the activities of children, some investigations seek information that can be obtained only by exposing the subjects to some risks that would not otherwise be part of their lives or their care. That same principle of conferring benefits also requires, not only that harmful current practices be revealed, but that harm to individuals be avoided. Thus, research with children, to the extent that it involves any exposure to otherwise nonexistent risks, raises a serious ethical question and calls for particular ethical justification. In addition, some assert that even where harm is not an issue, the researcher breaks into the privacy of the child in a way that is not ethically justified. For example, one author asserts that "children can be wronged, without being harmed."

In the case of research with adults, the problem of risk and the problem of privacy, as a rule, can be answered by insisting on the free consent and informed consent of the participant in research. The practice of generally requiring free and informed consent of adult subjects, which is recognized by all recent codes of ethics of research, rests upon the second major principle that the Commission has identified as underlying the ethical conduct of research: the principle of respect for persons. This principle can be understood as the source of the obligation that all persons be allowed to select and follow those courses of action which they judge good for themselves, unless their activities cause harm to others. In accordance with this principle, research participation ought never to be imposed on individuals against or without their willingness, provided they are capable of expressing their willingness. However, the principle of respect for persons can be stated in a more fundamental manner. It established the obligation that each person be acknowledged as a unique being, and dealt with in terms of his or her own desires, needs and purposes. If the person is capable of communicating those unique desires, needs and purposes, that expression becomes the first and, in most cases, the final and deciding factor in how others ought to act toward them. Children are often absolutely incapable for such communication; when they can communicate, they may do so only imperfectly. Children's desires, needs and purposes are imperfectly developed, their self-understanding and understanding of the world is incipient, and their judgments, when formulated, are limited. Still, the ethical principle of respect extends to them: it demands respect for their reality as children. This respect requires protection of their evolving autonomy, a protection which should lead them toward maturity and, at the same time, shelter them from harm which they cannot themselves ward off.

Finally, whatever benefits issue from the research should be distributed throughout the society in ways that are fair, and the burdens of any research that is permitted should not fall unduly on certain persons or groups. Thus, the principle of justice, identified by the Commission as the third ethical principle, supplements the principles of respect and conferral of benefits.

The Commission considers that all of these principles must be taken together as the necessary and sufficient conditions for the ethical conduct of research regarding children. Unless research can be designed which reflects all three, it cannot be called ethical. However, the Commission admits that the production of benefit, the avoidance of harm, respect for persons, and justice are complex notions that must be refined in ways which, on the one hand, make them more specific and, on the other, remain true to their essential meaning. Its deliberations were directed toward an attempt to view research with children within the perspective of all these ethical considerations. Its conclusions reflect the difficult effort to interpret these principles and to make appropriate distinctions in their application to the various general situations found in research involving children.

Recommendation (1) states the Commission's conclusion that the evidence bears out the social value of research with children. It also states that the Commission is satisfied that the benefits of research can be sought in ways that meet the ethical standards that ought to underlie the conduct of all research. Recommendation (2) proposes that reasonable and informed persons, in judging whether any proposal for research with children meets ethical standards, should invariably demand assurance on several points. Considerations of providing benefit and avoiding harm are reflected in the provisions that research be scientifically sound and significant and that its risks be minimized. Considerations of respect are reflected in the provisions about protection of privacy and confidentiality. Considerations of justice are reflected in the provisions to conduct studies first on animals or adults and to select subjects equitably.

Recommendation (3) applies the principle that harm should be avoided. It acknowledges that where no risk at all or no risk that departs from the risk normal to childhood (which the Commission calls "minimal risk") is evidenced, the research can ethically be offered and can ethically be accepted by parents and, at the appropriate age, by the children themselves. The Commission has taken this position because it has concluded that the scope of parental responsibility includes the right to choose activities and to define a manner of life for their children. It is inevitable that many activities and events of childhood involve some risks. No one suggests that parents must shield their children from all risks; some propose that permitting only those risks of activities likely to benefit the child lies within the parental prerogative. The Commission considers this position too stringent and artificial, since many of the experiences which parents generally allow to their children are somewhat risky and cannot be said, without forcing the case, to involve particular benefits. The Commission, then, has concluded that, when risks entailed in research are equivalent to normal risks of childhood, parents may properly permit these risks.

Recommendation (4) applies the principle of conferral of benefits to the situation in which a particular child is the intended beneficiary of an intervention which does entail risks "more than minimal." Whenever benefits and harm may accrue to the same person and when that person has some needs that require remedy, it has long been considered ethically appropriate to "balance" the risks and benefits and to proceed on the showing that "benefits outweigh the risks." The Commission has taken this concept a step further. It has decided that the justification of the contemplated course of action on the basis of the risks and anticipated benefits associated with it should be at least as strong as the justification on the basis of risks and anticipated benefits of any other course of action (or nonaction). Unquestionably, this sort of calculation is a matter of discretion. It cannot easily be expressed in quantitative terms, although in some cases statistical data about possible benefits and risks can be adduced as evidence. In the last analysis, the concerned parties, namely, the researchers, the reviewers, the parents and, if possible, the child, must attempt to form a judgment of acceptability.

Recommendations (5) and (6) represent the most difficult problem in reconciling all appropriate ethical principles. This problem arises when interventions dictated solely for research purposes, with no intention of benefiting the subject, present more than minimal risk. Some members of the Commission urged that the limit for risks of any interventions not intended to benefit the subject be held to the conservative level of "minimal risk"; others pointed out that such a limit would proscribe much research that promises substantial future benefits to many children. Much of the Commission's later debate centered on this class of research projects.

Most of the Commissioners agreed that a minor increase in risk would be permissible in order to attain substantial future benefits to children other than the subject. "Minor increase" refers to a risk which, while it goes beyond the narrow boundaries of minimal risk determined by the Commission, poses no significant threat to the child's health or well-being. Moreover, the Commission requires that the research activities presenting such risks be similar to the experiences familiar to the children who would be the subjects of the research. Such activities, then, would be considered normal for these children. Given this conservative limit, the Commission concluded that promise of substantial benefit does justify research which goes beyond, but only slightly beyond, the minimal risk. The Commission considers that, as in the question of "no more than minimal risk," permission to allow such research lies within the scope of parental responsibility. In addition, children capable of more mature judgment may wish to volunteer for research of this sort.

Ultimately, the Commission decided (with two members dissenting) that if three conditions are satisfied, research in this most difficult class of cases could be justified (Recommendation (5)). First, the risk involved must be only a minor increment beyond minimal. In addition, the procedures to be used must be reasonably commensurate with (similar to) those with which prospective subjects have had experience. Finally, the research must be likely to yield knowledge important for the understanding or amelioration of the subject's specific disorder or condition from which the subject suffers, even though the subject may not actually benefit. Thus, foreseeable benefit to an identifiable class of children may justify a minor increment of risk to research subjects.

The Commission acknowledged that exceptional situations may arise in which considerable dangers to children or to the community at large might be avoided or prevented by exposing children to research attended by more than minimal risk. Some might offer the ethical argument that avoidance of great danger or disaster outweighs the injunction against exposing children to risk of more than minimal harm. For instance, they may say the threat of an epidemic that could be offset by developing a safe and effective vaccine might justify research involving risk greater than otherwise acceptable to establish safety, efficacy and dosage levels for children of different ages. The outright prohibition of such research on grounds of risk might have consequences which themselves appear unethical.

Faced with such a hypothetical situation, the Commission found itself confronted by a common dilemma: regardless of whatever course is chosen, some benefit may be foregone and some harm may be done. Rather than attempt to resolve the dilemma in the abstract, the Commission has chosen to recommend that the ethical argument should be made, not over a hypothetical case, but over an actual situation, in which the real issues and the likely costs of any solution can be more clearly discerned. The ethical principles at stake are the moral obligation to protect the community or to come to the aid of certain sufferers within it and the moral prohibition against using unconsenting persons, at considerable risk to their well-being, for the promotion of the common good. These principles are of such moment and their observance so basic to a just and humane society that any debate about their application should be held at the most public level of discourse. Thus, Recommendation (6) urges that should such a situation occur, it be defined in the most stringent way and determined by those at high levels of public accountability.

The central point of contention in the debate over the ethics of research involving children is the question of consent. The codes of ethics of experimentation and almost all commentators agree that free and informed consent of the subject should be required for participation; however, as we have noted in Chapter 8, they are ambiguous regarding children. When they do admit the participation of children, they do so on condition that proxy consent is granted by parents or guardians. Proxy consent, of course, is not free and informed consent of the subject, but rather the permission of another.

Recommendations (7) and (8) deal with issues related to "informed consent." As noted above, the requirement to seek informed consent derives from the principle of respect for persons. This principle means both that the free choices of persons should be respected and that their individual needs, desires and life situations be acknowledged and honored. The Commission admits that infants are quite incapable of consent and that children exhibit in varying degrees the activities which can be recognized as understanding and consent. Since children are not autonomous, that is, fully capable of informed, reflective decisions, other aspects of their life situation besides autonomy are important in determining what "respect for persons" requires. The Commission decided that the dependence of children on adults, which is both the condition for their growth and the source of their vulnerability, is ethically relevant. Moreover, the Commission acknowledges and affirms the importance of the family in the child's life: to be a child is, generally, to be a member of a family. Respect, then, requires that children be protected from influence and circumstance that would (in the case of children, at least) impede their growth or compromise their health, safety or future well-being. In the case of children, this calls for an awareness of the limits and the potentiality of childhood, at varying steps in its development, as well as acknowledgement of the social milieu in which children live.

The Commission reached the conclusion that, as a rule, decisions about the participation of children in research should reflect a combination of respect for the general prerogatives of parents in protecting the health and safety of their children and respect for the maturing autonomy of the child. The Commission, therefore, recommends that the IRB assure adequate provisions are made for soliciting assent and permission (Recommendation (7)). It also suggests that the objection of a child to an intervention imposed for research purposes alone should generally be binding. In so doing, it permits the child to protect itself form unpleasant experiences and respects the maturing autonomy of the child. In view of the presumption that very small children are specially vulnerable and that parents are generally the best protectors of their children, the Commission also recommends that the IRB consider whether parents should be intimately involved, sometimes even present, in research activities that may disturb very young children or infants.

The Commission also notes that childhood is a changing state and that children become progressively more capable of reflective choices. Empirical studies have revealed the maturation, at particular ages, of children's ability to make ethical judgments. While there is debate about precise ages, the Commission has selected age seven as the age that may be considered as the time when children become capable of some reflective judgment. for procedural purposes, it imposes this age as the suitable time to consult the child about research. Since some research bears no benefit to such child, the Commission has decided that, in such cases, the child's refusal to participate should be determinative. In those cases where investigational procedures are being done with specific therapeutic intent and hold out the prospect of benefit that is available to the child only in the context of research, the Commission, recognizing the imperfect nature of a child's assessment of circumstances, allows the parental judgment to be final.

The Commission notes that the growing autonomy and privacy of children is recognized by some jurisdictions, where older children are permitted to give consent for specific medical interventions. Moreover, Commissioners were aware that informing some parents of proposed research involving their children might jeopardize rather than contribute to the child's welfare (e.g., in cases of venereal disease or child abuse). Thus, the Commission recommends that whenever parental permission is not a reasonable requirement to protect the well-being of the child, alternatives should be required by the IRB (Recommendation (8)). Here, it operates under the general moral principle to avoid harm as well as to respect the autonomy of older children. In addition, the Commission recognizes that some parents are unsuited to care well for their children, and that some children are without caring parents. In these situations, the Commission requires an advocate for the child, to take the place of a parent (Recommendation (9)).

Finally, Recommendation (10) requires that additional special protections be invoked where children are institutionalized.

STATEMENT OF COMMISSIONER LOUISELL

I hope that the alternative ethical rationalizations of the Commission's recommendations will not produce confusion. Each I think is an acceptable position paper so far as it goes. The assumed need for both reflects, I believe, the grave and inherent difficulty occasioned by Recommendation (5), which deals with potentially nontherapeutic experimentation involving more than minimal risks. Such experimentation on children can be morally justified, if ever, only to fulfill an essential social need analogous to that involved in the drafting of youth for

national security purposes. Resolution of this kind of a moral dilemma in a democracy at a minimum requires decision by society's highest political voice, and that is why I have insisted upon Congressional review as a condition of this type of experimentation.

Caution respecting experimentation on children can hardly be excessive, especially in an era when new inhibitions on the power of government to protect children are surprisingly found in the Constitution itself. *Carey v. Population Services International*, 97 Sup. Ct. 2010 (1977).

DISSENTING STATEMENT OF COMMISSIONER COOKE

Recommendation (5) permits the involvement of infants and children who are unable to consent in research which is highly important to reduce harm to other individuals with similar conditions at some subsequent time, but which offers no prospect of immediate or delayed benefit to the subjects despite the confusing implication of section (C) that the subjects' disorder might be ameliorated. If the subjects were truly able to volunteer rather than parents volunteering them, such a recommendation would be acceptable even though the risk exceeds minimal. Further, if the risk were no more than what is commonly understood to be "minimal"—that is, only a slight additional risk beyond that of everyday life—parental permission would be acceptable if the parents (one or both) also participated in the research and could withdraw the infant or child if discomfort seemed excessive.

By the designation of acceptable risk as that beyound minimal even to a "minor" degree, the Commission transfers to each Institutional Review Board the decision regarding the limits of "minor." Although a process is provided for judging "minor," no traditional guidelines exist nor are any examples provided. Considerable disparity can then be expected in such determinations by one IRB or another.

This recommendation does avoid the cumbersome transfer of much research approval to a National Ethical Advisory Board, but because of the differences in IRB performance it is likely that ethical review will be carried out by the NIH study sections, which will be forced to operate as a surrogate National Ethical Advisory Board, but without public debate or exposure as required in Recommendation (6).

In the ethical justification of its recommendation the Commission can invoke only the principle of utility. This in itself does not constitute any breach of ethics, but it does indicate the perilous nature of the recommendation and the ethical uncertainty of the Commission.

DISSENTING STATEMENT OF COMMISSIONER TURTLE

Preliminary Statement

Throughout the Commission's deliberations, I have expressed many reservations about the involvement of children as research subjects. My fellow Commissioners have heard me out in each instance and accommodations have been reached in all areas* except one—the special status, if any, to be accorded sick children with regard to their potential involvement as research subjects where no foreseeable benefit will accrue to the subject.

I believe that the substantial majority of the Commission (9-2) has committed clear error in approving Recommendation (5), potentially subjecting sick children to greater risks than other children without regard to foreseeable benefit, and thus, I must register this dissent to that Commission recommendation.

Conclusions

1. Sick children cannot be deemed to be a morally relevant separate class for purposes of relaxing protective measures and mechanisms.

2. Sick children, if capable of being placed into a morally relevant separate class, would require even greater protection than that afforded to children in general.

3. The distinctions attempted in both sets of deliberations* are shams and there is no legal, ethical or social basis for subjecting sick children to more than minimal risks merely because a foreseeable benefit might accrue to an identifiable class of children in the future.

Argument

1. *Sick Children Cannot be Deemed to be a Morally Relevant Separate Class for Purposes of Relaxing Protective Measures.*

Only one set of deliberations presents any argument for affording less protection to sick children than to all other children. It posits that sick children are by the very nature of their condition subject to certain unique risks and experiences, and relies on the limitation that added research "risks be similar to the risks and experiences familiar to certain classes of children" to conclude that the added research risks "are normal for these children." This rationale is a perversion of the Commission's attempt to define "minimal risks" as relating to the ordinary everyday risks of childhood.

The aggregation of risks concept and the impact of sickness on other protective mechanisms would, if properly assessed, require that sick children be segregated from others for purposes of special protection as described below.

2. *Sick Children, if Capable of Being Placed into a Morally Relevant Separate Class, Would Require Even Greater Protection Than Others.*

a. *The Principle of Beneficence Must be Applied.* The Commission has adopted as one of its basic ethical principles the principle of beneficence. This principle which directs, at the least, that we do no harm requires that those who, by virtue of their condition already experience greater than normal risks, should be protected against any increment of risks, no matter how slight. Thus, in assessing risks to a subject in both a legal and ethical sense, it is necessary to take into account the known fragility of the subject as a result of his existing conditions before creating a situation in which any increment of risk, no matter how minimal, can be added. There are some societies which do not grant equal value to the sick and the healthy. It has always been my assumption that our society was not among them and that we considered that we had a special need to protect and assist those, who through no fault of their own, might be at a disadvantage or most vulnerable. The Commission's Recommendation (5) is directly contrary to my understanding of the principle of beneficence as it is applied in our society.

b. *Other Protective Mechanisms Which Generally Supplement the IRB May be Adversely Affected in the Case of a Sick Child.* The Commission has recognized that IRB review is not the only protective mechanism which is available to children. Specifically, we have required parental permission, children's consent and have given the child a veto with regard to involvement in a research project.

The Commission did not specifically assess how well these other protective mechanisms would work with sick, as opposed to normal children. However, evidence in the record tends to support the general proposition that such protective mechanisms are not enhanced, but rather are diminished, when the prospective subject is a sick child.

First with regard to the child, the illness itself may be such as to interfere with normal cognitive and physical functions involved in the ability to assent meaningfully and even more important the ability to object at any stage of the project. This is especially true of children who are suffering from some form of mental retardation or are under the influence of some drug or sedative necessary to their therapy at the time that their participation is both solicited and effected.

Second, children who suffer long bouts with illness develop a special relationship with their therapist and the medical staff.

*My problems with "proxy consent" have been dealt with by obtaining parental permission and children's assent and in recognizing that a child's objection at any stage of the project is determinative. This protection is similarly afforded to infants through encouragement of the participation of a parent in those situations in which the child is clearly dependent (Recommendation (7)). The problem of an Executive "kiddie draft" for more than minimal risk research in response to another "swine flu" scare is ameliorated by the requirement for Congressional notification and real opportunity for debate and action (Recommendation (6), Comments).

*The Commissioners have presented two sets of deliberations, the rationale for the majority position on Recommendation (5) is found at pages 126 through 127 and 138 through 140 of this report.

Children, who through no fault or choice of their own, are subjected to greater risks incident to their condition or necessary treatment, cannot ethically be assumed to qualify for additional increments of risk. To do so, is to add to the potential burdens that result, directly or indirectly, from the child's illness. This is especially true when the Commission places more restrictive limits on the involvement of normal children (Recommendation (3)). The natural and intended consequencies of providing restrictive limits on one subject group, and relaxing limits on another, is a direction to researchers to involve more sick children as research subjects. Nowhere is such a direction countered by any requirement that research projects not involve sick children if normal children would likewise be scientifically appropriate subjects.

Taken as a whole the Commission's recommendations mandate that research involving more than minimal risk will be carried out on sick children, simply because they already are subject to similar or greater risks. The aggregate impact of risks is ignored and the burdens of research "fall unduly" on the sick child in clear violation of the Commission's own formulation of the principle of "justice."

To a certain extent because of their separation from their normal parents, the therapists and staff themselves often become surrogates for parental authority. When those therapists and medical staff are involved in a research project, the child's assent or failure to object may be influenced by the surrogate parent relationship.

With regard to parents there are certain obvious impacts on both the family unit and the parent that result from a child's illness. First, the emotional impact of a serious illness in the family may lead to a breakdown of the judgmental and perceptive relationships within the normal family unit. To a certain extent, the sick child becomes a burden that parents may not be capable of assuming without some diminishing of normal parental judgment and discretion. This is especially true in situations in which the child must be confined to an institution in order to obtain therapy or treatment. It is also true of those situations in which therapy or treatment at home is especially difficult and disruptive. Second, the parent of the sick child will in most instances have a long, intimate, and even emotional involvement with those who provide therapy for the child. As amply demonstrated in some of the filmed informed consent sequences presented to the Commission, that emotional involvement with the therapist may well have a severe and in fact even overriding inpact on the parents' judgment with regard to granting permission for the participation of their child in a research project.

In conclusion then both the principle of beneficence, and the adverse impact on the other protective mechanisms require that this Commission afford sick children greater protection than that afforded to children at large.

3. *The Distinctions Attempted in Both Sets of Deliberations are Shams and There is No Legal, Ethical or Social Basis for Subjecting Sick Children to More Than Minimal Risk Merely Because a Foreseeable Benefit Might Accrue to an Identifiable Class of Children in the Future.*

In its two sets of deliberations, the Commission has attempted to present a shopping list of reasons in support of Recommendation (5). Each of these shall be dealt with separately, below.

First, the Commission notes that "the scope of parental authority routinely covers a child's participation in many activities in which risk is more than minimal, and yet benefit is questionable (involvement in skiing and contact sports are two examples among many)." Without concurring in the judgment of the Commission that benefit in skiing and contact sports is questionable, it is clear to me that this same rationale holds true for normal children as well as sick children. Thus, I perceive no basis for making any distinction between the two classes of children on the basis of that statement.

Second, the Commission notes that it was "impressed by reported examples of diagnostic therapeutic and preventive measures that might well have been derived from research involving risks that, while minor, would be considered more than minimal." Again, that rationale provides no basis for segregating children into separate classes. The rationale is strictly utilitarian and is not specifically supported in the record. Moreover, at no point does the Commission require that such research be carried out only if normal children would not be scientifically appropriate subjects. In the absence of such a limitation, I do not believe a strictly utilitarian rationale can provide adequate justification for a policy creating a doubly disadvantaged class of children.

Third, the Commission suggests that more than minimal risk is a condition that is "normal" for sick children. My problems with that characterization have been expressed above and will not be repeated here.

Finally, both sets of Commission deliberations conclude that "foreseeable benefits in the future to an identifiable class of children may justify a minor increment of risk to research subjects." That statement can be used to justify large quantities of applied research utilizing sick as opposed to normal children. The statement itself is without legal, ethical or social justification. If such justification did exist, it could be applied equally as well to normal children. In a situation in which "conservative" limits are placed on the participation of normal children, relaxation of those limits for sick children constitutes a specific mandate and direction to shift the risks and burdens of research from children in general to those who, by nature of their illness, are least, and not most, appropriate research subjects.

Comment by Dr. Ryan, Chairman of the Commission

In spite of the diversity of views reflected in the foregoing statements, our recommendations were adopted almost unanimously. The dissenting statement of Commissioner Turtle reflects a sharp disagreement, however, and requires some comment since it is based, I believe, on a misunderstanding of Recommendation (5).

The Commission has adopted a conservative definition of "minimal risk," i.e., the risk of harm that is normally encountered in the daily lives, or in the routine medical or psychological examination, of healthy children. Virtually the entire Commission is in agreement that a "minor" or "slight" additional risk over that normally encountered may ethically be presented in very limited circumstances by research not intended to benefit directly the children who are subjects. These limited circumstances are commensurability of experience, likelihood of yielding generalizable knowledge about the subjects' disorder, and importance of that knowledge for understanding or treating such disorder. Further, provision must be made when appropriate, for the participation of parents in such research involving their children.

Recommendation (5) contemplates research into the nature and treatment of disorders that specifically afflict children. The limited circumstances under which such research may be approved under Recommendation (5) clearly indicate that the research must be related to the disorder or condition affecting those subjects who are involved. Such research cannot by its very nature be conducted on normal subjects. Accordingly, Mr. Turtle's statement that the Commission's recommendations require research presenting more than minimal risk to be carried out on sick children merely because they are already subject to such risk, and his contention that the recommendation would shift involvement in such research from normal to sick children, are both incorrect. The Commission's intention in Recommendation (5), and the likely effect of this recommendation, are clearly not to encourage any unnecessary involvement of sick children in research, but rather to permit the conduct of research intended to develop important knowledge of disease states from which certain children suffer and for which research they are the only appropriate subjects.

[FR Doc. 78-657 Filed 1-12-78; 8:45 am]

federal register

FRIDAY, JANUARY 13, 1978
PART IV

DEPARTMENT OF LABOR

Employment Standards Administration

■

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

MODIFICATIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State.

Alabama:	
AL77-1025	Mar. 4, 1977.
AL77-1040	Apr. 1, 1977.
Arkansas:	
AR77-4173	Aug. 19, 1977.
AR77-4285; AR77-4286; AR77-4287; AR77-4288	Sept. 30, 1977.
AL77-4290	Nov. 11, 1977.
Idaho	
ID77-5088	Oct. 7, 1977.
Mississippi:	
MS76-1004	Jan. 9, 1976.
MS77-1069	May 20, 1977.
MS77-1078	June 17, 1977.
Nevada:	
NV77-5072	July 8, 1977.
NV77-5077; NV77-5085; NV77-5089	Sept. 23, 1977.
Oklahoma:	
OK77-4273; OK77-4274	Sept. 30, 1977.
Texas:	
TX76-4039	Feb. 13, 1976.
TX77-4193; TX77-4197	Aug. 19, 1977.
TX77-4221	Sept. 23, 1977.
TX77-4236; TX77-4237; TX77-4238; TX77-4239; TX77-4240; TX77-4241; TX77-4242; TX77-4243; TX77-4244; TX77-4245; TX77-4246; TX77-4247; TX77-4248; TX77-4249; TX77-4250; TX77-4251; TX77-4252; TX77-4254; TX77-4256; TX77-4257; TX77-4258; TX77-4259; TX77-4260; TX77-4261; TX77-4262; TX77-4263; TX77-4264; TX77-4265; TX77-4280	Sept. 30, 1977.
TX77-4289	Oct. 21, 1977.
Utah:	
UT77-5075	Aug. 5, 1977.
Wisconsin:	
WI77-2102	July 15, 1977.
WI77-2126	Aug. 26, 1977.

SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Texas:	
TX77-4201 (TX77-4004)	Aug. 19, 1977.
TX77-4222 (TX77-4003)	Sept. 23, 1977.
TX77-4253 (TX77-4002)	Sept. 30, 1977.

Signed at Washington, D.C., this 6th day of January 1978.

RAY J. DOLAN,
Assistant Administrator,
Wage and Hour Division.

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision # AL77-1025 - Mod. #3 (42 FR-15277 - March 4, 1977) Lawrence, Limestone and Morgan Counties, Alabama					
CHANGE:					
Plumbers, pipefitters, steamfitters:					
Lawrence County (Eastern Portion of Co.., North from intersection of State Rt. 33 and Rt. 20 to Wheeler Lake including Moulton and Wren, excluding Bankhead National Park) Limestone Co. & Morgan Co.,	$10.50	.50	.55		.10
Decision # AL77-1040 - Mod. #5 (42 FR-17752 - April 1, 1977) Madison County, Alabama					
CHANGE:					
Plumbers & pipefitters	$ 10.50	.50	.55		.10
Power Equipment Operators:					
Group A	9.98	.40	.40		
Group B	8.64	.40	.40		
Group C	7.92	.40	.40		

MODIFICATIONS P. 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
DECISION NO. AR77-4173 - Mod. #4 (42 FR 42063 - August 19, 1977) Jefferson County, Arkansas					
CHANGE:					
ASBESTOS WORKERS	$10.70	.50	.70		.02
PLASTERERS	9.25				.02
DECISION NO. AR77-4285 - Mod. #3 (42 FR 52898 - September 30, 1977) Garland, Hot Springs and Clark Counties, Arkansas					
CHANGE:					
ASBESTOS WORKERS	10.70	.50	.70		.02
PLASTERERS	9.25				.02
BRICKLAYERS	8.40	.40	.35		.04
DECISION NO. AR77-4286 - Mod. #2 (42 FR 52900 - September 30, 1977) Union and Ouachita Counties, Arkansas					
CHANGE:					
ASBESTOS WORKERS	10.70	.50	.70		.02
PLASTERERS	9.25				.02
BRICKLAYERS	8.40	.40	.35		.04
DECISION NO. AR77-4287 - Mod. #5 (42 FR 52903 - September 30, 1977) Pulaski County, Arkansas					
CHANGE:					
ASBESTOS WORKERS	10.70	.50	.70		.02
PLASTERERS	9.25				.02
DECISION NO. AR77-4288 - Mod. #3 (42 FR 52901 - September 30, 1977) Sebastian, Crawford and Washington Counties, Arkansas					
CHANGE:					
PLASTERERS	9.25				.02
GLAZIERS (Washington County)	6.60				
DECISION NO. AR77-4290 - Mod. #2 (42 FR 58924 - November 11, 1977) Conway, Van Buren, Perry and Cleburne Counties, Arkansas					
CHANGE:					
ASBESTOS WORKERS	10.70	.50	.70		.02
PLASTERERS	9.25				.02

DECISION #ID77-5088 - Mod. #3
(42 FR 54709 - October 7, 1977)
Statewide Idaho

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers:					
Remaining Counties and Idaho County (south half)	$11.21	.84	$1.20		
Bricklayers; Stonemasons:					
Benewah, Bonner, Boundary, Kootenai, Shoshone Counties	12.00				
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington Counties	11.15	.75	1.10		
Glaziers:					
Benewah, Clearwater, Idaho County (north of 46th Parallel), Latah, Lewis, Nez Perce Counties	9.53	.40	.35	b	
Ada, Adams, Boise, Canyon, Elmore, Gem, Gooding County (western part of County from a line running north and south through the eastern limits of the City of Bliss), Idaho County (southern part of County from a line running east and west through the north limits of Elk City), Owyhee, Payette, Valley, Washington Counties	10.00	.35	.30		.10
Marble Setters:					
Benewah, Bonner, Boundary, Kootenai, Shoshone Counties	12.00				
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington Counties	11.15	.75	1.10		
Roofers:					
Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, - Idaho County (south of the 46th Parallel), Lemhi, Owyhee, Payette, Valley, Washington Counties:					
Roofers; Kettlemen	9.25	.60	.30	.50	
Roofers working with coal tar and pitch products	11.25	.60	.30	.50	

DECISION #ID77-5088 (Cont'd):

Add:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Terrazzo Workers & Tile Setters: Benewah, Bonner, Boundary, Kootenai, Shoshone Counties	$12.00				
Change:					
Terrazzo Workers & Tile Setters:					
Clearwater, Idaho, Latah, Lewis, Nez Perce Counties	10.75	.65	.70		
Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington Counties	10.60	.75	1.10		
Decision # MS76-1004 - Mod. # 2 (41 FR-1695 - January 9, 1976) Washington, Warren, Sunflower, and Coahoma Counties, Mississippi.					
Change:					
Laborers:					
Laborers	2.65				
Asphalt raker	2.65				
Mason tender	2.65				
Mortar mixer	2.65				
Decision # MS77-1069 - Mod. # 1 (42 FR-26094 - May 20, 1977) Bolivar County, Mississippi.					
Change:					
Ironworkers, reinforcing	2.65				
Laborers:					
Laborers	2.65				
Mortar mixers	2.65				
Plasterers' tenders	2.65				
Truck Drivers	2.65				
Decision # MS77-1078 - Mod. #3 (42 FR-31044 - June 17,1977) Lowndes County (excluding Columbia Lock and Dam and Tennessee Tombigbee Project Mississippi					
CHANGE:					
Ironworkers, reinforcing	$ 10.00	.60	.815		.06

DECISION #NV77-5072 - Mod. #6 (42 FR 35562 - July 8, 1977) Nevada Test Site including Tonopah Test Range in Clark and Nye Counties, Nevada	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers:	$13.87	.85	$1.20		
Omit:					
Brick Tenders	10.02	.66	1.35		
Add:					
Mason Tenders	10.02	.66	1.35		
DECISION #NV77-5077 - Mod. #5 (42 FR 48662 - September 23, 1977) Statewide (does not include the Nevada Test Site and Tonopah Test Range, and highway construction in Douglas County), Nevada					
Change:					
Asbestos Workers:					
Elko, Eureka, White Pine Counties	$11.21	.84	$1.20		
Add:					
Brick Hod Carriers:					
Statewide excluding Clark, Esmeralda, Lincoln, Nye County (south half):					
Zone A: 0-35 miles from Courthouse in Reno, Nevada	9.60	.50	.90		.05
Zone B: 35-75 miles from Courthouse in Reno, Nevada	10.50	.50	.90		.05
Omit:					
Brick Tenders:					
Clark, Esmeralda, Lincoln, Nye County (south half)	10.02	.66	1.35		
Remaining Counties:					
Zone A: 0-35 miles from Courthouse in Reno, Nevada	9.60	.50	.90		.05
Zone B: 35-75 miles from Courthouse in Reno, Nevada	10.50	.50	.90		.05
Change:					
Bricklayers; Stonemasons:					
Clark, Esmeralda, Lincoln, Nye County (south of Hwy. #6)	12.27	.70	.60		.06
Marble Masons:					
Clark, Esmeralda, Lincoln, Nye County (south half)	12.27	.70	.60		.06
Remaining Counties and Nye County (north half)	11.45	.50	.60		.01

DECISION #NV77-5077 (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Add:					
Marble, Terrazzo, Tile Helpers:					
Clark, Esmeralda, Lincoln, Nye County (south half)	$9.65	.70	.60		
Remaining Counties and Nye County (north half)	6.87	.50	.60		.01
Mason Tenders:					
Clark, Esmeralda, Lincoln, Nye County (south half)	10.02	.66	1.35		
Plaster Hod Carriers:					
Statewide except Clark, Esmeralda, Lincoln, Nye County (south half):					
Plaster Hod Carriers serving Plasterers	10.75	.50	.90		
Plaster Hod Carriers working on any type of gun	11.35	.50	.90		
Plaster Tenders:					
Clark, Esmeralda, Lincoln, Nye County (south half)	11.12	.66	1.35		
Omit:					
Plasterer Tenders:					
Clark, Esmeralda, Lincoln, Nye County (south half)	11.12	.66	1.35		
Remaining Counties:					
Plasterer Tenders serving Plasterers	10.75	.50	.90		
Plasterer Tenders working on any type of gun	11.35	.50	.90		
Change:					
Soft Floor Layers:					
Clark, Esmeralda, Lincoln, Nye Counties	13.07	.65			.15
Terrazzo Workers; Tile Setters:					
Clark, Esmeralda, Lincoln, Nye County (south half)	12.27	.70	.60		.06

DECISION #NV77-5085 - Mod. #3 (42 FR 48679 - September 23, 1977) Clark County (does not include the Nevada Test Site), Nevada	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Omit:					
Brick Tenders	$10.02	.66	$1.35		
Change:					
Bricklayers; Stonemasons	12.27	.70	.60		.06
Marble Masons	12.27	.70	.60		.06
Add:					
Marble, Terrazzo, Tile Helpers	9.65	.70	.60		
Mason Tenders	10.02	.66	1.35		
Plaster Tenders	11.12	.66	1.35		
Omit:					
Plasterers' Tenders	11.12	.66	1.35		
Change:					
Soft Floor Layers	13.07	.65			.15
Terrazzo Workers; Tile Setters	12.27	.70	.60		.06
DECISION #NV77-5089 - Mod. #4 (42 FR 48665 - September 23, 1977) Washoe County, Nevada					
Add:					
Brick Hod Carriers:					
Zone 1: 0-35 miles from Court-house in Reno, Nevada	$9.60	.50	.90		.05
Zone 2: 35-75 miles from Court-house in Reno, Nevada	10.50	.50	.90		.05
Omit:					
Brick Tenders:					
Zone 1: 0-35 miles from Court-house in Reno, Nevada	9.60	.50	.90		.05
Zone 2: 35-75 miles from Court-house in Reno, Nevada	10.50	.50	.90		.05
Add:					
Marble, Terrazzo, Tile Helpers	6.87	.50	.60		.01
Plaster Hod Carriers:					
Plaster Hod Carrier serving Plasterers	10.75	.50	.90		
Plaster Hod Carrier working on any type of gun	11.35	.50	.90		
Omit:					
Plasterer Tenders:					
Plasterer Tender serving Plasterers	10.75	.50	.90		
Plasterer Tender working on any type of gun	11.35	.50	.90		

DECISION NO. OK77-4273 - Mod. #4 (42 FR 53091 - September 30, 1977) Oklahoma, Cleveland, Caddo, Grady, Canadian, Kingfisher, Logan, Lincoln, McClain, Seminole and Pottawatomie Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
SHEET METAL WORKERS	$10.82	.50	.84		.07
ELECTRICIANS:					
Zone I	10.35	.50	3%+.70		1%
Zone II	10.60	.50	3%+.70		1%
Zone III	10.85	.50	3%+.70		1%
CABLE SPLICERS:					
Zone I	10.60	.50	3%+.70		1%
Zone II	10.85	.50	3%+.70		1%
Zone III	11.10	.50	3%+.70		1%
BRICKLAYERS-STONEMASONS:					
Oklahoma, Cleveland, Canadian and McClain Counties	10.27	.50	.50		.05
Lincoln, Pottawatomie and Seminole Counties	9.85	.50	.30		.05
Logan County	10.27	.50	.50		.05
Caddo and Grady Counties	9.50	.50	.30		.10
OMIT FROM MODIFICATION #3 ISSUED IN FEDERAL REGISTER PUBLISHED DECEMBER 9, 1977:					
BRICKLAYERS	$10.27	.50	.50		.05
DECISION NO. OK77-4274 - Mod. #4 (42 FR 53094 - September 30, 1977) Garfield County, Oklahoma					
CHANGE:					
SHEET METAL WORKERS	10.82	.40	.84		.07
ELECTRICIANS:					
Zone I	10.35	.50	3%+.70		1%
Zone II	10.60	.50	3%+.70		1%
Zone III	10.85	.50	3%+.70		1%
CABLE SPLICERS:					
Zone I	10.60	.50	3%+.70		1%
Zone II	10.85	.50	3%+.70		1%
Zone III	11.10	.50	3%+.70		1%

DECISION #TX77-4193 - Mod. #4 (42 FR 42121 - August 19, 1977) - Bexar County, Texas
DECISION #TX77-4221 - Mod. #7 (42 FR 48723 - September 23, 1977) - Travis County, Texas
DECISION #TX77-4252 - Mod. #6 (42 FR 53147 - September 30, 1977) - Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas
DECISION #TX77-4254 - Mod. #6 (42 FR 53150 - September 30, 1977) - Bee, Kleberg & Nueces Cos., Texas
DECISION #TX77-4256 - Mod. #8 (42 FR 53154 - September 30, 1977) - Brazos County, Texas
DECISION #TX77-4258 - Mod. #8 (42 FR 53158 - September 30, 1977) - Galveston & Harris Cos., Texas
DECISION #TX77-4259 - Mod. #3 (42 FR 53161 - September 30, 1977) - Gregg County, Texas
DECISION #TX77-4261 - Mod. #5 (42 FR 53165 - September 30, 1977) - Lubbock County, Texas
DECISION #TX77-4262 - Mod. #2 (42 FR 53167 - September 30, 1977) - Smith County, Texas
DECISION #TX77-4263 - Mod. #3 (42 FR 53167 - September 30, 1977) - Taylor County, Texas
DECISION #TX77-4264 - Mod. #3 (42 FR 53168 - September 30, 1977) - Tom Green County, Texas
DECISION #TX77-4265 - Mod. #4 (42 FR 53169 - September 30, 1977) - Wichita County, Texas
DECISION #TX77-4280 - Mod. #3 (42 FR 53171 - September 30, 1977) - Cameron, Hidalgo, Starr & Willacy Counties, Texas
DECISION #TX77-4289 - Mod. #2 (42 FR 56311 - October 21, 1977) - Harrison County, Texas

Change Description of Work to Read as Follows:
Building Construction (does not include single family homes & garden type apartments up to & including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

DECISION #TX76-4039 - Mod. #3 (41 FR 7014 - February 13, 1976) - Dimmit, Jim Hogg, LaSalle Maverick, Webb, Zapata & Zavala Counties, Texas
DECISION #TX77-4260 - Mod. #6 (42 FR 53162 - September 30, 1977) - Jefferson & Orange Counties, Texas

Change Description of Work to Read as Follows:
Building (including Residential) Construction

DECISION #TX77-4197 - Mod. #5 (42 FR 42127 - August 19, 1977) - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties, Texas

Change Description of Work to Read as Follows:
Building Construction (does not include single family homes & garden type apartments up to & including 4 stories) & also does not include Dallas-Fort Worth Regional Airport. (see current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

DECISION #TX77-4257 - Mod. #4 (42 FR 53156 - September 30, 1977) - El Paso County, Texas

Change Description of Work to Read as Follows:
Building Construction (does not include single family homes & garden type apartments up to & including 4 stories). (see current heavy & highway general wage determination for Paving Incidental to Building Construction).

DECISION #TX77-4236 - Mod. #1 (42 FR 53118 - September 30, 1977) - Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Montague, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, Wichita & Wilbarger Cos., Texas
DECISION #TX77-4237 - Mod. #1 (42 FR 53120 - September 30, 1977) - Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Foard, Gaines, Garza, Hale, Haskell, Hockley, Jones, Kent, King, Knox, Lamb, Lubbock, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry, Throckmorton, Yoakum & Young Cos., Texas
DECISION #TX77-4238 - Mod. #1 (42 FR 53122 - September 30, 1977) - Andrews, Brown, Callahan, Coke, Coleman, Comanche, Concho, Crane, Crockett, Eastland, Ector, Erath, Glasscock, Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Midland, Mills, Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Taylor, Tom Green, Upton, Ward & Winkler Co., Texas
DECISION #TX77-4240 - Mod. #2 (42 FR 53126 - September 30, 1977) - Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Guadalupe, Kendall, Kerr, Kinney, LaSalle, Maverick, McMullen, Medina, Real, Uvalde, Val Verde, Wilson & Zavala Cos., Texas
DECISION #TX77-4243 - Mod. #2 (42 FR 53132 - September 30, 1977) - Austin, Bastrop, Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Hays, Lee, Llano, Mason, Travis & Williamson Cos., Texas
DECISION #TX77-4247 - Mod. #1 (42 FR 53140 - September 30, 1977) - Bowie, Camp, Cass, Delta, Fannin, Franklin, Gregg, Harrison, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Rains, Red River, Rusk, Smith, Titus, Upshur, Van Zandt & Wood Counties, Texas
DECISION #TX77-4249 - Mod. #1 (42 FR 53143 - September 30, 1977) - Brazos, Burleson, Grimes, Leon, Madison, Milam, Robertson, Walker & Washington Cos., Texas

Change Description of Work to Read as Follows:
Heavy (does not include tunnels & dams) & Highway (does not include building structures in rest area projects) Construction & Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #TX77-4239 - Mod. #2 (42 FR 53124 - September 30, 1977) - Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Cos., Texas

Change Description of Work to Read as Follows:
Heavy (does not include tunnels & dams) & Highway (does not include building structures in rest area projects) Construction & Paving & Utilities Incidental to General Building Construction (not to be used for Utilities Incidental to General Building Construction in El Paso Co.). This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #TX77-4241 - Mod. #1 (42 FR 53128 - September 30, 1977) - Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy & Zapata Cos., Texas
DECISION #TX77-4242 - Mod. #2 (42 FR 53130 - September 30, 1977) - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, Live Oak, Nueces, Refugio, San Patricio & Victoria Cos., Texas
DECISION #TX77-4248 - Mod. #1 - (42 FR 53142 - September 30, 1977) - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Cos., Texas

Change Description of Work Read as Follows:
Heavy (does not include tunnels & dams) & Highway (does not include building structures in rest area projects) Construction & Incidental Shore Work & Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #TX77-4244 - Mod. #1 (42 FR 53134 - September 30, 1977) - Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone, McLennan & Navarro Cos., Texas

Change Description of Work to Read as Follows:
Heavy (does not include tunnels & dams) & Highway (does not include building structures in rest area projects) Construction & Paving & Utilities Incidental to General Building Construction (not to be used for Paving & Utilities Incidental to General Building Construction in Bell & Coryell Cos.). This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #TX77-4245 - Mod. #1 (42 FR 53136 - September 30, 1977) - Cooke, Denton, Hood, Jack, Johnson, Palo Pinto, Parker, Sommervell, Tarrant (does not include Dallas-Fort Worth Regional Airport) & Wise Cos., Texas

Change Description of Work to Read as Follows:
Heavy (does not include tunnels, dams & work performed on the site of water or sewage treatment facilities) & Highway (does not include building structures in rest area projects) Construction & Paving & Utilities Incidental to General Building Construction (not to be used for Utilities Incidental to General Building Construction in Tarrant Co.). This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #TX77-4246 - Mod. #1 (42 FR 53138 - September 30, 1977) - Collin, Dallas (does not include Dallas-Fort Worth Regional Airport), Ellis, Grayson & Rockwall Cos., Texas

Change Description of Work to Read as Follows:
Heavy (does not include tunnels, dams & work performed on the site of water or sewage treatment facilities) & Highway (does not include building structures in rest area projects) Construction & Paving & Utilities Incidental to General Building Construction. This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #TX4250 - Mod. #2 (42 FR 53144 - September 30, 1977) - Brazoria, Fort Bend, Galveston, Harris, Matagorda, Montgomery, Waller & Wharton Cos., Texas

Change Description of Work to Read as Follows:
Highway (does not include building structures in rest area projects) Construction, & Paving & Utilities Incidental to General Building Construction (not to be used for Paving & Utilities Incidental to General Building Construction on Galveston Island). This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #TX77-4251 - Mod. #1 (42 FR 53146 - September 30, 1977) - Chambers, Hardin, Jefferson, Liberty & Orange Cos., Texas

Change Description of Work to Read as Follows:
Heavy (does not include tunnels & dams & not to be used for Heavy Construction in Jefferson & Orange Cos.) & Highway (does not include building structures in rest area projects) Construction, Incidental Shore Work (not to be used for Incidental Shore Work in Jefferson & Orange Cos.) & Paving & Utilities Incidental to General Building Construction (not to be used for Paving & Utilities Incidental to General Building Construction in Jefferson & Orange Cos.). This wage determination does not apply to any residential construction (single family homes & garden type apartments up to & including 4 stories).

DECISION #UT77-5075 - Mod. #5
(42 FR 39884 - August 5, 1977)
Statewide Utah

Change:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$11.21	.84	$1.20		
Painters:					
Remaining part of State:					
Brush; Roller	9.70	.51	.30		.02
Brush (swing stage); Brush (steel and bridge); Spray Sandblaster; Steeplejack	10.00	.51	.30		.02
Spray (swing stage); Spray, (steel and bridge); Sandblaster (swing stage)	10.25	.51	.30		.02
Wallcovering Hanger	9.95	.51	.30		.02

DECISION NO. WI77-2102 - MOD. #3
(42 FR 36781 - July 15, 1977)
Statewide, Wisconsin

Change:					
Bricklayers:					
Zone 1 - Barron, Buffalo, Burnett, Chippewa, Dunn, Eau Claire, Pepin, Polk, Rusk, St. Croix, and Sawyer Counties	$ 9.75	.65	.25		.05
Zone 4 - Green, Lafayette, and Rock Counties	10.38	.65	.30		
Zone 7 - Dane, Grant Iowa, and Richland Counties	9.29	.65	.60	.50	
Zone 9 - Columbia and Sauk Counties	10.10	.65	.30		
Zone 10 - Kenosha and Racine Counties	10.55	.60	.60	.50	.05
Zone 11 - Sheboygan County	9.20	.65	.40		.05
Zone 14 - Adams, Clark, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Price, Taylor, Vilas, and Wood Counties	9.30	.65	.35		
Carpenters:					
Zone 1 - Ashland County					
Carpenters	8.59	.50	.30	.15	
Piledrivermen	8.79	.50	.30	.15	
Zone 4 - Green, Jefferson and Rock Counties					
Carpenters	10.28	.50	.50	.07	
Piledrivermen	10.43	.50	.50	.07	
Zone 5 - Kenosha County					
Carpenters	10.30	.40	.85		.05
Piledrivermen	10.38	.40	.85		.05
Zone 10 - Racine County					
Carpenters	10.10	.60	.85		.05
Piledrivermen	10.18	.60	.85		.05
Zone 11 - Sheboygan County					
Carpenters	9.35	.75	.30		
Piledrivermen	10.39	.75	.30		

DECISION NO. WI77-2102 Continued	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 13 - Walworth County					
Carpenters	10.28	.50	.50		.07
Piledrivermen	10.43	.50	.50		.07
Cement Masons.					
Zone 2 - Barron, Burnett, Chippewa, Dunn, Polk, Rusk, St. Croix, Sawyer and Washburn Counties	9.75	.65	.25		.05
Zone 3 - Adams, Clark, Forest, Langlade, Lincoln, Marathon, Menominee, Oneida, Portage, Price, Taylor, Vilas, and Wood Counties	8.80	.65	.30		.04
Zone 4 - Buffalo, Eau Clair, Pepin and Pierce Counties	9.75	.65	.25		.05
Zone 11 - Columbia and Sauk Counties	9.85	.65	.40		
Zone 14 - Grant County	9.93				
Zone 15 - Walworth County	9.26	.60	.60	.50	.05
Electricians:					
Zone 2 - Barron, Buffalo, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, Price, Rusk, St. Croix and Taylor Counties	10.92	5%	3%		
Zone 3 - Brown, Door, Kewaunee, and Shawano Counties	10.93	.60	3%		1/8%
Zone 4 - Florence Forest Counties	11.06	.40	3%		.5%
Zone 5 - Kenosha County	12.07	.51	3%	.25	.75%
Zone 6 - Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon counties	10.92	.55	3%		
Zone 7 - Walworth County	10.70	.45	3%	7%	½%
Zone 8 - Columbia, Dane, Dodge, Green Lake, Iowa, Marquette, and Sauk Counties	10.45	.74	3%	8%	

DECISION NO. WI77-2102 - MOD. #3	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians (cont'd)					
Zone 9 - Sheboygan County	9.83	.92	3%+.35	10%	½%
Zone 13 - Fond Dul Lac County	9.83	.92	3%+.35	10%	½%
Ironworkers:					
Zone 3 - Adams, Columbia, Crawford, Dane, dodge, Grant, Green Lake and Other Counties	10.72	.65	.375		.055
Zone 5 - Rock County	12.60	.65	.375		.10
Line Construction:					
Linemen	9.97	5%	7%		.5%
Heavy Equipment Operator	8.97	5%	7%		.5%
Light Equipment Operator	7.98	5%	7%		.5%
Heavy Groundman - Truck driver	6.98	5%	7%		.5%
Light Groundman - Truck driver	6.48	5%	7%		.5%
Groundman	5.48	5%	7%		.5%
Painters:					
Zone 3 - Brown, Door, Kewaunee, & Oconto Counties					
Brush	8.70	.80			
Spray	9.08	.80			
Zone 5 - Kenosha County					
Brush	9.325	.40	.40		
Spray	10.07	.40	.40		
Zone 6 - Adams, Clark, Crawford, Jackson, Juneau, La Crosse, Monroe, Portage, Vernon & wood Counties					
Brush	8.43		.45		
Spray	9.12		.45		
Zone 7 - Walworth County					
Brush	9.325	.40	.40		
Spray	10.07	.40	.40		
Zone 9 - Calumet and Mantitowoc Counties					
Brush	8.25				
Spray	8.75				
Zone 12 - Fond Du Lac, Green Lake, Marquette, Outagamie, Shawano, Waushara, Waupaca, and Winnebago Counties					
Brush and Steel	8.80	.70	.10		.03
Spray	9.30	.70	.10		.03
Zone 13 - Racine County					
Brush	9.20	.55	.60		.05
Spray	9.95	.55	.60		.05
Zone 15 - Ashland, Bayfield, Douglas, Iron, and Vilas Counties					
Brush	10.08	.40	.40		.09
Spray and Steel	10.68	.40	.40		.09

DECISION NO. WI77-2126 - MOD. #1 (42 FR 43364 - August 26, 1977) Statewide, Wisconsin	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Zone 1 - Ashland, and Iron Counties and east ½ of Bayfield County					
Carpenters	$ 8.59	.50	.30	.15	
Piledrivermen	8.79	.50	.30	.15	
Cement Masons:					
Zone 4 - Eau Claire, Pepin, & Pierce Counties & the North ½ of Buffalo, Jackson & Trempealeau Counties	9.75	.65	.25		.05
Zone 10 - Columbia and Sauk Counties	9.85	.65	.40		
Zone 13 - Grant County	9.93				
Electricians:					
Zone 2 - Barron, Chippewa, Clark, Dunn, Eau Claire, Pepin, Pierce, Polk, Rusk and Taylor Counties etc.	10.92	5%	3%		¼ of 1%
Zone 4 - Florence & Forest Cos. and that portion of Marinette County North of Ambest, Athelstone, and silver Cliff Townships	11.06	.40	3%		¼ of 1%
Zone 5 - Kenosha County	12.07	.51	3%		.75%
Zone 6 - Crawford, Grant, Juneau, La Crosse, Monroe, Richland & Vernon Counties & the remainder of Buffalo, Jackson & Trempealeau Cos.	10.92	.55	3%		
Zone 8 - Columbia, Dane, Dodge Iowa & Sauk Counties and the remaidner of Green Lake and Marquette Counties	10.45	.74	3%	8%	.75%
Zone 9 - Sheboygan County	9.83	.92	3%+.35	10%	1¼ of 1%
Zone 13 - Fond Du Lac County	9.83	.92	3%+.35	10%	1¼ of 1%

DECISION NO. WI77-2126 continued	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Ironworkers:					
Zone 3 - Adams, Columbia, Crawford, Dane, Grant, Green Lake, Iowa, etc.	10.72	.65	.375		.055
Line Construction:					
Linemen	9.97	5%	7%		.5%
Heavy equipment Operator	8.97	5%	7%		.5%
Equipment Operator	7.98	5%	7%		.5%
Heavy Groundman - Truck driver	6.98	5%	7%		.5%
Light Groundman - Truck driver	6.48	5%	7%		.5%
Painters:					
Zone 3 - Brown, Door, Kewaunee, & Oconto Counties					
Brush	8.70	.80		.50	
Spray	9.08	.80		.50	
Zone 5 - Kenosha County					
Brush	9.325	.40	.40		
Steel	9.475	.40	.40		
Spray	10.07	.40	.40		
Zone 7 - Walworth County					
Brush	9.325	.40	.40		
Steel	9.475	.40	.40		
Spray	10.07	.40	.40		
Zone 9 - Manitowoc County and the South ½ of Calumet County					
Brush	8.25				
Spray & Steel	8.75				
Zone 15 - Ashland, Bayfield, Douglas, Iron & Vilas Counties					
Brush	10.08	.40	.40		.09
Spray & Steel	10.68	.40	.40		.09
Truck Drivers:					
Change Pensions on all Zones and all Groups to			$25.00a		

FOOTNOTE:

a. Per week per employee on payroll 30 days or longer.

SUPERSEDEAS DECISION

STATE: Texas

COUNTIES: Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler

DECISION NO.: TX78-4002

DATE: Date of Publication

Supersedes Decision No. TX77-4253, dated September 30, 1977, in 42 FR 53149.

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BOILERMAKERS	$10.00	.50	1.00		.02
BRICKLAYERS	10.05		.30		
CARPENTERS	9.54		.40		.01
CEMENT MASONS	8.30				
ELECTRICIANS	10.58	.60	3%		1/2%
LABORERS:					
Laborers	5.16	.53	.27		
Mason tenders	5.32	.53	.27		
PAINTERS	8.45		.40		
PLUMBERS	9.56	.45	.65	.60	
SHEET METAL WORKERS	6.70	.35	.55		.10

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asphalt Heaterman	$ 3.70				
Asphalt Raker	4.10				
Batching Plant Scaleman	4.90				
Carpenter	4.70				
Carpenter Helper	4.00				
Concrete Finisher (Paving)	4.50				
Concrete Finisher Helper (Paving)	3.50				
Concrete Finisher (Structures)	4.75				
Concrete Finisher Helper (Structures)	4.00				
Form Builder (Structures)	4.75				
Form Builder Helper(Structures)	4.50				
Form Liner (Paving & Curb)	4.00				
Form Setter (Paving & Curb)	4.00				
Form Setter Helper (Paving & Curb)	3.50				
Form Setter (Structures)	5.05				
Form Setter Helper (Structures)	4.40				
Laborer, Common	3.00				
Laborer, Utility Man	3.65				
Manhole Builder, Brick	4.00				
Mechanic	5.10				
Mechanic Helper	3.50				
Oiler	4.20				
Serviceman	4.05				
Painter (Structures)	5.00				
Pipelayer	3.75				
Pipelayer Helper	3.25				
Powderman	4.20				
Reinforcing Steel Setter(Paving)	4.35				
Reinforcing Steel Setter (Structures)	4.85				
Reinforcing Steel Setter Helper	3.65				
Sign Erector	3.50				
Spreader Box Man	4.35				
Swamper	3.10				
Power Equipment Operators:					
Asphalt Distributor	4.65				
Asphalt Paving Machine	5.00				
Broom or Sweeper Operator	3.55				
Bulldozer, 150 HP and Less	4.20				
Bulldozer, over 150 HP	4.85				
Concrete Paving Curing Machine	4.75				
Concrete Paving Finishing Machine	4.80				
Concrete Paving Form Grader	3.75				
Concrete Paving Mixer	4.80				
Concrete Paving Saw	4.30				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.55				

DECISION NO. TX78-4002 Page 3

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	$ 5.05				
Crusher or Screening Plant Op.	4.95				
Foundation Drill Operator (Crawler Mounted)	5.35				
Foundation Drill Operator (Truck Mounted)	5.85				
Foundation Drill Op. Helper	4.00				
Front End Loader (2½ CY & Less)	4.20				
Front End Loader (Over 2½ CY)	4.90				
Mixer (Over 16 CF)	4.65				
Motor Grader Op., Fine Grade	5.50				
Motor Grader Operator	5.00				
Roller, Steel Wheel (Plant-Mix Pavements)	3.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.90				
Roller, Pneumatic (Self-Propelled)	3.85				
Scrapers (17 CY and Less)	4.35				
Scrapers (Over 17 CY)	4.80				
Side Boom	4.00				
Tractor (Crawler Type) 150 HP and Less	3.80				
Tractor (Crawler Type) over 150 HP	4.30				
Tractor (Pneumatic) 80 HP and Less	3.75				
Tractor (Pneumatic) over 80 HP	4.30				
Traveling Mixer	4.35				
Trenching Machine, Light	4.00				
Trenching Machine, Heavy	4.00				
Wagon Drill, Boring Machine or Post Hole Driller Operator	4.00				
Truck Drivers:					
Single Axle, Light	3.00				
Single Axle, Heavy	3.75				
Tandem Axle or Semitrailer	3.45				
Lowboy-Float	3.55				
Transit-Mix	3.50				
Vibrator Man (Hand Type)	3.05				
Weighman (Truck Scales)	3.25				
Welder	5.50				

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Bell, Bosque, Coryell, Falls, Hill & McLennan

DECISION NO.: TX78-4003 DATE: Date of Publication

Supersedes Decision No. TX77-4222, dated September 23, 1977, in 42 FR 48725.

DESCRIPTION OF WORK: Building Construction (does not include single family homes & garden type apartments up to & including 4 stories). (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction in Bosque, Falls, Hill & McLennan Counties).

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
ZONE 1 - Bell, Coryell & Falls	$10.35	.60	.60		.08
ZONE 2 - Bosque, Hill & McLennan	10.03	.40	.76		.025
BOILERMAKERS	10.00	.50	1.00		.02
BRICKLAYERS	9.60		.55		.03
CARPENTERS:					
ZONE 1 - Bell & Coryell Cos.:					
Carpenters	8.70				
Millwrights	8.95				
ZONE 2 - Bosque, Falls, Hill & McLennan:					
Carpenters	8.95				
Millwrights	9.35				
CEMENT MASONS	8.69	.40	.30		
ELECTRICIANS:					
ZONE 1 - Bell (that part which is nearer to Waco than Austin but excluding that part of Ft. Hood, the boundary which presently is located approx. 2 miles inside the Bell Co. line & the City of Killeen), Bosque, Coryell (except that part of Ft. Hood south of Cowhouse Creek), Falls, Hill & McLennan Cos.	9.40	.60	3%		1/4%
ZONE 2 - Bell (that part which is nearer to Austin than Waco & not to extend more than 2 miles into Bell Co. from the southeast boundary line of Coryell Co., Gray Field & the City of Killeen) & Coryell (that part south of Cowhouse Creek) Counties	10.70		8%		.8%
ELEVATOR CONSTRUCTORS:					
Mechanics	9.91	.745	.35	4%+a+b	.02
Helpers	70%JR	.745	.35	4%+a+b	.02
Helpers (Probationary)	50%JR				
GLAZIERS	7.00				
IRONWORKERS	9.45	.55	1.00		.12
LABORERS:					
Unskilled	2.97				
Mason tenders & mortar mixers	3.55				
LATHERS	9.30			.80	.05
LINE CONSTRUCTION:					
Linemen; Linemen operators	11.52		3%		1/2%
Cable splicers	12.67		3%		1/2%
Groundman, 1st 6 months	6.91		3%		1/2%
Groundman, 2nd 6 months	7.49		3%		1/2%
Groundman, 1 year & over	8.06		3%		1/2%
PAINTERS:					
GROUP 1 - Brush	7.60				.04
GROUP 2 - Boiler pipes & steel, structural steel, windos jacks, roofs, stage work, smoke stack, water towers, boatswain chair	8.10				.04

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 3 - Ames tools for dry wall	$ 8.20				.04
GROUP 4 - Spray work & self feeding rollers	8.35				.04
GROUP 5 - Steam cleaning, sandblasting & hazardous work	8.70				.04
PLASTERERS	9.54	.45	.50		.01
PLUMBERS & PIPEFITTERS:					
ZONE 1 - Area within a 35 mile radius of Waco including Temple, Marline, Clifton & Hillsboro	8.70	.30	.33		.03
ZONE 2 - All other areas	9.10	.30	.33		.03
ROOFERS:					
GROUP 1 - Slate, tile, asbestos, roofing & siding	6.95				.03
GROUP 2 - Composition, built-up, damp & waterproofing	6.80				.03
GROUP 3 - Kettlemen	5.10				.03
SHEET METAL WORKERS:					
ZONE 1 - Within a radius of 20 miles from the McLennan Co. Court House, Waco	9.26		.39		.05
ZONE 2 - Over 20 miles but less than 45 miles including the towns of Hillsboro, Temple, Marlin, Gatesville & Clifton	9.76		.39		.05
ZONE 3 - Over 45 miles	10.26		.39		.05
SPRINKLER FITTERS	11.15	.65	.95		.08
TRUCK DRIVERS	2.80				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 mos. - none; 6 mos. to 5 yrs. - 2%; over 5 yrs. - 4% of basic hourly rate
b - Paid Holidays A thru G

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; F-Christmas Day

DECISION NO. TX78-4003

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
GROUP 1	$ 8.63		.40		
GROUP 2	7.56		.40		
GROUP 3	6.34		.40		
GROUP 4	6.23		.40		

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Heavy Duty Mechanic; Blade Grader - Self-propelled; Bull Clam; Back Filler; Derricks, power operated (all types); Dragline; Push Cat Operator; Euclid Operator; Bull Dozer and all types of Cat Tractors; Cable-Way; Back Hoe; Crane, Power Operated (all types); Elevating Grader, self-propelled; Hoist, Motor-Driver, two drums or more; Mix Mobile; High-Lifts & Loaders, over 1/3 cu. yd. capacity; Winch Truck; Locomotive; Mixer, 14 cu. ft. or over; Paving Mixer (all sizes); Scraper; Trenching Machine (all sizes); Gradall; Foundation Boring Machine; Scoopmobile; Shovel, power operated; Pump Crete Machines; Clam Shell Operator; Rock Crusher Operated on Job; Welding Machine, 6 to 12; Two 125 cu. ft. Compressors; Well points, including installations

GROUP 2 - Blade Grader, Towed; Flex Plane; Form Grader; Mixer, less than 14 cu. ft.; Pulsometer; Truck Crane Driver & Oiler, Combination man; Gasoline or Diesel Driven Welding Machine, 3 to 6; Hoist, Single Drum; Pump, 2½ in. or larger; Pneumatic Roller; High-Lifts & Loaders, 1/3 cu. yd. or less; Forklift, 1500 lbs. capacity or less; Air Compressors, anytime there are two or more attachments operating on a 125 cu. ft. compressor, a light equipment operator shall be employed. One 125 cu. ft. air compressor and one welding machine requires no operator. One 125 cu. ft. compressor and two welding machines or any ? air compressors equivalent to a 125 cu. ft. air compressor requires a light equipment operator

GROUP 3 - Fireman

GROUP 4 - Oiler

DECISION NO. TX78-4003 Page 4

INCIDENTAL PAVING & UTILITIES (BELL & CORYELL COUNTIES)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 3.00				
Asphalt Heaterman	3.55				
Asphalt Raker	4.00				
Batching Plant Scaleman	4.25				
Carpenter	4.35				
Carpenter Helper	3.55				
Concrete Finisher (Paving)	4.75				
Concrete Finisher Helper(Paving)	3.75				
Concrete Finisher (Structures)	4.50				
Concrete Finisher Helper (Structures)	3.50				
Concrete Rubber	3.35				
Electrician	6.50				
Electrician Helper	4.00				
Form Builder (Structures)	4.00				
Form Builder Helper(Structures)	3.50				
Form Setter (Paving & Curb)	4.20				
Form Setter (Structures)	4.25				
Form Setter Helper (Structures)	3.55				
Laborer, Common	3.00				
Laborer, Utility Man	3.00				
Mechanic	4.60				
Mechanic Helper	3.80				
Oiler	3.25				
Serviceman	3.50				
Painter (Structures)	3.50				
Piledrivermen	4.00				
Pipelayer (Concrete & Clay)	4.00				
Pipelayer Helper (Concrete & Clay)	3.00				
Plumbers:					
Zone 1 - 35 miles from Waco, Texas including town of Temple	8.70	.30	.33		.03
Zone 2 - all area not included in Zone 1	9.10	.30	.33		.03
Powderman	4.35				
Reinforcing Steel Setter (Structures)	4.50				
Reinforcing Steel Setter Helper	3.00				
Sign Erector	4.50				
Sign Erector Helper	3.00				
Spreader Box Man	4.10				
Swamper	4.05				
Power Equipment Operators:					
Asphalt Distributor	4.00				
Asphalt Paving Machine	4.10				
Broom or Sweeper Operator	3.90				
Bulldozer, 150 HP and Less	3.75				
Bulldozer, over 150 HP	4.50				
Concrete Paving Curing Machine	4.00				
Concrete Paving Saw	4.75				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.00				

DECISION NO. TX78-4003 Page 5

INCIDENTAL PAVING & UTILITIES (BELL & CORYELL COUNTIES)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1p CY and Over)	$ 4.75				
Crusher or Screening Plant Op.	4.15				
Foundation Drill Operator (Truck Mounted)	5.40				
Foundation Drill Operator Helper	4.25				
Front End Loader (2½ CY & Less)	4.00				
Front End Loader (Over 2½ CY)	4.40				
Motor Grader Op., Fine Grade	5.00				
Motor Grader Operator	4.50				
Roller, Steel Wheel (Plant-Mix Pavements)	3.85				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.65				
Roller, Pneumatic (Self-Propelled)	3.40				
Scrapers (17 CY and Less)	3.75				
Scrapers (Over 17 CY)	4.00				
Tractor (Crawler Type) 150 HP and Less	3.35				
Tractor (Crawler Type) over 150 HP	3.75				
Tractor (Pneumatic) 80 HP & Less	3.40				
Tractor (Pneumatic) over 80 HP	4.00				
Traveling Mixer	4.25				
Trenching Machine, Light	4.00				
Trenching Machine, Heavy	4.45				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.80				
Truck Drivers:					
Single Axle, Light	3.45				
Tandem Axle or Semitrailer	3.55				
Lowboy-Float	4.15				
Welder	4.50				
Welder Helper	3.25				

SUPERSEDEAS DECISION

STATE: Texas COUNTY: Howard
DECISION NO.: TX78-4004 DATE: Date of Publication
Supersedes Decision No. TX77-4201, dated August 19, 1977, in 42 FR 42136.
DESCRIPTION OF WORK: Building (including Residential) Construction. (See current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 7.00				
CARPENTERS	6.10				
CEMENT MASONS	5.00				
ELECTRICIANS	7.40	.30	1%		1/10%
IRONWORKERS, STRUCTURAL & ORNAMENTAL	8.83	.55	1.00		.10
LABORERS:					
Laborers	3.06				
Mason tenders	3.50				
PAINTERS	4.50				
PLUMBERS	4.26				
ROOFERS	4.00				
SHEET METAL WORKERS	5.25				
TILE SETTERS	4.00				
TRUCK DRIVERS	2.65				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. TX78-4004 Page 2

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Tool Man	$ 3.00				
Asphalt Heaterman	3.25				
Asphalt Raker	3.90				
Asphalt Shoveler	3.50				
Batching Plant Scaleman	4.25				
Batterboard Setter	3.65				
Carpenter	4.40				
Carpenter Helper	3.30				
Concrete Finisher (Paving)	4.50				
Concrete Finisher Helper(Paving)	3.25				
Concrete Finisher (Structures)	4.40				
Concrete Finisher Helper (Structures)	3.50				
Electrician	6.30				
Form Builder (Structures)	4.50				
Form Builder Helper (Structures)	3.15				
Form Setter (Paving & Curb)	4.65				
Form Setter Helper (Paving & Curb)	4.00				
Form Setter (Structures)	4.75				
Form Setter Helper (Structures)	3.70				
Laborer, Common	3.00				
Laborer, Utility Man	3.50				
Manhole Builder, Brick	3.00				
Mechanic	4.00				
Mechanic Helper	3.75				
Oiler	3.50				
Serviceman	3.50				
Painter (Structures)	3.50				
Pipelayer	3.60				
Pipelayer Helper	3.50				
Powderman	4.00				
Powderman Helper	3.10				
Reinforcing Steel Setter (Structures)	3.75				
Reinforcing Steel Setter Helper	3.25				
Steel Worker (Structural)	3.75				
Sign Erector	4.15				
Sign Erector Helper	3.25				
Spreader Box Man	3.85				
Power Equipment Operators:					
Asphalt Distributor	4.10				
Asphalt Paving Machine	4.00				
Broom or Sweeper Operator	4.00				
Bulldozer, 150 HP and Less	4.00				
Bulldozer, over 150 HP	4.50				
Concrete Paving Saw	4.50				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1½ CY)	4.25				
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY and Over)	5.00				

DECISION NO. TX78-4004 Page 3

INCIDENTAL PAVING & UTILITIES & SITE PREPARATION (RESIDENTIAL CONSTRUCTION ONLY)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators (Cont'd):					
Crusher or Screening Plant Op.	$ 4.05				
Elevating Grader	4.10				
Foundation Drill Operator (Crawler Mounted)	4.60				
Foundation Drill Operator (Truck Mounted)	5.50				
Front End Loader (2½ CY & Less)	3.75				
Front End Loader (Over 2½ CY)	4.45				
Motor Grader Op., Fine Grade	5.00				
Motor Grader Operator	4.40				
Roller, Steel Wheel (Plant-Mix Pavements)	3.50				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	3.45				
Roller, Pneumatic (Self-Propelled)	3.75				
Scrapers (17 CY and Less)	3.70				
Scrapers (Over 17 CY)	4.00				
Self-Propelled Hammer	3.50				
Side Boom	3.50				
Tractor (Crawler Type) 150 HP and Less	3.45				
Tractor (Crawler Type) over 150 HP	3.85				
Tractor (Pneumatic) 80 HP & Less	3.25				
Tractor (Pneumatic) over 80 HP	3.75				
Traveling Mixer	3.00				
Trenching Machine, Light	4.05				
Wagon Drill, Boring Machine or Post Hole Driller Operator	3.50				
Truck Drivers:					
Single Axle, Light	3.25				
Single Axle, Heavy	3.25				
Tandem Axle or Semitrailer	3.40				
Lowboy-Float	3.95				
Winch	3.50				
Weighman (Truck Scales)	3.50				
Welder	4.00				

[FR Doc. 78-732 Filed 1-12-78; 8:45 am]

federal register

FRIDAY, JANUARY 13, 1978
PART V

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

IMPLEMENTATION OF EXECUTIVE ORDER 11914

Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

[4110-12]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 85—IMPLEMENTATION OF EXECUTIVE ORDER 11914, NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

Coordination of Federal Agency Enforcement of Section 504 of the Rehabilitation Act of 1973

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: This rule implements Executive Order 11914, "Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs," under which the Department of Health, Education, and Welfare is required to coordinate governmentwide enforcement of section 504 of the Rehabilitation Act of 1973, as amended. In particular, the rule sets forth enforcement procedures, standards for determining which persons are handicapped, and guidelines for determining what practices are discriminatory. These procedures, standards, and guidelines are to be followed by each federal agency that provides federal financial assistance in issuing regulations implementing section 504.

EFFECTIVE DATE: January 13, 1978.

FOR FURTHER INFORMATION, CONTACT:

Anne Beckman, Office for Civil Rights, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201, 202-245-6118.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of the Rehabilitation Act of 1973 (Pub. L. 93-112), Congress enacted section 504, which provides that "no otherwise qualified handicapped individual in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The definition of "handicapped individual" applicable to section 504 is contained in section 111(a) of the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516).

On April 28, 1976, the President issued Executive Order 11914 (41 FR 17871) to provide for consistent governmentwide enforcement of section 504; the executive order is reprinted at Appendix A to this rule. The order directs the Secretary of Health, Education, and Welfare to coordinate the implementation of section 504 by all Federal departments and agencies that extend financial assistance to any program or activity. Specifically, section 1 directs the Secretary to establish standards for determining who are handicapped individuals and to establish guidelines for determining what are discriminatory practices under section 504 and to assist other agencies as necessary to assure the coordinated and consistent implementation of section 504. Sections 2 and 3 also contemplate that this Department will establish procedures to guide other Federal departments and agencies in implementing section 504.

In addition to setting forth the responsibilities of this Department, the executive order directs other agencies to issue regulations consistent with HEW standards and procedures, to furnish the Secretary with reports and information upon request, and to cooperate with this Department in their implementation of section 504.

Finally, the executive order, in section 3, contains general procedures and sanctions for securing compliance with section 504 and, in section 5, requires the consistent implementation of all of Title V of the Rehabilitation Act of 1973 as well as the Architectural Barriers Act of 1968 (Pub. L. 90-480).

On May 4, 1977, this Department issued its final regulation implementing section 504 as to recipients of financial assistance from HEW.

On June 24, 1977, the Department issued a proposed rule to carry out its responsibilities under the executive order by specifying procedures for the promulgation and enforcement of section 504 regulations by all agencies providing financial assistance, standards for determining who are handicapped individuals, and guidelines for determining what practices are discriminatory under section 504. Fifty comments were received during the 30-day public comment period. The Secretary's response to these comments and the explanation for changes in the proposed rule are set forth below in the summary of the final regulation.

SUMMARY OF RULE AND ANALYSIS OF COMMENTS

Subpart A of this regulation sets forth general definitions and uniform procedures for the enforcement of section 504.

Section 85.3(e) defines the term "federal financial assistance." Several commenters objected to the exclusion of contracts of insurance and guaranty from that definition because programs whose only federal assistance is in the form of federal loan guarantees, such as the Federal Deposit Insurance Corporation (FDIC) and Federal Housing Administration (FHA) programs, are thereby exempt from coverage. In light of this concern, the Department asked the Department of Justice for an opinion as to whether contracts of insurance and guaranty are covered by section 504. The Department of Justice has advised this Department, on the basis of its analysis of the legislative history of section 504, that Congress intended the reach of section 504 to be "co-extensive with that of (titles VI and IX), thus excluding programs of guarantee and insurance." The final regulation reflects that determination.

Despite some difference in the wording of the definitions of federal financial assistance in the regulations implementing section 504 and title VI, the substance of the two definitions does not differ. Several commenters misunderstood the exclusion of "ultimate beneficiaries" in § 85.3(d); an ultimate beneficiary is not the final "recipient," but the student, patient, or other individual who participates in the assisted program.

One comment asked whether the definition of facility in § 85.3(f) applies only to land-based facilities. Although the definition is not so limited, the Department agrees with the observation that different standards may be needed for vessels than for other facilities. The appropriate mechanism for the recognition of such differences, however, is in the regulations of the agencies that provide assistance to programs involving vessels.

Section 85.4 contains procedures for the promulgation of agency regulations. In accordance with section 2 of the executive order, such regulations are required to be consistent with the standards and guidelines contained in this regulation. Agencies are encouraged to examine Subparts A, B, and C of the HEW section 504 regulation to determine whether their regulations should include any of the more detailed provisions to be found there. In addition, each agency should examine the programs and activities to which it provides assistance to determine whether detailed requirements concerning any such program or activity should be included in its regulation, similar to those contained in Subparts D, E, and F of the HEW section 504 regulation.

A number of recipients objected to the requirement in paragraph (a) that each agency issue a separate section 504 regulation and would have preferred implementation through one regulation enforced by one agency—the system used for section 503. Although the provision for interagency cooperation set forth in § 85.6 should take care of many of the problems foreseen by these commenters, there are admitted advantages to the single agency system. This approach is precluded here, however, because section

504, unlike section 503, does not place rulemaking authority in a single agency and the executive order itself directs each federal agency to issue its own regulation. Furthermore, because section 504 covers the provision of services as well as employment, it does not lend itself as readily to a single regulation as does section 503: While employment presents fairly uniform issues from agency to agency, the problems that arise in various service programs differ widely.

Section 85.4(b) sets forth the schedule for issuing agency regulations. In response to comment, the time for preparation of a proposed rule has been extended to 90 days. Three agencies commented that more than 90 days would be required for this purpose. While the Department recognizes that the problems to be resolved by these agencies are complex, it believes that every effort should be made to meet this schedule.

As stated in the proposed regulation, the Secretary believes that the provision for review of each agency's draft final regulation by the Director of the HEW Office for Civil Rights before it is finally issued is an effective and appropriate method of promoting consistency of regulation under section 504 throughout the government. Although a few commenters suggested the need for some additional, formal mechanism for determining whether an agency regulation conforms to this regulation, we believe that public comment, together with review by the Office for Civil Rights, will suffice.

One change has been made in paragraph 4(c). The phrase "aid, benefits, or services" has been substituted for the word "services" so as to describe more adequately the nonemployment elements of various assisted programs and activities.

One comment requested a statement by the Department that this regulation creates no judicially enforceable rights. Such a statement, we believe, is inappropriate and unnecessary. Whether any legally enforceable rights are created by this regulation is a matter for courts to decide. We would only observe that the regulation applies to Federal agencies, not to recipients, and that it has no retroactive reach.

Comments led to three changes in section 85.5 (Enforcement). Adoption of title VI enforcement procedures is not a required element of the enforcement system; even those commenters who do not entirely support the title VI procedures favored their inclusion because of the advantages of a single complaint mechanism. The language of the consultation requirement has been made consistent with the corresponding language of the HEW section 504 regulation. A requirement that recipients conduct self-evaluations has also been added because of the benefits to be gained by agencies, recipients, and handicapped persons of a mechanism for effecting compliance without Federal intervention. More specific guidance for conducting an evaluation, as well as a specific time for its completion, should be provided in each agency's regulation.

Despite these additions, § 85.5 is still not intended to be exhaustive. Agencies may wish to consider other additions from the HEW section 504 regulation, such as the designation by a recipient of an employee to coordinate 504 enforcement. Although § 85.5 has not been amended to require agencies to conduct pre-grant compliance reviews, as suggested, the Department does agree that they are an effective means of ensuring compliance and therefore encourages agencies to conduct such reviews as a routine matter, especially with respect to major grants.

Section 85.6 contains provisions concerning interagency cooperation. Although commenters were pleased that the issue of coordination of enforcement among the various Federal agencies had been addressed, many felt that this section failed to resolve adequately problems of the recipient who receives grants from more than one agency: Multiple assurance forms, inconsistent regulations or enforcement procedures, multiple investigations. Several commenters also suggested that the final regulation incorporate some method for determining the primary enforcement agency (such as the agency that provides the largest grants). While the Department is sympathetic with recipients' concerns, it believes that these problems can be resolved by the agencies themselves without further regulation. As noted in the proposed regulation, agencies are encouraged to extend existing title VI delegations to section 504. Ensuring consistent regulations should alleviate the problem as well. If, however, these mechanisms prove to be inadequate, the Department will issue further rules on the subject.

One comment suggested the need for standardized referral procedures when complainants appeal to the wrong agency. Although no change has been made in the regulation, the Department feels the issue is an important one. Each agency should adopt internal procedures to ensure that misdirected complaints are referred to the proper agency, rather than being returned to complainants, and to ensure that complainants are promptly notified of the referral.

Section 85.7 contains provisions for coordination with sections 502 and 503 of the Rehabilitation Act; two minor clarifying changes have been made.

One commenter inquired as to the precise meaning of "consult" and "coordinate" as used in this section. The terms are not meant to specify any explicit procedures. The requirement for consultation with the Architectural and Transportation Barriers Compliance Board (ATBCB) in developing requirements for the accessibility of new construction and alteration is based simply on the Department's belief that agencies should take advantage of the Board's expertise in this area.

The coordination requirement is designed to avoid inconsistent or duplicative enforcement where the jurisdiction of sections 502 or 503 overlaps with that of section 504. The ATBCB itself suggested that each agency be required to enter into a memorandum of understanding with the Board. Requiring formal agreements for this purpose, we believe, is neither necessary nor advisable.

Two agencies suggested that all matters of employment discrimination against handicapped persons be coordinated by the Department of Labor (DOL) to avoid inconsistent requirements being imposed upon entities that are both federal recipients and federal contractors. We believe that the requirements of the two regulations are not inconsistent despite some variance in language. There must, of course, be close coordination of enforcement with DOL when a recipient is also a contractor. A general rule that DOL should be the primary enforcement agency in this situation would not, however, be appropriate. Where a corporation that is a federal contractor gets minimal assistance from another agency, DOL would be the natural lead agency. But where, for example, a university with a major HEW grant is also a federal contractor, HEW would more appropriately take the primary enforcement role, even with respect to employment.

Several suggestions were received concerning consultation and coordination with other agencies in areas of potential overlap. The Department is reluctant to build in any more of these requirements. The opportunity that each agency will have to comment on the regulation proposed by each of the other agencies should suffice to handle any other similar situations.

As noted in the proposal, the Department will, on a continuing basis, fulfill its responsibilities under the executive order to assist and consult with other agencies in their implementation of section 504 and to monitor compliance with the executive order.

Subpart B of this regulation contains the standards for determining who are "handicapped persons" and "qualified handicapped persons" within the meaning of section 504. Except for the addition noted below, the definition of handicapped person (§ 85.31) is identical to the one contained in § 84.3(j) of HEW's section 504

regulation. Further discussion of its provisions may be found in paragraph 3 of Appendix A of that regulation (42 FR at 22685-6). A final sentence has been added to the definition listing, for illustrative purposes, some of the diseases and impairments that are included in the term "physical or mental impairment." It should be noted that this definition of handicapped person does not supersede or interfere with the narrower definitions of the term established by statute for specific purposes, such as reduced transportation fares or eligibility for vocational rehabilitaion services. Agencies using such definitions may not, however, substitute them for the definition prescribe in this regulation in connection with their implementation of section 504.

It is again noted that drug addiction and alcoholism are included in the list of diseases and impairments. As stated in the proposal, the question of section 504's application to drug addicts and alcoholics was a difficult one on which the Secretary of HEW sought the advice of the Attorney General. In an opinion dated April 12, 1977, the Attorney General concluded that drug addiction and alcoholism are physical or mental impairments and are thus handicaps for the purpose of section 540 if they result in a substantial limitation of a "major life activity."

A detailed analysis of the implications of the inclusion of drug addicts and alcoholics within the scope of section 504 is set forth in paragraph 4 of Appendix A of the HEW regulation (42 FR at 22686). In response to concern again expressed in a number of comments, we emphasize that the fact that drug addiction and alcoholism may be handicaps does not mean that the behavioral manifestations of these conditions must be ignored in determining whether a person is qualified for services or employment. The statute applies only to qualified handicapped persons.

The definition of qualified handicapped person in §85.32 has been adapted from §84.3(k) of the HEW section 504 regulation. Other agencies may wish to supplement its provisions with additional guidance concerning qualifications for specific programs, as was done in §84.3(k) (2) and (3) of the HEW section 504 regulation. Several comments objected to the difference in wording between §85.32(a) of this regulation and section 60-741.2 of the Department of Labor section 503 regulation. No difference in substance is thereby intended; this Department believes that its definition more adequately emphasizes the prohibition against deeming a handicapped person to be unqualified on the basis of functions that are not necessary to the successful performance of the job in question.

A number of comments from the transportation field raised the question of whether such factors as safety may be considered in determining whether a handicapped person, especially one who is or has been alcoholic or emotionally ill, is qualified for a job. The Secretary again wishes to reassure recipients that such considerations are appropriate and are not considered a violation of section 504, so long as they are based on facts relating to the individual applicant's qualifications, rather than on assumptions or stereotypes.

Subpart C of this regulation, sets forth guidelines for determining discriminatory practices; these are, in general, minimum requirements. Except where obvious discrepencies in implementation would result, other agencies may exceed these standards if they wish. The subpart is divided into three parts: General, based on §84.4 of the HEW section 504 regulation; Employment, based on Subpart B of the HEW section 504 regulation, and Program Accessibility, based on Subpart C of the HEW section 504 regulation. A more detailed discussion of these subparts than is contained below may be found in Appendix A of the HEW regulation.

The general prohibitions against discrimination on the basis of handicap set forth in §85.51 incorporate basic principles that the Department determined, in developing its own regulation, to be inherent in section 504. First, section 504, like other nondiscrimination statutes, prohibits not only those practices that are overtly discriminatory but also those that have the effect of discriminating. And it is equal opportunity, not merely equal treatment, that is essential to the elimination of discrimination on the basis of handicap. Thus, in some situations, identical treatment of handicapped and nonhandicapped persons is not only insufficient but is itself discriminatory. On the other hand, separate or different treatment can be permitted only where necessary to ensure equal opportunity and truly effective benefits and services. Federally assisted programs and activities must thus be provided in the most integrated setting appropriate to the needs of participating handicapped persons.

Several commenters asked about the effect of §85.51 on the previously issued regulation of the Department of Transportation (DOT) implementing the Urban Mass Transportation Act (UMT Act) with respect to handicapped persons. This Department has not reviewed the UMTA regulation because it was issued before the promulgation of these guidelines. In the course of developing its regulation to implement section 504, DOT will undoubtedly examine its prior regulations with a view toward incorporating or revising their underlying concepts in its 504 regulation. The DOT section 504 regulation will be subject to public comment and to reveiw by this Department.

Furthermore, the Department's interpretation of §85.51 on matters of physical accessibility is set forth in §§85.56-58; it is these sections that, in general, should be looked to for guidance on this subject. This observation is also relevant to the many questions raised by commenters concerning the application of various provisions of §85.51 to specific transportation situations. In response to comment, the Department wishes to make clear that it does not construe this section, nor §§85.56-58, to preclude in all circumstances the provision of specialized services as a substitute for, or supplement to, totally accessible services, nor do these sections require door-to-door transportation service. Neither does paragraph (b)(4) of this section require buses to move their regular route stops to the doors of handicapped riders.

Section 85.51 (b)(3) prohibits recipients from utilizing criteria or methods of administration that would have the effect of subjecting handicapped persons to discrimination on the basis of handicap. The main application of this provision is to state agencies that recieve federal funds and then distribute the funds to other entities. These state agencies are obligated to develop methods of administering the distribution of federal funds so as to ensure that handicapped persons are not subjected to discrimination on the basis of handicap either by the second-tier recipients or by the manner in which the funds are distributed. The prohibitions of this paragraph, as well as of paragraph (b)(1), apply not only to direct actions of a recipient but also to actions committed through contractual agreements or similar arrangements. This provision is based on the premise that a recipient should not be able to do indirectly that which it cannot do directly.

Sections 85.52-55 contain the basic requirements for the elimination of discrimination on the basis of handicap in employment. These sections should be augmented, where possible, with provisions appropriate to the programs assisted by each agency. Specifically, §85.53 could be supplemented, as is the corresponding §84.12 of the HEW section 504 regulation, with examples of actions constituting reasonable accommodation and with factors to be considered in determining undue hardship; and §85.54, with provisions adapted from the more specific requirements of the parallel §84.13 of the HEW section 504 regulation.

One comment raised an issue of interest to those agencies that decide to augment §85.53 with examples of reasonable accommodation. Because of the tendency of some readers to

equate this requirement with physical accommodations, any list of examples should include other types of actions, such as job restructuring and modified work schedules.

One comment to § 85.52, raised in the context of the transportation industry but of general applicability, inquired about the effect of this section on local, state, and federal laws that govern, in the interest of safety, driver eligibility. Local and state laws affecting the eligibility of handicapped persons for employment may continue to be applied, but only if they set standards that are job related and that do not unjustifiably disqualify such persons for particular jobs. Federal regulations as well should be reviewed to determine whether they meet this standard.

In response to comment, a new paragraph (b), taken from the HEW section 504 regulation, has been added to this section. It is designed to emphasize the prohibition on such practices as classifying certain jobs as being for handicapped persons.

In § 85.54, the word "nonjob-related" has been deleted as redundant. A test or other selection criterion "discriminates" if it screens out or tends to screen out handicapped persons but is not job related.

Although § 85.55, like § 84.14 of the HEW section 504 regulation, generally bans preemployment medical examinations and inquiries concerning handicap, certain qualifications to this general prohibition, found in § 84.14 and cross-referenced in § 85.55, should be noted. First, while employers may not, during the application process, inquire about the existence of a specific handicap (for example, epilepsy), they may ask about the applicant's ability to perform duties necessary to the job in question. Second, they may make voluntary inquiries as to handicap if they are subject to remedial or affirmative action obligations or if they are undertaking voluntary action to increase their employment of handicapped persons. Third, they may condition an offer of employment on the successful completion of a medical examination: *Provided*, That the examination follows the requirements of § 84.14(c) and that no offer is withdrawn on the basis of medical conditions that are not job related.

Several comments objected to the difference between the positions taken in the section 503 regulation and § 85.55 of this regulation on the question of preemployment inquiries and medical examinations. As discussed above, § 85.55 requires physical examinations and inquiries as to handicap to be postponed until after the hiring decision (which, again, may be conditioned on the result of the examination), whereas the section 503 regulation allows such examinations and inquiries to be made before an offer of employment.

The issuance of the DOL section 503 regulation preceded that of the HEW section 504 regulation by several years. During that time, the Department received extensive comment on the need to limit inquiries as to handicap in order to reduce the potential for discrimination, especially with respect to persons with nonvisible handicaps. We believe that the standard outlined above, although different from that of the DOL section 503 regulation, is necessary to achieve that objective; one virtue of this standard is that it makes it possible to determine whether the reason for not hiring a handicapped person is because of handicap. We also believe that legitimate purposes for obtaining such information are fulfilled as well at this later stage in the hiring process.

The misunderstanding of this section apparent in many comments makes it important to emphasize again that this provision does not prohibit taking job-related conditions into account in making employment decisions, nor does it preclude a recipient from obtaining information as to such conditions. It merely affects the time at which and the manner in which the information may be obtained.

Sections 85.56-58 concern "program accessibility," a term that summarizes the concept of prohibiting the exclusion of handicapped persons from programs by virtue of architectural barriers to such facilities as buildings, vehicles, and walks, while not requiring that existing facilities be completely barrier-free. Although new facilities are to be designed and constructed so as to be physically accessible to handicapped persons, structural modifications of existing facilities need be undertaken only where other methods are inadequate to assure that a program is available to handicapped persons. This final regulation has been amended to take into account the special problems of making various modes of transportation "program accessible," and the Department recognizes that the implementation of the concept of program accessibility will necessarily vary in other programs. As stated in the proposal, however, the Department believes that the basic principles contained in §§ 85.56-58, as amended, are appropriate governmentwide and are essential to the effective and consistent implementation of section 504.

Section 85.56 establishes the general standard for nondiscriminatory physical access to federally assisted programs and activities under section 504. It does not prohibit architectural barriers; it does prohibit exclusion of handicapped people from federally assisted programs and activities by virtue of such barriers. Sections 85.57-8 describe the means by which this standard is to be reached.

Section 85.57 has been amended and divided into three paragraphs. A new sentence has been added to paragraph (a) to rectify the misunderstanding, evident in some comments, that each existing facility must be altered.

Agencies are urged to set forth in their regulations illustrative types of actions that recipients may use as alternatives to structural changes to existing facilities. If they do so, agencies should also include the requirement, intrinsic to section 504, that priority be given to methods that offer programs and activities to handicapped persons in the most integrated setting appropriate. (See § 84.22(b) of the HEW section 504 regulation.) Agencies may also wish to consider supplementing § 85.57 with other details from section 84.22 of the HEW section 504 regulation.

In response to comment, the Department wishes to make clear that § 85.57 does not preclude other agencies from allowing recipients to choose among appropriate alternative methods of achieving program accessibility, so long as the agency itself sets an acceptable standard for what constitutes program accessibility.

Several transportation comments proposed that the word "program," for purposes of program accessibility, be interpreted to mean the entire transportation system of a certain geographic area, as opposed to particular modes of transportation (bus, rail) in the area. The Department rejects this concept as a general matter.

We recognize, however, that there are special problems to achieving program accessibility with the three-year time period for certain modes of transportation. Paragraph (b) has, therefore, been amended to allow more than three years for compliance for any mode of transportation in which program accessibility can be achieved within that period only through extensive alterations entailing extraordinary costs. Such exceptions may be allowed only where alternate, accessible modes of transportation are available. The specific period of time for compliance is to be established by the federal agency administering the transportation program (the Department of Transportation, in practically all cases); it may vary from mode to mode. The Department believes that this departure from the general scheme is justified by the lack of acceptable alternatives to extremely expensive alterations in the provision of some transportation services.

The Department recognizes that special problems may also be encountered in achieving program accessibility in existing public housing projects within the three-year schedule. Because the program accessibility stan-

dard itself requires only that a small percentage of units be accessible (and that there be access to the project itself), the Department believes that the standard can be met within the prescribed schedule. We are prepared to consult with the Department of Housing and Urban Development as compliance progresses and will reexamine the situation if circumstances so warrant.

Another issue raised during the comment period is the question of the effect of § 85.57 upon the requirements of the Architectural Barriers Act of 1968, Pub. L. 90-480. The relevant portion of that Act requires that, after 1968, all new construction and alteration receiving direct Federal financial assistance be accessible. One commenter feared that recipients who had undertaken construction subject to the Architectural Barriers Act but who had failed to comply with the Act might feel that compliance with the Architectural Barriers Act would be excused if its program, on the whole, were accessible and thus in compliance with § 85.57. Such is not the case. The Department does not intend, and has no authority, to interfere in any way with the requirements of the Architectural Barriers Act.

Two comments requested that an exception be added to § 85.57 for modifications of historic structures. While we agree that it is important to preserve historical structures, we believe that the flexibility of the program accessibility standard will permit recipients, with appropriate technical assistance and advice, to make their programs accessible without impairing the integrity of historic buildings.

Paragraph (c), added in response to comment, requires that transition plans be developed in cases where structural modifications are necessary to achieve program accessibility. The schedule for completion of these plans, as well as any further requirements deemed appropriate, is left to the determination of each regulating agency. The plan is to be developed with the aid of handicapped persons or their organizations.

Section 85.58 requires new facilities and, to the maximum extent feasible, alterations in existing facilities to be readily accessible. No accessibility standards have been specified here, but agencies should note that the HEW section 504 regulation requires HEW recipients either to meet the standards developed by the American National Standards Institute, Inc. (ANSI), or to provide equivalent accessibility. Each agency should, in the interest of governmentwide consistency, carefully consider adoption of the ANSI standards or their equivalent for any of its programs to which the standards are applicable.

A difficult problem that has arisen during the comment period with respect to § 85.58 is its effect upon buses ordered in the interval between the final issuance of individual agency 504 regulations and the effective date of the Department of Transportation's ruling concerning Transbus. (That ruling requires that all buses acquired with the assistance of the Urban Mass Transportation Administration (UMTA), ordered after September 30, 1979, meet the specifications for Transbus—a low-floor, ramped bus.) Because of the complexity of the bus accessibility issue, the final regulation has been amended to allow the Department of Transportation (DOT) to defer the effective date for requiring all new buses to be accessible if DOT concludes during its section 504 rulemaking process that it is not possible to do so by the effective date of its own section 504 regulation and if comparable, accessible services are available to handicapped persons in the meantime. The date may not, however, be deferred beyond the present effective date of the Transbus decision—October 1, 1979.

Because this Department agrees that Transbus is the most effective means of providing handicapped persons with accessible bus transportation, it encourages the Department of Transportation to take all possible steps to expedite the purchase of Transbus by its recipients.

The effective date of this regulation is January 13, 1978. Because the regulation applies only to other federal agencies rather than to the public and because the governmentwide implementation of section 504 should proceed without further delay, the Department believes that this departure from the normal 30-day waiting period is warranted.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis (EIA) statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

In consideration of the foregoing, Part 85 is hereby added to Title 45 of the Code of Federal Regulations to read as set forth below.

Dated: January 3, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart A—Federal Agency Responsibilities

Sec.
85.1 Purpose.
85.2 Application.
85.3 Definitions.
85.4 Agency regulations.
85.5 Enforcement.
85.6 Interagency cooperation.
85.7 Coordination with sections 502 and 503.
85.8-85.30 [Reserved]

Subpart B—Standards for Determining Who Are Handicapped Persons

85.31 Handicapped person.
85.32 Qualified handicapped person.
85.33-85.50 [Reserved]

Subpart C—Guidelines for Determining Discriminatory Practices

GENERAL

85.51 General prohibitions against discrimination.

EMPLOYMENT

85.52 General prohibitions against employment discrimination.
85.53 Reasonable accommodation.
85.54 Employment criteria.
85.55 Preemployment inquiries.

PROGRAM ACCESSIBILITY

85.56 General requirement concerning program accessibility.
85.57 Existing facilities.
85.58 New construction.
85.59-85.99 [Reserved]
Appendix A—Executive Order 11914.

AUTHORITY: Executive Order 11914, 41 FR 17871; sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706).

Subpart A—Federal Agency Responsibilities

§ 85.1 Purpose.

The purpose of this part is to implement Executive Order 11914, which requires the Department of Health, Education, and Welfare to coordinate the implementation of section 504 of the Rehabilitation Act of 1973.

§ 85.2 Application.

This part applies to each Federal department and agency that is empowered to extend Federal financial assistance.

§ 85.3 Definitions.

As used in this regulation, the term:

(a) "Executive order" means Executive Order 11914, titled "Nondiscrimination with respect to the Handicapped in Federally Assisted Programs," issued on April 28, 1976.

(b) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) "Agency" means a Federal department or agency that is empowered to extend financial assistance.

(d) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a con-

tract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(f) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

§ 85.4 Issuance of agency regulations.

(a) Each agency shall issue, after notice and opportunity for comment, a regulation to implement section 504 with respect to the programs and activities to which it provides assistance. The regulation shall be consistent with this part.

(b) Each agency shall issue a notice of proposed rulemaking no later than 90 days after the effective date of this part. Each agency shall issue a final regulation no later than 135 days after the end of the period for comment on its proposed regulation: *Provided,* That the agency shall submit its proposed final regulation to the Director of the Office for Civil Rights, HEW, for review at least 45 days before it is to be issued.

(c) Each such agency regulation shall: (1) Define appropriate terms, consistent with the definitions set forth in § 85.3 and with the standards for determining who are handicapped persons set forth in Subpart B of this Part; and (2) prohibit discriminatory practices against qualified handicapped persons in employment and in the provision of aid, benefits, or services, consistent with the guidelines set forth in Subpart C of this Part. The regulation shall include, where appropriate, specific provisions adapted to the particular programs and activities receiving financial assistance from the agency.

§ 85.5 Enforcement.

(a) Each agency shall establish a system for the enforcement of section 504 and its implementing regulation with respect to the programs and activities to which it provides assistance. The system shall include: (1) The enforcement and hearing procedures that the agency has adopted for the enforcement of title VI of the Civil Rights Act of 1964, and (2) a requirement that recipients sign assurances of compliance with section 504.

(b) Each agency regulation shall also include requirements that recipients: (1) Notify employees and beneficiaries of their rights under section 504, (2) conduct a self-evaluation of their compliance with section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, and (3) otherwise consult with interested persons, including handicapped persons or organizations representing handicapped persons, in achieving compliance with section 504.

§ 85.6 Interagency cooperation.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more agencies or where two or more agencies cooperate in administering assistance for a given class of recipients, the agencies shall: (1) Coordinate compliance with section 504, and (2) designate one of the agencies as the primary agency for section 504 compliance purposes.

(b) Any agency conducting a compliance review or investigating a compliant of an alleged section 504 violation shall notify any other affected agency upon discovery of its jurisdiction and shall inform it of the findings made. Reviews or investigations may be made on a joint basis.

§ 85.7 Coordination with sections 502 and 503.

(a) Agencies shall consult with the Architectural and Transportation Barriers Compliance Board in developing requirements for the accessibility of new facilities and alterations, as required in § 85.58, and shall coordinate with the Board in enforcing such requirements with respect to facilities that are subject to section 502 of the Rehabilitation Act of 1973, as amended, as well as to section 504.

(b) Agencies shall coordinate with the Department of Labor in enforcing requirements concerning employment discriminination with respect to recipients that are also federal contractors subject to section 503 of the Rehabilitation Act of 1973, as amended.

§§ 85.8–85.30 [Reserved]

Subpart B—Standards for Determining Who are Handicapped Persons

§ 85.31 Handicapped person.

(a) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(b) As used in paragraph (a) of this section, the phrase:

(1) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (iii) has none of the impairments defined in paragraph (b)(1) of this section but is treated by a recipient as having such an impairment.

§ 84.32 Qualified handicapped person.

"Qualified handicapped person" means (a) with respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question and (b) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

§§ 85.33–85.50 [Reserved]

Subpart C—Guidelines for Determining Discriminatory Practices

General

§ 85.51 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facility, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

EMPLOYMENT

§ 85.52 General prohibitions against employment discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 85.53 Reasonable accommodation.

A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

§ 85.54 Employment criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 85.55 Preemployment inquiries.

A recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14.

PROGRAM ACCESSIBILITY

§ 85.56 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 85.57 Existing facilities.

(a) A recipient shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require

a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the agency regulation: *Provided,* That, if the program is a particular mode of transportation (e.g., a subway system) that can be made accessible only through extraordinarily expensive structural changes to, or replacement of, existing facilities and if other accessible modes of transportation are available, the federal agency responsible for enforcing section 504 with respect to that program may extend this period of time, but only for a reasonable and definite period, such period to be set forth in the agency's regulation.

(c) In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within a definite period to be established in each agency's regulation, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons.

§ 85.58 New construction.

(a) Except as provided in paragraph (b) of this section, new facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) The Department of Transportation may defer the effective date for requiring all new buses to be accessible if it concludes on the basis of its section 504 rulemaking process that it is not feasible to require compliance on the effective date of its regulation: *Provided,* That comparable, accessible services are available to handicapped persons in the interim and that the date is not deferred later than October 1, 1979.

§§ 85.59-85.99 [Reserved]

APPENDIX A.—NONDISCRIMINATION WITH RESPECT TO THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS

EXECUTIVE ORDER 11914. APRIL 28, 1976

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including section 301 of title 3 of the United States Code, and as President of the United States, and in order to provide for consistent implementation within the Federal Government of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it is hereby ordered as follows:

SECTION 1. The Secretary of Health, Education, and Welfare shall coordinate the implementation of section 504 of the Rehabilitation Act of 1973, as amended, hereinafter referred to as section 504, by all Federal departments and agencies empowered to extend Federal financial assistance to any program or activity. The Secretary shall establish standards for determining who are handicapped individuals and guidelines for determining what are discriminatory practices, within the meaning of section 504. The Secretary shall assist Federal departments and agencies to coordinate their programs and activities and shall consult with such departments and agencies, as necessary, so that consistent policies, practices, and procedures are adopted with respect to the enforcement of section 504.

SEC. 2. In order to implement the provisions of section 504, each Federal department and agency empowered to provide Federal financial assistance shall issue rules, regulations, and directives, consistent with the standards and procedures established by the Secretary of Health, Education, and Welfare.

SEC. 3. (a) Whenever the appropriate department or agency determines, upon all the information available to it, that any recipient of, or applicant for, Federal financial assistance is in noncompliance with the requirements adopted pursuant to this order, steps to secure voluntary compliance shall be carried out in accordance with standards and procedures established pursuant to this order.

(b) If voluntary compliance; cannot be secured by informal means, compliance with section 504 may be effected by the suspension or termination of, or refusal to award or continue, Federal financial assistance or by other appropriate means authorized by law, in accordance with standards and procedures established pursuant to this order.

(c) No such suspension or termination of, or refusal to award or continue, Federal financial assistance shall become effective unless there has been an express finding, after opportunity for a hearing, of a failure by the recipient of, or applicant for, Federal financial assistance to comply with the requirements adopted pursuant to this order; however, such suspension or termination of, or refusal to award or continue, Federal financial assistance shall be limited in its effect to the particular program or activity or part thereof with respect to which there has been such a finding of noncompliance.

SEC. 4. Each Federal department and agency shall furnish the Secretary of Health, Education, and Welfare such reports and information as the Secretary requests and shall cooperate with the Secretary in the implementation of section 504.

SEC. 5. The Secretary of Health, Education, and Welfare may adopt rules and regulations and issue orders which he deems are necessary to carry out his responsibilities under this order. The Secretary shall ensure that such rules, regulations, and orders are not inconsistent with, or duplicative of, other Federal Government policies relating to the handicapped, including those policies adopted in accordance with sections 501, 502, and 503 of the Rehabilitation Act of 1973, as amended, or the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*).

GERALD R. FORD

The White House,
April 28, 1976.

[FR Doc. 78-929 Filed 1-12-78; 8:45 am]

federal register

FRIDAY, JANUARY 13, 1978
PART VI

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

BLOOD AND BLOOD PRODUCTS

Donor Classification Labeling Requirements

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER F—BIOLOGICS

[Docket No. 75N-0316]

PART 606—CURRENT GOOD MANUFACTURING PRACTICES FOR BLOOD AND BLOOD COMPONENTS

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

Whole Blood and Components of Whole Blood Intended for Transfusion; Donor Classification Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule amends the Food and Drug Administration (FDA) biologics regulations by requiring that each container of whole blood and blood components (red blood cells, cryoprecipitated antihemophilic factor, platelet concentrate, and single donor plasma) intended for transfusion bear the label statement "paid donor" or "volunteer donor," as applicable. The regulation is designed to reduce the risk of hepatitis associated with transfusion therapy.

EFFECTIVE DATE: May 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Joe K. Holloway or Al Rothschild, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-4626.

SUPPLEMENTARY INFORMATION: In two separate notices published in the FEDERAL REGISTER of November 14, 1975 (40 FR 53040), and February 25, 1977 (42 FR 11018), the Commissioner of Food and Drugs proposed to amend the biologics regulations to require that the labels of blood products distinguish between blood collected from volunteer donors and paid donors. In the initial proposal, the Commissioner also required that the labels for paid-donor blood contain a warning that such blood is associated with a higher risk of transmitting hepatitis than blood from volunteer donors.

The Commissioner concluded that the proposed labeling requirements would promote the use of blood from donors who are from sectors of society in which transmissible viral hepatitis, type B, is less prevalent and would thereby reduce the risk of hepatitis associated with transfusion therapy. In support of this conclusion, the Commissioner discussed published data regarding the incidence of posttransfusion hepatitis from use of blood which had and had not been tested for hepatitis B surface antigen (HB_sAg), the prevalence of HB_sAg in the blood of paid donors, and the reduced incidence of posttransfusion hepatitis after elimination of use of paid-donor blood. The Commissioner concluded that the published data demonstrate that blood collected from paid donors is distinguishable from blood collected from volunteer donors in terms of the potential hazard, and that the decreased use of blood from paid donors would have a greater impact in reducing the incidence of posttransfusion hepatitis than any other measure, including HB_sAg testing.

The Commissioner stated his belief that the proposed requirement for label disclosure identifying the source of whole blood and its components (1) is necessary in order to provide physicians who prescribe blood with this important information, (2) is consistent with the National Blood Policy objective to encourage, foster, and support efforts to establish an all-voluntary blood donation system, (3) will not interrupt blood services now provided, (4) will significantly increase the demand for blood from volunteer donors or blood from paid donors collected by blood banks having evidence that their donor population is as safe as volunteer donor populations, and (5) will reduce the risk of transmitting hepatitis via transfusion therapy.

The Commissioner also discussed in detail the statutory authority for proposing the labeling requirements.

Interested persons were given until January 13, 1976, to submit written comments to the first proposal. In response, 342 letters were received. A majority of the comments recommended that the proposal be reissued to include a proposed definition for the terms "paid donor" and "volunteer donor".

The Commissioner agreed that "paid donor" and "volunteer donor" should be defined in the regulations. Accordingly, he issued a notice, published in the FEDERAL REGISTER of February 3, 1976 (41 FR 4955), requesting interested persons to submit data and information for use in formulating a definition for "paid donor" and "volunteer donor". In response, 331 additional letters were received.

Because of the intense, widespread interest in and the public importance of the proposed labeling requirements, the Commissioner, in a notice published in the FEDERAL REGISTER of February 27, 1976 (41 FR 8523), announced and later convened a public meeting on March 18, 1976, to discuss the following subjects:

1. Data documenting the risk of posttransfusion hepatitis associated with blood collected from volunteer and paid donors.

2. Summary of comments received in response to the FEDERAL REGISTER proposal of November 14, 1975.

3. Recommendations for a reproposal, including definitions for "volunteer" and "paid" donors and other suggestions recommended in the comments on the November 1975 proposal.

4. General discussion of various viewpoints on the proposal.

In response to the comments received on the November 1975 proposal, on the February 3, 1976, notice, and at the March 1976 public meeting, the Commissioner published another proposal in the FEDERAL REGISTER of February 25, 1977, to require that each container of whole blood and blood components (red blood cells, cryoprecipitated antihemophilic factor, platelet concentrate, and single donor plasma) intended for transfusion bear the label statement "Paid Donor" or "Volunteer Donor", as applicable. In addition, the Commissioner proposed definitions for paid and volunteer donors.

The February 1977 proposal differed from the November 1975 proposal in that it made the labeling requirements applicable to all blood components intended for transfusion rather than to only whole blood and red blood cells. The February 1977 proposal did not, however, repropose the warning statement concerning the increased risks of hepatitis from blood collected from paid donors. The reasons for the deletion were discussed in detail in the February 1977 proposal.

In response to the February 1977 proposal, 165 letters, containing varying numbers of comments, were received. Approximately 103 letters favored and 62 opposed the proposal.

In general, the comments addressed three aspects of the proposal: (1) the definitions and interpretations of paid and volunteer donors and the mechanics of labeling, (2) the effect of labeling on safety, and (3) the effect of labeling on supply and cost of blood and blood products.

DEFINITIONS AND MECHANICS OF LABELING

1. Four comments agreeing with the proposed definitions noted that the definitions are equivalent or identical to those already established by the American Association of Blood Banks. One comment, although supporting the proposed definitions in principle, suggested that the adjectives "paid" and "volunteer" should be replaced with "reimbursed" and "nonreimbursed," respectively. One other comment suggested that a code be used on the label to identify the "paid" or "volunteer" donor.

The Commissioner is aware that various other words and phrases or even a code might be used to convey the desired information. However, they provide no more clarification than do the terms "paid" and "volunteer," which

terms "paid" and "volunteer," which are currently being used by the States of Illinois, California, Georgia, and Florida under their blood labeling laws. In addition, the American Red Cross, which collects only from volunteer donors, identifies its blood as "volunteer donor" blood. Accordingly, the substitute terminology is rejected.

2. Nineteen comments suggested that the term "paid" donor include a person who receives: (1) a large amount of time off from work, (2) additional vacation time, (3) rewards generally used as a motivation for donation, such as lotteries, giveaways, a chance interest in a prize with significant dollar value, or nonmonetary rewards associated with product promotion, (4) reduction or cancellation of hospital charges that are unrelated to the transfusion, and (5) the cancellation or refund of nonreplacement fees and blood assurance/insurance benefits.

As stated in the preambles of both the 1975 and 1977 proposals, the high risk of posttransfusion hepatitis associated with blood from paid donors primarily reflects the fact that direct monetary payment attracts and motivates donations from individuals in unfortunate socioeconomic circumstances in whom transmissible hepatitis is particularly prevalent, including drug addicts who are in desperate need of money to purchase drugs. Benefits which are not readily convertible to cash, such as those identified in the comments, are not likely to attract those groups in which transmissible hepatitis is prevalent. For this reason, the Commissioner concludes that donors receiving such benefits should not be classified as paid donors. Accordingly, the comments are rejected.

The Commissioner notes that in amended § 606.120, paragraph (b)(2)(iii) provides that benefits not readily convertible to cash do not constitute monetary payment for purposes of this labeling regulation. The basic definitions of "paid" and "volunteer" donors turn on the direct, clear, and thus enforceable distinction between the exchange or absence of exchange of money.

3. Nine comments suggested that the proposed labeling also distinguish between safe and unsafe paid donors. Some large institutional blood banks, such as hospitals and community blood banks, screen paid donors so that they have a lower incidence of HB_sAg than do some volunteer donor populations. The comments suggested that paid donors be categorized as either "paid noncommercial" or "paid commercial" as a shorthand way to distinguish between safe (low-risk) and unsafe (high-risk) donors. One of the comments also suggested that a distinction be made on the label between low-risk and high-risk volunteers.

As these comments demonstrate, a number of categories and distinguishing characteristics could be applied to blood donors. The definitions proposed by the Commissioner for "paid donor" and "volunteer donor" are widely recognized in the blood community and provide basic information without the confusion that might arise from the addition of new donor categories as they are identified. The subcategories suggested by the comment are not as generally recognized or understood as are the "paid" and "volunteer" donor categories. Accordingly, the comments are rejected.

4. Twelve comments suggested that the Commissioner require the donor classification statement to be changed to "first time donor" or "repeat donor" instead of "paid donor" or "volunteer donor" because the risk of hepatitis in blood from first time donors, whether paid or volunteer, is greater than the risk from repeat donors, whose blood has already been biologically tested, i.e., followup monitoring of the recipient has shown no hepatitis transmission. It was argued that if blood from screened and tested repeat paid donors must be labeled "paid", it would be unnecessarily avoided by doctors, because of an implied but unsubstantiated risk, in favor of "volunteer" blood collected from high-risk urban ghetto or State prison populations.

The Commissioner recognizes that a small proportion of "paid donor" blood is being obtained from biologically tested donors whose hepatitis risk is as low as or lower than that from random volunteer donors. In those few situations, mechanisms are available for informing hospital administrators, physicians, and patients. The mechanisms include information in the package circular accompanying the blood unit and agreements between the blood bank and the purchasing hospitals and physicians. The Commissioner notes that no first-donation blood is biologically tested, and that, therefore, for these units of blood, the volunteer/paid labeling would continue to be necessary. Accordingly, the comments are rejected.

5. Thirteen comments stated that the proposed labeling requirements present an undue expense and hardship to most blood banks since 95 percent of all blood collected is from volunteer donors. The comments suggested that only blood from paid donors need be identified on the label.

The Commissioner believes that the absence of the term "volunteer donor" from blood units may raise questions of accountability. For example, the inadvertent failure to place the "paid donor" label on a unit will result in the assumption, possibly unwarranted and incorrect, by physicians and patients that the unit was collected from a volunteer donor. If identification of donor source is required for both paid and volunteer donors, an unlabeled unit will not result in unjustified reliance, and the recipient will be on notice to check with the collecting facility. In addition, the affirmative disclosure of the donor source on blood labeling will serve to inform patient consumers, who are not as likely as hospital administrators and physicians to be current on Federal labeling laws for blood and blood products.

The Commissioner reiterates his belief, stated in the preamble to the February 25, 1977 proposal, that any cost increase resulting from the proposed labeling requirement will be minimal. All whole blood products for transfusion must bear a label with significant information. The donor classification can be included on the labels along with the currently required information and incorporated as new labels are printed. The effective date of this regulation should permit an orderly transition to the new labels. Accordingly, the comments are rejected.

6. Four comments stated that the proposed labeling requirement should be applicable to Source Plasma (Human) since the incidence of HB_sAg positive units is greater in this product than in whole blood or single donor components intended for transfusion. On the other hand, six comments requested that proposed § 606.120(b)(2) be amended to exempt Source Plasma (Human) from the proposed labeling requirement.

As stated in the February 1977 proposal, the Commissioner is not aware of any data to support the use of the proposed labeling requirements for Source Plasma (Human) or plasma derivatives. Although data have been published demonstrating a higher prevalence of HB_sAg in plasma from paid donors than in plasma from volunteer donors, no available data demonstrate that final plasma derivative products manufactured from volunteer donor plasma carry a lower risk of transmitting hepatitis to recipients than do similar products manufactured from paid donor plasma. Most types of derivative products are processed in a manner which destroys or removes the hepatitis virus. Accordingly, no established public health benefit can derive from requiring donor labeling on Source Plasma (Human); and such information, therefore, is not a material fact. Therefore, the Commissioner is amending § 606.120(b)(2) to exempt Source Plasma (Human).

7 a. One comment stated that blood is not a drug and therefore should not be subject to the proposed labeling requirements.

b. Three related comments stated that the proposed labeling represents an unauthorized attempt by FDA to

implement the National Blood Policy calling for an all-volunteer blood supply since the labeling is not sanctioned by statute and the policy is being implemented by an ad hoc coalition of government and private institutions.

These issues were thoroughly answered in the preamble of the November 1975 proposal. A summary of that discussion, and the legal basis for the blood good manufacturing practice regulations, of which the drug classification labeling is a part, is repeated here.

a. Blood and blood components are drugs as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) since they are used to treat disease, they affect bodily functions, and whole blood is recognized in the United States Pharmacopeia. As drugs, they must meet all statutory requirements of the Federal Food, Drug, and Cosmetic Act and are subject to regulation pursuant to all provisions of the act.

The donor classification labeling constitutes important information about the blood quality and gives notice of the potential adverse consequences from its use, namely, the documented increased risk of transmitting hepatitis from use of blood from paid donors. Failure to reveal this material fact renders blood labeling to be misleading (21 U.S.C. 321(n)) and results in the blood being misbranded (21 U.S.C. 352(a)) within the meaning of the act. The act also requires adequate warnings in drug labeling (21 U.S.C. 352(f)). In addition, a drug is adulterated (21 U.S.C. 351(a)(2)(B)) if it has not been manufactured in conformity with current good manufacturing practice. Pursuant to these statutory provisions, the Commissioner may promulgate regulations for essential information on blood labeling.

Jurisdiction under the act is not limited to situations where the blood itself has been, or is to be, introduced into interstate commerce. If one of the essential components of blood, such as the anticoagulant solution, has moved in interstate commerce, the blood is subject to the requirements of the act and FDA may regulate the final drug product (21 U.S.C. 321(g)(1)(D)). The Federal courts have uniformly upheld this scope of authority.

All blood and blood components offered for sale in interstate commerce are also biological products and are therefore also subject to the Public Health Service Act (42 U.S.C. 262). All manufacturers must have a license that has been issued upon a showing that the manufacturing establishment and its products meet all applicable standards prescribed in the biologics regulations. Regulations may be promulgated to assure proper labeling for any biological product (42 U.S.C. 262(d)), and the Public Health Service Act prohibits the false labeling or marking of any package or container of any biological product (42 U.S.C. 262(b)). Moreover, the prohibition against false labeling in this act contains no interstate commerce requirement; it applies to all blood, whether or not it has moved or is offered for sale in interstate commerce. When blood labels do not affirmatively reveal the donor source, they are false by reason of omission. Finally, the Commissioner is authorized to promulgate regulations, pursuant to 42 U.S.C. 264, which may be necessary to prevent the transmission of such blood-related communicable diseases as hepatitis. Thus, the Public Health Service Act equally and independently supports the donor classification labeling requirement.

b. There is nothing unlawful or improper with the Commissioner promulgating a regulation incorporating a policy advocated by any citizen or group, including members of regulated industry. The Commissioner routinely receives and considers the views of industry and individuals in the private sector. The Commissioner also gathers information by corresponding and meeting with interested persons outside FDA regarding any matter within the jurisdiction of the laws administered by him. All interested persons are afforded the opportunity to have their comments, favorable or otherwise, considered in the development of final rules that may have resulted from the meetings with the private sector or with representatives of industry. Even if the National Blood Policy were solely the product of the private sector, which it is not (see FEDERAL REGISTER of September 10, 1974 (39 FR 32702)) the two proposals and the public meeting on the donor classification labeling have provided every opportunity for comment by any interested person. Accordingly, the suggestion that the regulation is deficient because it will enhance one of the goals of the National Blood Policy is erroneous.

8. Four comments advocated retention of the warning statement, "blood collected from paid donors is associated with a higher risk of transmitting hepatitis than blood from voluntary donors," as originally proposed in November 1975.

The Commissioner reaffirms his decision, announced in the preamble to the February 1977 proposal, not to require the warning statement initially included in the November 1975 proposal. The designation of blood as to its source, paid or volunteer, is concise and adequate notification to physicians of the relative risk of hepatitis associated with the blood. The evidence of the association between paid donors and increased risk of hepatitis, delineated in the November 1975 proposal, was mailed directly to all blood banks registered with FDA. A brief synopsis of the proposal, emphasizing the high risk of hepatitis associated with blood from paid donors, was published in the FDA Drug Bulletin of April-May 1976, which is mailed to all physicians in the United States.

The American Blood Commission, an association within the private sector working towards implementation of the National Blood Policy, has urged the creation of an all-voluntary blood donor system because of the statistical association between paid donors and the transmission of hepatitis in blood therapy. The work of the Commission and its policies and publications are well known throughout the entire blood processing community. Also, the question of designating blood as being "paid" or "volunteer" has been aired not only in the medical literature but frequently in the lay press and on radio and television.

Four States with effective blood labeling laws—Illinois, California, Georgia, and Florida—do not require an additional warning statement. The experiences in these States, particularly in Illinois where this law has been in effect for several years, support the necessity for only a brief descriptive term without an explicit warning of the probability of infection.

Notwithstanding these data given to physicians, the Commissioner will propose a warning statement if it appears that responsible heads of blood banks, administrators, and purchasing agents of hospitals, physicians, or consumers are not adequately apprised of the facts.

9. One comment questioned whether the labeling of the donor source would continue in an all-volunteer system.

The Commissioner anticipates that in an all-volunteer system there would be no need for labeling to distinguish paid donors from volunteer donors.

10. One comment suggested that the donor source need not appear with the same prominence as the proper name. The comment noted that the American Red Cross labeling includes the donor source in smaller, less prominent type and away from the proper name.

The Commissioner has concluded that the donor source is of such importance that it must be stated conspicuously with the same prominence as the proper name of the product. (See 21 U.S.C. 352(c).) Accordingly, the comment is rejected.

EFFECT OF LABELING ON SAFETY OF THE PRODUCT

11. Twenty-nine comments suggested that the proposed labeling is unnecessary and should be withdrawn since (1) no scientific data have been presented to support the fact that a label

will insure the safety of transfused blood, (2) no information has been presented to show that the labeling will significantly reduce the number of blood units which transmit disease, and (3) the rule is a superficial answer to a serious medical problem and therefore will not contribute to the solution. The comments suggested that the time and effort spent in putting an additional label on a unit of blood and/or component would only further clutter the label and will have no impact on the clinician who will transfuse it.

The Commissioner disagrees with these comments. As a result of the 1973 Illinois law that all blood collected in or transported into the State must prominently display whether it was collected from paid or volunteer donors, the number of units of purchased blood infused decreased by 35.2 percent despite a 15 percent increase in the number of transfusions (fiscal 1974 to fiscal 1975). Furthermore, the percentage of outdated blood fell from 15.4 percent to 12.9 percent in the same period.

In a study conducted at the Hines Veterans' Administration Hospital, Chicago, Ill., 20.8 percent of transfused patients developed posttransfusion hepatitis from 1968-70, when 92 percent of the hospital blood supply was obtained from paid donors. However, the incidence of hepatitis decreased by 62 percent, to a rate of 7.9 percent of transfused patients, when 96 percent of the hospital's blood supply was obtained from volunteer donors. Similarly, in New Jersey, during a period in which the proportion of blood obtained from paid donors decreased from 31 percent (1970) to 9 percent (1973), the number of overt cases of posttransfusion hepatitis decreased from 424 (1 per 117 transfused patients) (1970) to 159 (1 per 284 transfused patients) (1973). In addition, during 1961-70 and 1971-73, the rate of fatalities resulting from posttransfusion hepatitis decreased from 12.9 percent to 7.2 percent, respectively. The Commissioner believes that these experiences, reported in November 1975, demonstrate that the paid and volunteer labeling significantly aids in reducing the incidence of posttransfusion hepatitis, and that it also promotes blood therapy safety and is therefore a valid, albeit partial, answer to the problem. Accordingly, the comments are rejected.

12. Nine comments suggested that FDA develop a program to enhance effective screening by the blood or component collection facility, including the improvement of donor selection procedures, by such means as the taking of medical histories from prospective donors.

The good manufacturing practice regulations for blood products, § 606.100 Standard operating procedures (21 CFR 606.100), require that each blood bank have written procedures establishing criteria for donor suitability, including acceptable medical history criteria. The requisite standard operating procedures manual should describe the best current techniques and procedures and policies developed by blood banking practitioners. These procedures, together with FDA inspections, have stimulated and enhanced good blood banking practices. In addition, the Bureau of Biologics is revising new donor selection procedures that will update the donor suitability requirements. These procedures will be published in a separate proposal.

13. Four comments suggested that the data presented in the November 1975 proposal, which were relied upon to classify certain categories of donors as high-risk, are not persuasive. It was argued that the distinction between donors in some of the referenced studies was imprecise because the methods of hepatitis testing were less sensitive than the third generation test, and that other studies revealed persistent posttransfusion hepatitis associated with blood despite third generation HB_sAg testing. Accordingly, the comments suggested that conclusions drawn from these studies were not reliable.

The Commissioner disagrees. Data establishing certain categories of donors as high risk transmitters of hepatitis were supported by numerous studies conducted after the nationwide HB_sAg-testing requirements became effective, including the use of methods of third generation sensitivity (radioimmuno assay procedures (RIA)).

As stated in the preamble to the November 1975 proposal, there has been a continuing evolution of more sensitive methods for detecting the HB_sAg. However, the most sensitive methods presently available and required by FDA regulations, methods of third generation sensitivity, are expected to detect only about 40 to 60 percent of the units of blood containing the hepatitis B virus. For this reason, the risk of transmitting viral hepatitis type B has been reduced but not eliminated by the testing requirements. Indeed, studies conducted by the New Jersey Department of health of recipients of blood prescreened by RIA found the rate of hepatitis B virus infection in recipients of blood from volunteer donors to be 1.1 percent compared to 4.2 percent in recipients of blood from paid donors. (Ref. "An epidemiological study of transfusion-associated hepatitis" conducted November 17, 1975 through December 31, 1976). Further, the National Heart, Lung and Blood Institute of the National Institutes of Health found that elevated liver-specific enzymes, indicating hepatitis of all varieties, were seen in about 10 percent of prospectively followed recipients of blood from volunteer donors as compared to about 40 percent of similarly followed recipients of blood from paid donors. (Ref. "The transfusion transmitted virus" study conducted July 1, 1974 through December 31, 1975).

These recent studies demonstrate that the high posttransfusion hepatitis risk associated with blood from paid donors pesists despite third generation testing. The Commissioner concludes that the available data support a need for the donor classification labeling. Accordingly, the comments are rejected.

14. Ten comments expressed concern that the labeling requirements did not apply to blood imported into this country and that the country of origin is not required to be identified. The comments suggested that such provisions are necessary to ensure that blood will be from populations with no greater risk of hepatitis, or other diseases transmissible by blood, than for blood or components obtained from donors in the United States. The comments suggested that though most imports today are from Western Europe and from volunteers who may be low hepatitis-risk donors, there are no means to prevent importation of voluntary blood from Japan, Mexico, and Greece. The nutrition, sanitation, and general health in countries other than the United States vary widely, as does the understanding of what a "volunteer" is and the effectiveness of donor screening. The comments suggested that labeling a unit of blood with the country of origin will provide both physicians and patients some valuable information and thus assist in informed decisions as to blood use. The comments suggest there is no known import commodity that does not contain a legend as to its country of origin and that blood should conform to this general practice.

In the February 1977 proposal, the Commissioner advised that the proposed labeling requirements are applicable to blood and blood components shipped into this country from overseas. Blood and blood components intended for transfusion may be imported into this country only if the establishment and the product(s) are licensed. (See § 601.30 (21 CFR 601.30).) Licensed biological products, whether from a foreign or domestic establishment, must meet the same standards of safety, purity, potency, and effectiveness and must be labeled in compliance with the law. Therefore, biologics regulations governing donor suitability and screening also apply to foreign licenses. Any new foreign sources of blood or blood components will have to meet these requirements. Products from countries in which disease trans-

missible by blood transfusions are endemic in frequencies that exceed to any significant degree that of the U.S. have not, and will not, be licensed for U.S. distribution. Accordingly, there is no need to label blood to identify the country of origin and the comments are therefore rejected.

15. Five comments suggested it would be simpler if FDA did not license blood banks that collect from high-incidence populations, such as the centers that regularly draw donors from skid-row areas, irrespective of whether the donors are paid or volunteer.

Establishments licensed pursuant to the Public Health Service Act (42 U.S.C. 262) to operate in interstate commerce are inspected prior to licensure and annually thereafter. Blood banks operating intrastate must be registered pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and are inspected at least biannually. All blood banks must conform to blood GMP's (21 CFR Part 606), including the provisions governing donor suitability. Licensed banks violating these regulations are subject to having their licenses revoked (21 CFR 601.5); registered banks are subject to injunction action and Federal seizure of any adulterated or misbranded blood products. The Commissioner believes these safeguards are adequate. The Food and Drug Administration will continue to monitor closely the product obtained at all blood banks. Accordingly, the comments are rejected.

16. Eight comments objected to a statement in the February 1977 preamble suggesting that the proposed label would significantly increase the demand for blood from volunteer donors and from paid donors with no higher risk than volunteer donors. The objections were based on the fact that the Commissioner has not established definitive criteria, such as procedures for followup of posttransfusion hepatitis episodes, for determining when a paid donor population is as safe as a volunteer donor population. Three other comments, however, suggested that in addition to the labeling requirement, blood banks that rely on paid donors should be required to demonstrate the safety of the blood. The comments added that these requirements would encourage blood banks that continue to rely on paid donors to provide continuing evidence that their donor populations are comparable to the volunteer donor population.

The Commissioner agrees that Federal standards for biological testing of paid donors to demonstrate the safety of their blood are desirable. However, several important variables compound the task:

(1) Whether a donor population will transmit hepatitis can only be established once it is biologically tested. However, the population will always be a mixture of tested individuals who have donated previously and untested first-time donors. Also, donors may get hepatitis after the initial biological testing, altering their prior status.

(2) Establishing rates of posttransfusion hepatitis in transfused patients is seriously complicated by the infusion of whole blood components and derivatives from many sources into one patient; thus identifying the hepatitis source and reporting cases of posttransfusion hepatitis present formidable obstacles.

(3) The present reporting system identifies only overt cases that come to a physician's attention and are correctly diagnosed. It is well recognized that these overt cases of posttransfusion hepatitis are a very small proportion of the total posttransfusion hepatitis problem. In order to obtain maximum incidence rates, it would be necessary for all blood banks to evaluate recipients prospectively after transfusion. The evaluation of over 2-million patients, receiving over 9-million units of blood distributed annually by more than 6,000 blood banks, would be very expensive. Therefore, although the Commissioner concurs with the desirability of maintaining records of cases of posttransfusion hepatitis, and periodically reviewing the hepatitis B antigen positive rates of blood banks, these procedures contribute more as performance measurements of testing proficiency and to ascertaining hepatitis rates than they do to pedigreeing (biologically testing) donor populations to ensure the safety of collected blood.

For these reasons, the Commissioner is not now prepared to establish procedures for all blood banks. The Bureau will review circulars and other materials in which blood banks describe their procedures to monitor the safety of paid donor blood.

17. Four comments criticized as factually arbitrary and legally improper the implication of the proposed labeling that paid blood is inherently stigmatized as a health risk since FDA has not provided mechanisms by which a commercial or hospital blood bank that pays donors yet supplies low-risk blood can avoid such a stigma. The comments characterized the labeling as unprecedented because it allows two classes of products to be licensed—one good and one bad—and therefore is inconsistent with FDA policy as applied to other classes of drugs and violates FDA's statutory mandate.

The Commissioner disagrees with the comments. A stigma is a mark of disgrace, which this regulation does not affix either to the product or to its producers merely by identifying the source of the product.

Whole blood and its components carry an undefined but documented risk of hepatitis, and this risk is known to be increased in paid donors. Each unit of blood donated, with or without monetary compensation, must have been collected in compliance with such legal provisions as the blood GMP's. The risks of using it may vary depending upon the donor who, if acceptable by medical criteria, is now considered suitable. Every drug approved by FDA has known side-effects and almost all drugs have acceptable ranges of characteristics, the recognition of which is not inconsistent with FDA's public charge.

18. One comment suggested that labeling blood or components according to donor classification will neither add to the awareness that paid donor blood carries a higher risk of transmitting hepatitis nor decrease the demand for blood from paid donors. For example, hospital administrators are aware of the use of paid donors when they contract with proprietary blood banks to meet hospital needs.

The Commissioner believes that the donor classification labeling is one of several means to increase physician awareness that blood from paid donors statistically carries a higher risk and is a major source of information for patients. The Commissioner recognizes that the demand for blood from paid donors may not immediately decrease but the data discussed in item 11 of this preamble strongly suggest that a marked impact will occur in a relatively short time. While hospital administrators or purchasing agents must regularly consider blood source, the labeling requirement may encourage physicians and users to review this matter more closely. Accordingly, the comment is rejected.

Effect of Labeling on Supply and Cost

19. Seven comments suggested that the proposed rules, if adopted, would make it more difficult to maintain adequate supplies of blood. This concern is based on the following assertions: (1) the 1973 Illinois blood labeling law forced that State to import volunteer blood while sending paid blood collected in Illinois to other States, (2) the General Accounting Office has reported (MWD-82) that the proposed labeling "could cause blood shortages," and (3) in Los Angeles, Calif., where a similar blood labeling law is in effect, hospitals in affluent areas meet their needs exclusively with volunteer blood, at the expense of hospitals serving areas of lower socio-economic status, which are forced to rely heavily on blood from less desirable sources. The comments postulated that in the absence of sufficient voluntary blood to replace the paid blood sources, hospitals will be faced with critical blood shortages and not be able to meet the total blood needs of

the disadvantaged sections of society they serve. Conversely, 11 comments suggested the proposed labeling will not increase the cost of blood or create blood shortages because (1) similar programs by the American Red Cross in collaboration with blood banks have operated successfully, (2) similar labeling laws in Illinois, California, and Georgia have not created blood shortages and have quickly eliminated the use of blood that is most likely to cause hepatitis, and (3) any impact on cost or supply will be negligible compared to potential benefits.

The Commissioner reiterates his belief, stated in the preamble of the November proposal, that the proposed labeling requirement will not interrupt blood services now provided and will help to achieve the National Blood Policy objective to encourage, foster, and support efforts to establish an all-voluntary blood donation system.

The Commissioner emphasizes that the proposed donor classification labeling does not prohibit monetary payment for blood donation. Indeed, monetary payment to selected donors, especially those with rare blood groups or with a long history of blood donation without adverse posttransfusion reactions in recipients, is expected to continue as long as the need exists.

Donor classification legislation is now effective in the states of Illinois, California, Florida, and Georgia. The longest experience with such legislation, in Illinois, does not support the contention that shortages in the blood supply will result because of the donor classification requirement. Indeed, the number of units collected from voluntary donors in Illinois increased sufficiently after the enactment of the donor classification legislation to provide adequately for all needs for blood within the State.

The cost-to-benefit balance of this regulation seems beyond serious question. For example, in one Illinois hospital where carefully monitored studies were conducted, the number of cases of posttransfusion hepatitis decreased significantly following the change from the use of predominantly paid donor blood to volunteer donor blood.

The Commissioner is not aware of any data, nor were any presented by the comments, to substantiate the speculations made by the comments concerning the blood use experiences in Illinois and Los Angeles, California. Accordingly, the comments are rejected.

20. Seventeen comments suggested that the proposed labeling requirements are inflationary because (1) an additional label must be applied to the millions of units collected from volunteer blood donors, (2) physicians who use blood from paid donors will need to increase their medical malpractice insurance premiums, (3) additional expenses will be required to mount effective recruitment efforts to replace the paid donor, and (4) the demand for volunteer blood will increase, raising the price and making it available only to people who can afford to pay more for it.

As stated repeatedly, the costs will be minimal because the information will be included on labels, along with the currently required information, by various means. It is not necessary to use an additional label. The Commissioner notes that the American Red Cross, which collects from volunteer donors approximately one-half of the blood supply in this country, already uses labels that identify the donor as a volunteer.

The Commissioner is not aware of any data, nor were any presented to substantiate the contention made in the comments, that (1) physicians' malpractice insurance will increase, (2) the labeling requirements will create ongoing expenses associated with mounting recruitment efforts used to motivate donors to donate blood, and (3) the price of volunteer donor blood will increase because of the demand for it. More importantly, this argument fails to consider the human and economic costs of blood recipients contracting hepatitis from blood transfusion. Even if the required labeling results in small increased expenses for the blood facility, these costs are exceeded by the benefits of reduced morbidity and mortality from posttransfusion hepatitis.

As the Commissioner noted in the proposed regulations, the inflationary aspect of the labeling requirements has been thoroughly considered, and no inflationary impact was noted. Accordingly, the comments are rejected.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 52 Stat. 1040-1042 as amended, 1049-1051 as amended (21 U.S.C. 321, 351, 352)) and the Public Health Service Act (secs. 351, 361, 58 Stat. 702-703 as amended (42 U.S.C. 262, 264)) and under authority delegated to him (21 CFR 5.1), the Commissioner is amending Chapter I of Title 21 of the Code of Federal Regulations as follows:

1. In Part 606 by amending § 606.120 by redesignating existing paragraphs (b)(2) through (b)(13) as paragraphs (b)(3) through (b)(14), and adding a new paragraph (b)(2) to read as follows:

§ 606.120 Labeling.

* * * * *

(b) * * *

(2) The appropriate donor classification statement, "paid donor," or "volunteer donor," in no less prominence than the proper name of the product (except that these requirements shall not apply to Source Plasma (Human) or plasma derivatives).

(i) A paid donor is a person who receives monetary payment for a blood donation.

(ii) A volunteer donor is a person who does not receive monetary payment for a blood donation.

(iii) Benefits, such as time off from work, membership in blood assurance programs, and cancellation of nonreplacement fees that are not readily convertible to cash, do not constitute monetary payment within the meaning of this paragraph (b)(2).

* * * * *

2. In Part 640:

a. By revising § 640.2(f)(3) to read as follows:

§ 640.2 General requirements.

* * * * *

(f) * * * (3) the label of each container of such blood bears the information required by § 640.7(f), * * *.

b. By amending § 640.7 by revising the introductory paragraph, by redesignating existing paragraphs (a) through (f) as paragraphs (b) through (g), respectively, and by adding a new paragraph (a), and revising the redesignated paragraph (f) to read as follows:

§ 640.7 Labeling.

In addition to all other applicable labeling requirements, the following, except as prescribed in paragraphs (f) and (g) of this section, shall appear on the label of each container:

(a) *Donor classification.* The appropriate donor classification statement prescribed in § 606.120(b)(2) of this chapter.

* * * * *

(f) *Issue prior to determination of test results.* The label on each container of blood that is issued pursuant to the provisions of § 640.2(f) shall bear the following information and instructions in lieu of the information specified in paragraphs (c), (d), and (e) of this section.

* * * * *

c. By amending § 640.18 by revising paragraph (a) to read as follows:

§ 640.18 Labeling.

* * * * *

(a) The information required by § 640.7 (a), (b)(2), (c), and (d) for Whole Blood (Human), except the proper name.

* * * * *

d. By amending § 640.26 by redesignating existing paragraphs (b)

through (n) as paragraphs (c) through (o), respectively, and by adding a new paragraph (b) to read as follows:

§ 640.26 Labeling.

* * * * *

(b) The appropriate donor classification statement prescribed in § 606.120(b)(2) of this chapter.

* * * * *

e. By amending § 640.35 by redesignating existing paragraphs (b) through (r) as paragraphs (c) through (s), respectively, and by adding a new paragraph (b) to read as follows:

§ 640.35 Labeling.

* * * * *

(b) The appropriate donor classification statement prescribed in § 606.120(b)(2) of this chapter.

* * * * *

f. By amending § 640.57 by redesignating existing paragraphs (b) through (o) as paragraphs (c) through (p), respectively, and adding a new paragraph (b) to read as follows:

§ 640.57 Labeling.

* * * * *

(b) The appropriate donor classification statement prescribed in § 606.120(b)(2) of this chapter.

* * * * *

Effective date: This regulation becomes effective May 15, 1978.

(Secs. 201, 501, 502, Pub. L. 717, 52 Stat. 1040-1042 as amended, 1049-1051 as amended (21 U.S.C. 321, 351, 352); secs. 351, 361, Pub. L. 410, 58 Stat. 702 as amended, 703 as amended (42 U.S.C. 262, 264).)

Dated: January 6, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-917 Filed 1-10-78; 10:33 am]

Federal Register

FRIDAY, JANUARY 13, 1978
PART VII

DEPARTMENT OF LABOR

Office of the Secretary

■

COMPREHENSIVE EMPLOYMENT TRAINING ACT

Youth Programs for Members of Migrant and Other Seasonally Employed Farmworker Families

[4510-30]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

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

Youth Programs for Members of Migrant and Other Seasonally Employed Farmworker Families Under the Comprehensive Employment and Training Act

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: These rules are for the purpose of implementing youth community conservation and improvement projects (YCCIP) and youth employment and training programs (YETP) for eligible youths who are members of migrant and seasonal farmworker families as provided in the Youth Employment and Demonstration Projects Act of 1977 (YEDPA). The purpose of these programs is to employ and enhance the employability of youths who are members of migrant and seasonal farmworker families; to help coordinate and improve existing career development, employment and training programs; and to test different approaches to solving the employment problems of youths who are members of migrant and seasonal farmworker families.

DATES: Effective date: February 13, 1978. Comments must be received on or before February 13, 1978.

ADDRESS: Send comments to: Paul A. Mayrand, Director, Office of Farmworker Programs, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Room 7122, Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT:

Paul A. Mayrand at the address in the preceding paragraph, 202-376-7288.

SUPPLEMENTARY INFORMATION. With high unemployment among youths in migrant and seasonal farmworker families, it is necessary to move as rapidly as possible to implement the programs described in the summary. To achieve this end, the Department finds it in the public interest to publish these regulations in final form. This finding constitutes a waiver of the Department's regulation 29 CFR 2.7. Nevertheless, in keeping with the spirit of 29 CFR 2.7, comments may be submitted during the 30-day period following this publication date.

Comments must be in writing and submitted to Paul A. Mayrand at the address previously cited. Although section 702(a) of the Comprehensive Employment and Training Act requires that these rules may not become effective until 30 days after publication, eligible grantees under section 303 of the Act which are interested in applying for YCCIP and YETP funds should plan programs that will comply with these rules when they become effective.

Requirements Common to YCCIP and YETP for Members of Migrant and Seasonal Farmworker Families

ELIGIBLE APPLICANTS

Sections 333(b) and 343(a)(4) of CETA provide funds for programs for youths who are members of migrant and seasonal farmworker families, and sections 332(1) and 344 state that sponsors of migrant and seasonal farmworker programs qualified as grantees under section 303 of the Act are eligible applicants for YCCIP and YETP funds. Consequently, only section 303 grantees funded under 29 CFR 97.205 or 29 CFR 97.233(c)(5) may be eligible applicants for funds under section 333(b), YCCIP, and 343(a)(4), YETP.

ELIGIBILITY FOR PARTICIPATION

Youths participating in YCCIP must meet the eligibility requirements described in 29 CFR 97.623, and youths participating in YETP must meet the eligibility requirements described in 29 CFR 97.714. In addition, youths participating in YCCIP or YETP programs operated by section 303 grantees must meet the requirements of 29 CFR 97.232(a) (1) and (2) which define farmworkers and their dependents.

Program Funding—Competitive Grants

Section 333(b) of CETA provides that 2 percent of the funds available for youth community conservation and improvement projects (YCCIP) shall be available for projects for eligible youths who are members of migrant and seasonal farmworker families; and section 343(a)(4) of CETA provides that 2 percent of the funds available for part C of title III shall be available for programs for eligible youths who are members of migrant and seasonal farmworker families, minus such amounts as are made available under section 333(b) of the Act.

To establish a variety of demonstration programs and to test the relative efficacy of different methods of dealing with unemployment problems of youths, the Secretary has decided to allocate YCCIP and YETP funds to those section 303 grantees selected as a result of a special competitive process for those funds. Taking into consideration the recommendations of a review panel, the Office of Farmworker Programs (OFP) will select those section 303 grantees to be awarded a YCCIP or a YETP grant, or both.

Grants for YCCIP or YETP will be not less than $150,000 and not more than $1,000,000; however, the Secretary, in exceptional circumstances, may allocate more than $1,000,000 to a single grant.

Requirements for YCCIP for Section 303 Migrant and Seasonal Farmworker Program Grantees

LIMITS ON USE OF FUNDS

Because section 335 of CETA requires that YCCIP programs be labor intensive, no less than 65 percent of funds available to an eligible applicant must be spent on wages and fringe benefits for participants. No more than a total of 20 percent of YCCIP funds available to an eligible applicant may be spent on administration, including administrative costs at the grantee and subgrantee level.

Requirements for YETP for Section 303 Migrant and Seasonal Farmworker Program Grantees

LOCAL EDUCATIONAL AGENCY AGREEMENTS

Section 303 grantees are not required by the Act to set aside YETP funds for services to in-school youths. However, if a YETP proposal includes an in-school component, the section 303 grantee is encouraged to seek financial and nonfinancial agreements with local education agencies. If such agreements are not feasible, a section 303 grantee may use other service deliverers to provide the most effective types of activities to serve youths who are members of migrant and seasonal farmworker families.

Youths of All Economic Backgrounds

Section 345(a)(2) of CETA permits the Department to allow program sponsors to spend 10 percent of their YETP funds on behalf of youths from families with incomes above 85 percent of the lower living standard income level. The Department, however, does not consider it practical or desirable at this time to allow section 303 sponsors to include such noneconomically disadvantaged youth in their YETP programs. The Department believes that, since the section 303 program is limited by statute to serving the economically disadvantaged, it is administratively more consistent, and more advantageous to the migrant and seasonal farmworker population, to insure that all YETP funds are used for poorer youths. These regulations, therefore, do not allow program sponsors to spend YETP funds on youths who are members of families whose incomes are above 85 percent of the lower living standard income level.

This document has been prepared under the direction of Paul A. Mayrand, Director, Office of Farmworker Programs.

Accordingly, title 29 of the Code of Federal Regulations is amended as follows:

§ 94.3 [Amended]

1. In § 94.3, *Consolidated table of contents of §§ 94–99*, the tables of contents for Part 97, Subparts J and K are added to read as follows:

Subpart J—Youth Community Conservation and Improvement Projects for Section 303 Grantees

GENERAL

Sec.
97.900 Scope and purpose.
97.901 Definitions.
97.902 Eligibility for funds.
97.903 Allocation of funds.
97.904 Award of funds.
97.905 Reallocation procedures.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

97.906 Eligible applicant planning process.
97.907 Preapplication for Federal assistance (Standard Form 424).
97.908 Project application content.
97.909 Project prioritization.
97.910 Submission of YCCIP grant application.
97.911 Special assurances and certifications.
97.912 Review of YCCIP grant applications.
97.913 Notification of selection.
97.914 Negotiation of a final grant.
97.915 Grant award.
97.916 Modifying the grant.

ADMINISTRATIVE PROVISIONS

97.917 Administrative provisions.

PROGRAM OPERATIONS

97.918 Eligibility for participation.
97.919 Participant benefits.
97.920 Substitution for title I or title III, section 303 programs.
97.921 Limitation on use of funds.
97.922 Complaint procedure.

Subpart K—Youth Employment and Training Programs for Section 303 Grantees

GENERAL

97.1000 Scope and purpose.
97.1001 Definitions.
97.1002 Eligibility for funds.
97.1003 Allocation of funds.
97.1004 Award of funds.
97.1005 Reallocation procedures.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

97.1006 Eligible applicant planning process.
97.1007 Preapplication for Federal assistance (Standard Form 424).
97.1008 Submission of YETP grant application.
97.1009 Narrative description, program and planning forms, additional documentation.
97.1010 Special assurances and certifications.
97.1011 Youth plan.
97.1012 Review of YETP grant applications.
97.1013 Notification of selection.
97.1014 Negotiation of a final grant.
97.1015 Grant award.
97.1016 Modifying the grant.

ADMINISTRATIVE PROVISIONS

97.1017 Administrative provisions.

PROGRAM OPERATIONS

97.1018 Eligibility for participation.
97.1019 Eligibility for participation (extraordinary).
97.1020 Allowable activities and services.
97.1021 In-school programs.
97.1022 Payments to participants.
97.1023 Substitution for title I or title III, section 303 programs.
97.1024 Complaint procedure.

2. Part 97 is amended by adding the following new subparts.

Subpart J—Youth Community Conservation and Improvement Projects for Section 303 Grantees

GENERAL

97.900 Scope and purpose.
97.901 Definitions.
97.902 Eligibility for funds.
97.903 Allocation of funds.
97.904 Award of funds.
97.905 Reallocation procedures.

GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

97.906 Eligible applicant planning process.
97.907 Preapplication for Federal assistance (Standard Form 424).
97.908 Project application content.
97.909 Project prioritization.
97.910 Submission of YCCIP grant applications.
97.911 Special assurances and certifications.
97.912 Review of YCCIP grant applications.
97.913 Notification of selection.
97.914 Negotiation of a final grant.
97.915 Grant award.
97.916 Modifying the grant.

ADMINISTRATIVE PROVISIONS

97.917 Administrative provisions.

PROGRAM OPERATIONS

97.918 Eligibility for participation.
97.919 Participant benefits.
97.920 Substitution for title I or title III, section 303 programs.
97.921 Limitation on use of funds.
97.922 Complaint procedure.

Subpart K—Youth Employment and Training Programs for Section 303 Grantees

GENERAL

97.1000 Scope and purpose.
97.1001 Definitions
97.1002 Eligibility for funds.
97.1003 Allocation of funds.
97.1004 Award of funds.
97.1005 Reallocation procedures.

GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

97.1006 Eligible applicant planning process.
97.1007 Preapplication for Federal assistance (Standard Form 424).
97.1008 Submission of YETP grant application.
97.1009 Narrative description, program and planning forms, additional documentation.
97.1010 Special assurances and certifications.
97.1011 Youth plan.
97.1012 Review of YETP grant applications.
97.1013 Notification of selection.
97.1014 Negotiation of a final grant.
97.1015 Grant award.
97.1016 Modifying the grant.

ADMINISTRATIVE PROVISIONS

97.1017 Administrative procedures.

PROGRAM OPERATIONS

97.1018 Eligibility for participation.
97.1019 Eligibility for participation (extraordinary).
97.1020 Allowable activities and services.
97.1021 In-school programs.
97.1022 Payments to participants.
97.1023 Substitution for title I or title III, section 303 programs.
97.1024 Complaint procedure.

AUTHORITY: Section 702(a) of the Comprehensive Employment and Training Act of 1973, as amended, unless otherwise noted.

Subpart J—Youth Community Conservation and Improvement Projects for Section 303 Grantees

GENERAL

§ 97.900 Scope and purpose.

(a) This subpart contains the Department of Labor's regulations for the Youth Community Conservation and Improvement Projects (YCCIP) authorized by title III, part C, subpart 2 of the Act for eligible youths who are members of migrant and seasonal farmworker families. This subpart does not contain all regulations under the Act necessary to the operation of a YCCIP component by a section 303 grantee and is, therefore, designed to be used in conjunction with Subpart G—Youth Community Conservation and Improvement Projects (YCCIP). All provisions of the regulations of subpart G of this part shall be incorporated except where the provisions of this subpart conflict with the provisions of the regulations of subpart G. All provisions of subpart C of this part also apply to YCCIP operated by section 303 grantees, except to the extent that they may conflict with this subpart.

(b) When the regulations of this subpart conflict with other regulations promulgated under the Act in 29 CFR Parts 94 through 99, the regulations contained in this subpart shall prevail. Part 98 of this title does not apply to programs under this subpart, except where noted.

(c) The Department of Labor will provide allocations of YCCIP funds to those section 303 grantees selected to receive these funds for fiscal year 1978, or subsequent years, if funds are made available by the Congress, as a result of a special competitive process.

Eligible section 303 applicants are expected to submit quality project applications selected through an objective process at the local level as described in section 335 of the Act. The Department will review these YCCIP project applications and will fund those projects which best fulfill the requirements of the program.

(d) Because of the special nature of problems faced by eligible youths who are members of migrant and seasonal farmworker families, programs developed and implemented under section 333(b) of the Act shall be administered by the Employment and Training Administration (ETA), Office of National Programs (ONP), Director, Office of Farmworker Programs (OFP) at the national level.

(e) Statutory authority for regulations in this subpart may be found in sections 303, 333(b), 354(b) and 702(a) of the Act, as amended, as well as in other sections of the Act.

§ 97.901 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4, of this title, and §§ 97.602 and 97.203 of this part.

§ 97.902 Eligibility for funds.

Only section 303 grantees funded under § 97.205 or paragraph (c)(5) of § 97.233 are eligible to compete for YCCIP funds.

§ 97.903 Allocation of funds.

(a) Two percent of the funds available for Youth Community Conservation and Improvement Projects (YCCIP) shall be made available for projects for eligible migrant and seasonal farmworker youths.

(b) Allocations shall be provided to those section 303 grantees selected as a result of a special competitive process for YCCIP funds. Section 303 grantees shall be allocated no more than $1,000,000 and no less than $150,000 for each YCCIP grant. In exceptional circumstances the secretary may allocate more than $1,000,000 for a single YCCIP grant.

§ 97.904 Award of funds.

The Director, Office of Farmworker Programs (OFP), shall award to selected section 303 grant applicants, funds in accordance with the provisions of § 97.218 except for paragraph (b)(3) of § 97.218.

§ 97.905 Reallocation procedures.

(a) The Director, Office of Farmworker Programs (OFP), may reallocate any amount of any allocation made to a section 303 grantee under subpart 2 of part C of title III of the Act to the extent that a grantee will not be able to use all or any part of YCCIP funds granted. Any reallocation of YCCIP funds shall be in accordance with the procedure established in section 354(b) of the Act.

(b) Priority shall be given to reallocating within the same State consistent with providing the most effective service to the maximum number of youths who are members of migrant and seasonal farmworker families.

GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

§ 97.906 Eligible applicant planning process.

Each eligible section 303 grant applicant which desires YCCIP funds shall submit a preapplication pursuant to § 97.907 and a plan pursuant to § 97.1006 and §§ 97.616 through 97.619.

§ 97.907 Preapplication for Federal assistance (Standard Form 424).

An eligible section 303 grant applicant interested in applying for YCCIP funds shall submit a Standard Form 424 to the appropriate Regional Administrator; Director, OFP; and to areawide A-95 clearinghouses by a date to be announced by the Director, OFP, and published in the FEDERAL REGISTER.

§ 97.908 Project application content.

In addition to information required in § 97.611, except paragraph (f)(1), project applications must include:

(a) Direct and indirect program costs as defined in paragraphs (a) (1) and (2) of § 97.255, and

(b) Administrative costs as defined in paragraphs (e)(6) of § 97.255.

§ 97.909 Project prioritization.

(a) Each section 303 eligible applicant shall rank, in terms of their relative priority, approvable project applications.

(b) Eligible applicants shall document the rationale used for ranking the approvable project applications.

§ 97.910 Submission of YCCIP grant application.

(a) Each eligible applicant must submit three copies of the proposed YCCIP plan by a date to be set by the Director, Office of Farmworker Programs, and published in the FEDERAL REGISTER, to the address listed below:

U.S. Department of Labor, Employment and Training Administration, 601 D Street NW., Room 7122, Washington, D.C. 20213. Attn: Director, Office of Farmworker Programs (OFP).

(b) Two copies of the proposed YCCIP plan shall also be submitted directly to the appropriate Regional Administrator for Employment and Training at the same time the three copies are submitted to the above address and labeled: YCCIP Plan for CETA 303 Farmworker Program.

§ 97.911 Special assurances and certifications.

In addition to the assurances and certifications noted in § 97.619, the proposed YCCIP plan must also comply with the assurances and certifications required in paragraph (b)(4) of § 97.213.

§ 97.912 Review of YCCIP grant applications.

Proposed YCCIP plans submitted by eligible applicants shall be reviewed and evaluated by the Director, Office of Farmworker Programs, to determine those judged to be most qualified to receive YCCIP grants.

(a) The Director, OFP, shall review the documentation described in § 97.611 and § 97.614 to determine whether a proposed YCCIP plan meets the requirements of the Act, regulations of this subpart and other applicable laws.

(b) The Director, OFP, shall use the factors and assurances set forth in paragraphs (b) and (c) of § 97.613 and review the criteria for ranking projects. In addition, the provisions of paragraphs (a), (b) (1), (2), (3), (4), (5), (6), (9), (10), and (11) of § 95.17 and paragraph (c)(6)(i) of § 97.255 shall be followed by the Director, OFP, in reviewing YCCIP proposals.

§ 97.913 Notification of selection.

(a) Potential YCCIP grantees selected as a result of the procedures set forth in § 97.912 shall be so notified by the Director, OFP. The notification shall invite each potential YCCIP grantee to negotiate the final terms and conditions of the grant, shall establish the time and place of the negotiation, and shall indicate the State or area to be covered by the grant.

(b) A section 303 grantee whose proposed YCCIP plan is not selected by the Secretary to receive YCCIP funds shall be notified in writing and shall be provided the names and addresses of potential YCCIP grantees.

§ 97.914 Negotiation of a final grant.

The procedures detailed in § 97.217 of this part shall apply.

§ 97.915 Grant award.

The approval of the proposed YCCIP plan will be in accordance with § 97.218 of this part.

§ 97.916 Modifying the grant.

Any modification to the YCCIP plan will be in accordance with provisions of § 97.220 of this part.

ADMINISTRATIVE PROVISIONS

§ 97.917 Administrative provisions.

Eligible section 303 grant applicants shall comply with the administrative provisions of § 97.250 of this part in operating programs pursuant to this subpart.

PROGRAM OPERATIONS

§ 97.918 Eligibility for participation.

In addition to the criteria detailed in § 97.623, participating youths must also meet the criteria for farmworker or dependent of a farmworker detailed in paragraphs (a) (1) and (2) of § 97.232.

§ 97.919 Participant benefits.

(a) Participants shall be paid wages as described in paragraph (c) of § 97.718 of this part, except that the Director, OFP, will negotiate any wage disputes as described in paragraphs (c) (3) (ii), (iii), and (4) of § 97.718.

(b) Each participant shall be provided the benefits and working conditions as provided in § 97.259 of this part.

§ 97.920 Substitution for title I or title III, section 303 programs.

Programs funded under YCCIP shall be supplementary to, and shall not replace programs and activities for youth available under title I or title III, section 303 of the Act.

§ 97.921 Limitation on use of funds.

Because section 335 of the Act requires that this program be labor intensive, no less than 65 percent of funds available to an eligible applicant shall be used for wage and fringe benefits for participants. Section 303 YCCIP projects will comply with paragraph (f)(6)(1) of § 97.255. Administrative costs shall not exceed 20 percent of planned costs for the entire YCCIP grant unless such additional costs have been approved in writing by the Secretary.

§ 97.922 Complaint procedure.

An eligible applicant shall have the right to appeal a decision not to fund a YCCIP proposal in accordance with procedures described in § 97.292.

Subpart K—Youth Employment and Training Programs for Section 303 Grantees

GENERAL

§ 97.1000 Scope and purpose.

(a) This subpart contains the Department of Labor's regulations for the Youth Employment and Training Programs (YETP) authorized by subpart 3 of part C of title III of the Act for eligible youths who are members of migrant and seasonal farmworker families. This subpart does not contain all regulations under the Act necessary to the operation of a YETP component by a section 303 grantee and is, therefore, designed to be used in conjunction with subpart H—Youth Employment and Training Programs. All provisions of the regulations of subpart H of this part shall be incorporated except where the provisions of this subpart conflict with the provisions of subpart H. All provisions of subpart C of this part also apply to YETP operated by section 303 grantees, except to the extent that they may conflict with this subpart.

(b) When the regulations of this subpart conflict with other regulations promulgated under the Act, in 29 CFR parts 94 through 99, the regulations contained in this subpart shall prevail. Part 98 of this title does not apply to programs under this subpart, except where noted.

(c) Because of the special nature of problems faced by eligible youths who are members of migrant and seasonal farmworker families, programs developed and implemented under section 343(a)(4) of the Act shall be administered by the Employment and Training Administration (ETA), Office of National Programs (ONP), Director, Office of Farmworker Programs (OFP) at the national level.

(d) Statutory authority for regulations in this subpart may be found in sections 303, 343(a)(4), 354(b) and 702(a) of the Act, as amended, as well as in other parts of the Act.

§ 97.1001 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title and §§ 97.702 and 97.203 of this part.

§ 97.1002 Eligibility for funds.

Only section 303 grantees funded under § 97.205 or paragraph (c)(5) of § 97.233 are eligible to compete for YETP funds.

§ 97.1003 Allocation of funds.

(a) Two percent of funds available for part C of title III of the Act shall be made available (after deducting the amount available under section 333(b) of the Act) for programs for eligible youths who are members of migrant and seasonal farmworker families.

(b) Allocations shall be provided to those section 303 grantees selected as a result of a special competitive process for YETP funds. Section 303 grantees shall be allocated no more than $1,000,000 and no less than $150,000 for each YETP grant. In exceptional circumstances the Secretary may allocate more than $1,000,000 for a single YETP grant.

§ 97.1004 Award of funds.

The Director, Office of Farmworker Programs, shall award to selected section 303 grant applicants funds in accordance with the provisions of § 97.218 except for paragraph (b)(3).

§ 97.1005 Reallocation procedures.

(a) The Director, Office of Farmworker Programs, may reallocate any amount of any allocation made to a section 303 grantee under subpart 3 of part C of title III of the Act to the extent that a grantee will not be able to use all or any part of YETP funds granted. Any reallocation of YETP funds shall be in accordance with the procedure established in section 354(b) of the Act.

(b) Priority shall be given to reallocating within the same State consistent with providing the most effective service to the maximum number of youths who are members of migrant and seasonal farmworker families.

GRANT PLANNING, APPLICATION AND MODIFICATION PROCEDURES

§ 97.1006 Eligible applicant planning process.

(a) *Youth plan.* In developing a plan for activities under part C of title III, an eligible section 303 applicant shall:

(1) Take into account the eligible section 303 grantee's section 303 program and, where applicable, title I and title III summer youth employment programs.

(2) Use the planning process and board or advisory council referenced in paragraph (b)(3)(i)(C)(*1*) of § 97.213 of this part, including participation of youths who are members of migrant and seasonal farmworker families as described in paragraph (b) of this section.

(b) *Youth participation in planning.* Where boards or advisory councils of private, nonprofit organizations have youth participation or youth advisory groups, the youth representatives shall, as a minimum, make recommendations to the board or council with respect to the planning and review of all activities proposed under part C of title III of the Act. Where the eligible applicant is a prime sponsor under section 102 of the Act, youth participation in planning shall be in accordance with paragraph (b) of § 97.705.

(c) *Community Based Organizations.* (1) The section 303 grantee will submit the proposed plan and responses from community based organizations in the section 303 grantee's service area which have reviewed the plan to the Director, Office of Farmworker Programs.

(2) An eligible section 303 grantee may directly perform program activities described in § 97.233 of this part.

(d) *Application.* Each eligible section 303 grant applicant which desires funds for YETP shall submit a preapplication pursuant to § 97.1007 and a youth plan pursuant to paragraphs (a) and (b) (1), (2), (5), (6), (8), and (9) of § 97.709 and § 97.1009. The eligible applicant's YETP plan shall use the planning process and the board or advisory council described in paragraphs (b)(3)(i)(B) (*1*), (*2*), and (*3*) and (b)(3)(i)(C) (*1*), (*2*), (*3*), (*4*), (*5*), (*6*), (*8*), (*9*), and (*10*) of § 97.213 and paragraph (b) of this section. The compliant pro-

cedure for program participants shall be as described in § 97.291.

§ 97.1007 Preapplication for Federal assistance (Standard Form 424).

An eligible section 303 grant applicant interested in applying for YETP funds shall submit a Standard Form 424 to the appropriate Regional Administrator; to Director, OFP, and to areawide A-95 clearinghouses by a date to be set by the Director, OFP, and published in the FEDERAL REGISTER.

§ 97.1008 Submission of YETP grant application.

(a) Each applicant must submit three copies of the proposed YETP plan by a date to be set by the Director, Office of Farmworker Programs, and published in the FEDERAL REGISTER, to the address listed below:

U.S. Department of Labor, Employment and Training Administration, 601 D Street, NW., Room 7122, Washington, D.C. 20213. Attn: Director, Office of Farmworker Programs.

(b) Two copies of the proposed YETP plan shall be submitted to the appropriate Regional Administrator at the time the three copies are submitted to the Director, Office of Farmworker Programs, and label: YETP Plan for CETA 303 Farmworker Program.

§ 97.1009 Narrative description, program and planning forms, additional documentation.

Section 303 applicants will not be required to include agreements described in paragraph (b) of § 97.717 in the narrative description if no in-school activity is planned or if no local educational agency agreement has been completed.

§ 97.1010 Special assurances and certifications.

In addition to requirements of § 97.710, the youth plan shall comply with assurances and certifications required in paragraph (b)(4) of § 97.213.

§ 97.1011 Youth plan.

The procedures of paragraphs (a) and (b) of § 97.711 shall apply except that the YETP plan will be submitted to the Director, Office of Farmworker Programs.

§ 97.1012 Review of YETP grant applications.

(a) Proposed YETP plans submitted by eligible applicants shall be reviewed and evaluated by the Director, Office of Farmworker Programs (OFP), to determine those judged to be most qualified to receive YETP grants.

(b) The Director, OFP, shall review this documentation described in paragraphs (a) and (b) of § 97.711 to determine whether the proposed YETP plan meets requirements of the Act, regulations of this subpart and other applicable laws. In addition, the provisions of paragraphs (a) and (b) (1), (2), (3), (4), (5), (6), (9), (10), and (11) of § 95.17 and paragraph (f)(6)(i) of § 97.255 shall be followed by the Director in reviewing YETP proposals.

§ 97.1013 Notification of selection.

Potential YETP grantees selected as a result of procedures set forth in § 97.1012 shall be notified in the manner described in § 97.913.

§ 97.1014 Negotiation of a final grant.

The procedures detailed in § 97.217 of this part shall apply.

§ 97.1015 Grant award.

The approval of the proposed YETP plan will be in accordance with provisions of § 97.218 of this part.

§ 97.1016 Modifying the grant.

Any modification of the YETP plan will be in accordance with provisions of § 97.220 of this part.

ADMINISTRATIVE PROVISIONS

§ 97.1017 Administrative provisions.

Eligible section 303 grantee applicants shall comply with the administrative procedures of § 97.250 in operating YETP programs.

PROGRAM OPERATIONS

§ 97.1018 Eligibility for participation.

In addition to criteria established in § 97.714, participating youths must also meet criteria for farmworker or dependent of a farmworker established in paragraphs (a) (1) and (2) of § 97.232.

§ 97.1019 Eligibility for participation (extraordinary).

Youths who are in school and are 14 or 15 years old may participate in YETP, provided they meet other conditions described in § 97.1018.

§ 97.1020 Allowable activities and services.

(a) Programs may include any type of employment and training activity described in § 97.233 of this part. For the YETP component, grantees are encouraged but not required to conduct OJT training on a "hire first, train later" basis.

(b) Each participant in on-the-job training, work experience or career employment experience shall be assured of the general benefits and working conditions for program participants provided in § 97.259.

(c) Eligible section 303 applicants shall not design a special component using up to 10 percent of YETP funds to serve a mixture of youth from families above and below the income level specified in paragraph (a)(3) of § 97.714. All YETP funds going to section 303 grantees will be used for youths who are members of migrant and seasonal farmworker families.

§ 97.1021 In-school programs.

Eligible section 303 grant applicants are not required by the Act to set aside any specific amount of YETP funds to serve in-school youth. However, section 303 grantees serving in-school youth in programs designed to enhance career opportunities and job prospects are encouraged to seek written agreements with local education agencies.

§ 97.1022 Payments to participants.

(a) *Allowances.* Participants shall be paid allowances in accordance with the criteria and process in § 97.256.

(b) *Wages.* Participants shall be paid wages as described in paragraph (c) of § 97.718, except that the Director, OFP, will resolve wage disputes described in paragraphs (c)(3) (ii), (iii), and (4) of § 97.718.

§ 97.1023 Substitution for title I or title III, section 303 programs.

Programs funded under YETP shall be supplementary to and shall not replace programs and activities for youths available under title I or title III, section 303 of the Act.

§ 97.1024 Complaint procedure.

Section 303 grant applicants shall have the right to appeal decision not to fund YETP programs in accordance with procedures described in § 97.292.

Signed this 10th day of January, 1978, in Washington, D.C.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-1018 Filed 1-12-78; 8:45 am]

FRIDAY, JANUARY 13, 1978
PART VIII

federal register

OFFICE OF MANAGEMENT AND BUDGET

■

BUDGET RESCISSIONS AND DEFERRALS

Reports

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS

January 1978

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of January 1, 1978, of four rescissions contained in the fourteenth, fifteenth, and seventeenth special messages of FY 1977 and one rescission and 50 deferrals contained in the first four special messages for fiscal year 1978. These messages were transmitted to the Congress on July 19 (both the fourteenth and fifteenth messages), July 26, September 23, October 3, November 10, and December 15, 1977.

RESCISSIONS (ATTACHMENT A)

Attachment A lists four rescission proposals totalling $643.4 million made in FY 1977 but carried into FY 1978 and a single rescission proposal for $2.7 million made this fiscal year. The history and status of each rescission proposal are shown on the attachment.

DEFERRALS (ATTACHMENT B)

As of January 1, 1978, $3,134.7 million in budget authority was being deferred from obligation and another $1.7 million in 1978 obligations was being deferred from expenditure. Attachment B shows the history and status of each deferral proposed during fiscal year 1978.

INFORMATION FROM SPECIAL MESSAGES

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the FEDERAL REGISTER of:

Friday, July 22, 1977 (Vol. 42, No. 141, Part V) (both the fourteenth and fifteenth 1977 special messages).
Friday, July 29, 1977 (Vol. 42, No. 146, Part VIII) (seventeenth 1977 special message).
Thursday, September 29, 1977 (Vol. 42, No. 189, Part IX).
Friday, October 7, 1977 (Vol. 42, No. 195, Part IV).
Thursday, November 15, 1977 (Vol. 42, No. 220, Part IV).
Wednesday, December 21, 1977 (Vol. 42, No. 245, Part IV).

JAMES T. MCINTYRE, JR.,
Acting Director.

STATUS OF RESCISSIONS

FISCAL YEAR 1978
(Amounts in thousands of dollars)

As of January 1, 1978

Agency/Bureau/Account	Rescission Number	Amount Proposed: Previously Considered by the Congress	Amount Proposed: Currently Before the Congress	Date Special Message Transmitted to Congress	Amount Rescinded	Amount Made Available	Date Made Available
Department of Defense - Military							
Aircraft procurement, Air Force	R77-18	462,000	1/	07-10-77	1/	462,000	10-05-77
Missile procurement, Air Force	R77-19	1,400	1/	07-19-77	1/	1,400	10-05-77
Missile procurement, Air Force	R77-20	105,000		07-26-77		105,000	10-14-77
Department of Justice							
Law Enforcement Assistance Administration: Salaries and expenses	R78-1 2/3/		2,668	09-23-77			
General Service Administration: Federal Buildings Fund	R77-17	75,000		07-19-77	75,000 4/		
TOTAL:		643,400 5/	2,668		75,000	568,400	

1/ On January 1, 1978, proposals to rescind these funds were included in the Senate-passed version of H.R. 9375, the Supplemental Appropriations Act, 1978.
2/ This rescission proposal is related to a request for transfer (contained in H.R. 9375, the Supplemental Appropriations Act, 1978) of the same funds within the Department of Justice. It is anticipated that a deferral will be submitted to report the extension of this withholding pending final Congressional action on the transfer request.
3/ An opinion issued by the Comptroller General on October 26, 1977, holds that this proposal should have been classified as a deferral.
4/ Public Law 95-186.
5/ This amount was proposed for rescission in FY 1977.

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Military assistance..	D78-47	131,200		12-15-77				131,200
International military education and training..	D78-48	2,000		12-15-77				2,000
Foreign military credit sales.....	D78-49	673,250		12-15-77	-10,870			662,380
Emergency refugee and migration assistance fund.....	D78-43	2,000		11-10-77				
	D78-43A		+5,800	12-15-77				7,800
TOTAL:		808,450	5,800		-10,870			803,380
* * *

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: DEPARTMENT OF COMMERCE								
Economic Development Administration								
Local public works..	D78-5	4,000		10-03-77				4,000
Financial and technical assistance..	D78-6	3,900		10-03-77				3,900
National Oceanic and Atmospheric Administration								
Operations, research, and facilities.....	D78-7	3,750		10-03-77	-3,750			0
Promote and develop fishery products and research pertaining to American fisheries...	D78-8	5,429		10-03-77				5,429
Fisheries loan fund..	D78-9	6,177		10-03-77				6,177
Fishermen's guaranty fund..	D78-10	714		10-03-77	-38			676
TOTAL:		23,972			-3,788			20,184

* * * \

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: DEPARTMENT OF DEFENSE-MILITARY								
Shipbuilding and conversion, Navy	D78-44	871,125		11-10-77				871,125
Military construction, all services	D78-11	438,439		10-03-77	-36,120			402,319
TOTAL:		1,309,564			-36,120			1,273,444
AGENCY: DEPARTMENT OF DEFENSE-CIVIL								
Miscellaneous accounts, Wildlife conservation, etc. military reservations	D78-12	456		10-03-77	-12			446
TOTAL:		456			-12			446
AGENCY: DEPARTMENT OF ENERGY 1/								
Energy (Plenum Fill experiment)	D78-31	1,500		10-03-77				
	D78-31A		+800 2/	11-10-77				2,300
Energy (Clean boiler fuel from coal project)	D78-32	46,660		10-03-77				
	D78-32A		2/	11-10-77				46,660
Energy (Molten salt breeder reactor project)	D78-30	1,500		10-03-77				
	D78-30A		2/	11-10-77				1,500

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: DEPARTMENT OF ENERGY 1/ - Continued								
Energy (10 MW Central receiver solar thermal power plant)...	D78-45	31,000		11-10-77				31,000
TOTAL:		80,600	800					81,460

1/ See also Energy Research and Development Administration.
2/ The supplementary report changed the deferral from the Energy Research and Development Administration to the Department of Energy.

* * * \

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: DEPARTMENT OF THE INTERIOR - Continued								
Geological Survey								
Payment from proceeds, sale of water.....	D78-17	34		10-03-77				34
Bureau of Mines								
Miscellaneous appropriations								
Drainage of anthracite mines. ..	D78-18	3,500		10-03-77				3,500
Office of Territorial Affairs								
Trust territory of the Pacific Islands.... ...	D78-19	12,000		10-03-77				12,000
TOTAL:		76,734						76,734
AGENCY: DEPARTMENT OF JUSTICE								
Federal Prison System								
Buildings and facilities.....	D78-20	42,245		10-03-77				42,245
TOTAL:		42,245						42,245
AGENCY: DEPARTMENT OF TRANSPORTATION								
Coast Guard								
Acquisition, construction, and improvements..	D78-21	13,031		10-03-77	-13,031	1/		0

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: DEPARTMENT OF TRANSPORTATION - Continued								
Federal Aviation Administration								
Construction, Metropolitan Washington Airports..	D78-22	1,010		10-03-77				1,010
Civil Supersonic aircraft development termination.....	D78-23	134		10-03-77				134
Facilities and equipment (Airport and airway trust fund.	D78-24	320,650		10-03-77				320,650
Federal Highway Administration								
Trust fund share of other highway programs.....	D78-25	74,880		10-03-77				74,880
TOTAL:		409,705			-13,031			396,674

1/ Impoundment resolution, S. Res. 282, passed the Senate on November 1, 1977, rejecting this deferral. The funds, however, were made available for obligation on October 31, 1977.

* * * \

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: DEPARTMENT OF THE TREASURY - Continued								
State and local government fiscal assistance fund.. ...	D78-28	391 1/		10-03-77	-40 1/			
	D78-28A		+1,360 1/	12-15-77				1,711 1/
Bureau of the Mint								
Construction of mint facilities..	D78-29	5,730		10-03-77				5,730
TOTAL: BA		59,910	38,261					98,171
O		3,797	1,360		-3,446			1,771

1/ Outlays only

* * * \

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION - Continued								
Plant and capital equipment (Intersecting storage ring accelerator)..	D78-35	5,000		10-03-77		-5,000 5/		0
TOTAL:		38,800				-38,800		0

1/ See also Department of Energy.
2/ Impoundment resolution H. Res. 851 passed the House on November 2, 1977, rejecting this deferral.
3/ Impoundment resolution H. Res. 852 passed the House on November 2, 1977, rejecting this deferral.
4/ Impoundment resolution H. Res. 853 passed the House on November 2, 1977, rejecting this deferral.
5/ Impoundment resolution H. Res. 854 passed the House on November 2, 1977, rejecting this deferral.

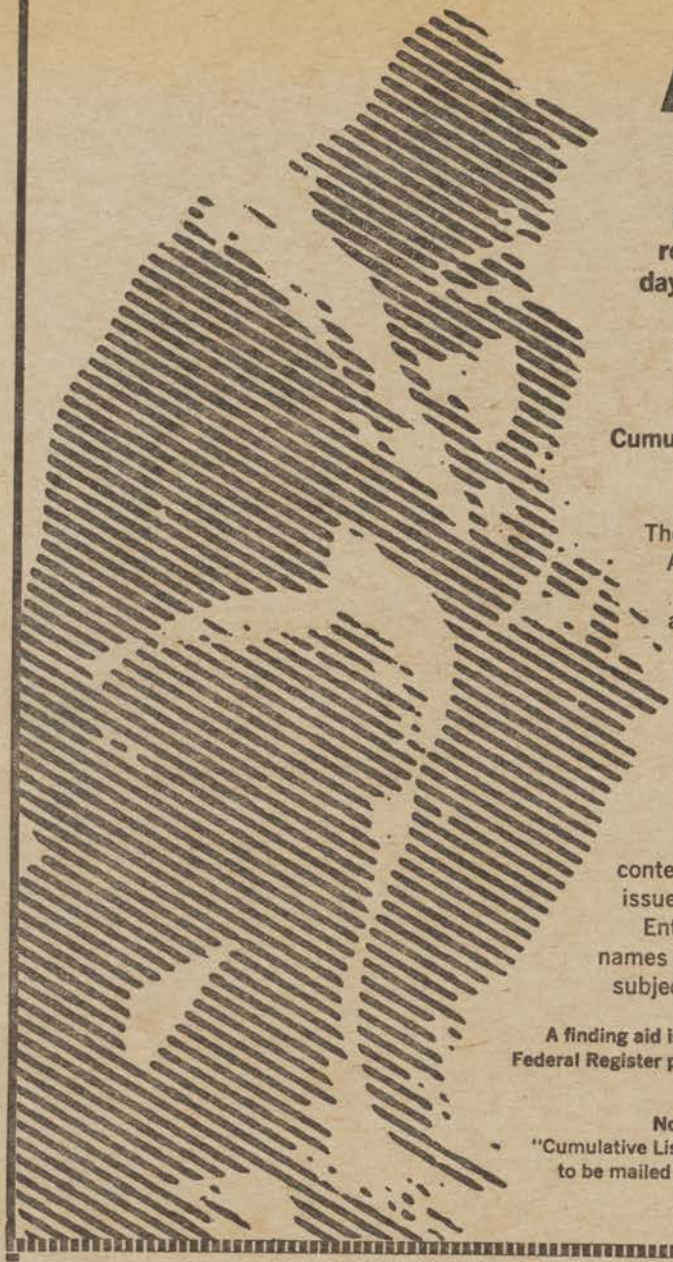
* * * *

STATUS OF DEFERRALS
FISCAL YEAR 1978

(amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Original Request	Amount Transmitted in Special Message: Subsequent Change	Date Special Message Transmitted	Cumulative OMB/Agency Releases	Congressionally Required Releases	Cumulative Adjustments	Amount Deferred as of 01-01-78
AGENCY: OTHER INDEPENDENT AGENCIES - Continued								
Interstate Commerce Commission Payment of directed rail service.. ..	D78-40	13,700		10-03-77				13,700
National Science Foundation Research, and related activities..	D78-40	4,500		11-10-77				4,500
United States Information Agency Salaries and expenses (special foreign currency program)..	D78-41	1,153		10-03-77				1,153
United States Railway Association Payment for purchase of Conrail securities..	D78-42	260,000		10-03-77				260,000
TOTAL:		290,091						290,091
TOTAL: ALL DEFERRALS	BA	3,195,296	44,661		-66,692	-38,600		3,134,665
	O	3,797	1,360		-3,446			1,711

[FR Doc. 78-1098 Filed 1-11-78; 3:58 pm]



would you like to know

if any changes have been made in certain titles of the CODE OF FEDERAL REGULATIONS without reading the Federal Register every day? If so, you may wish to subscribe to the "Cumulative List of CFR Sections Affected," the "Federal Register Index," or both.

Cumulative List of CFR Sections Affected
$10.00
per year

The "Cumulative List of CFR Sections Affected" is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register, and is issued monthly in cumulative form. Entries indicate the nature of the changes.

Federal Register Index $8.00
per year

Indexes covering the contents of the daily Federal Register are issued monthly, quarterly, and annually. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers: FR Indexes and the "Cumulative List of CFR Sections Affected" will continue to be mailed free of charge to regular FR subscribers.

Mail order form to:
Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

There is enclosed $_____ for _____ subscription(s) to the publications checked below:

..... **CUMULATIVE LIST OF CFR SECTIONS AFFECTED ($10.00 a year domestic; $12.50 foreign)**

..... **FEDERAL REGISTER INDEX ($8.00 a year domestic; $10.00 foreign)**

Name _____

Street Address _____

City _____ **State** _____ **ZIP** _____

Make check payable to the Superintendent of Documents

☆ GPO: 1976—O-58-000