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federal register

TUESDAY, NOVEMBER 14, 1978

highlights

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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
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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.

NOTE: As of August 14, 1978, Community Services Administration (CSA) documents are being assigned to the Monday/Thursday schedule.

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H.R. 13650 ..... Pub. L. 95-604
"Uranium Mill Tailings Radiation Control Act of 1978." (Nov. 8, 1978; 92 Stat. 3021). Price: $1.10.

S. 2774 ..... Pub. L. 95-605
To extend the boundaries of the Toiyabe National Forest in Nevada, and for other purposes. (Nov. 8, 1978; 92 Stat. 3044). Price: $.60.

S. 2727 ..... Pub. L. 95-606
"Amateur Sports Act of 1978." (Nov. 8, 1978; 92 Stat. 3045). Price: $.90.

S. 2981 ..... Pub. L. 95-607
To amend section 5 of the Department of Transportation Act, relating to rail service assistance, and for other purposes. (Nov. 8, 1978; 92 Stat. 3059). Price: $.80.

S. 1214 ..... Pub. L. 95-608
"Indian Child Welfare Act of 1978." (Nov. 8, 1978; 92 Stat. 3069). Price: $.80.

S. 3083 ..... Pub. L. 95-609
"Quiet Communities Act of 1978."

S. 274 ..... Pub. L. 95-610
To amend title 10, United States Code, to prohibit union organization of the armed forces, membership in military labor organizations by members of the armed forces, and recognition of military labor organization by the Government, and for other purposes. (Nov. 8, 1978; 92 Stat. 3085). Price: $.60.

H.R. 10898 ..... Pub. L. 95-611
To amend the Regional Rail Reorganization Act of 1973 to authorize appropriations for the United States Railway Association for fiscal year 1979. (Nov. 8, 1978; 92 Stat. 3089). Price: $.60.

S. 2093 ..... Pub. L. 95-612
To provide that the Exchange Stabilization Fund shall not be available for payment of administrative expenses; and for other purposes. (Nov. 8, 1978; 92 Stat. 3091). Price: $.60.

S. 2522 ..... Pub. L. 95-613
To extend the programs of assistance under title X and part B of title XI of the Public Health Service Act. (Nov. 8, 1978; 92 Stat. 3093). Price: $.60.

S. 553 ..... Pub. L. 95-614
To amend the boundary of the Cibola National Forest, designate an intended wilderness area, and for other purposes. (Nov. 8, 1978; 92 Stat. 3095). Price: $.60.

H.R. 9251 ..... Pub. L. 95-615
"Tax Treatment Extension Act of 1977." (Nov. 8, 1978; 92 Stat. 3097). Price: $.90.

H.R. 2329 ..... Pub. L. 95-616
"Fish and Wildlife Improvement Act of 1978." (Nov. 8, 1978; 92 Stat. 3110). Price: $.70.

H.R. 4018 ..... Pub. L. 95-617
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H.R. 5263 ..... Pub. L. 95-618
"Energy Tax Act of 1978." (Nov. 9, 1978; 92 Stat. 3174). Price: $1.40.

H.R. 5037 ..... Pub. L. 95-619
"National Energy Conservation Policy Act." (Nov. 9, 1978; 92 Stat. 3206). Price: $2.10.

H.R. 5146 ..... Pub. L. 95-620
"Powerplant and Industrial Fuel Use Act of 1978." (Nov. 9, 1978; 92 Stat. 3289). Price: $1.90.

H.R. 5289 ..... Pub. L. 95-621
"Natural Gas Policy Act of 1978." (Nov. 9, 1973; 92 Stat. 3350). Price: $1.90.

S. 2450 ..... Pub. L. 95-622
To amend the Community Mental Health Centers Act to revise and extend the programs under that Act, to amend the Public Health Service Act to revise and extend the programs of assistance for libraries of medicine, the programs of the National Heart, Lung, and Blood Institute, and of the National Cancer Institute, and the program for National Research Service Awards, to establish the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, and for other purposes. (Nov. 9, 1978; 92 Stat. 3412). Price: $1.30.

S. 2466 ..... Pub. L. 95-623
"Health Services Research, Health Statistics, and Health Care Technology Act of 1978." (Nov. 9, 1978; 92 Stat. 3443). Price: $.90.

S. 3151 ..... Pub. L. 95-624
"Department of Justice Appropriation Authorization Act, Fiscal Year 1979." (Nov. 9, 1978; 92 Stat. 3459). Price: $.70.

rules and regulations

[1620-01-M]

Title 4—Accounts

CHAPTER III—COST ACCOUNTING STANDARDS BOARD

PART 331—CONTRACT COVERAGE

AGENCY: Cost Accounting Standards Board.

ACTION: Final rule.

SUMMARY: This rule exempts contracts and subcontracts awarded to foreign concerns from Cost Accounting Standards except Standards 401 and 402. It also exempts contracts and subcontracts awarded to foreign governments and their agencies from all standards and rules of the Board. Certain of these amendments are being made in the interest of sound contracting practices and will continue to assure that necessary information about contracting is available. The exemptions will remove impediments to efficient and successful contracting with foreign concerns and governments.

DATE: These amendments are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Noah Minkin, General Counsel, Cost Accounting Standards Board, 441 G Street NW., Washington, D.C. 20548, 202-275-5940.

SUPPLEMENTARY INFORMATION: The Cost Accounting Standards Board is today promulgating amendments to its regulations dealing with exemptions for contracts and subcontracts performed by foreign governments and foreign concerns. On July 31, 1978, the Cost Accounting Standards Board published a proposal under which contracts or subcontracts with foreign concerns could be exempted from certain individual standards if an authorized official of a relevant Federal agency determines that application of the standards to such contracts or subcontracts is inappropriate. The Board received 12 comments on the proposal.

One commentator opposed the proposal as unnecessary because the Board itself has authority to grant exemptions when such action is appropriate and asserted that delegation is undesirable because such decisions are too important to be delegated. The Board agrees that decisions concerning exemptions are important and has carefully considered the proposed action in the light of all comments and other available information. Based on that consideration the Board has concluded that it should grant a specific categoric exemption. Consequently no delegations are needed. Moreover because of the categoric exemption, the need to amend individual standards is obviated.

One government agency to whom delegation of authority was proposed noted that in implementing the delegation, one of the factors it would consider in determining whether the application of an individual standard is appropriate is the matter of sovereignty. Because of the action being taken today, there is no need to comment on the appropriate weight to be assigned to that factor.

Another commentator also discussed sovereignty and suggested that the United States has no legal right to impose the requirements of its laws and regulations on foreign contracts. To support this assertion, the commentator cited an official of the Department of Defense who attributed some of the difficulties in foreign procurements to the insistence upon contracts rather than general agreements. Whether a contract or some other instrument is used is something to be decided by other agencies of the Government and not by the CASB. The Board has long recognized that its Standards are not applicable to noncontractual arrangements and agrees with the suggestion that if the procuring agencies used some noncontractual arrangement to transact business with foreign contractors, CAS would be inapplicable to the transaction. However, when the parties agree to use a negotiated national defense contract or subcontract as the vehicle for transacting business, the agreement must include the standards, rules, and regulations of the Board.

One commentator expressed the opinion that no substantial benefit would accrue to the United States under the limited exemption originally proposed but that a complete exemption from all Cost Accounting Standards Board requirements would be beneficial. Instead of the proposed exemption and delegation, that commentator recommended that all contracts and subcontracts with foreign firms and governments be exempt from all CAS requirements. The Board does not agree that a limited exemption would produce no significant benefits but that a complete exemption would. Significant benefits accrue to the United States Government from all standards, in part because each standard enhances the likelihood of achieving the goal of uniformity and consistency set forth in Pub. L. 91-379. The Board believes that by exempting foreign contracts from some standards there is a detriment rather than a benefit insofar as the public law itself is concerned. Nonetheless the Board has been advised that the requirement to apply some standards has become a significant impediment to efficient, successful contracting with foreign concerns and foreign governments.

The exemption being granted today will remove that impediment while continuing to provide protection through the application of CAS 401 and 402. In addition, foreign concerns will still be required to file Disclosure Statements.

The requirements of CAS 401 and 402 are fundamental to any sound cost accounting program. In the Board's view application of these standards is essential to provide some assurance that a contractor's cost accounting practices are sufficient to provide reliable information on which to base the negotiation, administration, and settlement of contracts. Similarly, the requirement for disclosure which is also being continued unchanged, serves to assure that necessary information about cost accounting practices is available to the Government.

Several commentators recommended that in addition to contracts with foreign contractors, the Board should exempt contracts with foreign governments. The Board has concluded that this recommendation has merit and the exemption being promulgated today has been amended accordingly. Because the exemption established in 1972 for the Canadian Commercial Corp., an agency of the Canadian Government, is included in today's exemption action, the 1972 exemption is being withdrawn.

One commentator suggested a need to define "foreign concerns" and another recommended that "performance" be defined. The term "foreign concern" has already been defined by the Board in § 331.30(c)(2).

As to what constitutes "performance," the Board believes that in general it encompasses the contractor's activity under the contract up to the point of inspection and acceptance of the items called for by the contract. However, because of the complexity and variety of contracts, the Board believes that the contracting agency can best determine whether a specific contract is to be performed outside the United States.

A number of commentators suggested various changes in the delegation procedures proposed by the Board. Since the Board is withdrawing the delegation, there is no need to consider these suggestions.

One commentator suggested that the reference in § 331.30(c) to the Assistant Secretary of Defense (Installations and Logistics) be changed to reflect organizational changes in the Department of Defense. This revision has been made.

Accordingly 4 CFR Part 331 is amended as follows:

1. Change § 331.30(b) by deleting § 331.30(b)(5) as presently stated and substitute the paragraph set forth below.

2. Revise § 331.30(c) (1) and (2) to read as set forth below.

§ 331.30 Applicability, exemption, and waiver.

* * * * *

(b) * * *

(5) Any contract or subcontract awarded to a foreign government or an agency or instrumentality of such government or, insofar as the requirements of Cost Accounting Standards 403 (4 CFR Part 403) or any subsequent standards are concerned, any contract or subcontract awarded to a foreign concern.

(NOTE.—This exemption does not relieve foreign concerns of any obligation to comply with the Cost Accounting Standards set forth in 4 CFR Parts 401 and 402 and to submit a Disclosure Statement.)

* * * * *

(c)(1) Upon request of the Secretary of Defense, the Deputy Secretary of Defense, an Under Secretary of Defense, or the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Policy), or outside the Department of Defense, of officials in equivalent positions, the Cost Accounting Standards Board may waive all or any part of the requirements of paragraph (a) of this section with respect to a contract or subcontract to be performed within the United States, or a contract or subcontract to be performed outside the United States by a domestic concern. A domestic concern is an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this subparagraph, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agency on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.) Any request for a waiver shall describe the proposed contract or subcontract for which waiver is sought and shall contain (i) an unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of the Cost Accounting Standards clause and the specific reason for that refusal, (ii) a statement whether the proposed contractor or subcontractor has accepted any prime contract or subcontract with any Federal department or agency containing the Cost Accounting Standards clause, (iii) the amount of the proposed award and the sum of all awards by the department or agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years, (iv) a statement that no other source of the supplies or services being procured is available to satisfy the needs of the agency on a timely basis, (v) a statement of any alternative methods of fulfilling the project or program needs and the agency's reasons for rejecting such alternatives, (vi) a statement of the steps being taken by the procuring agency to establish other sources of supply for future procurements of the products or services for which a waiver is being requested, and (vii) any other information that may aid the Board in evaluating the requested waiver.

(2) Upon request of the Secretary of Defense, the Deputy Secretary of Defense, an Under Secretary of Defense, or the Deputy Under Secretary of Defense, Research and Engineering (Acquisition Policy), or outside the Department of Defense, of officials in equivalent positions, the Cost Accounting Standards Board may waive all or any part of the requirements of paragraph (a) of this section with respect to a proposed contract or subcontract to be performed outside the United States by a foreign concern. A foreign concern is a concern that is not a domestic concern, as defined in paragraph (c)(1) of this section. Any request for a waiver shall describe the proposed contract or subcontract for which waiver is sought and shall contain (i) the amount of the proposed award and the sum of all awards by the department or agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding three years, (ii) a statement that no other source of the supplies or services being procured is available to satisfy the needs of the agency on a timely basis, (iii) a statement of any alternative methods of fulfilling the project or program needs and the agency's reasons for rejecting such alternatives, (iv) a statement of the steps being taken by the procuring agency to establish other sources of supply for future procurements of the products or services for which a waiver is being requested, and (v) any other information that may aid the Board in evaluating the requested waiver.

(34 Stat. Sec. 103 (50 U.S.C. app. 2168).)

ARTHUR SCHOENHAUT,
Executive Secretary.

[FR Doc. 78-32030 Filed 11-13-78; 8:45 am]

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 713—EQUAL OPPORTUNITY

Remedial Action

AGENCY: Civil Service Commission.

ACTION: Final regulation.

SUMMARY: The Civil Service Commission has amended its equal opportunity regulations to provide that a complainant is entitled to retroactive relief when there is a finding of discrimination, unless the record contains clear and convincing evidence that the complainant would not have been hired or promoted in the absence of discrimination.

EFFECTIVE DATE: November 14, 1978. The regulation shall apply to cases which are pending before an agency or court on November 14, 1978, or in which a final adminstrative decision was issued within 30 days prior to November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Lydia Parnes, Trial Attorney, Office of the General Counsel, U.S. Civil Service Commission, Room 6H31, 1900 E Street NW., Washington, D.C. 20415, 202-632-4600.

SUPPLEMENTARY INFORMATION: On August 1, 1978, a document was

published in the FEDERAL REGISTER proposing to amend Civil Service Commission regulations to provide for an award of retroactive remedial relief to an EEO complainant unless the record contains clear and convincing evidence that the complainant would not have been hired or promoted in the absence of discrimination. Interested persons were invited to participate by submitting their views and statements to Joyce L. Evans, Acting Deputy General Counsel, Office of the General Counsel, U.S. Civil Service Commission.

Comments received were generally supportive of the proposal. Principal objections concerned retention of the existing provision on priority consideration. Those objecting to the provision stated that if the record contains clear and convincing evidence that the complainant would not have been hired or promoted in the absence of discrimination, the complainant has not been injured and should not be entitled to any remedy. Other revisions in the part 713 regulations were also suggested. However, after considering these comments, the Commission determined that any further revisions in the regulations should be a matter for separate consideration.

One participant noted that the regulation as amended required a minor revision to avoid confusion as to when a complainant is entitled to retroactive relief and when he or she is entitled to priority consideration. Specifically § 713.271(b) states that when an agency finds that a complainant has been discriminated against and "as a result of that discrimination" was denied an employment benefit, the agency shall take remedial action including retroactive promotion and priority consideration. To avoid any possible confusion, the Commission has deleted this phrase.

Accordingly, 5 CFR 713.271 is amended as set forth below:

1. The first sentences of paragraphs (a) (1) and (2) are revised;

2. Introductory paragraph (b) is revised;

3. The first sentences of paragraphs (b) (1) and (2) are revised as follows.

§ 713.271 Remedial actions.

(a) *Remedial action involving an applicant.* (1) When an agency, or the Commission, finds that an applicant for employment has been discriminated against, the agency shall offer the applicant employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. * * *

(2) When an agency, or the Commission finds that discrimination existed at the time the applicant was considered for employment but also finds clear and convincing evidence that the applicant would not have been hired even absent discrimination, the agency nevertheless shall consider the individual for any existing vacancy of the type and grade for which he or she was considered initially and is qualified before considering other candidates. * * *

* * * * *

(b) *Remedial action involving an employee.* When an agency, or the Commission, finds that an employee of the agency was discriminated against, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

(1) Retroactive promotion, with backpay computed in the same manner prescribed by § 550.804 of this chapter, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The backpay liability may not accrue from a date earlier than 2 years prior to the date the discrimination complaint was filed, but, in any even, not to exceed the date the employee would have been promoted. * * *

(2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. * * *

* * * * *

(42 U.S.C. Section 2000e-16(b)).

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

[FR Doc. 78-31913 Filed 11-13-78; 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0157]

PART 226—TRUTH IN LENDING

Official staff interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretation of regulation Z, regarding the proper method of disclosure of premiums for certain credit life and disability insurance programs. The agency is taking this action in response to a request for interpretation of this regulation.

EFFECTIVE DATE: On or after November 14, 1978.

FOR FURTHER INFORMATION CONTACT: Dolores Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2412.

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

(2) An opportunity for public comment on an official staff interpretation may be provided upon request of interested parties and in accordance with 12 CFR 226.1(d)(2)(ii). As provided by 12 CFR 226.1(d)(3) every request for public comment must be in writing, should clearly identify the number of the official staff interpretation in question, should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be post marked or received by the Secretary's office before the effective date of the interpretation. The request must also state the reasons why an opportunity for public comment would be appropriate.

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

§ 226.8(b)(3)—Premium amounts for cancelable credit life and disability insurance that are computed on the outstanding indebtedness and decline over term may be included in schedule and total of payments even though they are part of neither amount financed nor finance charge. (Rescinds P.I. Letters 735, 833, and 850.)

OCTOBER 25, 1978.

This is in response to your letter of * * *, in which you requested an interpretation of § 226.8(b)(3) of regulation Z regarding the proper method of disclosure of premiums for certain credit life and disability insurance programs. An answer to your request had been deferred pending a rulemaking proceeding by the Board on this and other issues. That proceeding was completed on August 23 and resulted in an amendment of regulation Z. During the proceeding, it was decided that the question you raised would be answered by an official staff interpretation.

Your inquiry relates to closed end loans in which the customer is scheduled to remit an equal amount to the creditor each payment period. The amount of each scheduled payment includes a credit insurance premium and a finance charge, both of which are computed on the outstanding indebtedness and therefore decline in each succeeding payment period. Under this plan, the premium for credit life and disability insurance is a part of neither the finance charge (because the creditor complies with § 226.4(a)(5) of the regulation) nor the amount financed (since the premiums are not financed by the creditor, but instead accrue on the outstanding indebtedness and are paid periodically by the customer). Further, the insurance is cancelable at any time by the customer, without any obligation beyond the payment of accrued premiums.

You asked whether the premium amount for such insurance may be included in the payment amount and the "total of payments scheduled to repay the indebtedness" required to be disclosed under § 226.8(b)(3).

In the staff's opinion, the premium amount for such insurance may be included in the payment amount and total of payments disclosed under § 226.8(b)(3). The staff believes that such a disclosure provides the customer with significant information about the payment schedule, i.e., the actual amount the customer has agreed to pay the creditor each month. To prohibit inclusion of the premiums in the payments disclosed on the ground that they are not a part of the indebtedness, while meeting the technical requirements of the regulation, would result in a variable payment disclosure that would not reflect what the customer has agreed to pay.

A creditor also has the option of excluding the premium amounts from the schedule of payments disclosed under § 226.8(b)(3). Please note, however, that in transactions where the premiums decline while the principal and finance charge component remain constant, such exclusion will result in a schedule of varying periodic payments, and the creditor must disclose accordingly.

The staff has issued a number of public information letters on this subject that in some respects contradict each other and the opinions expressed herein. For that reason, the staff hereby rescinds Public Information Letters 735, 833, and 850.

Other staff interpretations take the general position that the total of payments should equal the amount financed plus the finance charge. The opinion stated in this letter, that certain insurance premiums may be included in the schedule and total of payments, although included in neither the amount financed nor the finance charge, provides a limited exception to that position. In addition to disclosing the cost of the insurance as required by § 226.4(a)(5), creditors may want to include the premium on the Truth in Lending disclosure statement as additional information—in sequence with the amount financed and the finance charge to enable customers to tally the total of payments disclosed.

Nothing in this letter should be interpreted as affecting the calculation and disclosure of the annual percentage rate under §§ 226.5 and 226.8(b)(2). The annual percentage rate must be calculated on the basis of the payment amounts exclusive of the declining insurance premium amounts.

This is an official staff interpretation of regulation Z issued pursuant to § 226.1(d)(2). It will become effective 30 days after publication in the FEDERAL REGISTER unless a request for public comment, made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended because such a request has been received.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31944 Filed 11-13-78; 8:45 am]

[6210-01-M]

[Reg. Z; FC-0158]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretation of regulation Z, concerning the relationship between New York law regarding preservation of claims and defense and the provisions of the Fair Credit Billing Act and regulation Z. The agency is taking this action in response to a request for interpretation of this regulation.

EFFECTIVE DATE: On or after November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3867.

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

(2) An opportunity for public comment on an official staff interpretation may be provided upon request of interested parties and in accordance with 12 CFR 226.1(d)(2)(ii). As provided by 12 CFR 226.1(d)(3) every request for public comment must be in writing, should clearly identify the number of the official staff interpretation in question, should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be postmarked or received by the Secretary's office before the effective date of the interpretation. The request must also state the reasons why an opportunity for public comment would be appropriate.

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

§ 171 Act—New York law regarding preservation of claims and defenses is not inconsistent with or preempted by credit billing provisions of Act and regulation Z.

§ 226.6(b)—New York law regarding preservation of claims and defenses is not inconsistent with or preempted by credit billing provisions of Act and regulation Z.

226.7(a)—Fair Credit Billing Act disclosures should not be deleted or modified to reflect New York Law regarding preservation of claims and defenses.

226.7(d)—Fair Credit Billing Act disclosures should not be deleted or modified to reflect New York Law regarding preservation of claims and defenses.

NOVEMBER 2, 1978.

This is in response to your letter of * * *, requesting an official staff interpretation of § 226.6(b) and § 226.13(i) of regulation Z, Truth in Lending.

You enclose a copy of a recent amendment to the New York personal property law. As you interpret the law, a credit card issuer will be subject to all claims and defenses of a cardholder against a seller arising out of the sale of goods or services purchased by use of a credit card. The card issuer's liability shall not exceed the amount owing to it at the time the claim or defense is asserted according to the new law.

On the other hand, § 226.13(i) of regulation Z states that tort claims may not be asserted against a card issuer and limits assertion of claims and defenses against a card issuer to situations in which the cardholder has made a good faith attempt to resolve whatever problems exist with the seller that honored the card, the amount of the transaction in dispute exceeds $50, and certain geographic limitations are met. In addition, regulation Z limits the amount of a claim or defense to no more than the amount of credit outstanding with respect to the transaction which gave rise to the claim or defense when the customer first notifies the seller or the card issuer of the claim or defense. The regulation furnishes a detailed description of how to determine the amount of credit outstanding at that time.

You inquire whether the New York statute is inconsistent with these provisions of the regulation and, if not, whether changes are necessary in the disclosures of rights under the Fair Credit Billing Act required by § 226.7(a)(9) and § 226.7(d)(5) of regulation Z to properly reflect the effect of the New York law.

Your question is answered by reference to § 226.6(b) of the regulation and § 171 of the Act. Section 171(a) of the Act provides that the Board may not determine that any State law relating to credit billing practices is inconsistent with any provision of the Federal law if the State law offers greater protection to the consumer. The Board implemented this statutory standard in § 226.6(b)(2) of regulation Z by providing that State laws of this type are not inconsistent with the Federal law if a creditor can comply with the State law without violating the Federal law.

Assuming, without deciding, that the New York law does in fact apply to credit card issuers, it appears that the law may be more protective of consumers in some respects than the Federal law. For instance, under the New York law, it appears that cardholders can assert claims or defenses without meeting the threshold requirements of § 226.13(i) of regulation Z (i.e., a good faith attempt at resolution with the party honoring the card and the dollar and geographic limits). To that extent, the New York statute would not be inconsistent with the provisions of the Federal Act and regulation Z and, therefore, would not be preempted.

On the other hand, there are questions regarding a card issuer's liability for claims and defenses which are answered by the Federal law but which are not specifically addressed in the New York statute. For example, the New York law does not indicate whether or to what extent cardholders may withhold payment in the event of a dispute. Neither does the New York law specify how cardholders may assert their claims or defenses (by notice to the card issuer? by court action? by either?). In addition, there is no indication in the New York law of whether cardholders can assert their claims or defenses in any manner against persons who honored their credit cards and, thereby, establish the "amount owing" for purposes of determining the card issuer's liability. There is such a provision in the Federal law. Furthermore, while regulation Z specifies how to allocate payments and credits to determine in monetary terms the extent of a cardholder's claim or defense (the "amount of credit outstanding" as delineated in § 226.13(i)(2)), the New York law does not provide the same guidance with respect to determining the "amount owing" which is the measure of the card issuer's liability under that law. In sum, while the New York law appears more protective of consumers than the Federal law in some respects, it also appears that the Federal law addresses situations that are not specifically covered by the New York law.

The staff is of the opinion that a creditor can comply with the New York law without violating the Federal law. Therefore, the Federal law does not preempt the New York law in any respect. Of course, should the questions not specifically addressed by the New York statute be answered through interpretation of the law by the appropriate authorities (e.g., the courts of the State of New York) in such a way that the New York law becomes less protective of consumers than the Federal law, the staff's position would have to be reevaluated.

Given the staff's opinion regarding the viability of both the New York and the Federal law, it is also the staff's view that a card issuer should provide the Fair Credit Billing Act disclosures required by § 226.7(a)(9) and § 226.7(d)(5) without any deletions or modifications, since those disclosures are only designed to reflect accurately the provisions of the Federal law.

In accordance with your request, this is an official staff interpretation of regulation Z, issued pursuant to § 226.1(d)(2) of the regulation and limited to the facts and issues discussed herein. It will become effective 30 days after publication in the FEDERAL REGISTER unless a request for public comment, made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended because such a request is received.

Finally, it should be noted that although it is the staff's position that the New York law discussed above is not inconsistent with the Federal law, supplement V to regulation Z (a copy of which is enclosed) prescribes a procedure whereby a State may apply to the Board, through specified State officials, for a determination that a State law is not inconsistent with and not preempted by the Federal law. This procedure is, of course, fully available to the State of New York.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

By order of the Board of Governors, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31945 Filed 11-13-78; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATION

[Regulation ER-1079; Amendment No. 47]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Veteran's Day

NOVEMBER 7, 1978.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This amendment of the tariff filing requirements reflects the change of Veteran's Day to November 11.

DATES: Adopted: November 7, 1978. Effective: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard B. Dyson, Civil Aeronautics Board, Office of the General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION: Pub. L. 94-97, 5 U.S.C. 6103(a) moved Veteran's Day from the fourth Monday in October to November 11, effective January 1, 1978. This action is being taken to bring into conformity the rule governing when tariffs may be filed with the Board.

Accordingly, effective immediately, 14 CFR 221.161 is amended to read as follows:

§ 221.161 Delivering tariff publications to Board.

* * * * *

Veteran's Day (November 11)

* * * * *

(Section 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 49 U.S.C. 1324.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-32002 Filed 11-13-78; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15292]

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Division of Investment Management's Interpretative Positions Relating to Rule 13f-1 and Related Form 13F

AGENCY: Securities and Exchange Commission.

ACTION: Interpretative release.

SUMMARY: The Securities and Exchange Commission today authorized the issuance of a release reflecting the views of the Division of Investment Management regarding the reporting obligation and filing requirement of certain institutional investment managers under the Commission's recently implemented institutional disclosure program. Since the program's implementation was announced, on June 15, 1978, the Division of Investment Management has received requests for interpretations with respect to various aspects of its requirements. This interpretative release is intended to assist interested persons in their understanding of, and compliance with, that program.

EFFECTIVE DATE: November 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael S. Lichtenthal, Esq., 202-755-9034, or W. Scott Cooper, Esq., 202-755-1792, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Section 13(f) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq. as amended by Pub. L. No. 94-29 (June 4, 1975)) was adopted by Congress as part of the Securities Acts Amendments of 1975. Generally, section 13(f) (15 U.S.C. 78m(f)) empowers the Commission to adopt rules which would create a reporting and disclosure system to collect specific information concerning section 13(d)(1) (15 U.S.C. 78m(d)(1)) equity securities held in accounts over which certain institutional investment managers exercise investment discretion. The reporting system required by section 13(f) is intended to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers.

On June 15, 1978, the Commission announced the adoption of rule 13f-1 (17 CFR 240.13f-1) and related form 13F (17 CFR 249.325) in Exchange Act release No. 14852, effective July 31, 1978 (43 FR 26700, June 22, 1978), implementing the basic institutional disclosure program mandated by section 13(f). Under the rule, as adopted, an institutional investment manager exercising investment discretion (as defined in section 3(a)(35) of the Exchange Act (15 U.S.C. 78(c)(a)(35)) with respect to accounts having more than $100,000,000 or more in exchange-traded or NASDAQ-quoted equity securities on the last trading day of any of the 12 months of a calendar year must file annually with the Commission, and, if a bank, with the appropriate banking agency, within 45 days after the last day of such calendar year, form 13F, beginning with the calendar year 1978. The form requires the reporting of the name of the issuer, and the title of class, CUSIP number, number of shares, or principal amount in the case of convertible debt, and aggregate fair market value of each such equity security held. The form also requires information concerning the nature of investment discretion and voting authority possessed.[1]

Since the adoption of the rule, the Commission's Division of Investment Management (Division) has received requests for interpretations with respect to various provisions under the rule and the related form. In order to assist other persons in their understanding of, and compliance with, the rule, the Commission has authorized the publication of this interpretative release setting forth the current views of the Division.

The following are intented to supplement the explanation and analysis of rule 13f-1 and related form 13F set forth in Exchange Act release No. 14852, and reflect the views of the Division as of the date of this release.

1. REPORTING REQUIREMENTS—WHO IS REQUIRED TO REPORT?

Question. If a natural person or company advises an account, but does not have de jure or de facto investment discretion over the account, is it required to report in respect of such account?

Answer. No. The reporting requirements apply to persons who have "investment discretion" as defined in section 3(a)(35) of the Exchange Act.[2] Note, however, that, by rule, investment discretion is deemed to exist with respect to all accounts over which any person under the control of such natural person or company (such as subsidiaries) exercises invesment discretion.

Questions. When a managed account is an institutional account such as a pension or endowment fund, when is investment discretion "sole" and when is it "shared"?

Answer. It depends on which most accurately reflects the nature of investment discretion possessed by the manager. If the manager makes all decisions, then of course he has sole investment discretion. If he merely makes recommendations to internal managers of the account, which make their own decisions, then he does not have investment discretion at all.[3] If the decisionmaking can best be described as joint decisionmaking, then investment discretion should be reported as shared.

Question. Does the foregoing answer also apply if the managed account is an investment company or separate account of an insurance company?

Answer. Yes.

Question. If, following the above, an investment adviser has sole investment discretion over portfolio securities of an investment company, does the investment company have any reporting obligations regarding such securities, including that of filing an information statement?

Answer. No. Again, reporting obligations relate to the possession of investment discretion.

Question. In determining whether investment discretion is sole, shared or none, is the determination (and response) to be given in terms of particular securities within an account, or as to the account as a whole?

Answer. The account as a whole, reflecting the statutory provision (sec. 13(f)) itself.

Question. In the case of a pension fund placed in an entity such as a master trust which is divided into segments for the purposes of investment management, each segment being assigned to a separate manager, what is the "account" with respect to each such separate manager: Is it the entire pension fund or the segment assigned to the manager?

Answer. It is the segment assigned to the manager.

Question. In the foregoing situation, if there is one manager assigned the role of reviewing and approving the decisions of the various separate managers and which receives a fee for this activity (in addition to a fee for any administrative duties), would this manager report as having "shared" investment discretion?

Answer. It is most probable that this activity, for which a fee is received, is a form of shared investment discretion.

Question. Could a natural person investing for his own account be subject to the reporting requirements?

Answer. No, section 13(f)(5) of the Exchange Act (15 U.S.C. 78m(f)(5)) excludes natural persons investing for their own accounts from the definition of "institutional investment manager."

Question. If a natural person (e.g., a trustee) has investment discretion over an account having at least $100 million in 13(f) securities of another person (as defined in section 3(a)(9) of the Exchange Act (15 U.S.C. 78(c)(a)(9)) to include a "natural person, company, government, or political subdivision, agency, or instrumentality of a government"), would the natural person be subject to the reporting requirements?

Answer. Yes; section 13(f)(5) of the Exchange Act includes natural persons in the definition of "institutional investment manager" when such persons exercise investment discretion over

[1] The release announcing the adoption of the rule sought comments concerning the usefulness and costs associated with quarterly, as opposed to annual, reporting. The Division is presently reviewing the numerous comments it has received concerning that matter and will be in a position to make a recommendation to the Commission in the near future.

[2] Sec. 3(a)(35) states: A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person: (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder.

[3] Unless he otherwise possesses the authority (contemplated by sec. 3(a)(35)(A) of the Exchange Act) to determine purchases and sales.

the account of any other person. Note that a natural person investing for his or her own account and managing the accounts of other persons could be required to report if the accounts of the other persons have in the aggregate at least $100 million in 13(f) securities, although the value of the securities in the account of the natural person would not be included in determining whether the natural person met the $100 million threshold. Similarly, in the case of a partnership which exercises investment discretion over various accounts, the personal investments of the individual partners would not be aggregated with the holdings or advisory accounts of the partnership.

Question. Does a person who exercises investment discretion with respect to an account organized by or under the auspices of a governmental authority (e.g., a municipal pension fund) have to report, assuming the basic reporting criteria are met?

Answer. Yes.

Question. Would the parent of a corporate complex with five subsidiaries be required to report if none of the subsidiaries had at least $100 million in 13(f) securities?

Answer. Yes; if in the aggregate its subsidiaries had investment discretion over $100 million or more of section 13(f) securities. Under rule 13f-1(b) (17 CFR 240.13f-1(b)) an institutional investment manager would be deemed to exercise investment discretion over all accounts with respect to which any person under its control exercises investment discretion. In addition, under special instruction v to form 13F the parent would be deemed to have shared investment discretion with each of its subsidiaries with respect to the specific 13(f) securities under their respective control. However, since none of the subsidiaries would have investment discretion over at least $100 million in 13(f) securities they would not have to be named in item 7 of form 13F.

2. MECHANICS OF REPORTING

Question. In the situation described in the immediately preceding question, how would the reporting be accomplished?

Answer. If none of the subsidiaries individually had investment discretion over $100 million in 13(f) securities, then, as explained above, only the parent corporation would have a filing obligation. Therefore, the parent would simply aggregate the holdings of its subsidiaries and check shared investment discretion under item 6(b) without naming the subsidiaries either on the cover page or in item 7.

Question. What if one or more such subsidiary did have investment discretion over $100 million in 13(f) securities?

Answer. If one or more of the subsidiaries were to have investment discretion over $100 million in 13(f) securities, then it too would have a reporting obligation. As such, there would then exist two possible reporting persons. However, under general instructions B to form 13F only one manager could include information with respect to a given security. Thus, if the parent were to file the report for both, it would list separately the holdings of the subsidiary with the reporting obligation, and the holdings of its other subsidiaries, which it would report in the aggregate. The parent corporation would check item 6(b) (indicating shared investment discretion) for all of the entries on the form, but would only name the subsidiary having a reporting obligation in response to item 7. Pursuant to special instruction i that subsidiary would also be named on the cover page of the form filed by the parent corporation. In addition, that subsidiary would file a cover page and a separate statement indicating that its parent would be filing on its behalf.

If, in the above situation, the subsidiary with a reporting obligation were to file on its own behalf, then it too would check item 6(b) for all entries and name its parent in item 7. The parent would then include a statement with its report indicating that the subsidiary would be filing on behalf of the parent.

Question. For purposes of item 6(b) of the form, would investment discretion be deemed shared if a subsidiary exercises investment discretion without interference from its parent?

Answer. Yes; subsection 13f-1(b) states: "An institutional investment manager shall also be deemed to exercise 'investment discretion' with respect to all accounts over which any person under its control exercises investment discretion."

Question. Can item 6(b) and item 6(c) both be checked with respect to the same securities?

Answer. Yes. This would be appropriate where, for example, a parent was reporting in respect of a subsidiary (6(b)) which shares investment discretion with another person (such as a cotrustee—6(c)).

Question. How would holdings be reported by a parent for a multitiered corporate structure where the parent, its midlevel subsidiary, and lower level subsidiary are all reporting persons?

Answer. The securities over which the lower level subsidiary exercises investment discretion would be listed separately, and item 6(b) would be checked to indicate shared investment discretion. In item 7, both the midlevel subsidiary and the lower level subsidiary would be named in accordance with the instructions to indicate that they have shared investment discretion with the parent. Any additional securities with respect to which the midlevel subsidiary exercises investment discretion would be reported in a similar manner, noting in item 7 that investment discretion is shared with the parent. Of course, the parent would indicate that it is filing on behalf of the two subsidiaries on the cover page, and each subsidiary would file an information statement indicating that its parent would be filing on its behalf.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 2, 1978.

[FR Doc. 78-31946 Filed 11-13-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 75N-0318]

PART 105—FOODS FOR SPECIAL DIETARY USE

Label Statements; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: This document corrects a final order that revised label statements for special dietary foods for weight control. It deletes the specific type size requirements for "low calorie" claims inadvertently left in the regulation.

EFFECTIVE DATE: September 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Taylor M. Quinn, Bureau of Foods (HFF-300), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1243.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-26623 appearing at page 43248 of the FEDERAL REGISTER for Friday, September 22, 1978, the Commissioner of Food and Drugs is correcting the regulation concerning label statements on special dietary foods for weight control by deleting the specific type size requirements for "low calorie" claims inadvertently left in

§ 105.66 (21 CFR 105.66). As stated in paragraph 15 of the preamble to the final order (43 FR 43252), the Commissioner agreed with the exceptions made to the tentative final order concerning type size requirements and decided to delete the specific type size requirements from paragraph (c)(1)(iii) and other paragraphs in § 105.66. Inadvertently, the deletion was not made in § 105.66(c)(1)(iii). As stated in the preamble to the final order (43 FR 43252), the general requirements concerning type size in § 101.2 (21 CFR 101.2) apply to these label statements on special dietary foods.

Accordingly, § 105.66(c)(1)(iii) is corrected to read as follows:

§ 105.66 Label statements relating to usefulness in reducing or maintaining caloric intake or body weight.

* * * * *

(c) * * *

(1) * * *

(iii) The food bears on its principal display panel the term "low calorie," "low in calories," or "a low calorie food."

* * * * *

Dated: November 1, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31623 Filed 11-13-78; 8:45 am]

[4110-03-M]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

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

Pyrantel Pamoate Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a new animal drug application filed by Ralston Purina Co. providing for the safe and effective use of pyrantel pamoate tablets for the removal and control of large roundworms and hookworms in dogs.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Ralston Purina Co., Checkerboard Square, St. Louis, Mo. 63188, filed an NADA (101-331V) providing for the safe and effective use of pyrantel pamoate tablets for the removal and control of large roundworms (ascarids) (*Toxocara canis* and *Toxascaris leonina*), and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*), in dogs. Approval of this application is based upon data and information contained in Pfizer's NADA 100-237V and included herein by reference.

In accordance 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 this approval is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), part 520 is amended by adding new § 520.2024 to read as follows:

§ 520.2042 Pyrantel pamoate tablets.

(a) *Specifications.* Each tablet contains pyrantel pamoate equivalent to 22.7, 45.4, or 113.5 milligrams of pyrantel base.

(b) *Sponsor.* See No. 017800 in § 510.600(c) of this chapter.

(c) *Conditions of use.* It is used for dogs as follows:

(1) *Amount.* For dogs weighing over 5 pounds, use at least 2.27 milligrams of pyrantel base per pound of body weight; for dogs weighing 5 pounds or less, use at least 4.54 milligrams of pyrantel base per pound of body weight.

(2) *Indications for use.* For removal and control of large roundworms (ascarids) (*Toxocara canis* and *Toxascaris leonina*), and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*).

(3) *Limitations.* Administer orally directly or in a small amount of food. Do not withhold food prior to or after treatment. The presence of these parasites should be confirmed by laboratory fecal examination. A followup fecal examination should be conducted 2 to 4 weeks after first treatment to determine the need for retreatment. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Effective date. November 14, 1978.

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

Dated: November 2, 1978

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31621 Filed 11-13-78; 8:45 am]

[4110-03-M]

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

Procaine Penicillin G-Novobiocin for Intramammary Infusion

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co., providing for two additional label claims for the use of procaine penicillin G-novobiocin for intramammary infusion in lactating cows.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard E. Miller, Bureau of Veterinary Medicine (HFV-125), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3134.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, Mich. 49001, has filed a supplemental NADA (55-072) providing for the safe and effective use of procaine penicillin G-novobiocin for intramammary infusion for treatment of mastitis due to *Streptococcus dysgalactiae* and *Streptococcus uberis*. The drug has previously been approved for use in treatment of mastitis due to *Staphylococcus aureus* and *Streptococcus agalactiae*.

In accordance 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 (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347-351 (21 U.S.C. 360b (i) and (n)), and under authority delegated to the Commissioner of

Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), the Director is amending § 540.874f by revising paragraph (c)(3)(i) to read as follows:

§ 540.874f Procaine penicillin G-novobiocin for intramammary infusion.

* * * * *

(c) * * *

(3) *Conditions of use.* (i) Use for treating lactating cows for mastitis caused by susceptible strains of *Staphylococcus aureus, Streptococcus agalactiae, Streptococcus dysgalactiae,* and *Streptococcus uberis.*

* * * * *

Effective date: November 14, 1978.

(Sec. 512 (i) and (n), 82 Stat. 347-351 (21 U.S.C. 360b (i) and (n)).)

Dated: October 30, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31620 Filed 11-13-78; 8:45 am]

[4110-03-M]

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lasalocid Sodium

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for the use of a 20-percent lasalocid sodium premix, in addition to the currently approved 15 percent lasalocid premix, to be used in making complete chicken feeds. The regulations are also amended to include the current assay requirements for the premix of 100 to 120 percent, which shall apply to the new premix level.

EFFECTIVE DATE: November 14, 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, 301-443-4313.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, N.J. 07110, filed a supplemental NADA (96-298V) providing for the use of a 20-percent lasalocid sodium premix in addition to the currently approved 15 percent premix. In accordance with the current animal drug regulations, these premixes are used to make complete chicken feeds containing 68 to 113 grams per ton of lasalocid for the prevention of certain forms of coccidiosis. In addition, the premix assay requirement of 100 to 120 percent will apply to the new premix level. The regulations are amended to reflect the new premix level and the previously unpublished assay requirements.

The provisions of this supplement will not result in an expanded use of lasalocid. Accordingly, approval of this supplement does not constitute reaffirmation of the safety of residues resulting from use of this drug.

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) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.83), part 558 is amended in § 558.311 by revising paragraphs (b) and (c) to read as follows:

§ 558.311 Lasalocid sodium.

* * * * *

(b) *Approvals.* Premix levels of 68 and 90.7 grams per pound of lasalocid sodium activity are granted to No. 000004 in § 510.600(c) of this chapter.

(c) *Assay limits.* Complete feed, 75 to 125 percent of labeled amount. Premix, 100 to 120 percent of labeled amount.

* * * * *

Effective date: November 14, 1978.

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

Dated: November 1, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31619 Filed 11-14-78; 8:45 am]

[4110-03-M]

[Docket No. 75N-0140]

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES: GENERAL

Regulations Establishing Good Manufacturing Practices for the Manufacture, Packing, Storage, and Installation of Medical Devices; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction of a final rule.

SUMMARY: This document corrects a final rule that was published in the FEDERAL REGISTER of Friday, July 21, 1978, by correcting certain text and deleting two items from the Guideline List of Critical Devices appearing in the preamble.

EFFECTIVE DATE: July 21, 1978.

FOR FURTHER INFORMATION CONTACT:

John A. Richards, Federal Register Writer (HFC-11), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-19885 appearing at page 31508 in the FEDERAL REGISTER of Friday, July 21, 1978, the following corrections are made:

1. On page 31512, first column, in the Guideline List of Critical Devices, delete item "16. Catheter, Embolectomy." and item "18. Catheter, Septostomy." and mark them "[Reserved]". These items were included in the list due to a computer entry error.

2. On page 31521, third column, the second line in paragraph 104 is changed to read: "that in the device history record, a".

3. On page 31522, in the center column, in the fourth complete paragraph, the second sentence is corrected to read as follows: "The Commissioner has decided that this regulation should not apply to persons who only distribute devices, as is stated in § 820.3(k), the definition of 'Manufacturer'."

Dated: October 31, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31622 Filed 11-13-78; 8:45 am]

[4410-01-M]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 807-78]

PART 45—STANDARDS OF CONDUCT

Prohibition Against Suggesting Payment of Fee to a Particular Charity

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The standards-of-conduct regulation of the Department of Justice contains provisions prohibiting department employees from accepting compensation for speeches or writings related to their official duties. This order adds a provision prohibiting Department employees from suggesting that such compensation be given to a particular charity or other third party.

EFFECTIVE DATE: November 3, 1978.

FOR FURTHER INFORMATION CONTACT:

John M. Harmon, Assistant Attorney General, Office of Legal Counsel, Department of Justice, Washington, D.C. 20530, 202-633-2041.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, § 45.735-12 of part 45 of Title 28, Code of Federal Regulations, is amended by addition of the following subsection:

§ 45.735-12 Speeches, lectures, and publications.

* * * * *

(d) When an employee is prohibited by this section from accepting compensation for an activity, he is also prohibited from suggesting that the person offering such compensation donate it to a particular charity or other third party.

Dated: November 3, 1978.

GRIFFIN B. BELL,
Attorney General.

[FR Doc. 78-31937 Filed 11-13-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 990-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Shasta County Air Pollution Control District

AGENCY: Environment Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Shasta County Air Pollution Control District (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn.: Wallace Woo, 415-556-7388.

SUPPLEMENTARY INFORMATION: On March 23, 1978, EPA published a notice of proposed rulemaking for revisions to the Shasta County APCD'S rules and regulations submitted on October 13, 1977, by the California Air Resources Board for inclusion in the California SIP.

The State also submitted regulations concerning new source review which will be addressed in a separate FEDERAL REGISTER notice.

The changes contained in the above mentioned submittal that are being acted upon by this notice include the following:

(a) Definition amendments;

(b) Agricultural and open burning amendments;

(c) Various rules concerning hearing board fees, and petitions for variances; and

(d) Specific air contaminant and organic solvent amendments.

The notice of proposed rulemaking for this submittal was published on March 23, 1978 (43 FR 12047) and provided a 30-day comment period. The only comments received were from the Shasta County APCD.

The county commented on the proposed disapproval of the definition of "modification" in rule 1:2. They stated that the term "facility" as used in the definition is sufficiently clear. However, because rule 1:2 includes definitions for the terms "affected facility," "institutional facility," and "loading facility," the term "facility" should be defined to avoid confusion in the definition of "modification." The confusion could be eliminated if the term "affected facility" were substituted in the definition of "modification" since that term is already defined in rule 1:2. Because of this confusion the definition of "modification" is disapproved.

The county commented on the disapproval of certain sections of rule 2:6. They questioned the need for a control strategy demonstration in order for EPA to approve the open burning exemptions for burning wastes above 3,000 feet and agricultural burning in general, above 6,000 feet elevation. 40 CFR 51.12 and 51.13 require a control strategy demonstration be submitted to show that the SIP will attain and maintain the national ambient air quality standards (NAAQS). A revision to the SIP, which has the potential to relax the SIP requirements, must be accompanied by a control strategy demonstration to show that the NAAQS will continue to be attained and maintained. Since these additional exemptions to rule 2:6, have the potential to increase emissions, and might result in an interference with the attainment and maintenance of the NAAQS, and no control strategy demonstration was submitted to show otherwise, they are disapproved. EPA could approve these sections if an adequate control strategy demonstration were submitted in accordance with the specific requirements of 40 CFR 51.13(e).

The county also commented on the disapproval of sections (2)(c), (3)(f), and (4)(e) of rule 2:6. They stated that the wording "except as otherwise authorized" in these sections, is necessary to provide flexibility in specifying methods for burning such plants as blackberries, which, the county says, will cause more pollution if burned as the current rule now specifies. While this may be true, the sections nonetheless allow the air pollution control officer (APCO) unlimited discretion to reduce drying times without any other

qualifications. Since these revisions could allow increased emissions, and no control strategy demonstration has been submitted to show that they would not interfere with the attainment and maintenance of the NAAQS, they are disapproved. EPA could approve these sections if they were revised to specify that exceptions could be authorized by the APCO if such exceptions resulted in equivalent control or a reduction of emissions.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations as SIP revisions.

It is the purpose of this notice to approve all of the revisions contained in the October 13, 1977, submittal, and incorporate them into the California SIP, with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

Rule 3:4, Industrial use of organic solvents, is approved and Shasta County is rescinded from 40 CFR 52.254.

Rule 1:2, Definitions, is approved with the exception of the definition for "modification" which is disapproved. The term "facility" as used in the definition is not defined. The lack of an adequate definition has the potential to render unenforceable any rules using the word "modification."

No action will be taken on the definition of "person" in rule 1:2, since the Federal Government is not included in that definition as required in section 118 of the Clean Air Act. Action will be taken in a separate FEDERAL REGISTER notice.

Sections (1)(b)(iii) (a), (b), and (d); (1)(c)(viii); and (5) (c) and (d) of rule 2:6, Agricultural burning, are disapproved since these sections allow exemptions to the burning prohibitions. No control strategy has been submitted to show that the additional emissions will not interfere with the attainment and maintenance of the NAAQS. Sections (2)(c), (3)(f), and (4)(e) are disapproved since they allow the air pollution control officer unlimited discretion to reduce the amount of drying time in preparing wood waste. This could interfere with the attainment and maintenance of the NAAQS and has the potential to make the burning regulations unenforceable. The previously approved rule 2:6 sections (2)(c), (3)(f), and (4)(e) submitted on July 19, 1974, remain in effect.

No action will be taken on sections (1)(b)(iii)(c), (1)(c)(vii), and (5)(a) of rule 2:6, which allow burning on a no-burn day in the threat of imminent and substantial economic loss. Action will be taken on these sections in a separate FEDERAL REGISTER notice.

Sections (2)(e), (3)(d), and (4)(d), of rule 2:6, are nuisance rules and are not appropriate for inclusion in the SIP under section 110 of the Clean Air Act. No action will be taken on these rules. The remainder of rule 2:6 is approved.

Rule 2:8, Exceptions to open burning, is disapproved since it would allow more exemptions to the open burning rule and no control strategy has been submitted to show that these exemptions will not interfere with the attainment and maintenance of the NAAQS. The previously approved rule 2:8, submitted on July 19, 1974, and July 22, 1975, remains in effect.

No action will be taken on rule 2:11, Fees, and rule 4:4, Hearing board fees, since these rules exempt any government agency from permit and variance fees. Action on these rules will be taken in a separate FEDERAL REGISTER notice.

No action will be taken on parts VI and VII of table II; and the explanatory notes 6 and 7 for table II of rule 3:2, Specific air contaminants. These sections deal with total reduced sulfur which is not a criteria pollutant under NAAQS and therefore is not appropriate for inclusion in the SIP. The remainder of rule 3:2 is approved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(41)(xii) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(41) * * *

(xii) Shasta County APCD.

(A) New or amended rules 1:2 (with the exception of the definition of "person"); 2:6(1)(a), (1)(b), (i-ii), (1)(b)(iii), (a, b, and d), (1)(b), (iv-vii), (1)(c), (i-vi and viii), (1) (d and e), (2) (a-d and f), (3) (a-c and e-g), (4) (a-c and e-i), (5) (b-d); 2:7, 2:8; 3:2 (except part VI and VII of table II, and explanatory notes 6 and 7); 3:4, 4:1, 4:5, 4:6, 4:14, and 4:19.

* * * * *

2. Section 52.236 is amended by adding paragraph (e)(2)(i) and (3)(i) as follows:

§ 52.236 Rules and regulations.

* * * * *

(e) * * *

(2) Sacramento Valley intrastate region.

(i) Shasta County APCD.

(A) Rule 1:2, Definitions, the definition of "modification" submitted on October 13, 1977, is disapproved.

(3) Northeast Plateau intrastate region.

(i) Shasta County APCD.

(A) Rule 1:2, Definitions, the definition of "modification" submitted on October 13, 1977, is disapproved.

* * * * *

3. Section 52.254 is amended by adding paragraph (a)(3)(iii) as follows:

§ 52.254 Organic solvent usage.

* * * * *

(a) * * *

(3) * * *

(iii) Shasta County APCD.

* * * * *

4. Section 52.273 is amended by adding paragraphs (a)(1)(viii), (a)(9)(i), (b)(4)(ii), and (b)(9)(i) as follows:

§ 52.273 Open burning.

* * * * *

(a) * * *

(1) * * *

(viii) Shasta County APCD.

(A) Rule 2:6, Agriculutral burning, sections (1)(b)(iii) (a, b, and d), (1)(c)(viii), (2)(c), (3)(f), (4)(e), (5) (c and d); are disapproved and the previously approved rule 2:6 sections (2)(c), (3)(f), and (4)(e), submitted on July 19, 1974, remain in effect.

* * * * *

(9) * * *

(i) Shasta County APCD.

(A) Rule 2:6, Agricultural burning, sections (1)(b)(iii), (a, b, and d), (1)(c)(viii), (2)(c), (3)(f), (4)(e), 5 (c and d), are disapproved and the previously approved rule 2:6 sections (2)(c), (3)(f), and (4)(e), submitted on July 19, 1974, remain in effect.

* * * * *

(b) * * *

(4) * * *

(ii) Shasta County APCD.

(A) Rule 2:8, Exceptions to open burning, is disapproved and the previously approved rule 2:8 submitted on July 19, 1974, and July 22, 1975, remains in effect.

* * * * *

(9) * * *

(i) Shasta County APCD.

(A) Rule 2.8, Exceptions to open burning, is disapproved and the previously approved rule 2:8 submitted on

July 19, 1974, and July 22, 1975, remains in effect.

* * * * *

[FR Doc. 78-31885 Filed 11-13-78; 8:45 am]

[6560-01-M]

[FRL 978-7]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by State of Idaho Department of Health and Welfare to FMC Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by the State of Idaho Department of Health and Welfare to the FMC Corp. The order requires the company to bring air emissions from its elemental phosphorus plant at Pocatello, Idaho, into compliance with certain regulations contained in the federally-approved Idaho State Implementation Plan (SIP). Because of the Administrator's approval, FMC Corp.'s compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period is in effect.

DATES: This rule takes effect on November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

John Pfander, EPA, Idaho Operations Office, 422 West Washington, Boise, Idaho 83702, 208-384-1450.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: EPA, Region 10, 1200 Sixth Avenue, Seattle, Wash. 98101, Library, 11th Floor.

SUPPLEMENTARY INFORMATION: On July 28, 1978, the Regional Administrator of EPA's Region 10 Office published in the FEDERAL REGISTER, 43 FR 32827 (July 28, 1978), a notice proposing approval, of a delayed compliance order issued by State of Idaho Department of Health and Welfare to the FMC Corp. The notice asked for public comments by August 28, 1978 on EPA's proposed approval of the order. No public comments were received in response to the proposed notice.

Therefore, the delayed compliance order issued to FMC Corp. is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places FMC Corp. on a schedule to bring its furnace stack scrubbers, the burden level and ore crusher at Pocatello, Idaho into compliance as expeditiously as practicable with regulations E and F of the rules and regulations for the Control of Air Pollution in Idaho, a part of the federally-approved Idaho State Implementation Plan. The order also imposes emission monitoring and reporting requirements. If the conditions of the order are met, it will permit FMC Corp. to delay compliance with the SIP regulations covered by the order until July 1, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that FMC Corp. is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place FMC Corp. on a schedule which if effective under the Clean Air Act for compliance with the applicable requirement(s) of the Idaho State Implementation Plan.

(AUTHORITY: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.171 by adding the following entry:

§ 65.171 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
FMC Corp	Pocatello, Idaho	101	Reg. E & F	July 28, 1978	July 1, 1979

[FR Doc. 78-31612 Filed 11-13-78; 8:45 am]

[FRL 991-4]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for Campbell Soup Co., Napoleon, Ohio

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of EPA issues a delayed compliance order to the Campbell Soup Co. The order requires the Campbell Soup Co. to bring air emissions from its boilers at Napoleon, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Campbell Soup Co.'s compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered in the order.

DATES: This rule takes effect November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Linda Buell, Attorney, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, Telephone 312-353-2082.

SUPPLEMENTARY INFORMATION: On July 17, 1978, the Acting Regional Administrator of EPA's Region V Office published in the FEDERAL REGISTER (42 FR 30581) a notice setting out the provisions of a proposed Federal delayed compliance order for Campbell Soup Co. The notice asked for

public comments and offered the opportunity to request a public hearing on the proposed order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a delayed compliance order effective this date is issued to Campbell Soup Co. by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places Campbell Soup Co. on a schedule to bring its two coal-fired boilers at Napoleon, Ohio, into compliance as expeditiously as practicable with regulation AP-3-07 and AP-3-11, a part of the federally approved Ohio State Implementation Plan. Campbell Soup Co. is unable to immediately comply with these regulations. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit Campbell Soup Co. to delay compliance with the SIP regulations covered by the order until July 1, 1979.

Compliance with the Order by Campbell Soup Co. will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order. Citizen suits under section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the order, and for violations of the regulations covered by the order which occurred before the order was issued by EPA or after the order is terminated. If the Administrator determines that Campbell Soup Co. is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this Notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

The provisions of the Order will be summarized, as set forth below, in 40 CFR 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 149876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Campbell Soup Co. on a schedule for compliance with the Ohio State Implementation Plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By amending the table in § 65.400 to add the following entry:

§ 65.400 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Campbell Soup Co.....	Napoleon, Ohio...	EPA-5-78-A-23...	July 17, 1978.	AP-3-07, AP-3-11.	July 1, 1979.

2. The text of the order is as follows:

U.S. ENVIRONMENTAL PROTECTION AGENCY

In the matter of Campbell Soup Co., Napoleon, Ohio, proceeding under sections 113 (a), (d) Clean Air Act, as amended, order No. EPA-5-78-A-23.

ORDER

The following order is issued this date pursuant to sections 113 (a) and (d) of the Clean Air Act, as amended, 42 U.S.C. sections 7413 (a) and (d), (hereinafter referred to as "the Act"). The order contains a compliance schedule with increments of progress, interim emission reduction requirements, and emission monitoring and reporting conditions. Final compliance is required as expeditiously as practicable, but no later than July 1, 1979. Public notice, opportunity for a public hearing and notice to the State of Ohio have been provided pursuant to section 113(d) (1) of the Act.

On November 18, 1977, James O. McDonald, Director, Enforcement Division, Region V, U.S. Environmental Protection Agency (hereinafter referred to as "USEPA"), pursuant to authority duly delegated to him by the Administrator of USEPA, issued a notice of violation to the Campbell Soup Co. (hereinafter referred to as the "the Company") stating that the Company's facility, located in Napoleon, Ohio, was found to be in violation of the applicable Ohio implementation plan, as defined in section 110(d) of the Act. The notice cited the Company's boilers 11-A (otherwise known as boiler B-001) and 11-B (otherwise known as boiler B-002) for violation of Ohio regulation AP-3-11. A copy of said notice was sent to the State of Ohio Environmental Protection Agency. After the notice was received by the Company, USEPA found boiler 11-B (B-002) in violation of Ohio regulation AP-3-07.

Pursuant to section 113(a)(4) of the Act, opportunity to confer with the Administrator's delegates was duly given to the Company. On December 28, 1977, a conference was held in Chicago, Ill., to discuss the November 18, 1977, notice of violation mentioned above. At this conference, the Company was notified that boiler 11-B (B-002) was found to be in violation of AP-3-07.

USEPA has determined that said violations have continued beyond the thirtieth day after the date of the Enforcement Director's notification.

After a review of information submitted at the conference and a thorough investigation of all relevant facts, including public comment, it has been determined that the Company is presently unable to comply with Ohio regulations AP-3-07 and AP-3-11, that the schedule hereinafter set forth requires compliance as expeditiously as practicable, and that the terms of this order comply with 113(d) of the Act.

Therefore, it is hereby ordered that:

I. The Company shall achieve compliance with Ohio regulations AP-3-07 and AP-3-11 in accordance with the following schedule:

Increment and date

Issue all necessary purchase orders, April 15, 1978.
Submission of engineering report, June 15, 1978.
Initial delivery of equipment, May 1, 1979.
Begin construction, May 15, 1979.
Cease operation of boilers 11-A (B-001) and 11-B (B-002) for tie-in of control equipment, June 30, 1979.
Complete tie-in and commence operation of boilers 11-A (B-001) and 11-B (B-002) and control equipment in compliance with AP-3-07 and AP-3-11, August 15, 1979.
Submission of test results and demonstration of compliance with AP-3-07 and AP-3-11, September 15, 1979.

II. This schedule provides for final compliance with Ohio regulations AP-3-07 and AP-3-11 by July 1, 1979, as required by section 113(d)(1)(D) of the Act. Final compliance will occur on this date when operation of boilers 11-A (B-001) and 11-B (B-002) will cease; operation of these boilers will not begin again until pollution controls have been installed.

III. This schedule is protected by section 113(d)(10) against Federal enforcement action and citizen suits under section 304 until July 1, 1979. After July 1, 1979, this schedule is covered by section 113(a).

IV. Nothing herein shall affect the responsibility of the Company to comply with other Federal, State or local regulations.

V. The Company shall notify USEPA as soon as the Company is aware that it may not meet the requirements specified in paragraph I in a timely manner. The Company

shall submit reports to the USEPA detailing progress made with respect to each requirement of this order. Such reports shall be submitted within ten (10) days of the completion of such requirement. In addition, no later than September 15, 1979, the Company shall certify to the USEPA that the Napoleon facility is in final compliance with AP-3-07 and AP-3-11.

VI. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under the Clean Air Act, including, but not limited to, section 303 of the Act, 42 U.S.C. section 7503.

VII. Pursuant to section 113(d)(7) of the Act, during the period of this order, until completion of the program set out in paragraph I herein, the Company shall use the best practicable systems of emission reduction so as to minimize particulate matter emissions and shall further comply with the requirements of the applicable implementation plan insofar as it is able to.

VIII. The Company shall install and maintain, no later than the final date for compliance set forth in paragraph I above, a continuous opacity monitor on each stack. These continuous monitoring systems shall be installed, calibrated, maintained and operated in accordance with the procedures set forth in appendix B of 40 CFR Part 60. Pursuant to section 114 of the Act, monitor data shall be retained by the Company for at least two (2) years subsequent to recording. Quarterly reports of emission excesses shall be sent to USEPA.

IX. The Campbell Soup Co. is hereby notified that its failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120. In the event of such failure, the Campbell Soup Co. will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

X. Nothing herein shall be construed to be a waiver by the Campbell Soup Co. of its rights to challenge any regulations promulgated under section 120, as authorized by section 307(b)(1) of the Act.

XI. All submissions and notifications to USEPA, pursuant to this order, shall be made to the Air Compliance Section, Enforcement Division, USEPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, 312-353-2090. A copy of all submissions and notifications shall be made to the Ohio EPA, Northwest District, 1035 Deviac Grove Drive, Bowling Green, Ohio 43402.

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

XII. Campbell Soup Co. has reviewed this order, consents to the terms and conditions of this order, and believes it to be a reasonable means by which the Napoleon, Ohio, facility can achieve final compliance with Ohio regulations AP-3-07 and AP-3-11.

Dated: September 5, 1978.

W. W. DREYER,
Plant Manager,
Campbell Soup Co., Napoleon, Ohio.

[FR Doc. 78-31882 Filed 11-13-78; 8:45 am]

[6560-01-M]

[FRL 982-5]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Orders for American Maize Products, Hammond, Ind.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: By this rule, the Administrator of EPA approves a delayed compliance order to the American Maize Products Co. (American Maize). The order requires the company to bring air emissions from its No. 3 starch ring dryer, in Hammond, Ind., into compliance with certain regulations contained in the federally approved Indiana State implementation plan (SIP). Company compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the order.

DATES: This rule takes effect on November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Louise C. Gross, Attorney, United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Ill. 60604, telephone 312-353-2082.

SUPPLEMENTARY INFORMATION: On May 22, 1978, the Acting Regional Administrator of EPA's Region V Office published in the FEDERAL REGISTER (43 FR 21902) a notice setting out the provisions of a proposed Federal delayed compliance order for American Maize. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed order. No public comments and no request for a public hearing were received in response to the proposed notice.

Therefore, a delayed compliance order effective this date is issued to American Maize by the Administrator of EPA pursuant to the authority of section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The order places American Maize on a schedule to bring its No. 3 starch ring dryer at Hammond, Ind., into compliance as expeditiously as practicable with regulation APC-19, a part of the federally approved Indiana State implementation plan. American Maize is unable to immediately comply with these regulations. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission reporting requirements. If the conditions of the order are met, it will permit American Maize to delay compliance with the SIP regulations covered by the order until September 21, 1978.

Compliance with the order by American Maize will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order. Citizen suits under section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the order, and for violations of the regulation covered by the order which occurred before the order was issued by EPA or after the order is terminated. If the Administrator determines that American Maize is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purpose of judicial review under section 307(b) of the Act.

The provisions of the order will be summarized, as set forth below, in 40 CFR 65. The provisions of 40 CFR Part 65 will be promulgated by EPA soon, and will contain the procedure for EPA's issuance, approval, and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 149876 (April 2, 1976), will be withdrawn, and replaced by a notice promulgating these new regulations.

EPA has determined that the order shall be effective upon publication of this notice because of the need to immediately place American Maize on a schedule for compliance with the Indiana State implementation plan.

(Authority: 42 U.S.C. 7413(d), 7601.)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending the table in § 65.190 by adding the following entry:

Section 65.190 Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act.

* * * * *

Source	Location	Order No.	Date of EPA proposal	SIP regulation involved	Final compliance date
American Maize Products Co.	Hammond, Ind....	EPA-5-78-A-20...	May 22, 1978.	Indiana APC-19.	Sept. 21, 1978.

[FR Doc. 78-31611 Filed 11-13-78; 8:45 am]

[4110-86-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER D—GRANTS

PART 51b—GRANTS FOR DISEASE CONTROL

Grants for Influenza Immunization Programs

AGENCY: Center for Disease Control (CDC), PHS, HEW.

ACTION: Interim final regulation.

SUMMARY: This regulation is applicable to the award of grants to State and local government health agencies to assist them in carrying out programs to immunize persons in high-risk groups against influenza. Influenza immunization grants are authorized by section 317 of the Public Health Service Act. A Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER June 23, 1978. The notice contained proposed revisions of 42 CFR Part 51b, Grants for Disease Control, applicable to other grant programs authorized by sections 317 and 318. That NPRM included Subpart A (General Provisions), Subpart B (Grants for Childhood Immunization Programs), Subpart C (Grants for Urban Rat Control Programs), and Subpart D (Grants for Venereal Disease Control Programs). Proposed rules governing influenza immunization grants (Subpart E) had not been finalized at that time. Issuance of a regulation governing influenza grants is necessary so that the grant application, review, and award process can proceed quickly when funds are appropriated to undertake the program.

EFFECTIVE DATE: November 14, 1978.

COMMENTS: Further comments are invited within 30 days after publication of this Interim Final Regulation and will be considered in any revision.

ADDRESS: Written comments should be sent to the Center for Disease Control, Attention: Director, Bureau of State Services, 1600 Clifton Road NE., Atlanta, Ga. 30333. Comments received will be available for public inspection during regular business hours in Building 1, Room 2047, at the same address.

FOR FURTHER INFORMATION CONTACT:

Dr. J. Donald Millar, Director, Bureau of State Services, Center for Disease Control, Atlanta, Ga. 30333, telephone 404-329-3771, or FTS: 236-3771.

SUPPLEMENTARY INFORMATION: As indicated in the NPRM published in the FEDERAL REGISTER June 23, 1978, the revision of Part 51b implements changes made by several public laws enacted since this part was previously issued. The revision incorporates programs authorized by sections 317 and 318 of the Public Health Service Act, including programs of childhood immunizations, urban rat control, and venereal disease control. Section 317(g)(1)(C) authorizes appropriations for grant programs directed toward all other diseases and conditions addressed by the legislation, including influenza. This regulation will logically become a subpart of Part 51b.

The issuance of Subpart E as an Interim Final Regulation without prior publication of a Notice of Proposed Rulemaking is necessitated by the severe time constraint imposed by the approaching 1978-79 influenza season. It is essential that grants be awarded as quickly as possible to avoid undue delay. Issuance of this regulation in final form is further justified by the groundwork already performed during formulation of grant guidelines and this regulation. Draft guidelines describing the grant award procedures and the operation of influenza immunization project grant programs were circulated for comment on May 5, 1978, to State and local health agencies. In addition, representatives from the HEW regional offices reviewed the draft guidelines with CDC staff on May 15. All of the issues of concern to interested parties were considered during this development process. Most of the comments received were related to technical issues. However, all comments and suggestions have been considered, and provisional guidelines consistent with this proposed regulation have been prepared and are available on request. HEW regional offices, state and local health agencies, and the general public have been represented in the decisionmaking process leading to the development of this regulation.

Subpart A contains general provisions applicable to all grant programs addressed in Part 51b. The subpart is reproduced here as it is expected to appear in the final rule. Two significant changes to Subpart A have been incorporated since its publication on June 23. The first is the inclusion of the influenza immunization program under § 51b.101. The second change clarifies the authority under § 51b.108 for the Secretary to impose additional conditions governing the use of information or consent forms.

In accordance with the foregoing, the Secretary has determined pursuant to 5 U.S.C. 553 and Department policy that it would be impracticable and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Notwithstanding the omission of the proposed rulemaking procedures, interested persons are invited to submit written comments relating to these regulations to the Director of the Bureau of State Services at the address given above. As indicated above, all relevant comments received will be considered in any revision.

Accordingly, the existing Part 51b is redesignated Subpart B, new Subparts A and E are added to Part 51b, and editorial changes are made in Part 51b as set forth below. The amendments will be effective on November —, 1978.

Dated: August 31, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: November 6, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

1. The part heading of Part 51b, title 42, CFR, is amended as follows:

PART 51b—GRANTS FOR DISEASE CONTROL

2. The existing text of Part 51b is redesignated as Subpart B. The subpart heading shall read as follows:

Subpart B—Grants for Communicable Disease Control

3. Sections 51b.1-51b.17 of the new Subpart B are renumbered §§ 51b.201-51b.217.

4. Part 51b is amended by adding the following new Subparts A and E.

[As amended, Part 51b reads as follows:]

Subpart A—General Provisions

Sec.
51b.101 Applicability

Sec.

AUTHORITY: Sections 317 and 318, Public Health Service Act (42 U.S.C. 247b and 247c).

Subpart A—General Provisions

§ 51b.101 Applicability.

The regulations of this part apply to grants authorized for childhood immunization, influenza immunization, and urban rat control programs under section 317 of the Public Health Service Act (42 U.S.C. 247b) and to grants authorized for venereal disease prevention and control under section 318(c) (42 U.S.C. 247c(c)).

§ 51b.102 Definitions.

As used in these regulations:

"Act" means the Public Health Service Act, as amended.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department to whom the authority involved has been delegated.

"State" means one of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

§ 51b.103 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other funds, including funds derived from other grant awards. With respect to each approved program, the grantee shall account for the total of all amounts paid out by presenting or otherwise making available evidence, satisfactory to the Secretary, of expenditures for direct and indirect costs meeting the requirements of this part. However, when the amount awarded for indirect cost was based on a predetermined fixed percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed percentage rates applied to the total, or a selected element thereof, of the reimbursable direct costs incurred.

(b) *Accounting for grant related income—Interest.* Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213), a State will not be held accountable for interest earned on grant funds pending their disbursement for grant purposes. A State, as defined in section 102 of the Intergovernmental Cooperation Act, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as defined in this subsection, must return all interest earned on grant funds to the Federal Government.

(c) *Grant Closeout*—(1) *Date of final accounting.* A grantee shall render with respect to each approved program a full accounting, as provided herein, as of date of the termination of grant support. The Secretary may require other special and periodic accounting. (2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section;

(ii) Any credits for earned interest pursuant to paragraph (b) of this section;

(iii) Any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74.

Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

§ 51b.104 Grant payments.

(a) The Secretary shall from time to time make payments to a grantee of all or a portion of any grant award. These payments may be made either in advance or by way of reimbursement for expenses incurred or to be incurred in the performance of the program. The payments shall be made as the Secretary determines necessary to promote prompt initiation and advance of the approved program.

(b) The Secretary may reduce the payment under a grant by the amount of the fair market value of any supplies (including vaccines and other preventive agents) or equipment furnished a grant recipient, when it is furnished at the request of the recipient. The Secretary also may reduce the payment under a grant by the amount of the pay, allowances, travel expenses, and any other costs in connection with the detail of any officer or employee of the Government to the recipient, when the detail is at the request of the recipient. The amount the grant is reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the official, and shall, for the purpose of these regulations, be deemed to have been paid to the recipient.

§ 51b.105 Nondiscrimination.

Recipients of grants under this part are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in Federally assisted programs on the ground of race, color, or national origin).

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

§ 51b.106 Publications and copyright.

Unless otherwise provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials resulting from a grant under these regulations. This authorization is subject to a royalty-free, nonexclusive, and irrevocable right in the Government to reproduce, translate, publish, use, disseminate, and dispose of the materials and to authorize others to do so.

§ 51b.107 Records and reports.

The grantee shall maintain such progress and fiscal records and file with the Secretary such progress, fiscal, and other reports relating to the conduct and results of grant activities as the Secretary may find necessary to carry out the purposes of this part.

§ 51b.108 Additional conditions.

The Secretary may impose additional conditions, including conditions governing the use of information or consent forms, when in his judgment they are necessary to advance the approved program, the interest of the public health, or the conservation of grant funds.

§ 51b.109 Voluntary participation.

Nothing in these regulations shall be construed to require any State or any

political subdivision of a State to have a disease control program which would require any person who objects to treatment to be treated under the program.

§ 51b.110 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, which establish uniform administrative requirements and cost principles, apply to all grantees under this part.

§ 51b.111 Review of applications under Title XV of the Public Health Service Act.

The application shall contain evidence satisfactory to the Secretary that it has been reviewed, commented upon, or approved by the appropriate planning agency designated by regulations implementing the National Health Planning and Resources Development Act (42 U.S.C. 300k-1, Pub. L. 93-641).

Subpart E—Grants for Influenza Immunization Programs

§ 51b.501 Applicability.

The regulations in this subpart apply to the award of grants under section 317 of the Act for programs to immunize persons in high-risk groups against influenza.

§ 51b.502 Definitions.

As used in this subpart: "High-risk groups" means those groups of persons at highest risk of serious illness or death due to influenza and its complications, as specified in grant guidelines.

§ 51b.503 Eligibility.

An applicant must be a State agency or an agency of a political subdivision of a State which has legal responsibility for disease control under the laws of a State.

§ 51b.504 Application.

(a) An applicant for a grant under these regulations shall submit an application to the appropriate Public Health Service Regional Health Administrator.[1] The application shall contain a full description of the program objectives, plans, and activities as described in section 51b.505.

(b) The application shall be signed by an individual authorized by the applicant to assume the obligations imposed by these regulations and any additional conditions of the grant.

§ 51b.505 Description of program.

The application shall contain or include a description of the following:

(a) Background and need for grant support including:

(1) An overview of the public, private, and voluntary health care delivery systems in the project area which are or will be available to conduct the program.

(2) The extent of current influenza immunization services provided in the public and private sectors with specific information concerning the purchase, distribution, use of vaccine, and the populations served.

(3) Estimates of the number of persons in the high-risk groups.

(b) Long-term and short-term objectives which are specific, measurable, and realistic, and which relate to the National Program Goals, as specified in grant guidelines.

(c) A detailed description of the method for carrying out the following program activities:

(1) Delivery of influenza vaccinations to high-risk populations through cooperative efforts with public health and private health care providers and voluntary organizations serving high-risk groups.

(2) Detecting and reporting outbreaks of influenza, including laboratory and epidemiologic surveillance.

(3) Monitoring illnesses or injuries which occur subsequent to vaccination.

(4) Dissemination of influenza information to health care providers and high-risk individuals to create awareness of the need for vaccination and to encourage active participation in the program.

(5) Assuring accountability for all vaccines stored, distributed, and administered.

(6) Other activities which will promote the achievement of program objectives.

(d) A budget and justification for grant funds requested.

(e) Assurance that no one will be denied services because of inability to pay and that the services are provided in a manner which preserves human dignity and maximizes acceptance.

§ 51b.506 Grant evaluation and award.

(a) Within the limits of funds available, the Secretary may award grants to assist in meeting part of the cost of an influenza immunization program. Before awarding a grant to a political subdivision of a State, the Secretary will consult with the State health authority.

(b) Priorities for funding will be based on the extent to which:

(1) The proposed activities are likely to result in a balanced program of vaccine delivery, detection and reporting of influenza outbreaks, monitoring of vaccine reactions, and information dissemination to health care providers and high-risk individuals.

(2) The plan of operation is likely to supplement rather than replace vaccinations given in the public or private sector.

(3) Project objectives are specific, measurable, realistic, and related to the national program goals.

(4) Budget requests and the proposed use of grant funds are appropriate and reasonable for a balanced program.

(5) There are plans for the coordination of activities with related programs and the effective use of volunteer groups and other community resources.

(6) The described methods of evaluation are likely to be effective in measuring the achievement of program objectives.

(c) A grant award shall be in writing. It shall set forth the amount of funds granted and the period for which support is recommended.

(d) The approval of a grant application or the award of funds shall not obligate the United States to make supplemental, continuation, or other award to a grantee. The grantee must apply separately for continuing support.

§ 51b.507 Use of grant funds.

(a) Grant funds may be used for costs of planning and establishing influenza immunization delivery services, for the purchase of influenza vaccine, and for the implementation of other approved program activities.

(b) Vaccine purchased with grant funds may be provided to private practitioners who agree not to charge for the vaccine, although charge for vaccine administration may be permitted.

[FR Doc. 78-31938 Filed 11-13-78; 8:45 am]

[1] Application forms, manuals, program guidelines, and instructions for preparing grant applications may be obtained from the PHS Regional Health Administrator of the Department of Health, Education, and Welfare for the region in which a program is to be conducted.

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

Part 672—GROUNDFISH OF THE GULF OF ALASKA

Final Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Final regulations.

SUMMARY: Final regulations are promulgated to implement the fishery management plan for groundfish of

the Gulf of Alaska under the Fishery Conservation and Management Act of 1976. The regulations are applicable to vessels of the United States and foreign nations fishing for groundfish in the fishery conservation zone in the Gulf of Alaska and supersede the regulations implementing the preliminary fishery management plan (PMP) for the Gulf of Alaska trawl fishery, as amended, and that portion of the PMP for sablefish of the Bering Sea and northeastern Pacific Ocean, as amended, applicable to the Gulf of Alaska (50 CFR 611.92 and 611.94).

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry Rietze, Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 98802, telephone 907-586-7221.

SUPPLEMENTARY INFORMATION:

A. History of the Plan

A fishery management plan (FMP) for groundfish of the Gulf of Alaska has been prepared by the North Pacific Fishery Management Council (the Council) pursuant to the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. section 1801 et seq., "the Act"). The FMP contains conservation and management measures applicable to foreign and U.S. vessels fishing for cod, pollock, flounders, Pacific Ocean perch, other rockfish, sablefish, Atka macherel, squid and all other stocks of finfish (except that it does not pertain to fishing by U.S. vessels for salmon, steelhead trout, and Pacific halibut) in the Fishery Conservation Zone (FCZ) in the Gulf of Alaska.

The FMP was the subject of extensive analysis and comment by fishermen, other representatives of the fishing industry, interested State and Federal agencies, governments of several foreign nations and members of the public. Public hearings on the FMP were conducted by the Council at the following locations: Seattle, Wash. (August 5-6, 1977), Petersburg, Alaska (August 3, 1977), Anchorage, Alaska (August 22, 1977), Sand Point, Alaska (August 23, 1977), and Kodiak, Alaska (August 24, 1977). After consideration of the information available to it, the Council approved the FMP on September 23, 1977, and submitted it to the Secretary of Commerce for review pursuant to section 304(b) of the Act.

On February 24, 1978, the Assistant Administrator for Fisheries, acting pursuant to a delegation of authority from the Secretary of Commerce and the Administrator of the NOAA, determined that the FMP was consistent with the national standards, the Act, and other applicable law, and approved the FMP. The FMP was published for public comment on April 21, 1978 (43 FR 17242) and proposed regulations to implement the FMP were also published for public comment (43 FR 17013 and 43 FR 17242).

An amendment (amendment one) of the FMP, which was adopted by the Council and approved by the Assistant Administrator, was published on August 7, 1978 along with proposed changes in the implementing regulations, for public comment (43 FR 34825). The amendment extended the specifications of optimum yield (OY), domestic capacity, total allowable level of foreign fishing (TALFF) and reserves from December 31, 1978 through October 31, 1979.

On August 28, 1978, the Council submitted another amendment (amendment 2) to the FMP. This amendment increased the amount of pollock held in reserve to 133,800 metric tons, with appropriate increases in the reserves of species taken incidental to fishing for pollock. The purpose of the amendment was to assure that an adequate supply of fish is available for harvest by U.S. vessels in potential joint venture operations involving sale of U.S.-caught fish to foreign processing vessels at sea. The amendment superseded the specifications of OY, TALFF, domestic capacity and reserve established by amendment one, but retained a fishing year ending October 31, 1979. The amendment was approved by the Assistant Administrator on September 22, 1978, and proposed changes in the implementing regulations were published for public comment on October 6, 1978 (43 FR 46349).

A third amendment (amendment 3) was also submitted by the Council and approved by the Assistant Administrator. The amendment, with proposed changes in the implementing regulations, was published for public comment on October 13, 1978 (43 FR 47222). This amendment would allow foreign vessels using longline gear to harvest the entire Chirikoff fishing area TALFF, when fishing for Pacific cod in the area west of 157° W. longitude.

The final regulations published below implement the management measures contained in the FMP and incorporate those portions of amendment 1 which are not superseded by amendment 2. The regulations are effective on December 1, 1978. Prior to December 1, these regulations may be republished to incorporate any regulations implementing amendments 2 and 3.

B. Management Measures Established

The management measures established in the FMP were developed by the Council to achieve the following conservation and management objectives (with priorities in the order listed):

(1) Rational and optimal use, in both the biological and socioeconomic sense, of the region's fishery resources as a whole;

(2) Protection of the Pacific halibut resource, currently in a state of decline;

(3) Orderly development by the U.S. of domestic groundfish fisheries, consistent with (1) and (2) above; and

(4) Foreign participation in the fishery consistent with (1), (2), and (3) above, to take that portion of the optimum yield not harvested by domestic fishermen.

In order to develop a management scheme reasonably calculated to achieve these competing objectives, the Council has imposed season, gear, area and catch restrictions (as well as reporting and other requirements) on both foreign and U.S. vessels. The Council has also employed two management techniques (reserves and in-season adjustments) which have not been used in other FMP's, in order to assure that the balance achieved among the objectives will not be upset by unexpected events occurring during the fishing season.

The FMP recognizes the disparities which exist between foreign and U.S. vessels as to size, harvest capability, type of fishing gear and other equipment, and fishing priorities. As a result, some of the management measures applicable to foreign vessels vary from those applicable to U.S. vessels, although the purpose of the provisions may be the same.

The Council also recognized the need for further information and research on several groundfish species. Where complete information is lacking, the best scientific information available was used, and necessary assumptions made on the basis of that information have generally favored protection of the resource over other competing policy objectives.

The basis and purpose of specific management measures are set out in the FMP. If a provision was the subject of public comment, additional discussion of the provisions can be found in heading C (Major Issues; Modifications from Proposed Regulations) of this preamble.

The basic management scheme encompassed by these regulations divides the FCZ of the Gulf of Alaska into five fishing areas. In each area, limits are set upon the amount of each species which may be harvested.

After determining the amount of fish which will be harvested by U.S. vessels, the FMP places a certain portion of the remaining fish in reserve against the contingency of unexpect-

edly high U.S. harvests. The remaining amount of fish is made available to vessels of foreign nations in the form of a TALFF for each species in each fishing area. Allocations from TALFF will be made to individual nations by the Department of State.

Fishing in appropriate fishing areas and for appropriate species is prohibited when vessels of a nation harvest a national allocation, or if a nation receives notice that an applicable catch limitation is reached. The regulations prohibit fishing by vessels of foreign nations in certain portions of the Gulf of Alaska, impose gear and effort restrictions during the winter months and impose reporting requirements.

Vessels of the United States are required to obtain permits, submit reports, and are subject to effort and additional catch limitations during the winter months. Regulations applicable to U.S. vessels include a provision authorizing the Regional Director to prohibit fishing during the season for reasons relating to conservation of groundfish or halibut stocks.

C. Major Issues; Modifications From Proposed Regulations

1. RESPONSE TO COMMENTS

Comments on the proposed regulations were received from a variety of sources including foreign nations, Department of State, U.S. Coast Guard, and the North Pacific Fishery Management Council. Many of the comments related to the approved FMP, others to the proposed regulations. The comments have been summarized by issue or by regulation and are presented below with responses.

A. *Comments on 50 CFR 611.92 (regulations applicable to vessels of foreign nations).* (1) *FMP specifications of optimum yield (see 50 CFR 672.20(a), table I).* Optimum yield represents the maximum amount of any species of fish which may be harvested by vessels of all nations in the Gulf of Alaska (FMP, section 7. The basis for the specifications of OY is found in section 6 of the FMP.

The following comments were received:

A. Insufficient evidence has been presented to justify substantial deviation from maximum sustainable yield (MSY) for OY's for Pacific Ocean perch, sablefish and flounders.

B. The OY for squid is arbitrary and capricious in that it is based only on "intuitive" belief.

C. The OY for flounders violates national standard 5 (section 301(a)(5) of the Act).

D. Economic analyses of OY's are incomplete (e.g., benefits from fees paid for additional fish, for example, might provide more overall benefit to the Nation).

E. The OY for sablefish is overly conseryative and the relationship between equilibrium yield (EY) and OY for sablefish appears arbitrary.

F. The OY is at low end of MSY or below with low probabilities of low end being the true figure; thus there is no biological justification for the OY's.

G. There is no need to be conservative in species like pollock with high natural mortality and stable resource conditions.

Response: These comments are similiar to (or the same as) the comments received by the North Pacific Fishery Management Council and were considered by the Council at the time of its approval of the FMP. The Assistant Administrator also considered these comments during review of the FMP before approval. Because no new evidence was presented that would justify a change in the OY's, the findings on approval of the FMP remain unchanged.

National standard 5 requires that management measures, where practicable, promote efficiency in the utilization of fishery resources. National standard 1, and the specific requirement of the FMP that OY not be exceeded for any reason, are intended to protect the resource. The interest of protection of the resource overrides the interest of efficiency in this situation.

(2) *Catch limitations by fishing area.* Catch limitations are imposed in each of five fishing areas in the Gulf of Alaska for the purpose of avoiding overfishing of localized stocks (see 50 CFR 611.92(b) and 50 CFR 672.20(a), table I). The following comments were received on the issue of separate specification of OY, TALFF and reserve in each fishing area:

A. The fishing areas are arbitrary and capricious in that there is no biological basis for catch limitation by fishing area.

B. Past catches are not a good indicator of present distribution because biomass location can vary from year to year.

C. Quotas by fishing area may result in underutilization of available resources.

D. National standard 3 (section 301(a)(3) of the Act) requires that a stock be managed as a unit throughout its range.

E. Because of their length, longlines may overlap fishing areas.

F. Efficiency will be reduced and operating costs raised.

G. Operations would be shut down on the basis of catches earlier in the year.

H. Fishery effort will adjust to stock density, therefore there is no need for catch limitations by fishing area.

I. Most species, except Pacific Ocean perch, migrate widely beyond individual fishing areas.

J. Depth limits and closed areas, combined with individual fishing areas, unduly inhibit foreign fishing opertions.

Response: As stated in the response to (1) above, these comments were made previously and present no new information. Although there is some uncertainty with regard to the evidence of localized populations of various species, the interest of conservation of the resource in this situation allows the conservative assumption that stocks are localized and follow general patterns from year to year unless there is strong evidence to the contrary. Recognizing that fishing by fishing area involves some additional inconvenience and possibility of underutilization, this alternative is considered preferable to the risk of localized overfishing.

Section 301(a)(3) of the Act requires that "To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." The FMP is consistent with this standard. A single plan manages groundfish stocks which intermingle in the Gulf of Alaska, and are likely to be caught in conjunction with each other. The in-season adjustment provision (§ 672.22(b)) allows close coordination with the State of Alaska in imposition of conservation measures, applicable to U.S. fishing vessels, to protect stocks which may occur both in the FCZ and territorial waters. Although specifications of OY, TALFF and reserve vary from area to area depending upon relative concentration of stocks and other factors stated in the FMP and other referenced material, management measures applicable in each fishing area are similar and are designed to achieve the same priorities and objectives in each fishing area.

(3) *Reserve provision.* The reserve provision (§§ 611.92(b) and 672.20(c)) sets aside a stated amount of fish, to be apportioned to TALFF during the fishing season depending on the extent of harvest by U.S. vessels. The purpose of the reserve is to allow foreign and U.S. vessels to fish concurrently while still assuring that: (a) OY will not be exceeded; (b) resources are available to domestic fishermen to the extent of their capacity to harvest, and; (c) optimum use will be made of fishery resources to the extent U.S. vessels will not harvest these resources. The provision furthers the objectives expressed in national standards 1, 5 and 6 (section 301(a) (1), (5) and (6) of the Act). The following comments were received:

A. The reserve is contrary to the applicable governing international fishery agreement (GIFA) which requires TALFF to be determined at the start of the year.

B. Adequate provision for expansion of domestic fishing has been made in the specification of domestic annual harvest (DAH) capacity.

C. Reserves should be apportioned at the earliest possible date. If domestic catch is less than DAH, the remaining amount of fish must be allocated to foreign nations.

D. Procedures must be developed for apportionment of the reserve. The uncertainty of the operation of the reserve provision could act to inhibit domestic fishermen.

E. The reserve is discriminatory to foreign fishermen because DAH is overestimated.

F. The 20 percent reserve should not be applied to all species.

G. Foreign countries will have difficulty in adjusting to mid-year reallocation of reserve, thus leaving some portion of stocks unharvested.

H. DAH should be reviewed in mid-year for appropriate reallocation to foreign nations.

Response: The reserve provision and the level of reserves set aside will be modified based on new information and proposed new procedures. The amendment to the plan modifying the reserve was published October 6, 1978 (43 FR 46349), with proposed regulations establishing procedures for apportionment of that reserve. Additional comments are solicited.

(4) *Closure of a fishing area when the amount of an OY, a TALFF or a national allocation for any species of groundfish is reached.* The proposed regulations provided that fishing for all species in a fishing area was prohibited when the OY, TALFF or a national allocation for any species in that area is reached. The following comments were received:

A. Section 201(d) of the Act, states that the amount of OY which will not be harvested by U.S. vessels shall be made available for harvest by foreign nations.

B. Longliners should be exempted.

C. The regulation discriminates against foreign vessels. The suggested alternative is to deduct excess catch from future allocations to that nation.

D. Operationally, fish will be left unutilized because of severity of the regulations.

E. Unwarranted. There should be flexibility to allow continued fishing by gear types which would not result in incidental catch of species concerned.

F. The OY closure provision is unreasonable in that any U.S. fishermen can close down an area by catching 400 mt of squid.

G. It is unreasonable for one country to be able to shift the responsibility and consequences of exceeding its catch quota to other countries. It was suggested that excess catch be deducted from particular countries' allocations for the succeeding year.

H. Unwarranted. Need flexibility.

Response: Comments A, D. The amount of fish which will not be harvested by U.S. vessels will be made available for harvest by foreign vessels under this FMP. The purpose of the closure provisions is to assure that fish in excess of available amounts will not be harvested. Given a choice between allowing some stocks to be underutilized and allowing others to be harvested in excess of applicable catch limitations, the protection of the resource receives first priority. This position is consistent with national standard 1 (section 301 of the Act) and the requirements of the FMP.

Comments B, E, H. These regulations implement a plan provision (section 7.0) which states that OY "shall not, for any reason, be exceeded by the all-nation fishery". The regulations were considered necessary because to permit additional incidental catch of a species for which an applicable catch limitation had been reached would lead to fishing in excess of OY and therefore violate the intent of the plan. Incidental catch of a species in excess of applicable catch limitations appeared unavoidable, and is still considered unavoidable by vessels fishing with trawl gear. In their comments on the regulations, however, the Council indicated that the intent of the FMP was to exempt vessels using longline gear from certain catch limitation provisions, except where the limit applied to sablefish or Pacific cod. The basis for the distinction is that longline gear can be used in such a way as to avoid catch of other species. The comments of Japan also made this point.

NOAA concurs in the conclusion that longline gear is more species-specific than trawl gear. The regulations therefore implement the intent of the Council to the extent allowed by the wording of the FMP (see FMP sections 7.0, 8.3.4.3(A), and 8.3.2.1(B)). The regulations exempt vessels using longline gear from the OY and TALFF closure provisions, except when the applicable limitation for sablefish or Pacific cod is reached. Exemptions from other closure provisions for longline vessels will have to be accomplished by amendment to the FMP. At its July, 1978 meeting, the Council voted to consider appropriate amendments.

Comments C, G. Deducting excess catch from future allocations was considered impracticable because the amount of future allocations, and the nations to whom the allocations will be given, is uncertain. This method would also involve the risk of localized overfishing. No other comments suggested other methods by which the resource could be protected from overfishing.

Comment F. The closure provisions are intended to protect the resource. Harvest by foreign vessels of 400 mt of squid could also result in closure of a fishing area to U.S. vessels.

(5) *Only 25 percent of catch of total allocations may be caught during the winter.* The limitation that a foreign nation may take only 25 percent of its total catch during the December 1-May 31 "winter fishing season", and the provision limiting incidental catches in the winter for domestic vessels (50 CFR 611.92(b) and 50 CFR 672.20(e) were established because of the greater incidental catches of halibut in the winter.

The following comments were received:

A. The same purpose can be served by limiting incidental catch of halibut.

B. This regulation is beyond the authority of the Secretary of Commerce under the Act.

C. Because 40 percent of Japanese longline catch is harvested in winter and because incidental catch of halibut is minimal, longliners should be exempt from provisions.

D. Incidental catch of halibut is declining. Halibut are being amply protected via existing regulations.

E. Japanese trawl catch is 50 percent of annual catch during winter season. It is not practical to take 75 percent of the quota during summer. This regulation would lead to nonutilization of available resources.

F. This regulation would be tantamount to a ban on operations.

G. Because domestic restrictions are considerably milder, this regulation is discriminatory.

Response: Although the same purpose might be served by limiting the incidental catch of halibut (comment A), total effort in the winter season would be restricted to about the same level because the incidental catch would be quickly reached. Moreover, the enforcement costs of the incidental catch provision would make it impracticable to apply this provision to foreign vessels. This regulation, which is an important component of the FMP, does not go beyond the authority of the Secretary of Commerce under the Act (comment B). Sections 303(b) (2) and (3) allow such a regulation. The Council and others have seriously considered exempting the longliners from these provisions (comment C) but the approved FMP does not allow such flexibility and must be amended by the Council before the regulations can be changed. The FMP indicates that there will be additional

protection of halibut as a result of the limit on winter catch, thereby indicating that halibut may not be amply protected by existing regulations (comment D). Although this regulation will impact foreign operations negatively (comments E and F), the FMP is intended to and does protect halibut. Domestic restrictions on incidental take of halibut are very severe and may be more restrictive than the foreign regulations (comment G). Further experience with winter catch limitations will allow more accurate comparison of the relative advantages and disadvantages of these management measures.

(6) *Closure of Davidson Bank to all foreign fishing.* The following comments were received on the prohibition against fishing by foreign vessels in the Davidson Bank area (see 50 CFR 611.92(d)(1)(iv)):

A. This regulation is a de facto extension of territoriality.

B. The regulation benefits a select and privileged local group of fishermen, thereby favoring one group of fishermen over another, a discrimination which is forbidden by FCMA.

C. Opening Davidson Bank to longliners would pose little threat to U.S. fisheries.

D. Closing Davidson Bank would not help sablefish stocks because the quota in the area is already set at a level to allow for rebuilding these stocks.

E. Because the Davidson Bank is a significant portion of the Shumagin statistical area, it would be difficult to take the total allocation in the Shumagin area.

F. Segmentation of no-fishing areas will increase operating costs for foreign longliners.

G. The United States mounts no effective sablefish operation in the above areas. Therefore, the areas should not be closed to longliners.

Response: The purpose of this regulation is to preserve as a sanctuary an area with healthy concentrations of several groundfish species for developing U.S. fisheries. This regulation is not considered an extension of territoriality (comment A) but rather a means of allowing the development of domestic fishing for Alaska groundfish, which is an objective of the Act and the FMP (comment C). The closing of the Bank will avoid gear conflicts which in the past have inhibited U.S. fishermen from fishing in these areas (comments C and G). The intent of closing the Davidson Bank is not to help sablefish stocks (comment D) but to avoid gear conflicts. Closing the Davidson Bank will probably increase operating costs to longliners and may make it more difficult for foreign vessels to take the total allocation in the Shumagin area (comments E and F), however, the interest of encouraging development of U.S. fishing by avoiding gear conflicts with foreign vessels outweighs this objection.

(7) *Winter fishing with pelagic trawls only.* Section 611.92(e)(1) provides that only pelagic trawls may be used between December 1 and June 1. The purpose of this provision is to protect juvenile halibut. The following comments were received:

A. The regulation is discriminatory because U.S. fishermen fishing in the same area are not as severely restricted.

B. Japan has not yet developed pelagic trawl gear for use in a groundfish fishery. The provision would make it totally unfeasible for the groundfish fleet to conduct operations at all.

C. Even off-bottom trawls are effective only for hake and pollock.

Response: This regulation is not considered discriminatory (comment A) because there are separate and severe restrictions on winter fishing by U.S. fishermen in the form of off-bottom trawl requirements, a limit on the total incidental catch of halibut, and the requirement of 1-hour tows. The information available indicates that the Japanese vessels do have pelagic trawl gear (comment B), and that it is effective (comment C). In developing different management measures to achieve the same objective, consideration was given to relative ability of U.S. and foreign vessels to tow a pelagic trawl.

(8) *Closure of the area between 3 and 12 miles, between 169° and 170° W. longitude.* Section 611.92(c) prohibits fishing by vessels of foreign nations within 12 nautical miles from the baseline used to measure the U.S. territorial sea. The following comments were received on this provision:

A. A uniform 12-mile wide zone is not necessary for this area because very little domestic fishing occurs there; therefore, there will be no gear conflicts.

B. This area is a traditional fishing ground for foreign longliners because waters outside 12 miles are too deep for longlining.

C. This area has been open under earlier bilateral fishing agreements.

D. Opening this area would eliminate other hardships.

Response: This area has been open to foreign fishing under previous bilaterals. The approved plan is quite specific (sections 8.3.2.1(d)(a)) in prohibiting fishing by vessels of foreign nations landward of 12 miles. A plan amendment would be required to change this regulation. At the July, 1978 meeting, the Council voted to consider appropriate amendment.

(9) *Other comments on foreign regulations.* A. Relaxation of the 500-meter isobath restriction east of 157° W. longitude by 100 or 200 meters would alleviate other problems caused by the FMP.

Response: This measure protects juvenile sablefish which have not reached their "critical size" from being taken and also prevents incidental catch of juvenile halibut. Relaxation of the restriction would jeopardize the purpose of the provision.

B. The special limitation on total catch of Pacific cod west of 157° W. longitude should be lifted.

Response: The Assistant Administrator has approved an amendment to the FMP to allow all of the Pacific cod TALFF in the Chirikoff fishing area to be taken in the portion of the fishing area west of 157° W. longitude. Proposed regulations were published in the FEDERAL REGISTER on October 12, 1978. Comments are solicited.

C. The Regional Director, Alaska Region, should not be delegated the power to make in-season adjustments to seasons and areas.

Response: The Administrator has redelegated this limited authority to the Regional Director subject to the restrictions and procedures set out in the final regulations, and subject to advance notification to the Assistant Administrator before action is taken. This provision does not apply to vessels of foreign nations.

B. *Comments on Part 672 (Regulations Applicable to Vessels of the United States).* The following comments were received on Part 672:

(1) *The in-season adjustment provision authority should include opening as well as closing seasons.*

Response: The change has been made (see § 672.22 (a) and (b)).

(2) *The requirement for net-sondes should be deleted; the requirement that pelagic trawl foot ropes not be in contact with the seabed for more than 10 percent of any tow, should be deleted.*

Response: The changes have been made. The FMP did not require these measures for U.S. fishermen, because U.S. vessels are not equipped with pelagic trawls.

(3) *The regulations should be written to assure fishermen that observer information will not be used for civil or criminal prosecution (see § 672.27).*

Response: Providing such an assurance is beyond the authority of the Assistant Administrator. Moreover, it is the position of NOAA that persons committing acts against observers, for which penalties are provided, should be prosecuted. The question as to civil penalties is whether the NOAA has the power to, or should as a matter of policy, prohibit use of observer reports within the NOAA for the purposes of enforcement of violations of the Act by individual vessels or persons.

Aside from scientific research, observers are considered essential to

count incidental catch of halibut in order to enforce § 672.20(e) of the regulations. This function can only be performed at sea, since halibut is a prohibited species (see § 672.20(d)). Since protection of the halibut resource is an important objective of the FMP, there is no inconsistency in adopting a policy which gives priority to this enforcement objective over others. However, the implications of such a decision require further detailed consideration of the Act and other applicable law. The Assistant Administrator is not prepared to decide this policy matter at this time.

(4) *The phrase in the in-season adjustment provision "groundfish or halibut" should be deleted to provide flexibility to act for reasons relating to other species (see § 672.22(b)).*

Response: The phrase has been retained because groundfish and halibut are the only species about which the FMP provides sufficient information on which to base in-season action. Section 8.2.1 of the FMP indicates that conservation of these stocks is the purpose of the in-season adjustment provision.

(5) *The reporting requirements should be modified to allow the buyers to submit a ADF and G "fish ticket", (see § 672.5).*

Response: This modification has been made. The Assistant Administrator has determined that an option is necessary to protect confidentiality as required by section 303(d) of the Act. He has also determined that additional reporting requirements, applicable to U.S. vessels delivering to foreign processors at sea, are unnecessary because adequate reports will be submitted by the processor and by observers on foreign processing vessels.

(6) *Amend the permit requirements to allow for the fact that the FMP is being implemented in mid-year.*

Response: Any appropriate changes have been made (see § 672.4).

(7) *The section on closure of a fishing area to all domestic fishing when OY is reached (§ 672.20) should be modified to allow some discretion on the part of the Regional Director.*

Response: The section has been rewritten to allow continued longlining for sable fish by U.S. vessels if the sablefish OY has not been reached.

(8) *The section on quarterly allocation of reserve should be made permissive.*

Response: This section has been changed as a result of an amendment to the FMP (43 FR 46349). Comments on new proposed regulations are solicited.

(9) *A new section should be added to make it clear that trawl-caught halibut are prohibited species and should be returned to the sea with a minimum of injury.*

Response: Section 672.20(d) clarifies this point.

C. *New fishing year.* One comment was also received on the proposed regulation to extend the FMP to 1979 (43 FR 34825). The commentor stated that the amendment did not adequately consider the possibility that joint venture arrangements may raise the level of U.S. harvest during 1979.

Response: The FMP was amended on October 6 (43 FR 46349) to establish a level of reserve which takes into account the possibility of increased joint venture harvests. Comments are solicited on these proposed regulations.

II. MODIFICATIONS FROM PROPOSED REGULATIONS

Certain other modifications to the regulations have been made. These modifications generally relate to procedures, and were made for the sake of clarity, procedural fairness to affected parties, and to facilitate enforcement. Minor changes in wording for the sake of clarity are not discussed.

A. *Modifications to section 611.92.* (1) Section 611.92(b)(2) has been modified to be consistent with 50 CFR 611.15. Foreign nations are responsible for requiring vessels fishing for allocations of that nation to cease fishing in a fishing area when an allocation of that nation is reached. When other catch limitations are reached, notification will be issued pursuant to the procedures of § 611.15(c) before fishing is prohibited.

(2) Section 611.92(f) (Reporting Requirements) has been clarified.

(3) Proposed amendments to 50 CFR Part 611, subparts A, B, and G have been deleted because proposed amendments to 50 CFR Part 611, subparts A, B, and G as a whole have been published in the FEDERAL REGISTER for public comment (43 FR 51053; November 2, 1978). The proposed regulations include modifications applicable to vessels of foreign nations fishing for groundfish in the Gulf of Alaska, including new species codes.

Table I of § 611.20 will be issued when this § 611.92 is republished.

B. *Modifications to section 672.* (1) *Format.* The proposed regulations applicable to U.S. vessels have been placed in a new format to ensure clarity and facilitate enforcement. The format was developed after consultation with the Regional officials of NMFS, the Department of State and the U.S. Coast Guard. U.S. fishermen are now able to locate, in a single section of the Code of Federal Regulations, all of the requirements, restrictions and other information applicable to fishing for groundfish in the Gulf of Alaska. Definitions taken from the Act and the proposed regulations, as well as uniform definitions of commonly used terms, have been included in a single subsection. The relation of the section to other law is explained. Permit requirements are made more precise. Applicable prohibitions and sanctions are stated, and provisions to facilitate enforcement are included. With the exception of § 672.20(c) which is reserved for insertion of the provision relating to specification and apportionment of reserves (amendment two to the FMP), the reserved sections are for types of management measures which are not yet applicable to the Gulf of Alaska groundfish fishery (e.g., vessel identification requirements and landing limitations).

(2) *Prohibited species (§ 672.20(d)).* This section was added to clarify the relationship of the regulations in this section to other applicable law. In contrast to vessels of foreign nations which, under the Act, may not harvest any fish for which the nation does not have an allocation, vessels of the United States may harvest any fish unless prohibited by the Act or other applicable law. Section 672.20(d) was added to emphasize this distinction and to assure that fishermen are aware that halibut and Tanner crab are regulated by other applicable law. Fishermen or vessels subject to the laws of the State of Alaska may be further restricted while fishing for groundfish. (See, for example, Alaska law regulating Steelhead trout and salmon).

(3) *Closure procedures (§ 672.22(a)).* This section was modified to assure that adequate notice is provided before fishing is prohibited during the season. No comments were received on inadequacy of the notice procedures in this section. A requirement that fishermen appoint on-shore agents, a possibility raised in the preamble to the proposed regulations, was therefore considered unnecessary.

(4) *In-season adjustments (§ 672.22(b)).* This section has been redrafted to assure that the public has sufficient opportunity to comment on actions taken during the fishing season. No comments were received on the procedures proposed to implement this section.

The purpose of this provision is to implement national standards 1, 3, and 6 (section 301(a) (1), (3), and (6) of the Act). The provision is designed to: (a) provide a mechanism to prevent overfishing should a determination be made that the specification of optimum yield was overestimated; (b) allow coordination with the State of Alaska, to the extent practicable, in conservation measures to protect halibut or groundfish stocks; and (c) provide management flexibility in situation where variations in availability of groundfish (or halibut) stocks, or other contingencies make in-season action necessary to protect the re-

source. The regulation envisions that action will be taken by amendment of section 672 (under the authority of section 305(g) of the Act), but will not require amendment of the FMP itself, since action under the in-season adjustment provision is a management measure which was authorized by the FMP and implemented pursuant to the procedures of section 305 (a) and (c) of the Act.

It was determined that the provision could be implemented most effectively if authority to take action was redelegated to the Regional Director. This redelegation has been made, and the Assistant Administrator has retained the right to be informed before action is taken.

It was also determined that procedures for public participation in the decisionmaking process should be clearly delineated, so that parties who wish to comment on the action will know where and how to do so. The section provides for compliance with the procedures of section 553 of title 5 of the United States Code (the Administrative Procedure Act), and also requires a 15-day comment period, after action is taken, in situations where, for good cause, no opportunity for advance public comment is provided. The data on which the action is based will be available to the public. If comments are received, the action will be reconsidered at the end of the fifteen day period.

The in-season adjustment provision is a management technique which has not been used in other fishery management plans. It is anticipated that the provision may be refined as the Council and NOAA gain experience in its operation. In section 9 of the FMP the Council indicates its intention to maintain a continuing review of the fisheries managed under the FMP, and to conduct public hearings "* * * to hear testimony on the effectiveness of the management plans and requests for change." Continuing public input, and Council reevaluation, of this and other management measures is clearly contemplated.

C. *Timing of implementation.* Section 305(c) of the Act requires that "* * * to the extent practicable, * * * regulations[s] shall be put into effect in a manner which does not disrupt the regular fishing season * * *." The preamble to the proposed regulations solicited practical suggestions for timing of implementation. The following comments were received:

1. The new specifications of OY and TALFF, and the addition of new regulations make efficient planning impossible. Implement January 1, 1979.

2. Midseason closure of Davidson Bank requires major readjustment in fishing plans.

3. Foreign fisheries operate on the basis of carefully developed trawl plans governing each type of fishery and individual vessel, therefore midseason changes are disruptive and would cause economic difficulties.

4. Because the allocations by fishing area would not be proportional to relative (biological) productivity, operations in some would be terminated because of catch conditions during the first part of the season.

5. Because vessels are at sea it will be difficult to provide guidance to the fleet to assure compliance.

6. Article IV of the United States-Japanese GIFA provides for "adjustments as may be necessitated by unforeseen circumstances affecting the stocks"; there are no "unforseen circumstances affecting the stocks" which would justify changes in regulations.

After consideration of these comments and review of catch reports, which indicated that in-season implementation would result in the closure of several fishing areas to vessels of several nations, the conclusion was reached that the most reasonable solution would be to implement the FMP for a new fishing year. This approach was chosen for the following reasons: (a) The objections raised by the comments would be met and foreign nations would have ample time to prepare for implementation; (b) the fishing year could begin during that period of the year when fishing activity was lowest; (c) beginning "fishing years" at various times throughout the calendar year more evenly distributes the administrative workload of the NOAA and the Council; and (d) several management measures in the FMP became operative in November. A fishing year beginning at that time would make the regulations more understandable.

The Council concurred in this conclusion. After reevaluating available data, the FMP was amended to extend specifications of OY, TALFF, domestic capacity and reserve through October 31, 1979. A fishing year from November to November was contemplated.

Implementation will again be delayed because of amendment two (see heading "History of the Plan" of this preamble). It is essential that the FMP and amendments one and two be implemented together to avoid the uncertainty and disruption which would result from changing the specifications of OY, TALFF and reserve after the first month of the fishing year. The following implementation schedule will therefore be followed:

(a) The regulations published below are effective December 1, 1978;

(b) Before December 1, 1978, the regulations published below will be reprinted, incorporating final regulations, implementing amendments 2 and 3;

(c) All sections of the reprinted final regulations will be effective on December 1, 1978 (the 30-day "cooling off period" required by 5 U.S.C. section 553 for amendment 2 will be reduced for the reasons stated in this preamble), except the sections implementing amendment 3 (see § 611.92(b) table I, note 3 and § 611.92(b)(2)(ii)(D)), which will be effective on January 1, 1979.

The Assistant Administrator for Fisheries, under delegation of authority from the Secretary of Commerce, has determined that these regulations and the FMP for groundfish of the Gulf of Alaska are consistent with the national standards, the other provisions of the act, and other applicable law and do not require a regulatory impact analysis under Executive Order 12044. An environmental impact statement for this FMP has been filed with the Environmental Protection Agency.

(16 U.S.C. 1801 et seq.)

Signed at Washington, D.C., this 7th day of November 1978.

WINFRED H. MEIBOHM,
Acting Executive Director, National Marine Fisheries Service.

50 CFR 611, Subpart G is amended. Section 611.92 is amended to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

(a) *Purpose and scope.* (1) This section regulates foreign fishing for groundfish in the Gulf of Alaska, which includes that portion of the North Pacific Ocean, exclusive of the Bering Sea, between 132°40′ W. longitude and 170°00′ W. longitude.

(2) For regulations governing fishing for groundfish in the Gulf of Alaska by vessels of the United States, see 50 CFR Part 672.

(3) Unless any subsection of this section states otherwise, the management measures in this section shall be effective on December 1, 1978, and shall remain in effect until amended, modified, or rescinded. The specifications of optimum yield (OY), total allowable level of foreign fishing, and reserves shall be effective from December 1, 1978, through October 31, 1979, unless amended, revised or modified.

(b) *Authorized fishery.*—(1) *TALFF's, national allocations and reserves.* The total allowable level of foreign fishing (TALFF) and the amounts of fish set aside as a reserve in each fishing area are set forth in table I of this section.

TABLE I.—*Gulf of Alaska Groundfish Fishery: TALFF and Reserve [1] by Species and Fishing Area for 1978–79*

[Specifications of TALFF and Reserve—Reserved]

Species		FISHING AREAS [2]					
		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Pollock	TALFF						
	Reserve						
Pacific cod [3]	TALFF						
	Reserve						
Flounders	TALFF						
	Reserve						
Pacific Ocean perch (POP)	TALFF						
	Reserve						
Other rockfishes [4]	TALFF						
	Reserve						
Sablefish	TALFF						
	Reserve			[Reserved]			
Atka Mackerel	TALFF						
	Reserve						
Squid	TALFF						
	Reserve						
Other species [5]	TALFF						
	Reserve						

[1] The TALFF's specified in this table may be modified during the year if reserves are apportioned to TALFF.
[2] See fig. 3 of app. II to § 611.9 for description of fishing areas.
[3] Of the total Pacific cod TALFF (including any apportioned reserve), only [reserved] metric tons may be caught west of 157° W. longitude.
[4] The category "other rockfishes" includes all rockfishes other than Pacific Ocean perch.
[5] The category "other species" includes all species of fish except (A) the other fish listed in the table; and (B) shrimp, scallops, salmon, steelhead trout, Pacific halibut, herring, and Continental Shelf fishery resources.

(i) In any fishing area where the TALFF for any species listed in table I of this section is "0" (zero), any catch of that species in that fishing area shall be considered catch of a "prohibited species" and treated in accordance with the provisions of § 611.13.

(ii) Reserves. [Reserved]

(2) *Fishing permitted.* (i) The catching and retention of any groundfish for which a nation has an allocation is permitted, except in the following circumstances:

(A) When vessels of a nation have caught the amount of the allocation of that nation for any groundfish species (or species group, e.g., "other rockfish") in any fishing area, fishing for groundfish in that fishing area by vessels of that nation is prohibited, even if (*1*) allocations of other species for that nation in that fishing area have not been reached, or (*2*) the nation has not received a notice issued pursuant to § 611.15(c) prohibiting fishing by vessels of that nation in that fishing area; or

(B) On the effective date of a notice of closure issued by the regional director pursuant to the procedures of § 611.15(c), fishing by vessels of that nation is prohibited for the groundfish species (or species groups), in the fishing areas and during the periods stated in the notice; or

(C) As otherwise prohibited by this section.

(ii) The regional director shall issue a notice of closure, pursuant to the procedures of § 611.15(c), prohibiting fishing for the applicable species of groundfish, in the applicable fishing area during the applicable periods, as listed in paragraphs (b)(2)(ii) (A) through (E) below, when he determines that one or more of the following catch limitations will be reached:

(A) Optimum yield for any groundfish species, or species group, in a fishing area: The regional director shall issue a notice prohibiting fishing using trawl gear for groundfish in that fishing area by vessels subject to this section, until November 1, except that if the optimum yield for sablefish or Pacific cod in a fishing area will be reached, the regional director shall prohibit fishing for groundfish in that fishing area by all vessels subject to this section until November 1 (see table I of 50 CFR 672 for OY amounts by fishing area);

(B) Total allowable level of foreign fishing (TALFF) for any groundfish species, or species group in a fishing area: The regional director shall issue a notice prohibiting fishing using trawl gear for groundfish in that fishing area, except that if the TALFF for sablefish or Pacific cod in a fishing area will be reached, the regional director shall prohibit fishing for groundfish in that fishing area by all vessels subject to this section until November 1.

(C) The allocation of a nation for any groundfish species, or species group, in a fishing area: The regional director shall issue a notice prohibiting fishing for groundfish in that fishing area by all vessels of that nation until November 1.

(D) [Reserved] metric tons of Pacific cod caught west of 157° W. longitude by vessels subject to this section: The regional director shall issue a notice prohibiting fishing for groundfish in the area west of 157° W. longitude, by all vessels subject to this section until November 1.

(E) 25 (twenty-five) percent of the total allocation (all groundfish species) of a nation caught during the period between December 1 and June 1: The regional director shall issue a notice prohibiting fishing for groundfish in the Gulf of Alaska by all vessels of that nation until June 1.

(iii) When a notice has been issued pursuant to this subsection prohibiting fishing, vessels of a nation subject to this section may resume fishing in a fishing area: (*1*) On the effective date of a notice issued pursuant to § 611.15(c) rescinding the notice of closure previously issued; or (*2*) when the time period stated in the notice of closure expires.

(c) *Open areas.* Except as prohibited in paragraph (d) below, foreign fishing for groundfish is permitted in the Gulf of Alaska beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea.

(d) *Closed areas.*—(1) *All fishing.* Foreign fishing for groundfish is prohibited in the following areas:

(i) Cape Edgecumbe-Salisbury Sound: Between 56°53′ N. latitude and 57°24′ N. latitude east of 137°00′ W. longitude.

(ii) Cross Sound Gully: Between 57°50′ N. latitude and 58°12′ N. latitude east of 137°25′ W. longitude.

(iii) Fairweather Gully: The area bounded by rhumb lines connecting the following coordinates in the order listed:

North latitude	West longitude
58°28′	140°00′
58°48′	138°50′
58°10′	139°11′
58°28′	140°00′

(iv) "Davidson Bank": Between 163°04′ W. longitude and 166°00′ W. longitude north of 53°00′ N. latitude.

(2) *Fishing with trawl gear.* Trawling for groundfish by vessels regulated by this section is prohibited in the following areas during the periods specified:

(i) 140° W. longitude to 147° W. longitude from November 1 to February 16.

(ii) 147° W. longitude to 157° W. longitude from February 16 to June 1.

(iii) Six "Kodiak Gear Areas" from August 10 to June 1. These areas, bounded respectively by rhumb lines connecting in each of the following groups the coordinates in the order listed, are described as follows:

(A) North latitude	West longitude
57°15′	154°51′
56°57′	154°34′
56°21′	155°40′
56°26′	155°55′
57°15′	154°51′

(B) North latitude	West longitude
56°27′	154°06′
55°46′	155°27′
55°40′	155°17′
55°48′	155°00′
56°54′	154°55′
56°03′	154°36′
56°03′	153°45′
56°30′	153°45′
56°30′	153°49′
56°27′	154°06′

(C) North latitude	West longitude
56°30′	153°49′
56°30′	153°00′
56°44′	153°00′
56°57′	153°15′
56°45′	153°45′
56°30′	153°49′

(D) North latitude	West longitude
57°05′	152°52′
56°54′	152°52′
56°46′	152°37′
56°46′	152°20′
57°19′	152°20′
57°05′	152°52′

(E) North latitude	West longitude
57°35′	152°03′
57°11′	151°14′
57°19′	150°57′
57°48′	152°00′
57°35′	152°03′

(F) North latitude	West longitude
58°00′	152°00′
58°00′	150°00′
58°12′	150°00′
58°19′	151°29′
58°00′	152°00′

(iv) Three "Kodiak Halibut areas" from 5 days prior to 5 days after the first opening of the U.S. halibut fishing season, if the first opening of that fishing season occurs after May 26 (as established by regulations of the International Pacific Halibut Commission).

(A) The three "Kodiak Halibut areas" bounded respectively by rhumb lines, are described as follows:

(*1*) 58°30′ N. lat. to 59°30′ Nat. lat., between 147°40′ W. long. and 150°20′ W. long.

(*2*) 57°40′ N. lat to 58°05′ N. lat., between 148°50′ W. long. and 150°30′ W. long.

(*3*) 55°30′ N. lat. to 56°25′ N. lat., between 155°45′ W. long. and 156°30′ W. long.

(B) The regional director shall give notification of the first opening date of the U.S. halibut fishing season to the designated representative of each foreign nation at least 48 hours before the U.S. halibut fishing season first opens.

(3) *Fishing with longline gear.* Foreign longline fishing for groundfish is prohibited in the following areas during the periods specified (for the purpose of this section 611.92, longline means a stationary, buoyed and anchored line with hooks or pots attached, or the taking of fish by means of such a device.):

(i) East of 140° W. longitude, at all times;

(ii) The area which is both landward of the 500 meter depth contour and between 140° W. longitude and 157° W. longitude, at all times;

(iii) The area which is both landward of the 500 meter depth contour and west of 157° W. longitude, at all times, except for longline fishing for Pacific cod; and

(iv) The area which is both landward of the 500 meter depth contour and west of 157° W. longitude, during the halibut fishing seasons as established by regulations of the International Pacific Halibut Commission. The regional director shall give notification of the opening and closing dates of the U.S. halibut fishing seasons to the designated representative of each foreign nation, at least 48 hours before the opening and closing dates of the U.S. halibut fishing seasons.

(4) Time periods begin and end at 0800 g.m.t. on the dates specified.

(e) *Gear restrictions.*—(1) *Vessels using trawl gear.* During the period from December 1 to June 1, vessels subject to this section shall not use trawls other than pelagic trawls (trawls in which neither the net nor the otter boards operate in contact with the seabed) equipped with recording net-sonde devices functioning properly during each tow.

(i) The footrope of the net shall not be in contact with the seabed for more than 10 percent of any tow, as indicated by the net-sonde readout.

(ii) Vessels subject to this section shall not attach to a pelagic trawl any protective device (such as chafing gear, rollers, or bobbins) which would make it possible to fish on the seabed.

(2) *Vessels using longline gear.* Vessels subject to this section shall not use gear other than longline gear when conducting a directed fishery for:

(i) Sablefish; or

(ii) Pacific cod in the area which is both west of 157° west longitude and landward of the 500 meter depth contour.

(f) *Additional statistical report—Annual.* In addition to the requirements of § 611.9 each nation whose fishing vessels fish subject to this section shall submit a written annual report to the regional director setting forth catch and effort statistics regarding fishing activities conducted under this section during the period from November 1 through October 31, by March 31 of the following year (e.g., statistics gathered between Nov. 1, 1978, and Oct. 31, 1979, must be submitted by Mar. 31, 1980).

(1) Foreign vessels fishing with trawl gear shall report:

(i) Effort in hours trawled and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area;

(ii) Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the following species categories: Yellowfin sole, rock sole, flathead sole, arrowtooth flounder, other flounders, Pacific Ocean perch, other rockfish, Pacific cod, sablefish (blackcod), walleye (Alaska) pollock, Atka mackerel, squid, any other species taken in excess of 1,000 metric tons, and other fishes.

(2) Foreign vessels fishing with longline gear shall report:

(i) Effort, in number of longline units (300 fathoms of longline or groundline per unit) and number of hooks per unit, number of pots, duration of soaking time for longlines and pots, and number of days fished, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing areas; and

(ii) Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) fishing area, by the species categories listed in subparagraph (1)(ii) of this subsection.

§ 611.94 [Superseded]

Section 611.94 is superseded by § 611.92. Fishing operations formerly regulated by § 611.94 are included in § 611.92.

Title 50, a new Part 672 is added as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

Subpart A—General

Sec.
672.1 Purpose and scope.
672.2 Definitions.

AUTHORITY: 16 U.S.C. 1801, et seq.

Subpart A—General

§ 672.1 Purpose and scope.

(a) Regulations in this part govern fishing for groundfish by vessels of the United States within that portion of the Gulf of Alsaka over which the United States exercises exclusive fishery management authority.

(b) For regulations governing fishing in the Gulf of Alaska groundfish fishery by fishing vessels other than vessels of the United States, see 50 CFR 611.92.

(c) These regulations implement the Gulf of Alaska groundfish fishery management plan developed by the North Pacific Fishery Management Council.

§ 672.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this part shall have the following meanings (some definitions in the Act have been repeated here to aid understanding of the regulations):

Act means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801-1882, as amended.

A.D.F. & G. means the Alaska Department of Fish and Game.

Assistant Administrator means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, or an individual to whom appropriate authority has been delegated.

Authorized officer means: (1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Fishery conservation zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing means any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in subparagraphs (1), (2), or (3) above.

Fishing area means any area of the FCZ seaward of the State of Alaska, previously established under the International North Pacific Fisheries Commission for the general purposes of research, reporting and/or regulation. The five fishing areas in the Gulf of Alaska are described as follows:

Area and Location

Shumagin between 170-159° West Longitude.
Chirikof between 159-154° West Longitude.
Kodiak between 154-147° West Longitude.
Yakutat between 147-137° West Longitude.
Southeastern between 137-132°40' West Longitude.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) Fishing, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation or processing.

Groundfish means pollock, cod, any species of flounder and sole, Pacific Ocean perch, other rockfish, sablefish, Atka mackerel, squid, and other finfish, except salmon, steelhead trout, and Pacific halibut. The scientific names of these species are as follows:

Pollock means *Theragra chalcogrammus.*
Cod means *Gadus macrocephalus.*
Arrowtooth flounder means *Atheresthes stomias.*
Other flounder means *Pleuronectiformes* (order) not specifically defined.
Rock sole means *Lepidopsetta bilineata.*
Flathead sole means *Hippoglossoides elassodon.*
Pacific ocean perch means *Sebastes alutus.*
Atka mackerel means *Pleurogrammus monopterygius.*
Other rockfish means *Scorpaenidae* (family) not specifically defined.
Sablefish means *Anoplopoma fimbria.*
Squid means *sepioid* and *teuthoid* squid.
Salmon means of the family *Salmonidae.*
Pacific halibut means *Hippoglossus styenolepis.*
Steelhead trout means *Salmo gairdneri.*

Gulf of Alaska means that portion of the fishery conservation zone in the North Pacific Ocean exclusive of the Bering Sea, between 132°40' W. longitude and 170°00' W. longitude seaward of the State of Alaska.

Landing means off-loading fish.

Longline means a stationary, buoyed, and anchored line with hooks or pots attached, or the taking of fish by means of such a device.

Off-bottom trawl means a trawl in which the otter boards may be in contact with the seabed but the ground rope of the net remains above the seabed.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time, or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by any person in subparagraph (1), (2), or (3).

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional director means Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802, or an individual to whom appropriate authority has been delegated.

Vessel of the United States means: (1) A vessel documented or numbered by the Coast Guard under U.S. law; or

(2) A vessel, under 5 net tons, which is registered under the laws of any State.

§ 672.3 Relation to other laws.

(a) *Federal law.* For other regulations concerning the conservation of halibut see the regulations of the International Pacific Halibut Commission, or any regulations implementing any halibut fishery management plan approved under the Act. For other regulations concerning fishing for tanner crab see 50 CFR Part 671.

(b) *State law.* Certain data collection and enforcement activities under this part will be performed by personnel of the State of Alaska under the terms of an agreement with NOAA/NMFS and the U.S. Coast Guard.

(c) *Delegation.* The Assistant Administrator has delegated to the regional director authority to take actions pursuant to § 672.22 of this part, and to apportion reserves pursuant to § 672.20(c) of this part.

§ 672.4 Permits.

(a) *General.* No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this Part. Permits shall be issued without charge.

(b) *Application.* An applicant may obtain a permit by submitting to the regional director a written request containing the following information:

(1) The applicant's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used; and

(6) The signature of the applicant.

(c) *Issuance.* (1) Upon receipt of a properly completed application, the regional director shall issue a permit.

(2) Upon receipt of an incomplete or improperly completed application, the regional director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) *Notification of change.* Any person who has applied for and received a permit under this section shall give written notification of any change in the information provided under paragraph (b) of this section to the regional director within 30 days of the date of that change.

(e) *Duration.* A permit shall continue in full force and effect until it is revoked, suspended, or modified pursuant to 50 CFR Part 621 (Civil procedures).

(f) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) *Transfer.* Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) *Inspection.* Any permit issued under this part must be carried aboard the vessel whenever the vessel is fishing for groundfish. The permit shall be presented for inspection upon request of any authorized officer.

(i) *Sanctions.* Subpart D of 50 CFR 621 (Civil procedures) shall govern the imposition of permit sanctions against a permit issued under this part. As specified in that subpart D, a permit may be revoked, modified, or suspended if the permitted vessel is used in the commission of an offense prohibited by the Act or these regulations; or if a civil penalty or criminal fine imposed under the Act and pertaining to a permitted vessel is not paid.

§ 672.5 Reporting requirements.

(a) The operator of any fishing vessel regulated by this part whose port of landing is in the State of Alaska shall, for each sale or delivery of groundfish, be responsible for the submission of an accurately completed State of Alaska fish ticket.

(b) At the election of the vessel operator, the fish ticket shall be either: (1) Submitted by the vessel operator directly to the A.D.F. & G. within 72 hours after such fish are sold or delivered; or (2) prepared, at the request of the operator, by the purchaser (i.e., any person who receives fish for a commercial purpose from a fishing vessel subject to this part) and submitted by the purchaser to the A.D.F. & G. within 72 hours after such fish are received by the purchaser. (A.D.F. & G. address: Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, Subport Building, Juneau, Alaska 99801.)

(c) In addition to the requirements of paragraphs (a) and (b) of this section, each operator (or purchaser, if the fish ticket is submitted in accordance with paragraph (b)(2)) shall also accurately state on each such fish ticket: (1) Total time fished; (2) total number of hauls; and (3) quantity and type of gear used.

(d) The operator of any vessel of the United States subject to this part whose port of landing is in the United States but outside the State of Alaska shall comply with the provisions of this section by submitting a completed Alaska fish ticket, or an equivalent document containing all of the information required on an Alaska fish ticket, to the A.D.F. & G. within 72 hours after the date of each sale or delivery of any species of fish covered by these regulations. (For the address of the A.D.F. & G., see § 672.5(b).) (Sample alternative document reserved.)

§ 672.6 [Reserved]

§ 672.7 General prohibitions.

It shall be unlawful for any person to:

(a) Fish for groundfish with a vessel of the United States which does not have aboard a valid permit issued pursuant to this part;

(b) Possess, have custody or control of, ship, transport, import, export, offer for sale, sell, or purchase any fish taken or retained in violation of the Act, this part, or any other regulation or permit issued under the Act;

(c) Refuse to permit an authorized officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation or permit issued under the Act;

(d) Forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (c) of this section;

(e) Resist a lawful arrest for any act prohibited by this part;

(f) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(g) Forcibly assault, resist, impede, intimidate, or interfere with an observer placed aboard a fishing vessel pursuant to this part;

(h) Violate any other provision of this part, the Act, or any regulation or permit issued under the Act.

§ 672.8 Enforcement.

(a) *General.* The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by an authorized officer to facilitate safe boarding and inspection of the fishing vessel, its gear, equipment, and catch for purposes of enforcing the Act and this part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of a fishing vessel shall be alert for signals conveying enforcement instructions. The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc." which is the call to an unknown station.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his party to come aboard;

(2) If requested, provide a safe ladder for the authorized officer and his party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line, and illumination for any ladder; and

(4) Take such other actions as necessary to insure the safety of the authorized officer and his party and to facilitate the boarding.

§ 672.9 Penalties.

Any person or fishing vessel found to be in violation of this part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and other applicable law.

Subpart B—Management Measures

§ 672.20 General limitations.

(a) *Optimum yield.* (1) The optimum yield (OY) and reserves for species regulated under this part in the five fishing areas are set forth in table I. These specifications of OY and reserves are effective for a fishing year beginning on December 1, 1978, and ending on October 31, 1979. The OY of each species in table I is the maximum amount of that species which may be caught or harvested during the fishing year by vessels of the United States and foreign nations in each fishing area.

TABLE I.—*Optimum Yield and Reserves*

[Reserved amounts; Reserved]

FISHING AREAS

Species		Shumagin	Chirikof	Kodiak	Yakutat	Southeast	Total
Pollock	OY	57,000	54,400	40,800	12,500	4,100	168,000
	Reserve						
Cod	OY	9,600	4,100	15,300	4,300	1,500	34,800
	Reserve						
Flounder	OY	10,400	2,700	12,000	6,400	2,000	33,500
	Reserve						
Pacific Ocean perch (POP)	OY	2,700	2,700	5,200	7,900	6,500	25,000
	Reserve						
Other rockfish	OY	300	200	600	3,400	3,100	7,600
	Reserve						
Sablefish	OY	2,100	1,400	2,400	3,400	3,700	13,000
	Reserve						
Atka mackerel	OY	4,400	3,600	15,800	1,000	0	24,800
	Reserve						
Squid	OY	400	400	400	400	400	2,000
	Reserve						
Other species*	OY	4,400	3,600	5,000	2,100	1,100	16,200
	Reserve						

* Includes all stocks of finfish except: (1) those listed above; and (2) salmon, steelhead trout and Pacific halibut.

(b) *Field orders.* (1) If the Regional Director determines that the OY for any species in any fishing area in table I of paragraph (a) will be reached, he shall issue a field order pursuant to § 672.22(a) prohibiting fishing for all species in that fishing area, except that the Regional Director shall not prohibit, under this section, fishing for sablefish by fishing vessels using longline gear unless he determines that the OY for sablefish in that fishing area will be reached.

(2) Fishing for species of groundfish by vessels of the United States in the applicable fishing area contrary to any field order issued under this paragraph is prohibited from the effective date of such field order except that fishing for sablefish with longline gear is not prohibited until the effective date of a field order prohibiting longline fishing for sablefish in that fishing area.

(c) [Reserved]

(d) *Prohibited species.* (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish, the rentention of which is prohibited by other applicable law, including regulations implementing any fishery management plan for that species.

(i) Any catch of halibut by fishing vessels regulated by this part is catch of a prohibited species, unless retention is authorized by the regulations of the International Pacific Halibut Commission.

(ii) Any catch of Tanner crab (*C. bairdi* or *C. opilio*) by fishing vessels regulated by this part is catch of a prohibited species after the effective date of regulations implementing the Fishery Management Plan for Tanner crab off Alaska (see 50 CFR 671).

(2) Each vessel subject to this part shall minimize its catch of prohibited species.

(3) Each vessel shall sort its catch as soon as possible after retrieval of the catch and, after allowing for sampling by an observer (if any), shall return any catch of prohibited species or parts thereof to the sea immediately with a minimum of injury regardless of its condition.

(4) It shall be a rebuttable presumption that any prohibited species found onboard a fishing vessel regulated by this part was caught and retained in violation of this part.

(5) In any fishing area where the OY in table I of paragraph (a) for any species is "0" (zero), any catch of that species by a vessel regulated by this part in that fishing area shall be considered catch of a "prohibited species" and shall be treated in accordance with this paragraph.

(e) *Halibut.* (1) If, during the period between December 1 and May 31, the Regional Director determines that the estimated total catch of halibut in any fishing area by vessels regulated by this part will reach the amount listed below, he shall issue a field order pursuant to § 672.22(a) prohibiting, until June 1, groundfish fishing with trawl gear in that fishing area by vessels regulated by this part.

Fishing Area and Catch Amount

Shumagin—29 metric tons (mt).
Chirikof—18 mt.
Kodiak—34 mt.
Yakutat—17 mt.
Southeast—14 mt.

(2) Fishing for groundfish with trawl gear by vessels regulated by this Part in the applicable fishing area is prohibited from the effective date of any field order issued pursuant to this paragraph, until June 1.

§ 672.21 [Reserved]

§ 672.22 Time and area closures.

(a) *Field orders.* (1) Field orders issued by the Regional Director under this part shall include the following information: (i) A description of the area to be opened or closed; (ii) the effective date and any termination date of such opening or closure; and (iii) the reason for the opening or closure.

(2) No field order issued under this paragraph shall be effective until:

(i) It is filed for publication in the FEDERAL REGISTER;

(ii) It has been posted and otherwise made available to the public, in accordance with procedures customarily used by the A.D.F. & G. for the posting and publicizing of similar notices of closure, for 48 hours prior to its effective date; and

(iii) It has been broadcast at those time intervals, channels and frequencies customarily used by the A.D.F. & G. to broadcast similar notices of closure, for 48 hours prior to its effective date.

(3) Field orders issued pursuant to this section shall remain in effect until the earlier of the following dates:

(i) Any expiration date stated in the field order; or

(ii) The effective date of any field order which modifies, rescinds, or supercedes the initial field order.

(b) *Inseason adjustments.* (1) *General.* The Regional Director may, following consultation with the A.D.F. & G., prohibit fishing by vessels regulated by this part, for any species of groundfish in any portion of the Gulf of Alaska during the fishing year.

(2) *Determinations.* Any adjustment under this paragraph shall be based on a determination by the Regional Director that: (i) The condition of any groundfish or halibut stock in any portion of the Gulf of Alaska is substantially different from the condition anticipated at the beginning of the fishing year, and (ii) such differences reasonably support the need for inseason conservation measures to protect groundfish or halibut stocks.

(3) *Data.* Fishery and observer data reported inseason which relates to one or more of the following factors may be considered in making this determination:

(i) The effect of overall fishing effort within a fishing area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) Amount of halibut being caught;

(v) Condition of stocks within the area; and

(vi) Any other factors relevant to the conservation and management of the groundfish or halibut resource.

(4) *Procedure.* (i) The Regional Director shall publish proposed adjustments in the FEDERAL REGISTER for public comment before they are made final, unless the Regional Director finds for good cause that such notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

(ii) If the Regional Director decides, for good cause, that an adjustment is to be made without affording a prior oportunity for public comment, public comments on the necessity for, and extent of, the adjustment shall be received by the Regional Director for a period of 15 days after the effective date of the field order. (Address: Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska 99802.)

(iii) During any such 15-day period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which an adjustment was based. (Address: National Marine Fisheries Service, Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802.)

(iv) If comments are received during the 15-day period, the Regional Director shall reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, shall either: (A) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, responding to comments received; or (B) modify or rescind the adjustment.

(5) *Notice of adjustments.* The Regional Director shall give notice of inseason adjustments by issuance of a field order in accordance with the procedures in paragraph (a) of this section.

(6) *Optimum yield.* No action which has the effect of raising the optimum yield for any species as specified in table I of § 672.20(a) is authorized under this paragraph.

(c) *Prohibition.* Any fishing contrary to a field order issued under this section is prohibited.

§ 672.23 [Reserved]

§ 672.24 Gear Limitations.

(a) *Trawl.* During the period from December 1 through May 31, only off-bottom trawls may be used by fishing vessels subject to this Part.

(b) [Reserved]

§ 672.25 Effort limitations.

The duration of individual tows of fishing vessels subject to this part using off-bottom trawls shall not exceed 1 hour.

§ 672.26 [Reserved]

§ 672.27 Observers.

All fishing vessels subject to this part must, when so requested by the Regional Director, take aboard an observer.

[FR Doc. 78-31958 Filed 11-13-78; 8:45 am]

proposed rules

[3410-08-M]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[7 CFR Part 401]

PROPOSED SOYBEAN ENDORSEMENT

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This notice proposes a revision of the regulations for insuring soybeans effective with the 1979 crop year to incorporate a previous amendment; amend the harvested guarantee; provide for more than one level of coverage on soybeans; and extend the end of the insurance period from December 10 to December 20 in certain States to conform with current farming practices regarding harvest period.

DATE: Written comments, data, and opinions must be submitted by December 4, 1978 to be sure of consideration.

ADDRESS: Written comments on the proposed rule must be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096 South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation proposes to revise and reissue the Soybean Endorsement as found in 7 CFR 401.134 (33 FR 8264, June 4, 1968), to include an amendment providing a formula for the downward adjustment in the production of soybeans to be counted because of poor quality due to insured causes which became effective for the 1975 crop year (39 FR 32127, September 5, 1974). In addition, the revised endorsement will contain a provision that the harvested guarantee will be shown on the actuarial table on file in the office for the county and that such guarantee will be reduced for any unharvested acreage. The current endorsement provides that the production guarantee as shown on the actuarial table shall be increased by 1.5 bushels for any acreage on which the amount harvested is 1.5 or more bushels per acre. The Corporation feels this provision will be more effective administratively. Further, the proposed Amendment No. 100 will provide for more than one coverage level on soybeans within a county. The change will allow the grower more flexibility in tailoring the insurance offered to meet his needs. It is anticipated that for the 1979 crop year, two coverage levels as well as three price elections will be offered to soybean growers. Finally, the current endorsement provides that the end of the insurance period shall be December 10 in some States. Present day farming practices in some of these States indicate that the harvest period comes later than December 10, and since soybean insurance protection terminates at harvest, this date had been changed in the proposed endorsement below to December 20 in such States to allow for such later harvest period.

The Federal Crop Insurance Corporation, in accordance with the provision of the Administrative Procedure Act (7 U.S.C. 553 (b) and (c)), relative to notice and public participation has determined that such regulations as are printed below shall be published in the FEDERAL REGISTER as a notice of proposed rulemaking. The public is invited to submit written comments, data, and opinions for consideration in connection with the proposed regulations to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096-South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

The soybean crop insurance regulations must be placed on file in the Corporation's office for the county by not later than December 15 in order to be effective for the 1979 crop year. The Board of Directors of the Corporation has determined that there would not be enough time to follow the procedure for notice and public participation allowing the public 60 days to comment on the proposed regulation and still meet the deadline of December 15. Therefore, only 20 days for public comment will be available.

All written submissions must be delivered or postmarked not later than December 4, 1978, to be sure of consideration. All written submissions made pursuant to this notice will be available for public inspection at the Office of the Manager during regular business hours 8:15 a.m. to 4:45 p.m. Monday through Friday (7 CFR 1.27(b)).

PROPOSED RULE

Accordingly, the Federal Crop Insurance Corporation proposes to amend the Soybean Endorsement as found in CFR 401.134 effective with the 1979 crop year in its entirety to read as follows:

§ 401.134 The soybean endorsement

1. *Insured crop.* The crop insured shall be soybeans planted for harvest as beans, as determined by the Corporation. Unless otherwise provided on the county actuarial table, insurance shall attach only on acreage initially planted in rows far enough apart to permit cultivation, as determined by the Corporation; but, if such insured acreage is destroyed and is replanted, whether in the same manner or by broadcasting, drilling or in rows too close to permit cultivation, it shall be regarded as insured acreage and not as acreage put to another use. Insurance shall not attach on acreage on which it is determined by the Coporation that soybeans are planted for the development of hybrid seed, or planted in the same row or interplanted in rows with corn. Item (1) of the second sentence of subsection 2(c) of the policy shall not be applicable hereunder in Arkansas, Louisiana, and Mississippi.

2. *Production guarantee.* The production guarantee shall be in bushels per acre as shown on the county actuarial table and the guarantee for any unharvested acreage shall be decreased by the lesser of 3 bushels or 20 percent. Where applicable, at the time the application for insurance is made, the applicant shall elect a guarantee level from the guarantee levels shown on the actuarial table. If the insured has not elected a guarantee level, or the guarantee level elected is not one shown on the actuarial table, the guarantee level which shall be applicable, and which the insured will be deemed to have elected, shall be the guarantee level provided on the actuarial table for such purpose. The insured may, with the consent of the Corporation, elect a new guarantee level for any crop year any time before the closing date for filing applications for that year.

3. *Insurance period.* Insurance on insured acreage shall attach at the time the soybeans are planted and shall cease in the same calendar year as follows: The earliest of (1) final adjustment of a loss, (2) threshing or remov-

al from the field, whichever occurs first, or (3) October 31 in North Dakota, December 20 in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, and Virginia, and December 10 in all other States.

4. *Claims for loss.* (a) Any claim for loss on an insurance unit shall be submitted to the Corporation on a form prescribed by the Corporation not later than 60 days after the time of loss. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of either party prevent compliance with this provision. (b) It shall be a condition precedent to the payment of any loss that the insured (1) establish the production of the insured soybeans on the unit, and that such loss of production has been directly caused by one or more of the hazards insured against during the insurance period of the crop year for which the loss is claimed, and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation, (c) Losses shall be determined separately for each unit. The amount of loss with respect to any unit shall be determined by (1) multiplying the insured acreage of soybeans on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share. *Provided,* That if the insured fails to report all of the insurable acreage or share for the unit, the amount of loss shall be determined with respect to all of the insurable acreage and share, and in such case, if the premium computed on the basis of the insurable acreage and share exceeds the premium computed on the acreage and share shown on the acreage report, or the acreage and share when determined by the Corporation under section 3 of the policy, the amount of loss shall be reduced proportionately.

(d) The total production to be counted for a unit shall be determined by the Corporation and, subject to the provisions hereinafter, shall include all harvested production and any appraisals made by the Corporation for unharvested or potential production, poor farming practices, uninsured causes of loss, or acreage abandoned or put to another use without the consent of the Corporation: *Provided,* That the total production to be counted shall be not less than the applicable guarantee for any acreage which is abandoned, put to another use without prior written consent of the Corporation, or damaged solely by an uninsured cause.

(e) Notwithstanding any other provision of this section for determining production to be counted, the production to be counted of any harvested soybeans which have in excess of 8 percent kernel damage, as defined in the "Official Grain Standards of the United States," due to insurable causes occurring within the insurance period shall be adjusted by (1) dividing the value per bushel of the damaged soybeans as determined by the Corporation, by the market price per bushel at the local market for soybeans grading No. 2 at the time the loss is adjusted, or if the damaged soybeans have been sold, by dividing the price per bushel received by the insured by the No. 2 price on the date of sale at the local market, and (2) multiplying the result thus obtained by the number of bushels of such damaged soybeans. If the soybeans do not have in excess of 8 percent kernel damage and it is determined that the production contains a moisture content of 15 percent or more, such production shall be reduced 1.2 percent for each full percent of moisture in excess of 14 percent.

5. *Meaning of terms.* For purposes of insurance on soybeans the term:

(a) "Harvest" means the mechanical severance from the land of matured soybeans for threshing.

6. *Cancellation and termination for indebtedness dates.* For each year of the contract, the cancellation date and termination date for indebtedness are the following applicable dates immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective:

State	Cancellation date	Termination date for indebtedness
Delaware, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Ohio, and Wisconsin.	Dec. 31	May 10
North Dakota	Dec. 31	Apr. 15
All other states	Dec. 31	Apr. 30

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

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942 and OMB Circular No. 840.

Approved by the Board of Directors on November 7, 1978.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

[FR Doc. 78-31919 Filed 11-13-78; 8:45 am]

[3410-08-M]

[7 CFR Part 416]

PEA CROP INSURANCE

Regulations for the 1979 and Succeeding Crop Years

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: This notice proposes regulations to prescribe procedures for insuring peas effective with the 1979 crop year. These regulations are proposed under the authority contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions must be submitted not later than December 4, 1978, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C 1501 et seq.), it is proposed that there be hereby established a new Part 416 of Chapter IV in title 7 of the code of Federal Regulations to be known as 7 CFR Part 416, Pea Crop Insurance.

This part is entirely new and is issued by the Federal Crop Insurance Corporation to provide the regulations for insuring peas effective with the 1979 crop year. This part is subject to amendment from time to time in the light of insuring experience under the authority contained in the Federal Crop Insurance Act, as amended. Any such amendments will be published in the FEDERAL REGISTER and codified in title 7 of the code of Federal Regulations.

The proposed Part 416 Pea Crop Insurance outlined below supercedes all previous regulations for insuring peas. Such regulations were applicable to insuring dry peas as found in 7 CFR 401.131 The Dry Pea Endorsement (33 FR 8262, June 4, 1968), to insuring canning and freezing green peas only in Minnesota and Wisconsin as found in 7 CFR 401.146 The Canning and Freezing Pea Endorsement (Applicable only in Minnesota and Wisconsin) (39

FR 41167, November 25, 1974), and to insuring canning and freezing green peas in all States except Minnesota and Wisconsin as found in 7 CFR 401.147 The Canning and Freezing Pea Endorsement (Applicable in all States except Minnesota and Wisconsin) (37 FR 25497, December 1, 1972).

The Corporation has determined that combining all previous regulations for insuring both dry peas and canning and freezing green peas would result in a program that is more effective administratively.

In combining all previous pea crop insurance regulations in the proposed Part 416, the corporation proposes to include two main functional changes in the endorsement. These are: (1) to change the acturial table guarantee in section 6 of the endorsement to a harvested basis with a 20 percent reduction for any unharvested acreage instead of a complicated formula dealing solely with unharvested acreage, and (2) to provide that pea crop insurance in Minnesota and Wisconsin will be offered on a price per pound selection instead of on a contract price per pound thus affording the grower a price selection for the purposes of computing indemnities that more nearly reflects the cost of production.

In establishing these regulations, the Corporation has determined that the cancellation date for all pea endorsements shall be December 31. Such regulations as are contained in this part, and any amendments thereto, must be placed on file in the Corporation's office for the county not later than 15 days prior to December 31 in any given crop year in order to be effective for that crop year.

The Federal Crop Insurance Corporation, in accordance with the provisions of the Administrative Procedure Act (7 U.S.C., 553 (b) and (c)), relative to notice and public participation, has determined that such regulations as are printed below in the proposed Part 416 shall be published in the FEDERAL REGISTER as a notice of proposed rule making. The public is invited to submit written comments, data, or views for consideration in connection with the proposed regulations for insuring peas. Such written comments should be submitted to James D. Deal, Manager, Federal Crop Insurance corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

All written submissions must be delivered or postmarked by not later than December 4, 1978 to be sure of consideration. All written submissions made pursuant to this notice will be available for public inspection at the Office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday (7 CFR 1.27(b)).

PROPOSED RULE

Accordingly, the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.131, 401.146, and 401.147, incorporating all previous regulations for insuring peas into a new Part 416 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1979 crop year as follows:

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation hereby issues the provisions of this subpart which shall apply, until amended or superseded, to all pea crop insurance effective with the 1979 and succeeding crop years.

PART 416—PEA CROP INSURANCE

Subpart—Regulations for the 1979 and Succeeding Crop Years

Sec.
416.1 Availability of Pea Insurance.
416.2 Premium rates and amounts of insurance.
416.3 Application for insurance.
416.4 Public notice of indemnities paid.
416.5 Creditors.
416.6 Good faith reliance on misrepresentation.
416.7 The contract.
416.8 The policy.

AUTHORITY: Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.)

Subpart—Regulations for the 1979 and Succeeding Crop Years

§ 416.1 Availability of pea insurance.

Insurance shall be offered under the provisions of this subpart on peas in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation, from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this section the name of the county and the crops on which insurance will be offered.

§ 416.2 Premium rates and amounts of insurance.

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

§ 416.3 Application for insurance.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the pea crop as landlord, owner-operator, tenant, or sharecropper. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date set forth below preceding the first crop year for which insurance is to be in effect:

CLOSING DATES

April 15 in Minnesota and Wisconsin, March 15 in Oregon, and April 1 in all other States.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for acceptance of applications in any county by publishing a notice in the FEDERAL REGISTER upon his determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Applications for initial insurance shall be made on the following form:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Application for Federal Crop Insurance for 19—— and succeeding crop years

....
(Name and Address) (Zip Code) (Contract Number)

....
(County) (State) (Identification Number)

A. The undersigned applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called the "Corporation"), hereby applies to the Corporation for insurance on his share (for cotton, peanut and tobacco insurance, on his sharecropper or share tenant shares as specified in paragraph B below) in the crops stated below that are insurable crops planted on insurable acreage as shown on the applicable county actuarial table of the Corporation for the above-stated county. The applicant elects each plan of insurance, amount of insurance, or price at which indemnities shall be computed, shown below which in each case shall be an electable plan, amount, or price, as provided on the applicable county acturial table on file in the Corporation's office for the above county. The premium rates and production guarantees shall be those shown on the applicable county acturial table for each crop year.

....
Crops Elections (A) (P)

B. Applicable only to cotton, peanuts and tobacco:

If the applicant intends to insure only the shares of his sharecroppers or share tenants who have no insurance on the crop with the Corporation, "(SC-Int.)" shall be entered following the name of the crop. If the applicant intends to insure both his individual share and the shares of his sharecroppers or share tenants, "(Comb. Int.)" shall be entered following the name of the crop. Insurance for sharecroppers and share tenants shall be provided in accordance with the regulations of the Corporation (7 CFR-401.103(b)).

C. Upon acceptance of this application by the Corporation, the contract shall be in effect for the first crop year specified above, except on any crop on which the time for the filing of applications has passed at the time this application is filed, and shall continue for each succeeding crop year until canceled or terminated as provided in the contract. This application, the insurance policy, endorsements, and the county actuarial tables shall constitute the contract. Any changes in the contract shall be on file in the Corporation's office for the county at least 15 days prior to the applicable cancellation date.

D. This application, when executed by a person as an individual, shall not cover his share in a crop produced by a partnership or other legal entity.

The applicant is a _____
(Type of Entity)
All natural persons in whose behalf this application is made are over 18 years of age? (Yes or No) ——.

E. Premium note: In consideration hereof, the insured promises to pay to the order of the Corporation each crop year of the contract the annual premiums. It is agreed that any amount due the Corporation by the insured may be deducted from any indemnity payable to the insured and when not prohibited by law, from any loan or payment otherwise due the insured under any program administered by the United States Department of Agriculture.

.....
(Witness to Signature)

.....
(Signature of Applicant)

, 19
(Date)

.....
Code

Address of Office for County:

_____

Phone _____
Location of Farm(s) or Headquarters:

_____

Phone _____

§ 416.4 Public notice of indemnities paid.

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

§ 416.5 Creditors.

An interest of a person other than the insured in an insured crop existing by virtue of a lein, mortgage, garnishment, levy, execution, bankruptcy, or any involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in sections 13 and 14 of the policy set forth in § 414.8.

§ 416.6 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the insurance contract, whenever an insured person under any contract of crop insurance entered into under these regulations has suffered a loss to a crop which is not insured, or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, because of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation and the Board of Directors of the Corporation, or the Manager in cases involving not more than $5,000.00, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to deny said insured's claim for indemnity would not be fair and equitable, such insured person shall be entitled to such indemnity the same as if otherwise entitled thereto.

§ 416.7 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the pea production which is provided in and covered by the policy when insurance is accepted on peas by the Corporation pursuant to a duly submitted application. The contract shall consist of the policy, the actuarial table as defined in the policy, and the application. Any changes made in the contract shall not affect the continuity from year to year.

§ 416.8 The policy.

The provisions of the Pea Insurance Policy for the 1979 and succeeding crop years are as follows:

U.S. DEPARTMENT OF AGRICULTURE

PEA INSURANCE POLICY

Federal Crop Insurance Corporation

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

TERMS AND CONDITIONS

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

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

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

(c) "County" means the county shown on the application and any additional insurable land located in a local producing area bordering on the county, as shown on the actuarial table.

(d) "Crop year" means the period within which peas are normally grown and shall be designated by the calendar year in which the peas are normally harvested.

(e) "Harvest" as to any green-pea acreage means the vining or combining and acceptance by the processor of the peas from such acreage. "Vining" or "combining" means separating the peas from the pods. "Harvest" as to any dry-pea acreage means combining peas which are or could be marketed as dry peas.

(f) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the actuarial table.

(g) "Loss ratio" means the ratio of indemnity(ies) paid to premium(s) earned.

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

(i) "Peas" means either (1) canning and freezing peas (herein called green peas) grown under a contract executed with a processor by the time the acreage to be insured is reported or (2) all spring-planted smooth green and yellow, and wrinkled varieties of dry peas and lentils (herein called dry peas).

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

(k) "Share" means the share of the insured as landlord, owner-operator, or tenant in the insured peas at the time of planting as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

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

(m) "Unit" means all insurable acreage of any one of the types of green peas or varietal groups of dry peas as shown on the actuarial table in the county on the date of

planting for the crop year (1) in which the insured has a 100 percent share, (2) which is owned by one person and operated by the insured, or (3) which is owned by the insured and rented to one tenant. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. *Causes of loss.* (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from drought, earthquake, excessive rain, fire, flood, freeze, frost, hail, hurricane, insect infestation, lightning, plant disease, snow, tornado, wildlife, wind, winterkill, and any other unavoidable cause of loss due to adverse weather conditions occurring within the insurance period, subject, however, to any exceptions, exclusions, or limitations with respect to such causes of loss that are set forth on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production due to (1) green-pea acreage not being timely harvested unless the Corporation determines that because of unusual weather conditions, a substantial percentage of such acreage in an area was ready for harvest at the same time (the uninsured loss of production resulting from failure to timely harvest will be appraised and counted as production with no adjustment for quality by the Corporation as pounds of peas which were available for timely harvesting), (2) the neglect or malfeasance of the insured, any member of his household, his tenants or employees, (3) failure to follow recognized good farming practices, (4) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (5) any cause not specified as an insured cause in this policy as limited by the applicable actuarial table.

3. *Crop and acreage insured.* (a) Upon acceptance of an application for insurance, the pea crop insured shall be green or dry peas of a type or variety for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage in the county planted to peas on insurable acreage, as shown on the actuarial table, and as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached as determined by the Corporation to any acreage (1) of green peas not grown under a processor contract or excluded from such contract for the crop year pursuant to the terms thereof, (2) which was planted to peas the previous 2 crop years, (3) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (4) not reported for insurance as provided in section 4 if such acreage is irrigated and an irrigated practice is not provided for such acreage, (5) which is destroyed and after such destruction, it was practical to replant to peas of the same type of green peas or the same varietal group of dry peas as shown on the actuarial table and such acreage was not replanted, (6) initially planted after the date established by the Corporation and placed on file in the office for the county as being too late to initially plant and expect a normal crop to be produced, (7) of volunteer peas, or (8) planted to a type or variety not established as adapted to the area or shown as noninsurable on the actuarial table.

(c) An instrument in the form of a "lease" under which the insured grower retains control of the acreage on which the insured peas are grown and which provides for delivery of the peas under certain conditions and at a stipulated price(s) shall, for the purpose of this contract, be treated as a processor contract under which the insured has the share in the peas.

4. *Responsibility of insured to report acreage and share.* (a) The insured shall submit to the Corporation at the office for the county, on a form prescribed by the Corporation, a report showing all acreage of peas planted in the county (including a designation of any acreage of peas to which insurance does not attach) in which the insured has a share and the insured's share therein at the time of planting. Such report shall be submitted each year not later than a date established by the Corporation and on file in the office for the county. If the insured does not have a share in any insured acreage in the county for any year, he shall submit a report so indicating. Any acreage report submitted by the insured shall be binding upon the insured and shall not be subject to change by the insured.

(b) If the insured does not submit an acreage report by the date established by the Corporation, the Corporation may elect to determine by insurance units the insured acreage and the share or declare the insured acreage on any insurance unit(s) to be "zero."

5. *Irrigated acreage.* (a) Where the actuarial table provides for insurance on acreage on which an irrigated practice is carried out, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of planting.

(b) Any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

(c) Insurance shall not attach to peas seeded on any irrigated acreage the first year after a major leveling operation has been carried out, as determined by the Corporation.

6. *Production guarantees and prices for computing indemnities.* (a) For each crop year of the contract, the production guarantees and prices at which indemnities shall be computed are those shown on the actuarial table.

(b) The applicable production guarantee per acre shall be reduced 20 percent for any unharvested acreage.

(c) In counties where the actuarial table shows a guarantee for both green and dry peas the applicable guarantee for any acreage shall be determined by the type of green peas or varietal group of dry peas shown on the acreage report, except that if any acreage shown on the acreage report as green peas is harvested as dry peas, the guarantee for such acreage shall be reduced 40 percent.

(d) At the time application for insurance is made, the applicant shall elect a price from among those shown on the actuarial table at which indemnities shall be computed. If the insured has not elected a price or the price elected is not shown on the actuarial table for the crop year, the applicable price under the contract, and which the insured shall be deemed to have elected, shall be the price provided on the actuarial table for such purposes. The insured may, with the consent of the Corporation, change the price election for any crop year by the closing date for submitting applications for that year.

7. *Annual premium.* (a) The annual premium is earned and payable at the time of planting and shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of planting, and applying the premium adjustment herein provided.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

Adjustments for Favorable Continuous Experience

	Number years continuous experience through previous crop year								
	0	1	2	3	4	5	6	7	8 or more
Loss ratio through previous crop year:	[Percentage adjustment factor for current crop year]								
0 to .49	100	100	95	95	90	85	80	75	70
.50 to .89	100	100	100	100	95	90	85	80	75
.90 to 1.09	100	100	100	100	100	100	100	100	100

Adjustments for Unfavorabe Insurance Experience

	Number of years indemnified through previous crop year									
	1	2	3	4	5	6	7	8	9	10 or more
Loss ratio through previous crop year:	[Percentage adjustment factor for current crop year]									
1.10 to 1.19	100	100	100	103	104	106	108	110	112	115

Adjustments for Unfavorabe Insurance Experience

	Number of years indemnified through previous crop year									
	1	2	3	4	5	6	7	8	9	10 or more
Loss ratio through previous crop year:	[Percentage adjustment factor for current crop year]									
1.20 to 1.39	100	100	103	106	109	112	116	120	125	130
1.40 to 1.69	100	102	105	109	113	118	124	130	137	145
1.70 to 1.99	100	103	107	112	118	124	132	140	150	160
2.00 to 2.49	100	104	109	115	122	130	140	150	162	175
2.50 to 3.24	100	105	111	118	127	136	148	160	175	190
3.25 to 3.99	100	106	113	121	131	142	156	170	187	205
4.00 to 4.99	100	107	115	124	136	148	164	180	200	220
5.00 to 5.99	100	108	117	127	140	154	172	190	212	235
6.00 up	100	110	120	130	145	160	180	200	225	250

(d) If there is no break in the continuity of participation, any premium adjustment applicable under subsection (c) of this section shall be transferred to: (1) The contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured in operating only the same farm or farms, if such person had previously actively participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

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

(f) Any unpaid amount of premium due the Corporation by the insured may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

8. *Insurance period.* Insurance on insured acreage shall attach at the time the peas are planted and shall cease in the same calendar year as follows: The earliest of (1) final adjustment of a loss, (2) harvest, or (3) September 15: Provided, however, That if any acreage of green peas is not timely harvested, insurance shall be deemed to have ceased when the acreage should have been harvested, as determined by the Corporation.

9. *Notice of damage or loss.* Any notice of damage or loss shall be given in writing by the insured to the Corporation at the office for the county.

(a) Notice shall be given promptly if, during the period before harvest, the peas on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late to replant to peas of the same type or varietal group. Notice shall also be given when such acreage has been put to another use.

(b) Notice shall be given not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire pea crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines that circumstances beyond the control of the insured prevent compliance with this provision.

(c) In addition to the notices required in paragraphs (a) and (b) of this section, if an indemnity is claimed on any unit of green peas, notice shall be given (1) no later than 48 hours after harvesting of the peas has been discontinued on a unit, before all the acreage is harvested, or (2) before harvest would normally start if any acreage on a unit is not to be harvested. If such notice is not given, the Corporation shall appraise the pounds of unharvested production with no adjustment for quality and, if there is insufficient evidence upon which to base an appraisal, the appraisal on such acreage shall be the applicable guarantee.

(d) Any insured acreage which is not to be harvested shall be left intact until the Corporation makes an inspection.

(e) There shall be no abandonment to the Corporation of any insured peas.

(f) The Corporation shall reject any claim for indemnity if any of the requirements of this section are not met.

10. *Claim for indemnity.* (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of peas on the unit and that any loss of production has been directly caused by one or more of the causes insured against during the insurance period of the crop year for which the indemnity is claimed and (2) furnish any other information regarding the amount of production as may be required by the Corporation.

(c) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by subtracting the dollar amount of production from the dollar amount of insurance and multiplying the remainder by the insured's share. The dollar amount of production is obtained by multiplying the total production to be counted by the price per pound elected. The dollar amount of insurance is obtained by multiplying the pound guarantee per acre times the determined acres times the price per pound elected: *Provided*, That if the premium computed on the determined acreage and share is more than the premium computed on the reported acreage and share, the amount of loss shall be computed on the determined acreage and share and then reduced proportionately.

(d) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production. (1) All harvested green peas which are accepted by the processor and dry peas which are or could be marketed shall be counted as production. (2) Appraised production shall not be adjusted for quality and shall include (i) the greater of the appraised production or 40 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted in the current crop year to any other crop insurable on such acreage (*excluding small grains normally maturing for harvest in the following calendar year*) before the peas are harvested, or normally would be harvested and (ii) any appraisals made by the Corporation for unharvested or potential production, poor farming pratices, uninsured causes of loss, or acreage abandoned or put to another use without the consent of the Corporation. Appraisals shall not be less than the applicable guarantee for any acreage which is abandoned, put to another use without prior written consent of the Corporation, or damaged solely by an uninsured cause. (3) If the Corporation determines that any acreage of green peas was not timely harvested, and the insured received payment from the processor for such acreage, the pounds of production to count will be determined by dividing the processor payments by the processor price per pound for the applicable tenderometer reading or sieve size shown on the actuarial table.

(e) The pounds of the production to be counted for any harvested peas shall be determined as follows: (1) For *green peas*, the dollar value received from the processor shall be divided by the processor contract price per pound for the tenderometer reading or sieve size shown on the actuarial table. (2) For *dry peas*, any production which does not grade No. 3 or better, or lentils which do not grade No. 2 or better (determined in accordance with United States Standards for dry peas and lentils) because of poor quality due to insurable causes occurring within the insurance period shall be reduced by (i) dividing the value per pound of the damaged peas, as determined by the Corporation, by the price per pound for the same variety of peas grading No. 3 (No. 2 for lentils) and (ii) multiplying the result thus obtained by the pounds of such peas. The applicable price of No. 3 peas (No. 2 lentils) shall be the market price for such peas on the earlier of the day the loss is adjusted or the day the damaged peas were sold.

(f) If consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of peas becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

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

11. *Payment of indemnity.* (a) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. However, in no event shall the Corporation be liable for interest or dam-

ages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

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

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

13. *Other insurance against fire.* (a) If the insured has other insurance against damage by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of (1) the amount of the indemnity determined pursuant to this contract without regard to any other insurance or (2) the amount as determined by the Corporation by which the loss from fire exceeds the indemnity paid or payable under such other insurance.

(b) For purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit involved before and after the fire, as determined by the Corporation from appraisals made by the Corporation of the production and fair market value.

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

15. *Transfer of insured share.* If the insured transfers all or any part of the insured share during the crop year, upon approval by the Corporation, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the transferor for the current crop year. Any transfer shall be made on a form prescribed by the Corporation.

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

17. *Records and access to farm.* The insured shall keep or cause to be kept, for 2 years after the time of loss, records of the harvesting, storage, shipments, sale, or other disposition of all peas in the county in which the insured has a share, including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

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

19. *Contract changes.* The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the applicable cancellation date, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 20.

20. *Life of contract: Cancellation and termination.* (a) The contract shall be in effect for the crop year specified on the application, and may not be canceled for such crop year. Thereafter, either party may cancel insurance for any crop year by giving written notice to the other by the cancellation date shown in subsection (b) of this section.

(b) For each year of the contract, the cancellation date shall be December 31 and the termination dates for indebtedness shall be April 15 in Minnesota and Wisconsin, March 15 in Oregon and April 1 in all other states. These dates are those immediately preceding the beginning of the crop year for which the cancellation or the termination is to become effective.

(c) If the premium for any crop year is not paid by the termination date for indebtedness shown in subsection (b) of this section, the contract shall terminate: *Provided*, That the date of payment for premium (1) deducted from an indemnity claim shall be the date the insured signs such claim or (2) deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

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

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

(f) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (b), (c), (d), and (e) of this section, the contract shall continue in force for each succeeding crop year.

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

NOTE.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. 840.

Dated: August 14, 1978.

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

[FR Doc. 78-31940 Filed 11-13-78; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the qualification requirements for public members of commodity committees to permit nominations from a wider range of potential candidates. The Pear, Plum, and Peach Commodity Committees are established under Marketing Order 917.

DATE: Comments must be received on or before November 29, 1978.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: The Pear, Plum, and Peach Commodity Committees are established under the marketing agreement, as amended, and order No. 917, as amended (7 CFR 917), which regulates the handling of fresh pears, plums, and peaches grown in California and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Control Committee (the agency established under the order to administer the terms and provisions) has recommended that section 917.122 of the rules and regulations (42 FR 3625), which sets forth the qualification requirements and nomination procedure for public members of commodity committees, be amended with respect to the qualification requirements.

Section 917.122(a) provides that public members shall not have a direct financial interest or be closely associated with production, processing, financing, or marketing (except as consumers) of California agricultural commodities. Thus, nomination of persons who have any interest in agriculture is precluded. The Control Committee has concluded that this requirement makes many persons ineligible for nomination who might otherwise be suitable. For example, a person with an interest in livestock would be ineligible for nomination as a public member on any of the commodity committees. The proposal would

permit nomination for public member to be made from a wider range of potential candidates. To assure the character of the public member, the proposed amendment specifies that such members not have any financial interest in or association with the production, processing, financing, or marketing (except as consumers) of the commodities regulated under this part.

The amended § 917.122(a) would read as follows:

§ 917.122 Qualification requirements and nomination procedure for public members of Commodity Committees.

(a) Public members shall not have a financial interest in or be associated with the production, processing, financing, or marketing (except as consumers) of the commodities regulated under this part.

* * * * *

Dated: November 8, 1978.

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

[FR Doc. 78-31935 Filed 11-13-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 455]

SALE OF USED MOTOR VEHICLES

Publication of Staff Report on Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Publication of staff report.

SUMMARY: The staff report, being placed on Public Record No. 215-54 today, summarizes and analyzes the material on the record in the above-captioned rulemaking proceeding and also makes recommendations as to the final action the Commission should take.

The staff report takes into account the Presiding Officer's findings of fact. Notice of the publication of the Presiding Officer's report in this proceeding appeared in the FEDERAL REGISTER, 43 FR 28521, June 30, 1978.

DATE: A 60-day comment period on both the staff report and the Presiding Officer's report begins today. Comments will be accepted for the public record if received on or before January 14, 1979.

ADDRESSES: Requests for copies of either report should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, telephone 202-523-3598.

Comments should be sent to: Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Michael H. Wald, Attorney, Federal Trade Commission, Washington, D.C. 20580, telephone 202-523-1642.

SUPPLEMENTARY INFORMATION: The staff report was prepared pursuant to § 1.13(g) of the Commission's Rules of Practice.

Comments at this stage of the proceeding are received pursuant to § 1.13(h) of the Commission's Rules of Practice. Accordingly, comments must be confined to information already in the record; new evidence will not be accepted.

Comments should be submitted, when feasible, in four copies.

The staff report has not been reviewed or adopted by the Commission, and its publication should not be interpreted as reflecting the views of the Commission or any individual member thereof.

Approved: November 14, 1978.

ALBERT H. KRAMER,
Director,
Bureau of Consumer Protection.

[FR Doc. 78-31934 Filed 11-13-78; 8:45 am]

[6351-01-M]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 30]

FRAUD IN CONNECTION WITH COMMODITY TRANSACTIONS

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission is proposing to adopt an expanded version of § 30.03 of its regulations, which makes unlawful fraudulent activities in connection with so-called leverage transactions in silver or gold bullion or bulk coins. The proposed rule reflects the enactment of the Futures Trading Act of 1978. Among other things, that Act expands the jurisdiction of the Commission to cover leverage transactions involving all commodities, in addition to gold and silver bullion and bulk coins.

DATES: Written comments on the proposed rule must be received by the Commission at its offices in Washington, D.C., by November 24, 1978.

ADDRESS: In order to be considered, written comments on the proposed rule must be submitted to: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT:

John P. Connolly, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-5304.

SUPPLEMENTARY INFORMATION: Under section 2(a)(1) of the Commodity Exchange Act, 7 U.S.C. § 2 (1976), and section 217 of the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. § 15a (1976), Congress granted the Commission exclusive jurisdiction over leverage contracts involving gold and silver bullion and bulk coins and broadly empowered the Commission to regulate the offer and sale of such leverage contracts. Section 217 basically provided that no person could offer to enter into, enter into, or confirm the execution of leverage transactions involving gold or silver bullion or bulk coins contrary to Commission rules and regulations designed to insure the financial solvency of those transactions or to prevent manipulation or fraud. In addition, section 217 provided that if the Commission determined that any gold or silver leverage transaction was a contract for future delivery within the meaning of the Commodity Exchange Act, that transaction should be regulated in accordance with the applicable provisions of that Act. Effective June 24, 1975, the Commission adopted a broad antifraud rule applicable to gold and silver leverage transactions.[1]

On September 30, 1978, the President signed into law the Futures Trading Act of 1978, section 23 of which added a new section 19 to the Commodity Exchange Act.[2] This section greatly expands the Commission's jurisdiction over leverage transactions. Among other things, section 19 prohibits leverage transactions involving those agricultural commodities specifically enuerated in section 2(a) of the Commodity Exchange Act prior to 1974,[3] incorporates the substantive provisions of section 217 of the Commodity Futures Trading Commission Act of 1974 concerning gold and silver leverage transactions, and grants the Commission new regulatory authority

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[1] 40 FR 26504, 17 CFR 30.03 (1977); statutory authority citations amended, 43 FR 47722, Oct. 17, 1978.

[2] Pub. L. 95-405, 92 Stat. 865, 870-871.

[3] These commodities are as follows: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

to prohibit or regulate leverage transactions involving all other commodities. In addition, section 19 broadens the Commission's jurisdiction to include not only standardized contracts commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, but also "any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract." Specifically, the new section 19 of the Commodity Exchange Act provides:

"(a) No person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2(a) of this Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974 under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(b) No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins, or bulk gold coins, under a standardized contract described in subsection (a) of this section, contrary to any rule, regulation, or order of the Commission designed to insure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing.

(c) The Commission may prohibit or regulate any transactions, under a standardized contract described in subsection (a) of this section, involving any other commodities under such terms and conditions as the Commission shall initially prescribe by October 1, 1979: *Provided*, That any such order, rule, or regulation may be made only after notice and opportunity for hearing: *Provided further*, That the Commission may set different terms and conditions for such transactions involving different commodities.

(d) If the Commission determines that any transaction under subsections (b) and (c) of this section is a contract for future delivery within the meaning of this Act, such transaction shall be regulated in accordance with the applicable provisions of this Act." [4]

Like the Commodity Futures Trading Commission Act of 1974, the new legislation also grants the Commission exclusive jurisdiction over these transactions, thus preempting the regulatory authority of the States in this area.[5] Significantly, however, section 15 of the Futures Trading Act of 1978 has added a new section 6d to the Commodity Exchange Act, which will now authorize the States, through their attorneys general, administrators of securities laws, or other duly designated officials, to bring an action in U.S. district courts to enforce compliance with the Commodity Exchange Act and the regulations the Commission promulgates thereunder. Thus, the States now have express statutory authority to enforce existing § 30.03 of the Commission's regulations and whatever additional regulations the Commission may adopt, including the expanded version of the Commission's leverage antifraud rule that it now proposes to adopt.[6] This new statutory authority will permit the States significantly to assist the Commission's enforcement efforts to control fraudulent activities in leverage transactions, as well as in other areas.

In view of these legislative developments, the Commission believes that it should act expeditiously to prevent a prolonged regulatory gap regarding leverage transactions in commodities other than gold and silver. Section 8a(5) of the Commodity Exchange Act broadly empowers the Commission "to make and promulgate such rules and regulations as, in the judgement of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of" the Act. The Commission is of the view, based on its study and monitoring of the offer and sale of leverage contracts in gold and silver and its experience with so-called London commodity options, that the proposed rule is a necessary first step to protect the public.

Under the proposed rule, fraudulent activity in connection with transactions in silver or gold bullion or bulk coins described in present § 30.03 will continue to be a violation of the Commission's regulations, as it has been since June 24, 1975. The proposed rule, employing the same standards contained in present § 30.03 [7], will also

[4] The Conference Committee Report which accompanied S. 2391, the bill that became the Futures Trading Act of 1978, explained that:

"The Conference substitute combines the provisions of the Senate bill and section 217 of the Commodity Futures Trading Act of 1974 [sic] into a new section 19 of the Commodity Exchange Act. The new section—

(i) Prohibits leverage transactions involving agricultural commodities enumerated in section 2(a) of the Commodity Exchange Act prior to 1974;

(ii) Requires the Commission to regulate leverage transactions (as defined in the Senate bill) involving gold or silver bullion or bulk coins;

(iii) Authorizes the Commission to prohibit or regulate leverage transactions involving all other commodities by October 1, 1979; and

(iv) Authorizes the Commission to regulate any leverage transactions as a futures contract if it determines the transaction to be a contract for future delivery under the Commodity Exchange Act."

S. Rep. No. 95-1239, 95th Cong., 2d Sess. 27 (1978).

[5] Prior to the enactment of the Futures Trading Act of 1978, section 2(a) of the Commodity Exchange Act granted the Commission exclusive jurisdiction over gold and silver leverage transactions which were the subject of section 217 of the Commodity Futures Trading Commission Act of 1974. Section 2 of the Futures Trading Act of 1978 replaced the reference to section 217 contained in section 2(a) of the Commodity Exchange Act with a reference to the new section 19. Thus, the Commission's exclusive jurisdiction continues over gold and silver leverage transactions and has been expanded to cover all leverage transactions.

[6] Of course, notwithstanding the Commission's exclusive jurisdiction, the States remain free to enforce their own civil or criminal antifraud and other statutes of general applicability. See section 6d(7) of the Act, 92 Stat. 872-73. *Cf. Commonwealth of Massachusetts* v. *Lloyd, Carr & Co.* [Current Binder], CCH Comm. Fut. L. Rep. ¶ 20,561 (Mass. Sup. Ct. 1978).

[7] Existing § 30.03 and the proposed section are patterned after the provisions of Securities and Exchange Commission Rule 10b—5, since the Commission intends that the broad remedial interpretations that have been accorded by the courts to rule 10b-5 with respect to securities transactions generally be applied in connection with the offer and sale of leverage contracts. It should be emphasized, however, that the Commission also intends that scienter—*i.e.*, knowing or intentional misconduct—not be required to establish a violation of § 30.03 or the proposed section, when adopted. In this regard, the principle enunciated in *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185 (1976) has no effect on § 30.03 or the proposed section. In that case the Supreme Court, at least for purposes of private actions for damages, held that the words "manipulative or deceptive," when used in conjuction with "device or contrivance" in section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), pursuant to which rule 10b-5 was adopted, were intended to authorize the SEC to promulgate antifraud rules that only prohibited "knowing or intentional misconduct." 425 U.S. at 197. Unlike the SEC's authority under section 10(b), however, the rulemaking authority of the Commission contains no comparable limiting language. Section 19 of the Commodity Exchange Act, as amended, as did section 217 of the Commodity Futures Trading Commission Act of 1974, authorizes the Commission to adopt regulations concerning leverage transactions, among other things, "to prevent * * * fraud." As it has evolved in the areas of both securities and commodities, the term "fraud" has been held to be free of the restrictive concepts, such as requirements of intent and knowledge, which have traditionally been associated with fraud at common law. See *Securities and Exchange Commission* v. *Capital Gains Research*

Footnotes continued on next page

cover leverage transactions involving all other commodities, such as platinum, diamonds and other precious gems, over which the Commission has been given jurisdication pursuant to section 19 of the Commodity Exchange Act * and will also reflect the broadened jurisdiction over transactions contained in that section. Since Section 19 already prohibits leverage transactions involving those commodities enumerated in section 2(a) of the Act, the proposed rule does not cover those transactions.

In consideration of the foregoing, the Commission proposes to amend Part 30 of Chapter I of Title 17 of the Code of Federal Regulations by amending § 30.03 to read as follows:

§ 30.03 **Fraud in connection with certain transactions in silver or gold bullion or bulk coins, or other commodities.**

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in, or in connection with (1) an offer to make or the making of, any transaction for the purchase, sale or delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or any other commodity pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or pursuant to any contract, account, arrangement, scheme, or device that serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same fashion as such a standardized contract, or (2) the maintenance or carrying of any such contract.

The provisions of this section shall not apply to any transaction expressly prohibited by section 19(a) of the Act.

(Secs. 2(a), 8a, and 19 of the Commodity Exchange Act and secs. 2 and 23 of Pub. L. 95-405 (92 Stat. 865, 870-871); 7 U.S.C. 2 and 12a.)

Issued in Washington, D.C., on November 8, 1978.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-31967 Filed 11-13-78; 8:45 am]

Footnotes continued from last page

Bureau, Inc., 375 U.S. 180, 195 (1963). *Cf. Commodity Futures Trading Commission* v. *J. S. Love & Associates Options Ltd.*, 422 F. Supp. 652, 659-660 (S.D.N.Y. 1976). In addition, like § 30.03, the Commission's proposed section would also be promulgated pursuant to section 8a(5) of the Act, which broadly empowers the Commission to adopt regulations reasonably necessary to effectuate, *inter alia*, any of the "purposes" of the Act. One of those purposes in to insure fair and honest dealing with respect to commodity transactions, an aim which cannot be achieved if persons dealing in commodity transactions are not deterred from engaging in negligent or other conduct short of that encompassed under the concept of scienter.

*The Senate Report accompanying S. 2391, made clear that the Commission would have the "authority to regulate or ban leverage contracts on diamonds * * *." S. Rept. 95-850, 95th Cong., 2d sess. 27 (1978). In this connection, Senator Huddleston, in discussing S. 2391 as reported by the Conference Committee, observed that: "The media has recently disclosed the widespread potential for fraud in the marketing of leverage contracts in diamonds. The Commission under new section 19 of the Commodity Exchange Act, will have the authority to regulate or ban leverage transactions in diamonds, emeralds, or other commodities on which leverage transactions are offered. It is my hope that this new authority, coupled with the Commission's acquired experience over the past 3 years, will insure that the scandals with 'London' options will not be repeated with leverage transactions." 124 Cong. Rec. S16530 (daily ed., Sept. 28, 1978).

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 16, 54, 71, 170, 171, 180, 310, 312, 314, 320, 330, 361, 430, 431, 510, 511, 514, 570, 571, 601, 630, 1003, and 1010]

[Docket No. 77N-0278]

OBLIGATIONS OF CLINICAL INVESTIGATORS OF REGULATED ARTICLES

Amendment of Proposal and Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Amendment of proposal and extension of comment period.

SUMMARY: As a result of a comment received on the proposal concerning obligations of persons who conduct clinical investigations of products regulated by the Food and Drug Administration (FDA), the agency is amending the proposal by withdrawing certain provisions of the conforming amendments governing the use of new animal drugs in clinical investigations. The agency is also extending the comment period on the proposal to allow interested parties more time to analyze related FDA proposals and provide more meaningful comments.

DATE: Written comments by December 6, 1978.

ADDRESS: Written comments to the Heaing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Marilyn L. Watson, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3640.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 8, 1978 (43 FR 35210), the Commissioner of Food and Drugs issued a proposal to clarify existing regulations concerning persons who conduct clinical investigations on new drug products and to extend those regulations to include persons who conduct clincial investigations on other products regulated by FDA. The regulations are intended to insure adequae protection of the rights and safety of subjects involved in clinical investigations and the quality and integrity of the resulting data submitted to FDA. Interested persons were given until November 6, 1978, to submit comments on the proposal.

The Commissioner has received four written requests for an extension of the comment period. Two comments requested an extension to coincide with the period provided for comment on the proposed regulations regarding Standards for Institutional Review Boards for Clinical Investigations, also published in the FEDERAL REGISTER of August 8, 1978 (43 FR 35186). One of these comments believed that because the two proposals are related, it is in the public interest to analyze and comment on them at the same time to provide more meaningful comments. The other comment requested the extension so as to be able to develop a response to both sets of regulations at an organizational meeting to be held November 30 through December 1, 1978. Two other comments requested a 30-day extension of the comment period. One of these requested the extension in order to discuss the proposed regulation at an association meeting on November 14, 1978. The other comment requested the extension because of the complexity of the issues involved in the proposed regulation. The Commissioner agrees that an extension of the comment period is in order.

As part of the proposed requirements concerning obligations of clinical investigators, the Commissioner proposed certain conforming amendments, including revisions to § 511.(b) (21 CFR 511.1(b)). On October 6, 1978, the Animal Health Institure, Suite 1009, 1717 K street NW., Washington, D.C. 20006, petitioned FDA to withdraw the proposed changes to 21 CFR

Part 511 and, if such changes are to be proposed, to republish them as a separate docket in a separate proposed rulemaking proceeding. The petition contends that the revisions to part 511 are not conforming amendments but, rather, significant substantive changes which the agency has proposed without a summary of the facts and policy underlying the changes, and without references to all data and information on which the Commissioner relies The petition further contends that the proposed changes to part 511 revise the regulatory framework that must be followed by a sponsor in order to ship an animal drug legally for use in a clinical investigation, and that the proposed changes are therefore unrelated to the requirements of proposed part 54 (21 CFR Part 54), which deal with the responsibility of an investigator of a clinical investigation whether the investigation deals with animal drugs or any other article regulated by the agency.

The Commissioner has reconsidered the proposed revisions to part 511 in light of the petition and agrees that certain provisions are substantive and not applicable to this rulemaking. The Commissioner therefore concludes that the proposed revisions should be withdrawn and reproposed as a separate FEDERAL REGISTER document in the near future, except for the requirement set forth in proposed § 511.1 (b) (6) and (d) (2). The Commissioner concludes that the provision requiring a clinical investigation to be conducted in compliance with the requirements set forth in part 54 is relevant to this rulemaking. The Commissioner is therefore reproposing that requirement and advises that the extended comment period is applicable to that as amendment to § 511.1.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 408, 409, 502, 503, 505, 506, 507, 510, 512-516, 518-520, 601, 701(a), 706, and 801, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851, 59 Stat. 463 as amended, 68 Stat. 511-517 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-403 as amended, 76 Stat. 794 as amended, 82 Stat. 343-351, 90 Stat. 539-574 (21 U.S.C. 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360b-360f, 360h-360j, 361, 371(a), 376, and 381)) and the Public Health Service Act (secs. 215, 351, 354-360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 262, 263b-263n)) and under authority delegated to him (21 CFR 5.1), the Commissioner extends to December 6, 1978, the period for submitting comments on the August 8, 1978, proposal (43 FR 35210) and amends that proposal by revising proposed amendment No. 15 to read as follows:

* * * * *

PART 511—NEW ANIMAL DRUGS FOR INVESTIGATIONAL USE

15. In § 511.1, by adding new paragraph (b)(11), by redesignating paragraph (d)(2) as (d)(3), and by adding new paragraph (d)(2) to read as follows:

§ 511.1 New animal drugs for investigational use exempt from section 512(a) of the act.

* * * * *

(b) * * *

(11) The clinical investigation is conducted in compliance with the requirements set forth in part 54 of this chapter.

* * * * *

(d) * * *

(2) The clinical investigations are not being conducted in compliance with the requirements set forth in this part or in part 54 of this chapter; or

(3) The continuance of the investigation is unsafe or otherwise contrary to the public interest or the drug is being or has been used for purposes other than bona fide scientific investigation, he shall first notify the sponsor and invite his immediate correction. If the conditions of the exemption are not immediately met, the sponsor shall have an opportunity for a regulatory hearing before the Food and Drug Administration, pursuant to part 16 of this chapter, on whether the exemption should be terminated. If the exemption is terminated, the sponsor shall recall or have destroyed the unused supplies of the new animal drug.

* * * * *

Interested persons may, on or before December 6, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31779 Filed 11-7-78; 11:22 am]

[4110-03-M]

[21 CFR Part 310]

[Docket No. 75N-0062]

ORAL HYPOGLYCEMIC DRUGS

Availability of Agency Analysis and Reopening of Comment Period on Proposed Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Notice of availability of analysis of UGDP study and reopening of comment period on proposed rule.

SUMMARY: The Food and Drug Administration (FDA) announces the completion and availability of an agency analysis of the study on diabetes treatment regimens conducted by the university group diabetes program (UGDP) and reopens for 60 days the comment period on the oral hypoglycemic labeling revisions proposed in 1975. The analysis was conducted in light of questions raised by comments received in response to the 1975 proposal. The agency invites comments on the FDA analysis as well as on the 1975 proposal.

DATE: Comments by January 15, 1979.

ADDRESS: Comments to, and agency analysis on file at, the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Copies of the analysis available from Bureau of Drugs (HFD-30), Attn. Robert D. Bradley, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bradley, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 7, 1975 (40 FR 28587), the Commissioner of Food and Drugs proposed labeling requirements for oral hypoglycemic drugs and announced that an open public hearing would be held on August 20, 1975, so that interested persons could present their views on the proposed labeling. The hearing date was confirmed in the FEDERAL REGISTER of August 8, 1975 (40 FR 33459).

The document proposed to establish new § 310.510 (21 CFR 310.510) to require class labeling for oral hypoglycemic drugs that would reflect current scientific knowledge on their safety and effectiveness.

The proposal provided for labeling changes for both the sulfonylurea and biguanide categories of oral hypoglycemic drug products. The sulfonylurea category comprises tolbutamide, chlorpropamide, acetohexamide, and tolazamide. Phenformin is the only drug in the biguanide category.

Since the oral hypoglycemic labeling revisions were proposed, the Secretary of Health, Education, and Welfare, upon finding phenformin an imminent hazard due to its association with lactic acidosis, suspended new drug applications for the drug.

The proposed labeling changes were based primarily on a long-term study that began in 1961 and was conducted by the UGDP in 12 university medical centers to determine whether lowering blood sugar levels with oral hypoglycemic drugs had a beneficial effect on the long-term vascular complications of diabetes. The program initially had four treatment groups: (1) 1.5 grams of tolbutamide a day, (2) 10 to 16 units of insulin a day based on body area, (3) variable dose of insulin adjusted to control blood glucose, and (4) placebo. Eighteen months later a group was added in which the patients were given 100 milligrams of phenformin per day.

By 1969 the tolbutamide group showed an unexpected increase in cardiovascular mortality. The UGDP subsenquently discontinued use of tolbutamide because no benefit had been shown for those patients, and long-term use of the drug was associated with cardivoascular mortality. This study is discussed in greater detail in the preamble to the July 7, 1975 proposal.

Interested persons were invited to submit written comments regarding the proposal by September 5, 1975. In addition, an open hearing before the Director of the Bureau of Drugs was held on August 20, 1975. Interested persons were allowed to submit data, information, or views within 15 days after the open hearing of August 20, 1975; this date was later extended to October 22, 1975 in the FEDERAL REGISTER of September 22, 1975 (40 FR 43513).

There were 68 written comments on the proposed oral hypoglycemic labeling revisions and 17 presentations at the open hearing, including material submitted after the hearing. Comments were received from physicians, individuals, manufacturers, medical associations, consumer groups, medical schools, hospitals and clinics, interested professionals, and representatives of UGDP. Some of the comments questioned the UGDP design, its findings, the results of the Biometric Society's audit of the UGDP study and the fact that other studies, while not contradiction the UGDP study, do not support its results. In addition, statements were made at the open hearing to the effect that the data in the file of the coordinating center for the study had not been audited, and therefore, the possibility of error or misrepresentation had not been eliminated.

Because of these questions, FDA conducted an audit of both the UGDP study and the subsequent audit by the Biometrics Society Committee. This FDA audit was conducted by a team of FDA medical officers, statisticians, and field investigators that reported to the Director of the Bureau of Drugs. The purpose of the audit was to assess the validity of data transfer from case report forms, and other information provided by the clinics' physicians, from coding and computerization in the coordinating center to final publication of scientific reports, and to analyze the impact of any discrepancies on the conclusions of the study. The audit consists of a report with appendices containing extensive records furnished by UGDP and records generated by FDA.

A complete copy of the audit has been placed on public file in the office of the Hearing Clerk, FDA and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday. Because of the physical size of the audit and because much of it is contained within a computer program, requests should be sent directly to the Bureau of Drugs at the address shown earlier in this document.

The essential findings of the FDA audit team are set forth in a summary and conclusion section as follows:

Various objective parameters (e.g., height, blood pressure, cholesterol, and assigned treatment) were audited. Meaningful error frequencies could be determined for 20 items, and these frequencies were quite low. For technical reasons meaningful error frequencies could not be determined for 13 items. These parameters could not be evaluated because of the records storage methods, but would seem to bear more on morbidity than on moratality.

Baseline electrocardiograms were obtained for all but 3 of the 150 patients audited and were read by an FDA expert using the Minnesota Code. Using the UGDP criteria for "significance" 17 cases were identified where the FDA reader and the UGDP reader differed in interpretation involving a "significant" abnormality. In five cases the FDA reading would change the classification from nonsignificant to significant, and in three cases the FDA reading would change the classification from significant to nonsignificant.

It was not the intention of this audit to make a judgment on the cause of death in each case, but rather to determine if there were obvious discrepancies or errors in listing the cause of death. In comparing the causes coded by the UGDP death committee with those published by UGDP, differences were found in three patients. In one case the committee listed myocardial infarction, but the publication listed sudden death, which did not change the cardiovascular classification. In two cases that did involve a change in cardiovascular/noncardiovascular classification, the causes of death initially assigned by the death committee were later changed by that committee, but the initial assignments rather than the corrected ones were published. If published as the death committee had intended, one death in the placebo group would have been classified as noncardiovascular rather than as cardiovascular, and one death in th IVAR group would have been classified as cardiovascular rather than as noncardiovascular.

The FDA audit was extended to include nine deaths not reported in the UGDP Publications to which this audit refers. It was found that the reports of these nine deaths were received by the coordinating center after the cutoff date for receipt of information to be analyzed for these particular publications had passed. The audit team has retabulated the deaths with inclusion of these nine late receipts and the two reclassifications in accord with death committee intent, and finds that the conclusions which may be drawn from the retabulated data do not differ from those which may be drawn from the published data.

Of the 150 patients audited a total of 44 were found to have changed hypoglycemic medication at some time during the course of the study. Twenty-seven of these were not on the originally assigned treatment in the last quarter observed. Because of this the audit team studied the methods used for recording treatment prescribed and patient adherence to the prescribed treatment. The team concluded that the UGDP decision to base their analysis of adherence upon the original randomly allocated therapy represents a conservative approach from the statistical point of view. This procedure would tend to minimize rather than exaggerate any effect associated with treatment regimen and thus lends credence to any positive effects found.

The audit team concludes that, while there are certain errors and discrepancies between the data file of the UGDP study and the published reports, none of these appears of sufficient frequency or magnitude to invalidate the finding that cardiovascular mortality was higher in the groups of patients treated with tolbutamide plus diet and phenformin plus diet compared to the groups treated with placebo or insulin.

The Commissioner is seeking comments regarding the audit report from interested parties. Comments may also be submitted during the same 60-day period regarding the oral hypoglycemic labeling proposed on July 7, 1975. The Commissioner would prefer that comments on the labeling be limited to issues newly arising as a result of the FDA analysis of the UGDP study. Comments previously submitted on the proposed labeling need not be resubmitted. In preparing a final order, the Commissioner will consider all comments received on the matter since the proposal of July 7, 1975.

The Food and Drug Administration has determined that this document does not contain an agency action covered by 21 CFR 25.1(b) and consideration by the agency of the need for preparing an enviromnetal impact statement is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 512, 701(a), 52 Stat. 1040-1042 as amended, 1049-1051 as amended, 1052-1053 as amended by 76 Stat. 781-785, 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 321, 351, 352, 355, 360b, 371(a))) and under authority delegated to him (21 CFR 5.1) the Commissioner reopens the comment period on the July 7, 1975 proposal to establish labeling requirements for oral hypoglycemic drugs.

Interested persons may, on or before January 15, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding the FDA audit and the proposal discussed in this document. Four copies of all comments must be submitted, except that individuals may submit single copies of comments; all comments must be identified with Hearing Clerk Docket No. 75N-0062. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday

Dated: November 6, 1978.

DONALD KENNEDY,
Commissioner of Food and Drugs.

[FR Doc. 78-31694 Filed 11-7-78; 10:07 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[EE-102-78]

INCOME TAX

Minimum Funding Standards Asset Valuation; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to asset valuation for purposes of computing the minimum funding standard for pension plans.

DATES: The public hearing will be held on January 11, 1979, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by December 30, 1978.

ADDRESS: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T (EE-102-78) Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 412(c)(2) of the Internal Revenue Code of 1954. The proposed regulations appeared in the FEDERAL REGISTER for Friday, August 25, 1978, at page 38027 (43 FR 38027).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by December 30, 1978. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Becuse of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978.

By direction of the Commissioner of Internal Revenue.

GEORGE H. JELLY,
Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 78-31878 Filed 11-13-78; 8:45 am]

[4310-05-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Parts 715 and 717]

SURFACE MINING RECLAMATION AND ENFORCEMENT PROVISIONS

Proposed Rules and Notice of Public Hearing

AGENCY: Office of Surface Mining Reclamation and Enforcement, (OSM), Department of the Interior.

ACTION: Proposed rules for interim regulatory program and announcement of hearing.

SUMMARY: The proposed regulations would establish design criteria for sedimentation ponds and head-of-hollow fills constructed during the interim regulatory program and invite comments on consultations between the Secretary and those who have designed head-of-hollow fills. The proposed regulations reflect the Secretary's reconsideration of the regulations for sediment ponds and head-of-hollow fills in light of the directives of the District Court of the District of Columbia.

DATES: The comment period on the proposed rules and other published information will extend until December 18, 1978. All written comments must be received at the address given below by 5 p.m. on December 18, 1978. Comments received after that hour will not be considered or be included in the administrative record for this rulemaking. The Office cannot insure that written comments received or delivered during the comment period to any other locations than specified above will be considered and included in the administrative record for this rulemaking.

A public hearing on the proposed regulations will be held on December 14, 1978, at 9:30 a.m. in Washington, D.C., Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C. 20240.

ADDRESSES: Written comments must be mailed to: Office of Surface Mining, U.S. Department of the Interior, South Building, Room 120, 1951 Constitution Avenue NW., Washington, D.C. 20040. All comments should be clearly marked as comments on the proposed rules for the interim regulatory program.

A public hearing on the proposed regulations will be held on December 14, 1978, at 9:30 a.m. in Washington, D.C., Department of the Interior Auditorium, 18th and C Streets NW., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. Section 501(a) of the Surface Mining Control and Reclamation Act requires the Secretary to promulgate regulations establishing an interim regulatory program for surface coal mining operations. The interim regulations were promulgated on December 13, 1977. 42 FR 62639 (Dec. 13, 1977). On February 27, 1978, the Secretary adopted interim final rules modifying the interim regulations controlling the design of sediment ponds. 43 FR 8090-93.

Portions of the interim regulations, including the amended design critera for sediment ponds, were challenged by the coal industry pursuant to section 526 of the act in the District Court for the District of Columbia. As a result of that litigation, the Secretary was ordered to reconsider, in particular, 30 CFR Sections 715.17(e), 717.17(e) (sediment pond design criteria), 30 CFR Section 715.15(b), and 25 CFR Section 177.106(b) (head-of-hollow fills). See *In Re Surface Mining Regulation Litigation*, 452 F. Supp. 327 (1978); and *In Re Surface Mining Regulation Litigation*, Mem. Op. filed August 24, 1978.

The proposed regulations reflect the Secretary's reconsideration of the regulations for sediment ponds and head-of-hollow fills in light of the aforementioned directives of the District Court for the District of Columbia.

2. *Head-of-hollow fills.* In litigation contesting the interim regulatory program, the coal industry and the State of West Virginia challenged two specific provisions of § 715.15 concerning underdrains and compaction of spoil in valley fills. On August 24, 1978, the District Court for the District of Columbia kept the regulations in force, but at the same time remanded the regulations for reconsideration in light of the 1978 Skelly and Loy Report. See *Surface Mining Regulation Litigation*, Mem. Op. at 10 (August 24, 1978).

Pursuant to the court's order, the Secretary's reconsideration is to also include a disclosure of the substance of consultations the Department had prior to the December 13, 1977 regulations with individuals who have studied head-of-hollow fills. The Secretary is require to allow all interested people to comment on the substance of the consultations and consider such comments in the review of the regulations.

After preliminary reconsideration of the regulations, OSM has decided to propose a modification to the interim regulation for head-of-hollow fill construction. The new regulations would permit a modified West Virginia rock core system to be utilized at the discretion of the regulatory authority. The rock core would be designed to direct water falling on the surface of the fill to a central rock core which extends from the toe of the fill and from the base to the surface of the fill. As proposed, in no case may the rock core method be used where there is drainage from above the fill into the fill mass, except if such fills are associated with a montaintop removal operation and are located at or near the resultant ridge line, or in the case of contour mining if such fill is located at or near the mined seam of coal, and providing that such fill is not larger than 250,000 cubic yards. In the case of mountaintop removal operations the relatively flat disturbed area contiguous to the fill may be drained to the rock core. Thus, if such regulations are adopted during the interim regulatory program, head-of-hollow fills could be constructed in accourdance with the Secretary's December 13, 1978, requirements or, the modified West Virginia method.

Regarding consultations prior to the December 13, 1977 regulations, representatives of the Department spoke with representatives of the Skelly and Loy consulting firm to determine the scope and limitations of the 1977 Skelly and Loy Report on head-of-hollow fills. Skelly and Loy consultants confirmed the conclusions and recommendations at I-3-I-7 of the report. The substance of the key consultations with Skelly and Loy is reflected in Skelly and Loy's recommendations which follow:

a. A rock underdrainage system should be constructed along the hollow's natural drainway with lateral drains to each spring or seep.

(1) In fills containing less than 765,000 cubic meters or 1,000,000 cubic yards of predominantly sandstone, the main drain dimensions should be not less than 2.4 meters wide by 1.2 meters high (8 ft. by 4 ft.); if overburden is predominantly shale, the underdrain should be not less than 4.9 meters by 2.4 meters (16 ft. by 8 ft.).

(2) In fills containing more than 765,000 cubic meters of predominantly sandstone, the main drain dimensions should not be less than 4.9 meters by 2.4 meters (16 ft. by 8 ft.); if overburden is predominantly shale, the underdrain should not be less than 4.9 meters by 4.9 meters (16 ft. by 16 ft.). These underdrains (both main and lateral) should be designed by a qualified engineer based on assessment of site specific geologic and physical factors.

b. All underdrains should be of durable rock with no more than 10 percent of a size 0.3 meters (12 inches) and no material larger than 25 percent of the drain width.

c. All surface drainage should be diverted away from the fill site to diversion ditches constructed in undisturbed material—these ditches should be protected by riprap or other means in steep grades such as outslopes.

d. The preceding recommends criteria for the construction of environmentally stable head-of-hollow fill spoil disposal. It is emphasized, however, that these criteria should allow flexibility in the surface reclamation for sculpting and final landform to harmonize with the local environment and regional land-use plan.

Pursuant to the order of the District Court interested persons are invited to comment on the substance of the consultations and these comments will be considered in the review of the regulations.

As required by court order, the proposed regulations also reflect consideration of the 1978 Skelly and Loy Report entitled "Environmental Assessment of Surface Mining Methods: Head-of-Hollow Fill and Mountaintop Removal." Skelly and Loy said, "* * * each mine site is physically different and any adopted criteria should provide for alternative construction techniques considerate of these physical variations * * *" p. 11.

The following discusses in detail the basis and purpose of the proposed regulation:

Authority for these proposed sections is found in section 102, 201, 501, 502 and 515 of the Act.

Literature utilized in the preparation of these proposed regulations includes:

1. American Society of Civil Engineers, "Geotechnical Practice for Disposal of Solid Waste Materials"; A.S.C.E. Symposium—March 1977, Ann Arbor, Mich.

2. American Society of Civil Engineers, "Stability and Performance of Slopes and Embankments," August 1969. American Society of Civil Engineers: *Stability of Rock Cuts.* Edited by E. J. Cording, 1972.

3. American Society for Testing and Materials, "Instruments and Apparatus for Soil and Rock Mechanics," *Special Technical.*

4. American Society for Testing and Materials, 1976. Soil and rock; building stones; peat: part 19 AM. Soc. Test Matter.

5. Bishop, A. W., and Henkel, D. J., *The Measurements of Soil Properties in the Triaxial Test*, Edward Arnold, Ltd., London, England, 1962.

6. Bishop, A. W., "The Stability of Tips and Spoil Heaps," *Quarterly Journal of Engineering Geology*, Vol. 6, 1973.

7. Bishop, A. W., "The Use of the Slip Circle in the Stability Analyses of Slopes," *Geotechnique*, 1955.

8. Cedergren, H. R., *Seepage, Drainage and Flow Nets*, John Wiley and Sons, Inc., 1967

9. Chassie, Ronald G. and Goughnour Roger D., 1976. States Intensify Efforts to Reduce Highway Landslides. Civil Engineering—ASCE, April 1976.

10. Chironis, Nicholas P., 1977. *Better ways to build hollow fills:* Coal Age, November 1977, p. 104-100.

11. Thomson, G. McKecknie and Rodon, S., *Colliery Spoiltips—After Aberfan*, The Institution Civil Engineers, 1972.

12. Cummins, David G., Plass, William T., and Gentry, Claude E., 1965, *Chemical and physical properties of spoil banks in the eastern Kentucky coal fields:* U.S. Department of Agriculture, Forest Service Research Paper CS-17, 11 p. (Central States Experiment Station, Columbus, Ohio.)

13. Curry, James A., 1977, *Surface Mining Coal on Steep Slopes Back-to-Contour Demonstration.* Fifth Symposium on Surface Mining and Reclamation NCA/BCR Coal Conf., Louisville, Ky.

14. Curtis, Willie R., 1973(b), *Moisture and density relations in graded strip-mine spoils*, Paper II-1, in Hutnik, R. J., and Davis, Grant, eds., Ecology and reclamation of devastated land, v. 1: New York, Gordon and Breach, p. 135-144 (reprint).

15. Despard, Thomas L., 1974, *Avoid problem spoils through overburden analysis:* U.S. Department of Agriculture, Forest Service General Technical Report NE-10, 4 p. (Northeastern Forest Experiment Station, Upper Darby, Pa.).

16. Department of Energy, Mines and Resources, Canada, *Pit Slope Manual—Chapter 9—Waste Embankments* CANMET Report 77-01; Mining Research Laboratories, 1977.

17. Drnevich, Vincent P., Williams, G. Perry, and Ebelhar, Ronald J., 1976 *Soil mechanics tests on coal mine spoils*, in 2d Kentucky Coal Refuse Disposal and Utilization Seminar, May 20-21, 1976, Pine Mountain State Resort Park, Pineville, Ky., Proceedings, p. 47-59: Lexington, Ky., University of Kentucky Institute for Mining and Minerals Research (Reprint).

18. Eliassen, R., "Solid Waste Management, A Comprehensive Assessment of Solid Waste Problems, Practices and Needs," Prepared for the Office of Science and Technology, Washington, D.C., 1969

19. Greer, M. R. "Disposal of Solid Wastes from Coal Mining in Washington, Oregon, and Montana," *IC8430* Bureau of Mines, U.S. Department of the Interior, 1960, 39 pages.

20. Greene, Benjamin C. and Raney, William B., 1975. West Virginia's Controlled Placement Third Symposium on Surface Mining and Reclamation. NCA/BCR Coal Conf. Louisville, KY.

21. Grim, E. C., and Hill, R.D., 1974, Environmental protection in surface mining of coal: U.S. Evironmental Protection Agency Report EPA-670/2-74-093, 277 p.

22. Havers, J. A., Stubbs, F. W., Jr., eds. *Handbook of Heavy Construction* McGraw-Hill Book Co., 1971.

23. Holtz, W. G., and Gibbs, H. J., "Triaxial Shear Tests on Previous Gravelly Soils," *Journal*, Soil Mechanics and Foundations Division American Society of Civil engineers, Paper 867, January 1956.

24. Hvorslev, J., "Subsurface Exploration and Sampling of Soils for Civil Engineering Purposes," Report of Committee on Sampling and Testing, Soil Mechanics and Foundations Division, American Society of Civil Engineers, 1948.

25. Hopkins, Tommy C., Allen, David L., and Deen, Robert C., 1975, "Effects of Water on Slope Stability" Research Report 435, KY Dept. of Transportation.

26. Huang, Yang H., D. Schenck, Rikki, and Choy, K. J., 1975. "Slope Stability of Spoil Banks from Surface Mining," Univ. of KY, Lexington. Annual Report FY75 Project No. 201-65-8H300-53272.

27. Huang, Yang H., 1978. "Stability of Spoil Banks and Hollow Fills Created by Surface Mining," Univ. of KY, Lexington IMMAR34-RRR1-78.

28. Kimball, L. Robert, Consulting Engineers, 1974, *Research and demonstration of improved surface mining techniques in eastern Kentucky—slope stability* v. 1, Report and field book; v. 2, Appendices: Appalachian Regional Commission and Kentucky Department for Natural Resources and Environmental Protection, Report ARC-71-66-, v. 1, 81 p.; v. 2, 353 p.

29. Lambe, T. W., and Whitman R. V., *Soil Mechanics*, John Wiley and Sons, Inc., 1969.

30. Lambe, T. W., *Soil Testing for Engineers*, John Wiley and Sons, Inc., 1951

31. Legett, R. F., *Geology and Engineering*, McGraw-Hill Book Company, 2nd Edition, 1962.

32. Leonards, G. A., *Foundation Engineering*, McGraw-Hill Book Company, New York, 1962.

33. May, Robert F., 1963, *Predicting outslopes of spoil banks:* U.S. Department of Agriculture, Forest Service Research Note. CS-15, 4 p. (Central States Forest Experiment Station, Columbus, Ohio.)

34. Meyerhof, G. G., 1970. "Safety Factors in Soil Mechanics," Canadian Geotechnical Journal. Toronto, Ontario, Canada, Vol. 7, Nov. 1970 pp. 349-355.

35. National Coal Board, "Spoil Heaps and Lagoons," Technical Handbook, September 1970, 232 pages.

36. National Coal Board, "Review of Research on Properties of Spoil Tip Materials," January 1972.

37. Skelly and Loy, Consultants, 1977, Environmental assessment of surface mining methods—head-of-hollow fill and mountaintop removal—interim report: U.S. Environmental Protection Agency, Cincinnati, Ohio (Contract No. 68-03-2356; Project Officer: John F. Martin), 11 Chapters separately paged, as updated in March, 1978.

38. Soil Conservation Service (SCS), "Engineering Field Manual, for Conservation Practices," U.S. Department of Agriculture, 1969-a.

39. Soil Conservation Service (SCS), "Erosion and Sediment Control Handbook for Urban Areas, West Virginia," U.S. Department of Agriculture, 1974.

40. Soil Conservation Service (SCS), "Soil Mechanics Note No. 1," 1975.

41. Superfesky, Michael J. and Williams, George P. Jr., 1978 "Shear Strength of Surface-Mine Spoils Measured by TRIAXIAL AND DIRECT SHEAR METHODS," *Forest Service General Technical Report NE-39.*

42. Taylor, D. W., *Fundamentals of Soil Mechanics, John Wiley and Sons, Inc., 1948.*

43. Terzaghi, K., and Peck, R. B., *Soil Mechanics in Engineering Practice*, 2nd Edition, John Wiley and Sons, Inc., New York, 1967.

44. Terzaghi, K., *Theoretical Soil Mechanics*, John Wiley and Sons, Inc., New York, 1943.

45. U.S. Bureau of Reclamation 1973, *Design of Small Dams*, GPO, Washington, D.C.

46. U.S. Corps. of Engineers, 1971, *Notes for Construction of Earth and Rock-Fill Dams.* U.S. Army Engineer Waterways Experiment Station, Vicksburg, Miss.

47. U.S. Corps. of Engineers, 1952, *Soil Mechanics Design—Seepage Control:* U.S. Corps of Engineers, Engineer Manual EM 1110-2-1901.

48. U.S. Dept. of Agriculture, Forest Service Region 9—*Construction Specifications.*

49. U.S. Dept. of Interior, "Coal Refuse Inspection Manual," MESA, 1976.

50. U.S. Navy Bureau of Yards and Docks, "Soil Mechanics, Foundations and Earth Structures," DM-7, 1963.

51. Weigle, Weldon K., 1966(b), *Spoil bank stability in eastern Kentucky:* Mining Congress Journal, April, 1966 (reprint, 4 p.).

52. West Virginia Department of National Resources, 1975, Drainage handbook for surface mining: West Virginia Department of Natural Resources, Division of Reclamation, 75 p., 5 appendixes.

53. William, George P., Jr., 1973, *Changed spoil dump shape increases stability on contour strip mines, in* 1st Research and Applied Technology Symposium on Mined-Land Reclamation, Mar. 7-8, 1973, Pittsburgh, Pa., Proceedings, pp. 243-249: Monroeville, Pa., Bituminous Coal Research, Inc. (Reprint).

54. Wood, L. E., et al., "Guidelines for Compacted Shale Embankments," Purdue University, 1976.

Applicable State and Federal laws comparable to or containing similar requirements include but are not limited to:

1. 30 USC 801, MSHA regulations.
2. 33 USC 1151-75 Water Pollution Control Act.
3. Chapter 20, Article 6, *West Virginia Code*—"Surface Mining and Reclamation Control Act."
4. Chapter 20, Article 6C, *West Virginia Code*—"The Coal Refuse Disposal Control Act."
5. "Pennsylvania Clean Streams Law," 35 *Pa. Stat. Anno.*, Sec. 691.1 *et seq.*
6. "Solid Waste Management Act," 35 *Pa. Stat. Anno.*, Sec. 6001 *et seq.*
7. Title 25 *Pennsylvania Code*, Chs. 95, 97, 101, 125.
8. Ch. 20 Art. 5, *W.Va. Code, "Water Pollution Control Act."*
9. 40 CFR 136. "Protection of the Environment."

Proposed § 715.15(a) requires controlled placement utilizing current prudent engineering practices utilized in embankment construction for all types of permanent fills.

Maintaining stability protects the public and the environment from the adverse results of failure. Compatibility with surroundings and the approved postmining land use minimizes the adverse effects of mining as required in the Act. American Society of Civil Engineers, 1977; Tromson, 1972; DOE, 1977, 1978; Eliassen, 1969, Greer, 1960; Grin, 1974; National Coal Board, 1970; Skelly and Loy, 1977; Weight, 1966; West Virginia DNR, 1975; and Wood, 1976.

Proper engineering practices require that all organic material be removed to allow for proper foundation preparation before fill placement, and to prevent the existence of weak, unstable zones within the embankment. Topsoil must be stockpiled for later use as required by the American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Bishop, 1973; DOE, 1977; Greer, 1960; Havers, 1971; Huang, 1978; Kimble,

1974; Lambe, 1969; Leonards, 1962; National Coal Board, 1970; USSCS, 1969; Taylor, 1948; Terzaghi, 1967; USBOR, 1973; US Corps of Engineers, 1971; USDA (no date); USDOI, 1976; USN, 1963; West Virginia DNR, 1975; and Wood, 1976.

Slope protection and vegetation of all unprotected areas should be provided contemporaneously with construction, consistent with standard maintenance procedures for permanent structures under construction. Adams, et al., 1974; Bonny and Frein, 1973; Brundage, 1974; BOM, 1973; Capp, et al., 1975; Capp and Gilmore, 1974; Capp and Adams, 1971 Charmbury and Chubb, 1973; Coalgate et al., 1973; Czapowskyz and Writer, 1970; Czapowskyz and Sowa, 1973; Davidson, 1974; Dean, 1972; Dean and Havens, 1971; Department of Energy (Canada), 1972; D'Appolonia, 1975; Eigenbrod, 1971; Eliassen, 1969; James, 1966; Jones et al., 1973; Leroy, 1972; National ASN Association, 1972; National Coal Board, 1970; Peterson and Geshwind, 1973; Riley and Rinier, 1972; SCS, 1974; Sorrell, 1974; Spirik, 1973; Thompson and Hutnik, 1971; Welsh and Hutnik, 1972; White et al., 1973; and Wood and Thiegood, 1955.

The prohibition against depressions or impoundments is proposed to preserve the structural integrity of the fill by limiting sources of water introduced into the embankment.

Limiting the use of terraces to sites where approved by the regulatory authority as necessary to control erosion or enhance stability is proposed to maintain embankment outslopes compatible with the surroundings.

The use of keyway cuts and buttresses is intended to increase the stability of the embankment where steep foundation conditions necessitate special treatment to resist the sliding movement created by the weight of the fill. Bishop, 1973; Chirionis, 1972; Curry, 1977; DOE, 1977; Huang, 1978; Lambe, 1969; Leggett, 1962; National Coal Board, 1970; Skelly and Loy, 1977; SCS, 1969; Taylor, 1948; Terzaghi and Peck, 1967; USBOR, 1973; US Corps of Engineers, 1971; USN, 1963; Weigle, 1966; and Wood, 1976.

To monitor potentially hazardous changes effectively, frequent inspections are mandatory. The proposed inspection procedure is standard for embankment construction, both in content and frequency. The procedures for maintaining records of inspection, notification of the regulatory authority and certification of the construction by a registered professional engineer provides quality control records which indicate the close scrutiny necessary to provide for proper construction. (See 30 U.S.C. 77.215-3; WV Code; PA Code.)

Proposed subsection 715.15(a)(12) requires subdrain networks which allow for control of all ground water beneath a disposal area. Lack of control can result in ground water saturating portions of the fill and, as a consequence, endangering the structural integrity of the embankment. The rock underdrain fill construction is designed to keep water from infiltrating into the body of the fill.

The proposed subsection 715.15(a)(14) requires that the foundation be analyzed to assure the site is or can be utilized without danger of foundation problems during or after construction. Improper foundation treatment could lead to instability and variance from the purpose of the Act. American Society of Civil Engineers, 1969; Bishop, 1962; Department of Energy (Canada), 1972; D'Appolonia, 1975; Forrester and Whittaker, 1976; Hvorslev, 1948; Lambe et al., 1969; Leggett, 1962; Leonards, 1962; National Coal Board, 1970; Taylor, 1948; Terzaghi & Peck, 1967; Terzaghi, 1943; USDOI, 1976; USDOI, 1968; U.S. Navy Bureau of Yards and Docks, 1963; Wood et al., 1976; Thomson et al., 1972; and Department of Energy (Canada), 1977.

Proposed § 715.15(b) requires that valley fills shall have a minimum static factor of safety of 1.5. Reduced factor of safety requirements for remote areas were considered as alternatives, but the size and variability of sites and the potential for significant environmental harm negated the validity of the alternative. The 1.5 safety factor was chosen over lower values to insure an adequate margin of safety. A 1.5 safety factor is standard engineering practice for structures located where failure could cause loss of life, property damage, or significant environmental harm. American Society of Civil Engineers, 1977; ASCE, 1969; Bishop, 1973; Bishop, 1955; DOE (Canada), 1972; D'Appolonia, 1975; Lambe and Whitman, 1969; National Coal Board, 1970; Taylor, 1948; Terzaghi & Peck, 1967; Terzaghi, 1943; USDOI, 1976; U.S. Navy, 1963; Wood, 1976; Thompson, et al., 1972; and DOE (Canada), 1977.

Proposed subsection 715.15(b)(2) outlines subdrain requirements. The main rock underdrain is constructed to provide passage for water infiltrating the fill. It is a common, accepted engineering and construction practice to allow surface water to infiltrate a soil mass and to minimize the hydrostatic pressure within the fill. Lateral interceptors insure collection and transport of all major sources of ground water beneath the disposal area.

The prerequisite for drains in areas of actual or projected seepage implements requirements in section 515(b)(22)(C) of the Act and parallels standard engineering requirements. American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Ceceigren, 1965; Chassie and Goughnour, 1976; Chironis, 1977; DOE, 1977; Green and Raney, 1975; Hopkins et al., 1975; Huang et al., 1975; Lambe and Whitman, 1969; Leggett, 1962; Leonards, 1972; National Coal Board, 1970; Skelly and Loy, 1977; SCS, 1969; SCS, 1974; SCS, 1975; Taylor, 1948; Terzaghi and Peck, 1967; Terzaghi, 1943; USBOR, 1973; U.S. Corps of Engineers, 1971; U.S. Corps of Engineers, 1952; USN, 1963; Weigle, 1966; West Virginia, DNR, 1975; and Wood, 1976.

Filters must be provided which are compatible with the fill, the foundation, and each other. This is a standard engineering criterion which prevents the potential for blockage of drains by migration of fine materials.

The sizing criteria are derived from standard drain design in texts and publications, and from performance of actual drains in the field. American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Cedergren, 1967; Chassie, 1976; Chironis, 1977; DOE, 1977; Greene and Raney, 1975; Hopkins, et al., 1975; Huang, 1975; Huang, 1978; Lambe, 1969; Leggett, 1962; Leonards, 1962; National Coal Board, 1970; Skelly and Loy, 1977; SCS, 1969; SCS, 1974; SCS, 1975; Taylor, 1948; Terzaghi, 1967; Terzaghi, 1943; USBOR.

Subdrain material must be durable to prevent degradation which could lead to blockage and subsequent failure. This is a standard design criterion for drain design and construction. Astin, 1976; Cedergren, 1967; DOE, 1977; Lambe, 1969; Lambe, 1951; Leonards, 1962; SCS, 1969; SCS, 1975; Taylor, 1948; Terzaghi & Peck, 1967; USBOR, 1973; U.S. Corps of Engineers, 1952; USDA (no date); and USN, 1963.

The proposed 18-inch lift requirement is based on additional information which has been gathered on the process of constructing earthfill structures in a series of horizontal lifts. This information shows that a variety of lift thicknesses was required for fill construction by different methods and contractors. The more conservative requirements allowed lifts only a few inches thick between compactions, the less conservative allowed up to 6 feet. Most authorities agreed that it was the compaction and removal of pore spaces that was important for fill stability. Because the agencies authorizing the construction of earthfill dams and groins, both of which have possible failure consequences similar to those of fills, require lift thicknesses of 3 to 8 inches and because the agencies have extensive experience and empirical evidence for their decisions, the

Office has proposed an 18-inch rule on lift thickness, which varies from the previous interim program regulations which require 4-foot lifts. If the operator can show by continuous inplace density monitoring that the spoil density specified in the design certified by a registered professional engineer is being attained throughout each lift thickness employed, thicker lifts will be allowed not to exceed 4 feet in thickness. Under the proposed regulations end dumping would be prohibited. American Society of Civil Engineers, 1977; American Society of Civil Engineers, 1972; Astin (no date); Bishop and Henkel, Goughnour, 1976; Chironis, 1977; Thomson and Podon, 1972; Cummins et al., 1965; Curtis, 1973; Depaid, 1974; DOE, 1977; Denevich et al., 1976; Holtzgard Gibbs, 1956; Hvorslev, 1948; Huang et al., 1975; Huang, 1978; Kimble, 1974; Lambe, 1969; Lambe, 1951; May, 1963; Meyerhoff, 1970; Superfesky and Williams, 1978; Taylor, 1948; Terzaghi and Peck, 1967; Terzaghi, 1943; USBOR, 1973; U.S. Corps of Engineers, 1971; USN, 1963; Weigle, 1966; and Grim and Hill (1974); Skelly and Loy (1978).

Diversion of runoff is required to prevent erosion of which could decrease the overall stability of the site. A 6-hour duration storm was considered, but the 24-hour storm produces a peak substantially larger in total volume than the 6-hour hydrograph. American Society of Civil Engineers, 1969; U.S. Corps of Engineers, 1952; Department of Energy (Canada), 1972; D'Appolonia, 1975; Good et al., 1970; Leonards, 1962; Marks, 1975; SCS, 1969; SCS, 1975; Terzaghi, 1967; USDOI, 1976; U.S. Navy Bureau of Yards and Docks, 1963; and West Virginia Department of Natural Resources (no date); Brater and King, 1976; Chow, 1959; Davis and Sovenson, 1969; Department of Energy (Canada), 1972.

The proposal to allow terraces is intended to break the length of the slope thus allowing the water to maintain low, nonerosive velocities. All slope values proposed are standard slopes for fill construction which are flat enough to limit or retard erosion. American Society of Civil Engineers, 1972; Chironis, 1977; Aury, 1977; Eliassen, 1969; Greene, 1960; Greene, 1975; Grim, 1974; Kimble, 1974; SCS, 1969; USDA (no date); and West Virginia DNR, 1975.

A maximum 2:1, lv:2h outslope limitation is proposed, as also specified by MSHA in 30 CFR 77.214. This slope reflects combinations of accessibility and stability.

Proposed § 715.15(c) contains the requirement for placing spoil fills in the uppermost reaches of the drainage area to reduce the size of drainage areas necessary to be controlled. The rock core chimney drain allowance was based on the following course of events. On December 13, 1977, final rules were adopted for the interim surface mining reclamation and enforcement program developed pursuant to the Act. These rules covered the disposal of spoil from surface mining in areas other than mine workings of excavations, and specifically authorized the rock underdrain system of fill construction. Following adoption of rules, the Office received petitions for change of the Federal rules affecting head-of-hollow fills. The Office instituted an investigation of the allegations of the petitions, which result in these proposed revisions of the earlier rules.

Petitions from the State of West Virginia and from coal mine operators in that State alleged that the Office was being too narrow in defining only one construction method for building head-of-hollow fills. They claimed that the "rock core system" authorized in West Virginia provided as much, or more, protection as the "rock underdrain system" in the interim program. Several professional engineers have expressed concern with long-term clogging of the rock core by fine-grained sediment in the drainage and in some cases piping (internal erosion) caused by the flow of water within the fill which could lead to instability and potential failure of the fill. To date the Office is not convinced that rock core fills are potentially less stable than the rock underdrain fills.

Some engineers have expressed doubt that the rigorous West Virginia construction requirements could be adequately monitored in a State that was just beginning a strict inspection program and that inadequate engineering practices would be more likely to result in failure in the rock core system. It is critical that the rock core maintain its permeability throughout. If one impermeable section is placed or if a section become impermeable, the result could be disastrous. On the basis of the investigation, the Office is proposing a permanent program revision to the regulations permitting the rock core system of head-of-hollow fills to be used at the discretion of the regulatory authority with adequate inspection and supervision. At the same time, the Office is instituting a formal study through the National Academy of Engineering to investigate, in depth, the potential for failure of the types of head-of-hollow fills.

The rock core drain system is designed to direct water falling on the surface of the fill to a central rock core by means of surface grading. The rock core extends from the toe to the head of the fill and from the base to the surface of the fill. A system of lateral underdrains will dispose of water from seeps emerging beneath the fill. Filters are provided for the core and subdrains. A drainage pocket of less than 10,000 gallon capacity at the head of the fill is designed to handle surges from heavy runoff conditions.

The major advantage of the rock core construction appears to be its ability to cope with long-term differential settlement of the fill that results in a surface grade toward the center of the fill, where settlement is usually greatest. In areas where such settlement is unavoidable, the regulatory authority might specify rock core drains as the construction method; in other areas, diversion of the water from the fill might be the preferred construction method. Other criteria such as side hill conditions, shot spacing, or haulage methods could affect the design of the fill. For both cases, the key to preventing erosion is adequate design and construction of diversion and surface drainage systems. In all cases, only the precipitation that falls on a fill may run over it. The path such precipitation travels should be the one that minimizes erosion. Lateral interceptors insure collection and transport of all major sources of ground water beneath the disposal area. This is a standard design criterion for drains and may be found in numerous soil mechanics and engineering references. Greene and Raney, 1975; Skelly and Loy, 1977, 1978; and West Virginia DNR, 1975.

3. *Buffer zones.* Pursuant to the decision of the District Court for the District of Columbia, In re *Surface Mining Regulation Litigation*, Mem. Op. at 17 filed August 24, 1978, the Secretary is required to receive additional comments concerning the buffer zone requirements of § 715.17(d). The court reasoned that although the Secretary had pointed to ample support for the regulation, the sources relied upon in the Government's brief were not listed in the certified index in reference to § 715.17(d)(3). Therefore, the Secretary was directed to reconsider the regulation in light of additional comments received. Section 715.17(d)(3) reads as follows:

> (3) *Buffer zone.* No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in § 715.12.

It is generally recognized that a buffer zone or "filter strip" of undisturbed land located between a disturbed area and a stream acts to protect the stream from sediment-bearing water flowing from the disturbed area.

The vegetation and undisturbed soil within the filter strip has the effect of filtering significant amounts of polluted water before it directly enters the stream. Grim and Hill, 1974, Environmental Protection in Surface Mining of Coal, U.S. Environmental Protection Agency, p. 118.

The Grim and Hill publication expressly states that, at a minimum, a 100-foot filter strip should be retained between a disturbed area (such as a haul road) and a stream (p. 118):

> Experience has shown that a protective strip of absorbent undisturbed forest soil between the road and stream usually prevents muddy road water from reaching streams. This strip, often called a filter strip, should be wide enough to absorb all the muddy water that runs off road surfaces. A minimum distance of 100 feet (30.5 meters) is recommended between the road and stream. (Footnote omitted.)

An identical recommendation is contained in Guidelines for Construction of Mine Roads, Region 10, U.S. Environmental Protection Agency, which is included as appendix D to Grim and Hill at p. 255. In addition, in Weigle (1965), the author recommends a filter strip at least 50 feet wide if the slope is nearly level. If the slope is very steep, i.e., 70 percent grade, a 165-foot wide filter strip is recommended. For medium slopes, i.e., 40 percent grade, a minimum 105-foot filter strip is deemed appropriate. Moreover, at least two States presently require 100-foot wide buffer zones between disturbed areas and streams. Alabama Guidelines for Minimizing the Effects of Surface Mining on Water Quality, p. 2; Kentucky Revised Statues 350.085(4).

The Secretary's choice of the 100-foot buffer zone appears to be well supported by technical literature and State legislation in the field. In accordance with the court's order of August 24, 1978, the Office invites additional comments on the regulation and technical literature and State legislation supporting the requirement.

4. *The design criteria for sediment ponds.* In brief, the February 28, 1978, design criteria for sedimentation ponds required operators to: (a) Consider surface area in the design of ponds in order to achieve effluent limitations; (b) provide a sediment storage volume equal to 0.2 acre-feet per acre of disturbed area within the upstream drainage area unless the operator uses onsite or point-of-origin activities to reduce the required 0.2 acre-feet per acre of disturbed area storage volume; and (c) provide 24-hour theoretical detention time for inflow or runoff entering the pond(s) from a 10-year, 24-hour precipitation event. The 0.2 acre-feet per acre of disturbed area sediment storage volume requirement could also be reduced by the regulatory authority upon a showing that lesser sediment yields were appropriate. Additionally, a credit system was established to allow for the reduction of the 24-hour theoretical detention time.

On May 3, 1978, the District Court for the District of Columbia enjoined enforcement of the design criteria for sedimentation ponds contained at §§ 715.17(e) and 717.17(e) of the regulations until the Secretary considered comments on the interim final rules, published final rules and the court reviewed the merits of the rule. Based upon a prediction of imminent irreparable harm to plaintiffs coupled with a lack of an effective review remedy, the court found it necessary to stay the interim final rules to allow for adequate judicial review prior to making coal operators subject to the sediment pond design criteria.

Ten witnesses testified at a public hearing on the interim final rules on March 15, 1978, and 20 additional written comments were received by the close of the comment period on March 29, 1978.

The major issues raised at the hearing and in written comments can be summarized as follows:

(a) Commenters said sediment ponds are not always the "best technology currently available" to minimize disturbances to the prevailing hydrologic balance. According to commenters, operators should be allowed the discretion to use other methods to achieve effluent limitations. Commenters 1, 3, 4, 5, 10, 11, 16, 17, 20, 24, 27.

(b) Commenters said there are no data to support the sediment storage volume requirement for sedimentation ponds. According to commenters the sediment storage volume standard of 0.2 acre-feet per acre of disturbed area within the upstream drainage area is arbitrary and capricious as a national standard. They said it was derived from a 1974 study by Willie Curtis, "Sediment Yield From Strip-Mined Watersheds in Eastern Kentucky," which was undertaken on steep slope mining operations during the days of "shoot and shove" mining methods. Consequently, 0.2 acre-feet per acre sediment storage volume was not viewed as a proper design factor for sediment ponds in the eastern or western United States under more restrictive standards of the Surface Mining Act and regulations. Commenters 1, 3, 4, 11, 13, 14, 19, 20, 24.

(c) Commenters said OSM had interpreted the 0.2 acre-feet number as a sediment storage figure rather than its intended purpose as a guideline for total pond volume. According to commenters, in Curtis' work the 0.2 acre-feet per acre of disturbed area storage volume was not only sediment storage volume but also sufficient water storage to provide adequate retention time. Furthermore, commenters went on to say his study assumed no pond sediment removal. Commenters 1, 11, 20.

(d) Commenters said the 24-hour theoretical detention time for the design inflow or runoff entering sedimentation ponds for a 10-year, 24-hour precipitation event was arbitrary and capricious and lacked technical foundation. Commenters 1, 3, 10, 16, 20, 27.

Based upon consideration of comments submitted on the interim final rules and the following technical literature, the Office proposes to require sedimentation ponds in conjunction with other sediment control measures as "best technology currently available" to prevent to the extent possible additional contributions of suspended solids to streamflow or runoff outside the permit area. See section 515(b)(10) of the Act. It appears to be well established that sedimentation ponds used with other sediment control measures are "state of the art" for controlling sedimentation from surface coal mining operations. The Environmental Protection Agency (EPA) has undertaken a number of studies to determine the best methods for controlling sediment laden flow. EPA studies have concluded that sedimentation ponds are the key to controlling sediment. According to EPA, such ponds are "the most effective structures for trapping sediment." The conventional method for controlling sediment that reaches the periphery of the mining operations is through the construction of a sediment retention pond to intercept the surface runoff before it leaves the mining site. Erosion and Sediment Control—Surface Mining in the Eastern United States, at 65 (1976). Another EPA study indicates sediment ponds are the last line of defense (treatment) before the water leaves the mine area. Hill, Sedimentation Ponds—A Critical Review, at 2 (October 1976). According to one of the leading commentators in the field, sediment ponds should be located as close to the sediment source as possible and before drainageways reach the main stream. Grim and Hill, Environmental Protection in Surface Mining of Coal, EPA-670/2-74-093 at 103 (October 1974).

Also, several States, including West Virginia, Pennsylvania, Kentucky, and Montana now require sediment ponds as part of the mining operations. Hill, at 13 (1977).

Simply stated, sediment ponds are structures used to slow down water runoff in order to allow sediment particles to settle out. The ponds must provide sufficient water storage volume to detain the runoff long enough for particle settling. As the re-

servior fills due to trapped sediment, the water storage capacity decreases. Therefore, additional sediment storage volume must be provided in order to prevent the total volume of the reservoir from falling below the volume required for particle settlement.

To draw out the water in the pond at a controlled rate so as to assure the required water detention time, a pipe is placed through the pond embankment. If the runoff overtops the embankment, erosion could occur which can ultimately lead to pond failure and hazards to life downstream. For this reason, sufficient discharge capacity must be provided from the pond in the form of an emergency spillway to eliminate the possibility of overtopping the embankment on rare precipitation events.

In mountainous areas several small ponds in series may be more desirable because of topographic constraints. Passing water from one pond to another can also improve detention time. Moreover, one small pond can be used to pretreat or remove the bulk of the large particles thus reducing the need to clean out a larger polishing pond. Hill, at 14 (1977).

The mechanics of sediment laden flow are complex. The major factors governing the efficiency of a sediment pond are the geometry of the basin, the inflow hydrograph, the inflow sediment graph, the outlet design, the hydraulic behavior of the flow within the basin, control devices within the basin which minimize short circuiting, turbulence, and resuspension, the characteristics of the sediment and the settling behavior of the suspended sediment particles and the detention time. Ward, Simulation of the Sedimentology of Sediment Detention Basins at 32 (1977); Oscanyan, Design of Sediment Basins for Construction Sites (1975).

In addition to a sediment pond, other sediment control measures which may be necessary to achieve and maintain applicable effluent limitations include the use of vegetative buffers, sediment traps, sand bags, straw bales, and log and pole structures. Grim and Hill, at 102 (1974); Erosion and Sediment Control Surface Mining in the Eastern United States, 60-65 (1976).

The Department proposes to allow operators and the regulatory authority to select the mix of sediment control measures to be used in conjunction with sediment ponds to achieve applicable water quality standards.

Legal authority: Sedimentation pond design criteria are supported by sections 102, 201(c), 501(b), 502, 515(b)(10), 515(b)(24) and 516 of the Act. See also Surface Mining Regulation Litigation, Civil Action No. 78-162 at 3 (Mem. Op. August 24, 1978).

Sediment storage volume. Subsections 715.17(e) and 717.17(e) (i) and (ii) of the proposed regulations provide methods for calculating the required sediment storage capacity to store the expected sediment accumulation in the reservoir during its useful life.

Two methods are used for making the computations and both are acceptable in this proposed regulation. First, the operator may use the universal soil loss equation (USLE), qully erosion rates and the appropriate sediment delivery ratios. The universal soil loss equation projects the sheet rill and qully erosion from disturbed areas as a function of rainfall energy, soil erodibility characteristics, length and steepness of slope, and the type of cover present. Proceedures for making the USLE predictions are well established and accepted by the engineering and scientific community. Meyer, Sediment Yields from Roadsides: An Application of the Universal Soil Loss Equation, at 289, (Dec. 1975); Boysens, A Procedure for Estimating Urban Sediment Yield, at 3, (Dec. 1975); Haan, Hydrology and Sediment Control from Surface Mined Areas, at 5.1 (1978); Wischmeir, Predicting Rainfall Erosion Losses from Cropland East of the Rocky Mountains, (1965); USDA, 1975, Procedure for Computing Sheet and Rill Erosion on Project Areas, SCS Technical Release No. 5 (Rev.); Heineman, Volume Weight of Reseroir Sediment, 181-197 (1962).

The sedimentation pond must be designed to store sediment volume from the drainage areas to the pond for a minimum of 3 years. This minimum design requirement is proposed to assure that ponds have sufficient sediment capacity to last the duration of the surface coal mining and reclamation operation. Hill, Sedimentation Ponds—A Critical Review, at 11 (1977). For some area mines the pond may need to collect sediment for more than 3 years. Therefore, it is expected that sediment storage volume will have to be increased to accommodate the additional sediment volume. Hill, at 11 (1977). Alternatively, adequate sediment storage volume may be maintained by more frequent removal of sediment.

The universal soil loss equation and the qully erosion rates must be used in conjunction with a delivery ratio because some of the sediment eroded from disturbed areas is deposited before reaching the reservoir by natural vegetation, stream channels, and mine pits. The gross erosion from the surface coal mining operation reduced by a delivery ratio quantifies this effect. Procedures for making these calculations are summarized in Haan, at 548 (1978); and USSCS National Engineering Handbook Section 3.

Alternatively, an operator may design the pond with a sediment storage volume of 0.1 acre-feet for each acre of disturbed area within the upstream drianage area. The basis for 0.1 acre-feet for each acre of disturbed area as an initial design requirement is a study by Curits, Sediment Yield from Strip mines Watersheds in Eastern Kentucky (1974). Five settling basins were studied in Breathitt County, Ky., to measure the sediment yield from surface mined watersheds. Data collected included disturbed area, storage area, sediment yield, and accumulated precipitation. According to the study, methods of mining and handling the overburden were the major factors controlling sediment yield. Likewise, reclamation measures, including prompt revegetation, were determined to be important to minimize the sediment yield. He then concluded that the design criterion of 0.2 acre-feet for each acre of expected disturbance be retained. This recommendation was qualified, however, to the extent that mining and reclamation methods were refined and improved.

One commenter has submitted updated unpublished data collected by Curtis at the same sites between 1973 and 1977. All the data collected by Curtis are now available for public comment and analysis. The data show considerable disparity in sediment yields depending upon the type of mining operation. A 0.2 acre-feet per acre of disturbed area storage volume requirement is probably justified for operations with poor onsite mining and reclamation methods. Curtis, at 99 (1974).

Based upon this data the Department proposes 0.1 acre-feet per acre of disturbed area as a starting point for determining required storage volume for sediment ponds. A 0.1 acre-feet per acre of disturbed area sediment storage volume standard appears justified based upon anticipated compliance with the interim mining and reclamation regulations. If the operator utilizes additonal onsite erosion and sediment control measures, such as prompt and progressive backfilling, prompt revegetation, adequate mulching, and sediment traps, the regulatory authority may approve a sediment storage volume not less than 0.035 acre-feet for each acre of disturbed area within the upstream drainage area. To obtain the reduction in sediment storage volume, the operator must show the sediment removed by other control methods is equal to the reduction in sediment storage volume. Thus 0.035 acre-feet for each acre of disturbed area is proposed as a nationwide minimum sediment storage volume for sedimentation ponds. Simpson, Westmoreland Resources, Comments on the Interim Final Rules,

(March 23, 1978); National Coal Association, Comments and data on the proposed interim regulatory program, Oct. 1977. Robbins, Comments on the Interim Final Rules, (March 15, 1978).

Detention time. The pond must also be designed to detain sediment laden water for a period of time sufficient to allow the water to come to rest and clarify itself. This pond "theoretical detention time" is defined as the average time that the design flow is detained within the sediment pond. Haan, Hydrology and Sediment Control from Surface Mined Areas, at 6.6 (1978).

The Department proposes that each sediment pond provide a 24-hour theoretical detention time for the water inflow or run-off entering the ponds from a 10-year 24-hour precipitation event. The design storm event is based upon EPA regulations, 42 FR 21380 and the development document for interim final effluent limitation guidelines and new source performance standards (1976).

The regulatory authority is to determine runoff by considering soil type, ground cover, slope, moisture conditions, and other physical characteristics. A 24-hour theoretical detention time is a necessary starting point to capture sediment laden flow from surface coal mining operations. It appears that trap efficiencies greater than 90 percent will be required if water quality standards are to be maintained. Ward, at 30 (1978). Studies of actual pond detention time versus theoretical detention time have shown the actual detention time to be 30 to 70 percent theoretical detention time with most ponds falling into the lower category. Hill, at 11 (1977). Assuming sedimentation ponds are approximately 50 percent efficient, to obtain 94 percent removal efficiency, 12 hours actual detention time is necessary. Kathuria, at 56 (1976).

Sedimentation ponds designed with a 24-hour theoretical detention time are in use. For example, sedimentation ponds in Poland are typically designed with detention times of inflow from 1 to 5 days. A study of ponds in Poland show actual detention time to be two to four times less than the theoretical time. Janiak, Purification of Waters from Lignite Mines, at 59, May 1975.

The regulatory authority is authorized to approve a theoretical detention time not less than 10 hours when the person engaged in surface coal mining operations has demonstrated that the improvement in sedimentation removal efficiency is equivalent to the reduction in detention time as a result of pond design, size distribution of particles, or specific gravity of particles. The pond effluent must also be shown to achieve and maintain applicable effluent limitations. The 10-hour theoretical detention time specified is proposed as the minimum time necessary to separate by gravitational settling suspended particles that commonly occur from surface mined areas. Generally, single basins which provide an average detention time less than 10-hours, will not meet applicale effluent limitations, Hill (1977).

The Office proposes to allow the regulatory authority to approve a theoretical detention time less than 24 hours when the person has demonstrated to the regulatory authority that chemical treatment will achieve and maintain the applicable effluent limitations; is harmless to flora and fauna; is planned under the supervision of a registered professional engineer; and the treatment facility is operated by a qualified person. Chemical treatment or flocculants can be applied to the water to cause the particles to come together with each other or with a heavier chemical to facilitate settling. Fine silts and clays often carry a negative charge, which causes the particles to repel each other and stay in suspension for longer times. Chemical treatment is sometimes necessary to affect negatively charged colloidal articles causing them to become attracted to each other and form larger masses which settle out. Types of coagulant include metal salts (aluminum sulfate, ferrous sulfate, ferric chloride), metal hydroxides (aluminum hydroxide, calcium hydroxide), and synthetic polymers or polyelectrolytes (anionic, cationic, nonionic). Selection of the coagulant and the required dosage is an important factor in design of a chemical treatment system. Erosion and Sediment Control—Surface Mining in the Eastern United States, at 69 (1976).

The use of chemical flocculating agents is beginning to see more widespread use. In the past, polymer electrolytes and several other chemicals have been widely used in water treatment facilities. Flocculating agents provide an economic solution to meeting water quality goals on large surface mining areas. On three watersheds near Centralia, Wash., water quality was maintained within the applicable effluent limitations for an estimated cost of $10 per acre of runoff. Suppliers of chemical agents indicate they are now being widely used throughout the United States. Ward, at 24 (1978). See also Ward, at 59 (1977); Janiak at 67 (1975); Kathuria, at 5 (1976). See also H.R. Report No. 95-218 (1977).

In the domestic water treatment field, alum and ferric chloride have been used to reduce suspended sediment. In England, wire baskets filled with alum brickettes are placed in the inflow channels leading to sedimentation ponds. Hill, at 18, 19 (1977).

Dewatering. Subsection 715.17(e)(4) requires a nonclogging dewatering device (which can be a principal spillway) to achieve and maintain the required theoretical detention time. The dewatering device and the principal spillway are required to pass the runoff resulting from a 10-year 24-hour precipitation event without use of the emergency spillway. If the design flow passes through the emergency spillways, there is no practical way to detain it. Thus, the detention time would be inadequate. For this reason, flow through the emergency spillway is restricted to precipitation events exceeding the 10-year 24-hour event. Erosion and Sediment Control—Surface Mining in the Eastern United States, Vol. 2 at 55 (1976); Hill, at 17 (1977); Haan, at 6.1–6.27 (1978).

The sediment pond dewatering devices may be designed in a number of ways. One method is to place the inlet of the principal spillway (usually a pipe spillway) at the elevation of the required sediment storage. A second method would be to place the inlet elevation of the principal spillway at an elevation above the required sediment storage elevation. If this latter alternative is selected, sediment cleanout would not be necessary when sediment accumulates to 60 percent of the required sediment volume. However, the reduction in settling storage must not reduce the actual detention time below the theoretical detention time.

Short-circuiting. To assure that actual detention time approaches theoretical detention time, the Department proposes that sedimentation ponds shall be designed, constructed and maintained to prevent short-circuiting. Short-circuiting is caused by high velocity jet action of incoming water, wave action, inlet and outlet design. Hill, at 10 (1976). The shape of the pond has a major bearing on short-circuiting of flow. Teardrop and tooth-shaped ponds usually have less short-circuiting than elongated ponds perpendicular to the inlet. A long, narrow, snake-shaped pond would probably be the best shape. Hill, at 16 (1977). Methods of minimizing short-circuiting include baffles, partitioning the pond into chambers, maintaining a length-to-width ratio of 5 to 1, constructing an energy dissipator at the pond entrance, modifying the inflow, or adding two or more basins in series. Erosion and Sediment Control—Surface Mining in the Eastern United States, at 68 (1976). See also Ward, at 57 (1977); Janiak, at 59 (1975); Schiebe, Control of Water Retention Time in Small Reservoirs, ASAE Meeting (1977).

Sediment removal. Subsection 715.17(e)(8)(h) generally requires sediment removal when the volume of sediment accumulates to 60 percent of

the required sediment storage volume. This requirement is necessary to assure that the pond has adequate sediment storage as a reserve for future precipitation events inasmuch as runoff events are not entirely predictable. Additionally, the remaining water volume (40 percent of required sediment volume) reduces the velocity inflows and decreases the change for scour and resuspension of previously settled sediment. When resuspension occurs, the concentration of suspended solids in the outflow has been shown to exceed the concentration of the inflow to the pond. Erosion and Sediment Control—Surface Mining in the Eastern United States, Vol. 2 at 53 (1976); Hill, at 11, 13, 14 (1976); Kathuria, Effectiveness of Surface Mine Sedimentation Ponds EPA 600/2-76-117 (1976); Haan, at 6.1-6.27 (1978); Oscanyan, Design of Sediment Basins for Construction Sites (1975).

General design requirements. A number of other standard design and construction requirements are proposed in the regulations. These include spillway design, required freeboard, allowance for settlement, minimum top width, required embankment side slopes, foundation preparation, fill materials and placing, spreading, and compaction requirements. These are general minimum requirements required in construction of similar sized ponds. USSCS, Practice Standard 378-Pond.

The sediment storage volume, and detention time requirements proposed are identical to requirements proposed for the permanent program regulations. 43 FR 41885 (Sept. 18, 1978). However, the Office proposes to allow the requirements to be relaxed for steep slope mining during the interim program. Under the proposed regulations the regulatory authority would be authorized to grant a limited waiver from the pond design criteria if the operator demonstrates that ponds constructed in accordance with the criteria would jeopardize public health or safety or result in contributions of suspended solids to streamflows in excess of the incremental sediment volume trapped in the sediment pond designed to fully comply with § 715.17(e) (1)-(22). Sediment released during the construction of the sediment pond should not be included in determining contributions of suspended solids in excess of the incremental sediment trapped.

The regulatory authority's discretion to relax the design criteria is carefully conditioned upon the operator implementing special control measures in conjunction with a sediment pond or series of sediment ponds which comply with the design criteria to the maximum extent possible.

Furthermore, to assure that such sediment control measures are an adequate substitute, the operator must submit a plan which includes a quantitative analysis demonstrating that onsite measures will achieve and maintain applicable effluent limitations. Moreover, the operator would be required to depict the location of all onsite control measures to facilitate inspection and enforcement.

The Office proposes this waiver from explicit design criteria for the interim program only. The Office believes the adaption of technology for sediment control can be advanced at a pace which will militate against the necessity for such a waiver in the permanent regulatory program. This position is based on the growing use of flocculants as a means to settle sediment.

Alternatives considered. The Office considered a number of alternatives to the design criteria proposed for sediment ponds. The Office weighed allowing coal operators to use any sediment control measures to achieve and maintain applicable effluent limitations and control sediment. However, based upon the literature in the field, it appears unlikely that water quality standards will be achieved and maintained without sediment ponds.

Second, the Office considered alternative sediment storage volumes, detention times and dewatering devices for sediment ponds. For example, 0.2 acre-feet per acre of disturbed area was considered as a national standard and preliminary rejected as unnecessary for all surface coal mining operations. Also a 10-hour theoretical detention time was rejected as inadequate for the initial design requirement for sediment ponds. In this regard, the literature appears to say that sediment ponds must be designed with trap efficiencies exceeding 90 percent to achieve and maintain water quality goals. Therefore the Office has proposed a 24-hour theoretical detention time corresponding to 94 percent efficiency. This initial design requirement can be reduced by appropriate control measures.

Dated: November 7, 1978.

JOAN M. DAVENPORT,
Assistant Secretary
Energy and Minerals.

Chapter VII of title 30 of the Code of Federal Regulations is amended as follows.

PART 715—GENERAL PERFORMANCE STANDARDS

A. 30 CFR § 715.15(a) and (b), is amended as follows:

1. Paragraphs (a) and (b) are revised.
2. New paragraph (c) is added.

§ 715.15 Disposal of spoil and waste materials in areas other than the mine workings or excavations.

(a) *Disposal of excess spoil: General requirements.*—(1) Spoil not required to achieve the approximate original contour shall be hauled or conveyed to and placed in designated disposal areas within a permit area other than mine working or excavations, only if the disposal areas are authorized for such purposes in the approved mining and reclamation permit and only in accordance with paragraphs (a)(c) of this section. The spoil shall be placed in a controlled manner to ensure—

(i) That leachate and surface runoff will not degrade surface or ground waters or exceed the effluent limitations of § 715.17.

(ii) Stability of the fill; and

(iii) That the land mass is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated and replaced under § 715.16 before spoil is proved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion to promote growth of vegetation, or to increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas including diversion ditches that are not riprapped shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the regulatory authority. If such placement provides additional stability and prevents mass movement, fill matrials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, to insure long-term stability.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 715.13 except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces shall not be constructed unless approved by the regulatory authority.

(9) Where the slope in the disposal area exceeds lv:2.8h (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock), or rock toe buttresses shall be constructed to stabilize the fill. The slope or original ground at the toe of the fill shall not exceed lv:5h (20 percent).

(10) The fill shall be inspected for stability by a registered engineer or other professional specialist approved by the regulatory authority during critical construction periods and at least quarterly throughout construction to ensure removal of all organic material and topsoil, placement of underdrainage systems, proper installations of surface drainage systems, proper placement and compaction of fill materials, and proper revegetation. The registered engineer or other qualified professional specialist shall provide to the regulatory authority a certified report within two weeks after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority, and a copy of the report shall be retained at the mine site by the person who conducts the surface mining activities.

(11) Coal processing wastes shall not be comingled with spoil and disposed in head-of-hollow fills, and may only be disposed in other excess spoil fills if such waste is—

(i) Demonstrated to be nontoxic and nonacid forming; and

(ii) Demonstrated to be consistent with the design stability of the fill.

(12) The disposal area shall not contain springs, natural watercourses, or wet-weather seeps unless lateral drains are constructed from the wet areas to the underdrains in a manner that prevents infiltration of the water into the spoil pile.

(13) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be designed and constructed in accordance with the requirements of paragraphs (b) and (c) of this section respectively.

(14) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(15) Excess spoil may be returned to underground workings only in accordance with a spoil disposal program approved by the regulatory authority under 30 CFR 784.14.

(b) *Disposal of excess spoil: Valley fills.*—Valley fills shall meet all of the requirements of paragraph (a) of this section and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static factor of safety of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

A system of underdrains constructed of durable rock shall—

(i) Be installed along the natural drainage system;

(ii) Extend from the toe to the head of the fill; and

(iii) Contain lateral drains to each area of potential drainage or seepage.

(3) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering.

(4) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (b)(5) of this section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd	Sandstone	10	5
Do	Shale	16	8
More than 1,000,000 yd	Sandstone	16	8
Do	Shale	16	16

(5) Rock used shall not have less than 50 percent wear in 500 revolutions in the Los Angeles Rattler Test (AASAHTO T-96-70), shall not have less than 15 percent weight loss in 5 cycles of the Sodium Sulfate Test (ASTM C088, AASHTO T-1-4), and shall not contain less than 30 percent by volume of clay or clay minerals as determined by standard petrologic analytical tests, and shall not be acid forming or toxic forming.

(6) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the regulatory authority in lifts no thicker than 18 inches in order to—

(i) Achieve the densities designed to ensure mass stability;

(ii) Prevent mass movement;

(iii) Avoid contamination of the rock underdrain or rock core; and

(iv) Prevent formation of voids.

(7) The person who conducts the surface mining activities may use lifts of greater thickness than required under paragraph (b)(6) of this section if he has demonstrated to the regulatory authority by density monitoring tests that the density throughout the thickness of the lift is equal to or greater than the density specified in the design referred to in paragraph (b)(1) of this section, except that in no event shall lift thickness exceed 4 feet.

(8) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from the 24-hour duration, 100-year frequency storm or larger event specified by the regulatory authority. Sediment control structures shall be provided at the discharge of the diversion ditch before entry into the natural watercourse in accordance with § 715.17. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass runoff from a 24-hour duration, 100-year frequency storm. Diversion design shall comply with the requirements of § 715.17.

(9) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than lv:20h (5 percent). The vertical distance between terraces shall not exceed 50 feet.

(10) Drainage shall not be directed over the outslope of the fill.

(11) The outslope of the fill shall not exceed lv:2h (50 percent). The regulatory authority may require a flatter slope.

(c) *Disposal of excess spoil: Head-of-hollow fills.*—Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in paragraphs (a) and (b) of this section and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site approved by the regulatory authority to the approximate elevation of the ridgeline. A

rock core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the some elevation as the low point of the adjacent ridge line, the fill must be designed as specified in paragraph (b) of this section with diversion of runoff around the fill except if such fills are associated with a mountaintop removal operation and are located at or near the resultant ridge line or in the case of a contour mining operation, such fill may be located at or near the mined seam of coal, providing that such fill is not larger than 250,000 cubic yards.

(2) The alternative rock core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(i) The fill shall have along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of paragraph (b) of this section.

(ii) A filter system to insure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(iii) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be lv:33h (3 percent). Instead of the requirements of paragraph (a) of this section, a drainage pocket may be maintained at the head of the fill during and after construction to intercept surface runoff and discharge the runoff through or over the rock drain if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

(3) The drainage control system shall be capable of safely passing the runoff from a 24-hour, 100-year storm, or larger event, as specified by the regulatory authority.

B. 30 CFR § 715.17(e) is amended as follows:

1. Paragraph (e) (1)-(e)(9) are revised.

2. New paragraphs (e) (10)-(23) are added.

§ 715.171 Protection of the Hydrologic system.

* * * * *

(e) *Sedimentation ponds.*—(1) *General requirements.* Sedimentation ponds shall be used individually or in series and shall—

(i) Be constructed before any disturbance of the disturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; and

(iii) Meet all the criteria of this section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a sediment storage volume equal to—

(i) The accumulated sediment volume from the drainage area to the pond for a minimum of three years. Sediment storage volume shall be determined using the universal soil loss equation, gully erosion rates, and sediment delivery ratio converted to sediment volume using the sediment density, or other empirical methods established by the regulatory authority and based upon actual sedimentation pond studies; or

(ii) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount based upon sediment yield to the pond if required by the regulatory authority. The regulatory authority may approve a sediment storage volume of no less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area if the person who conducts the surface mining activities demonstrates that sediment removed by other sediment control measures is equal to the reduction in sediment storage volume.

(3) *Detention time.* Sedimentation ponds shall provide a 24-hour theoretical detention time for the water inflow or runoff entering the pond from a 10-year 24-hour precipitation event. Runoff diverted in accordance with paragraphs (c) and (d) of this section, away from the disturbed drainage areas and not passed through the sedimentation pond need not be considered in sedimentation pond design. In determining the runoff volume, the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered.

(i) The regulatory authority may approve a theoretical detention time of not less than 10 hours, when the person who conducts the surface mining activities demonstrates that—

(A) The improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, inflow and outflow facility locations, baffles to decrease inflow velocity and short circuiting, and surface areas; and

(B) The pond effluent is shown to achieve and maintain applicable effluent limitations.

(ii) The regulatory authority may approve a theoretical detention time of not less than 10 hours when the person who conducts the surface mining activities demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(iii) The regulatory authority may approve a theoretical detention time of less than 24 hours to any level of detention time when the person who conducts the surface mining activities demonstrates to the regulatory authority that the chemical treatment process to be used—

(A) Will achieve and maintain the effluent limitations;

(B) Is harmless to fish, wildlife, and related environmental values;

(C) Is planned under the supervision of a registered professional engineer; and

(D) Shall be operated by a qualified person.

(iv) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under paragraphs (e)(3) (i)-(iii) of this section shall be included in the permit application.

(4) The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a spillway approved by the regulatory authority, and shall have a discharge rate to achieve and maintain the required theoretical detention time. The dewatering device shall not be located at a lower elevation than the maximum elevation of the design sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations.

(7) There shall be no overflow through the emergency spillway during the passage of the runoff resulting from the 10-year 24-hour precipitation event through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the required sediment storage volume. With the approval of the regulatory authority, additional permanent water storage may be provided

above that required for sediment storage if the person who conducts the surface mining activities demonstrates that applicable effluent limitations will be achieved and maintained. Upon the approval of the regulatory authority for those cases where additional permanent water storage is provided above that required for sediment under paragraph (f) of this section, sediment removal may be delayed until the remaining volume of permanent storage has decreased to 40 percent of the required sediment storage provided the theoretical detention time is maintained.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year 24-hour precipitation event, or larger event as specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be as specified by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the reservoir with the emergency spillway flowing at design depth.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement unless it has been demonstrated to the regulatory authority that the material used and the design will insure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5 where H is the height of the embankment as measured from the upstream toe of the embankment.

(13) The upstream and downstream side slopes of the settled embankment shall not be less than lv:5h with neither slope steeper than lv:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surface sloped to no steeper than lv:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation and the fill brought up in horizontal layers of such thickness as required by the regulatory authority to facilitate compaction. Compaction shall be conducted as specified by the regulatory authority in order to achieve stability.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year 24-hour precipitation event, or a larger event if specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5 or such higher safety factor as designated by the regulatory authority to insure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be graded, fertilized, seeded, and mulched in accordance with § 715.20 immediately after the embankment is completed. *Provided*, That the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stablized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 715.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216-3. Each person who conducts surface mining activities shall deliver to the regulatory authority any report or notification required under 30 CFR 77.216-3 whether or not the pond meets the criteria of 30 CFR 77.216(a).

(21) Each sedimentation pond shall be removed and the affected land regraded and revegetated in accordance with § 715.14 and § 715.20, unless approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments in paragraph (e)6 of this Section.

(22) (i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health and safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with paragraphs (e)(1) through (e)(22) of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

PART 717—UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

A. 30 CFR § 717.17(e) is amended as follows:

1. Paragraphs (e) (1)-(e)(9) are revised.

2. New paragraphs (e) (10)-(23) are added.

§ 717.171 Protection of the hydrologic system.

* * * * *

(e) *Sedimentation ponds.* (1) General requirements: Sedimentation ponds shall be used individually or in series and shall—

(i) Be constructed before any disturbance of the disturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; and

(iii) Meet all the criteria of this section.

(2) Sediment storage volume: Sedimentation ponds shall provide a sediment storage volume equal to—

(i) The accumulated sediment volume from the drainage area to the pond for a minimum of 3 years. Sediment storage volume shall be determined using the universal soil loss equation, gully erosion rates, and sediment delivery ratio converted to sediment volume using the sediment density, or other empirical methods established by the regulatory authority and based upon actual sedimentation pond studies; or

(ii) 0.1 acre-foot for each acre of disturbed area within the upstream drainage area or a greater amount based upon sediment yield to the pond if required by the regulatory authority. The regulatory authority may approve a sediment storage volume of no less than 0.035 acre-foot for each acre of disturbed area within the upstream drainage area if the person who conducts the surface mining activities demonstrates that sediment removed by other sediment control measures is equal to the reduction in sediment storage volume.

(3) Detention time: Sedimentation ponds shall provide a 24-hour theoretical detention time for the water inflow or runoff entering the pond from a 10-year 24-hour precipitation event. Runoff diverted in accordance with paragraphs (c) and (d) of this section, away from the disturbed drainage areas and not passed through the sedimentation pond need not be considerredd on sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures, and onsite sediment control practices shall be considered.

(i) The regulatory authority may approve a theoretical detention time of not less than 10 hours, when the person who conducts the surface mining activities demonstrates that—

(A) The improvement in sediment removal efficiency is equivalent to the reduction in detention time as a result of pond design. Improvements in pond design may include but are not limited to pond configuration, inflow and outflow facility locations, baffles to decrease inflow velocity and short circuiting, and surface areas; and

(B) The pond effluent is shown to achieve and maintain applicable effluent limitations.

(ii) The regulatory authority may approve a theoretical detention time of not less than 10 hours when the person who conducts the surface mining activities demonstrates that the size distribution or the specific gravity of the suspended matter is such that applicable effluent limitations are achieved and maintained.

(iii) The regulatory authority may approve a theoretical detention time of less than 24 hours to any level of detention time when the person who conducts the surface mining activities demonstrates to the regulatory authority that the chemical treatment process to be used—

(A) Will achieve and maintain the effluent limitations;

(B) Is harmless to fish, wildlife, and related environmental values;

(C) Is planned under the supervision of a registered professional engineer; and

(D) Shall be operated by a qualified person.

(iv) The calculated theoretical detention time and all supporting documentation and drawings used to establish the required detention times under paragraphs (e)(3) (i)–(iii) of this section shall be included in the permit application.

(4) The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a spillway approved by the regulatory authority, and shall have a discharge rate to achieve and maintain the required theoretical detention time.

The dewatering device shall not be located at a lower elevation than the maximum elevation of the design sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent shortcircuiting.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations.

(7) There shall be no outflow through the emergency spillway during the passage of the runoff resulting from the 10-year 24-hour precipitation event through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds when the volume of sediment accumulates to 60 percent of the required sediment storage volume. With the approval of the regulatory authority, additional permanent water storage may be provided above that required for sediment storage if the person who conducts the surface mining activities demonstrates that applicable effluent limitations will be achieved and maintained. Upon the approval of the regulatory authority for those cases where additional permanent water storage is provided above that required for sediment under paragraph (f) of this section, sediment removal may be delayed until the remaining volume of permanent storage has decreased to 40 percent of the required sediment storage provided the theoretical detention time is maintained.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year 24-hour precipitation event, or larger event as specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be as specfied by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the reservoir with the emergency spillway flowing at design depth.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement unless it has been demonstrated to the regulatory authority that the material used and the design will insure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of (H+35)/5 where H is the height of the embankment as measured from the upstream toe of the embankment.

(13) The upstream and downstream side slopes of the settled embankment shall not be less than 1v:5h with neither slope steeper than 1v:2h. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surface sloped to no steeper than 1v:1h, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation and the fill brought up in horizontial layers of such thickness as required by the regulatory authority to facilitate compaction. Compaction shall be conducted as specified by the regulatory authority in order to achieve stability.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year 24-hour precipitation event, or a larger event if specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5 or such

higher factor as designated by the regulatory authority to insure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be graded, fertilized, seeded, and mulched in accordance with § 717.20 immediately after the embankment is completed, *Provided*, that the active, upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 717.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216-3. Each person who conducts surface mining activities shall deliver to the regulatory authority any report or notification required under 30 CFR 77.216-3 whether or not the pond meets the criteria of 30 CFR 77.216(a).

(21) Each sedimentation pond shall be removed and the affected land regraded and revegetated in accordance with §§ 717.14 and 717.20, unless approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments in paragraph (k) of this section.

(22) (i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health or safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with paragraphs (e)(1) through (e)(22) of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimination pond, will achieve and maintain applicable effluent limitations, and maps depiciting the location of all onsite sedimentation control measures.

[FR Doc. 78-31957 Filed 11-13-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1005-6]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS—MASSACHUSETTS

Proposed Rulemaking: Approval of Use of Higher Sulfur Fuel at Crane & Co.'s Pioneer Mill, Dalton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Massachusetts State implementation plan (SIP) which would allow Crane & Co.'s Pioneer Mill in Dalton, Mass. to burn higher sulfur content fuel than presently required by the federally-approved SIP. The revision is being proposed on the basis of a review of sulfur dioxide (SO_2) levels in the Dalton area, wind speed and direction data, and dispersion modeling results. The evaluation indicates that the national ambient air quality standards for SO_2 will be protected.

DATES: Comments must be received on or before December 14, 1978.

ADDRESSES: Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 2113, J. F. K. Federal Building, Boston, Mass. 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460; and Department of Environmental Quality Engineering, Air and Hazardous Materials Division, Room 320, 600 Washington Street, Boston, Mass. 02111.

Comments should be submitted to the Regional Administrator, Region I, Environmental Protection Agency, Room 2203, J. F. K. Federal Building, Boston, Mass. 02203.

FOR FURTHER INFORMATION CONTACT:

David Stonefield, Air Branch, EPA Region I, Room 2113, J. F. K. Federal Building, Boston, Mass. 02203, 617-223-5609.

SUPPLEMENTARY INFORMATION: On August 31, 1978 the Commissioner of the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a State implementation plan (SIP) revision to allow Crane & Co.'s Pioneer Mill in Dalton to burn residual fuel oil with a sulfur content not to exceed 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2 percent sulfur content by weight). The mill is presently limited to use of residual fuel oil with a sulfur content not to exceed 0.55 pounds per million Btu heat release potential (approximately equivalent to 1.0 percent sulfur content by weight).

This source was previously evaluated as part of a SIP revision submitted by the DEQE on April 14, 1977, which proposed a relaxation of the sulfur in fuel limitation to 2.2 percent for all sources in the Berkshire air pollution control district (APCD). The SIP revision, which would bring the federally-approved SIP and DEQE regulations into conformance with chapter 353 of the Acts of 1974 (passed by the State Legislature on June 11, 1974), was approved by EPA in the FEDERAL REGISTER published on March 24, 1978 (43 FR 1234) with the exception of two sources. These sources, Kimberly-Clark's Columbia Mill and Crane & Co.'s Pioneer Mill, were predicted by computer dispersion modeling (Valley model) to cause violations of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2) and thus had to be limited to the 1.0 percent sulfur content requirement of the original SIP.

The DEQE subsequently reevaluated the modeling results using actual air quality and meterological data collected at ambient monitoring stations established and operated by Crane & Co. The monitoring stations were selected by EPA and DEQE to measure SO_2 impacts in the area to the southeast of the source where the model predicted NAAQS violations and to provide an indication of population exposure to general SO_2 levels in the Dalton area. Meteorological data were recorded at the Pioneer Mill.

SO_2 levels at the source-oriented site did not exceed 13 percent of the 3-hour secondary NAAQS of 0.5 ppm and 24 percent of the 24-hour primary standard of 0.14 ppm.

Analyses of these data demonstrate the conservativeness of the Valley model when it is applied in this particular location and support DEQE's conclusion that the burning of 2.2 percent sulfur oil at Crane & Co.'s Pioneer Mill will not jeopardize the NAAQS. The Valley model is judged to be overly conservative for the Dalton area, based on the following:

1. The maximum SO_2 Concentrations (3 hour: 0.067 ppm and 24 hour: 0.033 ppm) measured at the source-oriented site do not occur when the Pioneer Mill is upwind of the monitor. Maximum levels are associated with winds parallel to the valley. When the plant is upwind of this monitor (cross-valley winds), the SO_2 concentrations never exceed 0.020 ppm, 1-hour concentration.

2. The maximum SO_2 concentrations (3 hour: 0.106 ppm and 24-hour: 0.043 ppm) measured at the population-oriented site are associated with southwest winds which place both the source and urban Pittsfield upwind of the monitor. In fact, a large percentage of the elevated levels at both sites occur with southwest winds and during the same or overlapping time periods.

This SIP revision is not subject to the new requirements for prevention of significant deterioration (PSD) in 40 CFR 52.21. First, the source does not need a PSD permit because fuel changes are specifically excluded from the permit requirement; and second, the SIP revision, resulting in the increased emissions, does not consume increment because the original SIP revision for sources in the Berkshire APCD, proposing an increase in allowable emissions from 1.0 percent sulfur oil to 2.2 percent sulfur oil, was pending in the Regional Office on August 7, 1977 (40 CFR 52.21(b)(11)(i)).

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: November 1, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

[FR Doc. 78-31881 Filed 11-13-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 1005-5]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the Puget Sound Air Pollution Control Agency To Seattle Steam Corp.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Puget Sound Air Polution Control Agency (PSAPCA) to Seattle Steam Corp. The order requires the company to bring air emissions from its heating plant in Seattle, Wash. into compliance with certain regulations contained in the federally approved Washington state implementation plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. in addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 14, 1978.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Avenue, Seattle, Wash. 98101. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth D. Brooks, Environmental Protection Agency M/S 513, 1200 Sixth Avenue, Seattle, Wash. 98101, telephone 206-442-1387.

SUPPLEMENTARY INFORMATION: Seattle Steam Corp. operates a heating plant at Seattle, Wash.

The order under consideration addresses emissions from the Riley oil-fired boiler at the facility, which is subject to PSAPCA regulation I, section 9.03(b)(1). The source is unable to comply with the Washington SIP at this time. The regulation limits visual emissions and is part of the federally approved Washington State implementation plan. The order requires final compliance with the regulation by July 1, 1979 through testing to determine requirements to bring the boiler into compliance and implementing the selected schedule to meet final compliance. The source has consented to the terms of the order.

Because this order has been issued to a major source of visual emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA proposes to approve the order because it satisfies the appropriate requirements of this subsection.

In the matter of: Seattle Steam Corp., Seattle, Washington, Delayed compliance order No. 78-208-1.

Whereas, the Congress of the United States amended section 113(d) of the Federal Clean Air Act by 42 U.S.C. 7401, etc., to procure the attainment of emission standards by noncomplying sources in the United States and the procedure outlined is for the local air pollution control agencies to prepare a "Delayed Compliance Order" which would be reviewed and approved by the Department of Ecology and the Environmental Protection Agency, and

Whereas, the Seattle Steam Corp., Seattle, Wash., operates a Riley oil-fired boiler that is presently in noncompliance with the emission standards and this Order is being issued pursuant to section 113(d) of the Clean Air Act and RCW 70.94.141, RCW 70.94.155, RCW 70.94.211, RCW 70.94.221 and regulation I of the Puget Sound Air Pollution Control Agency, and

Whereas, this order, pursuant to the Federal Clean Air Act and State law, contains a schedule for compliance, interim requirements and reporting requirements, and

Whereas, Puget Sound Air Pollution Control Agency has issued public notice of this order and of a public hearing before the Board of Directors of the Agency to consider the order, pursuant to section 113(d) of the Federal Clean Air Act and the requirements of the Washington State implementation plan (WSIP), and

Whereas, the Board has considered the entire record and the statements made for and against the compliance order and the Board being fully advised in the premises; makes the following:

FINDINGS

I

On May 16, 1978, the U.S. Environmental Protection Agency issued a notice of violation pursuant to section 113(a)(1) of the Clean Air Act, to the Seattle Steam Corp. upon the finding that the Riley oil-fired boiler is in violation of section 9.03(b)(1) of the Puget Sound Air Pollution Control Agency, a part of the applicable WSIP, as defined in section 110(d) of the Act.

The observations of section 9.03(b)(1) of regulation I were made by air pollution inspectors employed by the Puget Sound Air

Pollution Control Agency and said observations are of record and on file in the office of the Puget Sound Air Pollution Control Agency.

Based upon the above findings, the Board does hereby enter the following:

ORDER

It is hereby determined that the schedule for compliance is as expeditious as practicable and that the terms of this order are in compliance with section 113(d) of the Act and are in furtherance of the public health, safety and welfare of the inhabitants of the Puget Sound area. Therefore, it is hereby ordered:

1. That the Seattle Steam Corp. will comply with Puget Sound Air Pollution Control Agency regulation I, section 9.03(b)(1) in accordance with the following schedule on or before the dates specified therein:

a. Conduct testing of combustion conditions including but not limited to increasing stack temperature, using fuel additives, firing less polluting fuel mixtures, varying excess oxygen and investigating low excess air burners as scheduled below:

(1) Conduct combustion tests—completed November 9, 1978.

(a) October 17-22, 1978 test No. 1. Raise flue gas to 420° F, use fuel additive.

(b) October 23-27, 1978 test No. 2. Adjust flue gas and fuel additive depending on test No. 1 results.

(c) October 30, 1978 test No. 3. Fuel oil/natural gas firing.

(d) November 1-17, 1978. Test further combinations based on previous tests.

(2) Survey and investigate low excess air burners—completed November 9, 1978.

(3) Complete decision on method to meet compliance—December 31, 1978.

(4) Submit notice of construction as required—December 31, 1978.

(5) If compliance method selected is by combustion modification compliance shall be achieved by December 31, 1978.

b. If low excess air burners are selected to achieve compliance the following schedule applies:

(1) Submit notice of construction—December 31, 1978.

(2) Complete installation—June 31, 1979.

(3) Final compliance by July 1, 1979.

(4) Demonstrate compliance by November 30, 1979.

c. Quarterly progress reports:

Due date:	*Quarter ending*
(1) Jan. 15, 1979	Dec. 31, 1978.
(2) Apr. 15, 1979	Mar. 31, 1979.

2. That the Seattle Steam Corp. shall comply with the following interim requirements:

a. That the Seattle Steam Corp. shall take all precautions to minimize the emission of smoke and particulate matter from the subject's oil-fired boilers to the maximum degree practical.

b. During the time this order remains in effect the Seattle Steam Corp. shall comply with section 9.03 of regulation I at all times except when conducting tests outlined in section 1(a)(1) by using lower polluting fuels or such other measures deemed necessary.

These requirements are determined to be the best, reasonable and practicable interim system of emission reduction (taking into account the requirements of which compliance is ordered in section 1 above) and are necessary to avoid an imminent and substantial endangerment to the health of persons and to assure compliance with Puget Sound Air Pollution Control Agency regulation I, section 9.03(b)(1) insofar as the Seattle Steam Corp. is able to comply during the period this order is in effect.

3. That the Seattle Steam Corp. is not relieved by this order form compliance with any requirements imposed by the Washington State implementation plan and/or the courts pursuant to RCW 70.94.710 and RCW 70.94.715 during any period of imminent and substantial endangerment to the health of persons.

4. The Seattle Steam Corp. shall comply with the following reporting requirements specified below:

a. Monitoring. (1) Maintain existing system of opacity monitoring and recording.

b. Reporting requirements. (1) No later than 5 days after any date for achievement of an incremental of final compliance specified in section 1 of this order, Seattle Steam Corp. shall notify the Agency in writing of its compliance or noncompliance (state reasons for noncompliance) with the requirement. If delay is anticipated in meeting any requirement of this order, Seattle Steam Corp. shall immediately notify the Agency in writing of the anticipated delay and reason therefore. Notification to the Agency of any anticipated delay does not preclude the Agency taking enforcement action.

(2) The Agency shall be notified at least 24 hours in advance of each test specified in section 1 a(1).

(3) All submittals and reports pursuant to this Order shall be made to: Mr. A. R. Dammkoehler, Air Pollution Control Officer, Puget Sound Air Pollution Control Agency, 410 West Harrison Street, P.O. Box 9863, Seattle, Wash. 98109, 206-344-7330.

5. Nothing in this order is to be construed, in any way, as to prevent enforcement and/or abatement action for any violation of any applicable law, rule or regulation of any other governmental agency.

6. The Seattle Steam Corp. is hereby notified that its failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120 of the Clean Air Act. In the event of such failure, the Seattle Steam Corp. will be formally notified by the U.S. Environmental Protection Agency or its delegate of its noncompliance pursuant to section 120(b)(3) of the Act and to any applicable regulation promulgated thereunder.

7. This order shall be terminated by the Board of Directors if it is determined on the record after notice and hearing that inability to comply with Puget Sound Air Pollution Control Agency regulation I, section 9.03(b)(1) no longer exists.

8. Failure to comply with any condition and/or complete any specific action by its related date without prior written approval of the Agency shall subject the Seattle Steam Corp. to appropriate penalties and/or legal remedies as provided in RCW 70.94 for any violation of regulation I: Provided further that this order does not prevent the Agency, during the term of the order, from issuing to Seattle Steam Corp. notices of violation of any violation of regulation I.

9. This order is issued by the Puget Sound Air Pollution Control Agency Board of Directors effective October 12, 1978, pursuant to Puget Sound Air Pollution Control Agency, regulation I, section 3.11 and RCW 70.94.141, RCW 70.94.155, RCW 70.94.211 and RCW 70.94.221 which are part of the Washington State implementation plan.

Passed and approved at a regular meeting of the Board of Directors of the Puget Sound Air Pollution Control Agency held this 12th day of October 1978.

Puget Sound Air Pollution Control Agency.

GENE LOBE,
Director.

Attest:

ARTHUR R. DAMMKOEHLER,
Air Pollution Control Office.

Approved as to Form:

KEITH D. MCGOFFIN,
Agency Attorney.

If the order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Washington SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order on 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

Dated: November 2, 1978.

L. EDWIN COATE,
Acting Regional Administrator,
Region 10.

[FR Doc. 78-31883 Filed 11-13-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 993-3]

STATE AND FEDERAL ADMINISTRATIVE ENFORCEMENT OF IMPLEMENTATION PLAN REQUIREMENTS AFTER STATUTORY DEADLINES

Proposed Delayed Compliance Order for the City of Rye Municipal Incinerator, Rye, N.Y.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The EPA proposes to issue an administrative order requiring The City of Rye, N.Y. ("the City") to bring emissions from its Municipal Incinerator into compliance with certain regulations contained in the federally-

approved New York State Implementation Plan ("SIP"). The proposed order would, because of the inability of the source to comply with these regulations at this time, establish a schedule requiring final compliance at the Incinerator by no later than July 1, 1980. Source compliance with the terms of this order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act ("the Act") for violation of the SIP regualtions covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on the EPA's proposed issuance of the order.

DATES: Written comments and request for a public hearing must be received on or before December 14, 1978.

All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after thirty days prior notice of the date, time and place of the hearing has been given in this publication.

ADDRESSEES: Comments and requests for a public hearing should be submitted to the Director, Enforcement Division, Region II, USEPA, 26 Federal Plaza, New York, N.Y. 10007. Material supporting this order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Walter E. Mugdan, Esq., General Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, N.Y. 10007, 212-264-4434.

SUPPLEMENTARY INFORMATION: The city of Rye, N.Y. operates a Municipal Incinerator for the disposal of its solid waste. The proposed order addresses emissions from this source, which are subject to sections 201.2(b) and 222.3 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, parts of the federally-approved New York SIP. The order requires the City to investigate alternative modes of solid waste disposal, as well as the upgrading of its existing Incinerator. Violative operation of the Incinerator must be terminated by March 15, 1979, unless the City can make certain specified showings, in which case such operation may continue until July 1, 1980.

The proposed order satisifes the applicable requirements of section 113(d) of the Act. If it is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act for violations of the regulations covered by the order during the period it is in effect. Enforcement against the source under the citizen suit provisions of section 304 of the Act would be similarly precluded. Failure by a source to achieve final compliance by July 1, 1979, will result in a requirement to pay a noncompliance penalty under section 120 of the Act. In the event of such failure, formal notice, pursuant to section 120(b)(3) and any regulations promulgated thereunder, will be provided to such source.

Comments received by the date specified above will be considered in determining whether EPA should issue these orders. Testimony given at any public hearing concerning the orders will also be considered. After the public comment period and any public hearing, the Administrator of the EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR Part 65 will be promulgated by EPA soon,[1] and will contain the procedure for EPA's issuance, approval and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn and replaced by a notice promulgating these new regulations.

(42 U.S.C. §§ 7413, 7601.)

Dated: October 12, 1978.

ECKARDT C. BECK,
Regional Administrator,
Region II.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.370, Federal delayed compliance orders issued under section 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order:

[Order No. 60225]

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II

CONSENT ORDER, INDEX NO. 60225

In the matter of Rye Municipal Incinerator (Rye, N.Y.).

PRELIMINARY STATEMENT

On May 5, 1977, the United States Environmental Protection Agency ("EPA") Region II, issued an administrative Order to the City of Rye, pursuant to Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a) ("the Act"), establishing a compliance schedule pursuant to which existing violations of applicable portions of the New York State Implementation Plan ("SIP") (approved by the Administrator of the EPA pursuant to Section 110 of the Act, 42 U.S.C. § 7410) at its Municipal Incinerator would be corrected.

The Order provided that the Incinerator must be in final compliance with Sections 201.2(b) and 222.3, Title 6, Official Compilation of codes, Rules and Regulations of the State of New York ("NYCRR"), by no later than July 1, 1981. This date reflected the then projected date of completion of the Grasslands Resource Recovery facility, to be built by the County of Westchester pursuant to its County Solid Waste Plan.

The Clean Air Act Amendments of 1977, which were enacted into law on August 7, 1977, provide that any administrative Orders issued pursuant to Section 113(a) shall become void one year after the enactment of those Amendments, unless they have by that time been modified to comply with the requirements of Section 113(d). (Section 113(d)(12).) Section 113(d) requires, inter alia, that administrative Orders issued thereunder may not permit delays in compliance with SIP regulations beyond July 1, 1979 or three years after the date for final compliance with the regulation(s) in question, whichever is later. (Section 113(d)(1)(D).) The effective final compliance date for 6 NYCRR §§ 201.2(b) and 222.3 in the New York portion of the New Jersey-New York-Connecticut Interstate Air Quality Control Region ("AQCR"), in which the rye Municipal Incinerator is located, was July 1, 1977, the date for attainment of the primary National Ambient Air Quality standards for particulate matter in that AQCR established pursuant to Section 110 of the Clean Air Act as amended in 1970. Thus, an administrative Order issued to the City of Rye with respect to that Incinerator may not, pursuant to Section 113(d) of the Clean Air Act as amended in 1977, extend compliance with the above-mentioned SIP regulations beyond July 1, 1980.

Pursuant to Section 113(d)(12), therefore, the above-mentioned administrative Order became void on August 7, 1978.

FINDINGS

1. The EPA finds that the Rye Municipal Incinerator is operating in violation of 6 NYCRR § 201.2(b), in that it does not have a valid certificate to Operate issued by the New York State Department of Environmental Conservation ("DEC"), and 6 NYCRR § 222.3, in that it emits smoke of a shade or opacity in excess of the limitations established in that section.

2. Such violations have continued beyond the 30th day after EPA's issuance to the city of Rye, on September 29, 1976, of a Notice of Violation (Index No. 60225), pursuant to Section 113(a)(1) of the Act.

3. The Grasslands Resource Recovery Facility, earlier anticipated by the Westchester County Solid Waste Plan to be completed by mid-1981, has not yet passed the planning stages, and cannot be expected to be built by that time.

4. The City of Rye has acted in good faith, and the City can, by meeting the terms of this Order, bring the emissions from its Municipal Incinerator into compliance with ap-

[1] Published at 43 FR 44522 (September 28, 1978).

plicable SIP requirements prior to July 1, 1980. The EPA has determined that the schedule embodied herein will provide for such compliance as expeditiously as practicable.

5. The EPA has determined that there exist certain interim control measures, required pursuant to Paragraph (C) of the administrative Order issued to the City on May 5, 1977, the implementation of which can minimize air pollution emissions during the period of delayed compliance at the Incinerator permitted by the terms of this Order, and these measures are therefore included herein.

6. Public notice, opportunity for a public hearing, and thirty days notice to the State of New York have been provided.

ORDER

Based upon the foregoing, and pursuant to Section 113(d) of the Act, it is hereby *ordered:*

That the City of Rye (hereinafter "the City") complete the actions specified on or before the dates set forth in the following schedule:

I. (A) On or before August 1, 1978, the City shall commence a thorough study of the feasibility and advisability of installing a sewage and refuse-composting facility to replace its Municipal Incinerator, the construction of some other sort of resource-recovery refuse disposal system, or the upgrading of the Municipal Incinerator.

(B) On or before December 15, 1978, the City shall complete such study, and submit to the EPA a written report of its findings and recommendations. The study shall include projected time schedules for the implementation of the alternatives considered. The EPA will, by January 15, 1979, send to the City its written comments on the City's report required by this Paragraph.

(C) By February 15, 1979 the City may enter into a binding commitment to implement one of the various options studied, and submit an incremental compliance schedule to the EPA which would provide for such implementation as expeditiously as practicable.

(D) If the City enters into a binding commitment as contemplated in Paragraph (C), above, EPA will review the schedule submitted by the City pursuant thereto; if it is approved, it shall be incorporated into this Order by reference, and shall be fully enforceable as a portion hereof.

(E) Subject to the exceptions set forth in Paragraph (F), below, by March 15, 1979 the City of Rye shall terminate operation of its Municipal Incinerator (until such time, if ever, as the Incinerator has been brought into full compliance with all applicable emission limitations, and has received a valid Certificate to Operate from the New York State Department of Environmental Conservation, and all other necessary federal or State permits).

(F) On or before December 15, 1978 the City may, if it so chooses, submit to EPA a request for permission to continue operation at its Municipal Incinerator during the period of construction of a replacement refuse disposal facility (but not later than July 1, 1980). Such request will only be approved by EPA subject to the following conditions:

1. Receipt, on or before December 15, 1978, of a complete economic analysis demonstrating that such continued operation of the Incinerator during the period of construction (but not later than July 1, 1980) is of significant importance to the financial condition of the City; and

2. Entrance into a binding commitment, by the City, on or before February 15, 1979, to construct a facility which will enable resources to be recovered from the refuse being disposed of (such as the recovery of resources in the form of heat, fuel, or compost).

EPA's determination with respect to any such request from the City will be communicated in writing to the City by no later than January 1, 1979. If such request is approved, EPA's approval shall specify the date on which the Rye Municipal Incinerator must be closed, which will in no event be later than July 1, 1980. Such date, specified in such approval, will be incorporated into this Order by reference.

(G) If the City does not enter into a binding commitment as contemplated by Paragraph (C), above, or if EPA finds that the schedule submitted by the City pursuant to that Paragraph does not provide for implementation of the selected alternative as expeditiously as practicable, the City shall terminate operation of the Rye Municipal Incinerator on or before March 15, 1979 notwithstanding any prior approval by the EPA of a request by the City made pursuant to Paragraph (F), above. (Such termination shall continue until such time, if ever, as the Incinerator has been brought into full compliance with all applicable emission limitations, and has received a valid Certificate to Operate from the New York State Department of Environmental Conservation, and all other necessary federal or State permits.)

(H) Beginning on August 7, 1978, and continuing as long as the Rye Municipal Incinerator is in operation, the City shall comply with the following operating and maintenance procedures therefor in order to minimize excess emissions of air contaminants:

1. Inspect and repair the water sprays on a weekly basis.

2. Submit to EPA spray monitoring meter data on a monthly basis.

3. Maintain and calibrate opacity monitors, temperature gauges, and opacity recording equipment at regular intervals as prescribed by the manufacturers.

4. Submit to EPA on a monthly basis:

a. Furnace temperature and smoke opacity charts;

b. An explanation in writing of occasions upon which furnace temperatures are less than 1400 F. for 10 percent or more of the burning time; and

c. An explanation in writing of periods when opacity exceeds 20 percent.

5. When starting up its Incinerator, the City shall use only dry types of waste and exclude cardboard, paper and other such materials which tend to produce high fly-ash emissions.

6. An experienced operator must be stationed at the storage pit to segregate and prevent the charging of objectionable materials, such as tires, appliances and large metal objects.

7. The quantity of underfire air shall be strictly limited to the amount necessary to adequately support combustion and provide necessary cooling for the grates; overfire and secondary air should be adjusted to keep smoke emissions to a minimum.

8. The Incinerator shall be inspected weekly and necessary repairs on the refractory and grates made promptly.

9. A stockpile of replacement parts shall be maintained at all times.

II. (A) If compliance with any incremental step, required by the above Paragraphs, is not or cannot be achieved in a timely manner, the City shall submit to EPA in writing not later than five days after the date specified for completion of such step a full explanation for such failure (or expected failure) to comply. Notwithstanding any explanation for a delay (or anticipated future delay), any failure to meet the incremental steps by the dates specified hereinabove shall be deemed a violation of this Order and may subject the City to the remedies described in Section III, below.

(B) All submissions, notifications and reports to the EPA pursuant to the terms of this Order shall be made to Mr. Kenneth Eng, Chief, Air and Environmental Application Section, Status of Compliance Branch, Enforcement Division, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

III. Violation of any requirement of this Order may result in one or more of the following (to the extent such steps may be legally applicable):

(A) Enforcement of such requirement pursuant to Section 113 (a) (b) or (c) of the Act, including possible judicial action for an injunction and civil penalties, or criminal prosecution.

(B) Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of 6 NYCRR §§ 201.2(b) and 222.3, in accordance with the preceding paragraph.

(C) If such violation continues beyond July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act, 42 U.S.C. § 7420.

So ordered, effective immediately.

Dated: October 31, 1978.

DOUGLAS COSTLE,
Administrator, U.S.
Environmental Protection Agency.

CONSENT

The undersigned, having full authority to represent the City of Rye, has read the foregoing Order, believes it to be reasonable, and therefore consents to both its issuance and to its terms. The undersigned recognizes that the City of Rye is subject to all remedies provided in Section 113 of the Act for failure to comply with the terms of the foregoing Order, and explicitly waives any and all rights under any provision of law to challenge this Order.

Dated: September 25, 1978.

F. J. CULROSS,
for City of Rye.

[FR Doc. 78-31747 Filed 11-13-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[Docket No. 693; FRL 1005-2]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Approval of an Administrative Order Issued by the State of Connecticut's Department of Environmental Protection to E. I. du Pont de Nemours & Co.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Connecticut Department of Environmental Protection to E. I. du Pont de Nemours & Co. The order requires the company to bring air emissions from its fabric coating plant in Fairfield, Conn., into compliance with certain regulations contained in the federally approved Connecticut State implementation plan (SIP) by December 5, 1978. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before December 14, 1978.

ADDRESSES: Coments should be submitted to Director, Enforcement Division, EPA, Region I, Room 2103, John F. Kennedy Federal Building, Boston, Mass. 02203, Attn.: Air Compliance Clerk. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Wesley Marshall, attorney, 617-223-5600, at EPA, Region I, Room 2103, J. F. K. Building, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: E. I. du Pont de Nemours & Co. operates a fabric coating plant at Fairfield, Conn. The order under consideration addresses emissions from tower No. 3 at the facility, which are subject to section 19-508-18(e) of the Connecticut regulations for the abatement of air pollution. The regulation limits the emissions of particulates, and is part of the federally approved Connecticut State implementation plan. The order requires final compliance with the regulation by December 5, 1978, through modification of the production process. The source has consented to the terms of the order.

Because this order has been issued to a major source of particulate emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (sec. 304) would be similarly precluded. If approved, the order would also constitute an addition to the Connecticut SIP. All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601.)

REBECCA W. HANMER,
Acting Regional Administrator,
Region I.

OCTOBER, 26, 1978.

[FR Doc. 78-31749 Filed 11-13-78; 8:45 am]

[6560-01-M]

[40 CFR Part 65]

[FRL 991-6]

STATE AND FEDERAL ADMINISTRATIVE ORDERS PERMITTING A DELAY IN COMPLIANCE WITH STATE IMPLEMENTATION PLAN REQUIREMENTS

Proposed Delayed Compliance Order for the Town of Mars Hill, Maine

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to the town of Mars Hill, Maine. The order requires the town to bring air emissions from its open burning dump into compliance with certain regulations contained in the federally-approved Maine State Implementation Plan (SIP). Because the town is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by June 15, 1979. Source compliance with the order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the order.

DATES: Written comments must be received on or before December 14, 1978, and requests for a public hearing must be received on or before November 29, 1978.

All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after 21 days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, EPA, Region I, Room 2103, John F. Kennedy Building, Boston, Mass. 02203, Attention: Air Compliance Clerk. Material supporting the order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Wesley Marshall, attorney, 617-223-5600, or Mr. Robert O'Meara, engineer, 617-223-5610, both at EPA, Region I, Room 2103, JFK Building, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: The town of Mars Hill operates an open burning dump. The proposed order addresses emissions from the open burning dump which are subject to § 100.2.2 of the Maine Department of Environmental Protection Air Pollution Control Regulations. The regulation limits the emissions of particulate matter and carbon monoxide, and is part of the federally-approved Maine State Implementation Plan. The order requires final compliance with the regulation by June 15, 1979, and the source has consented to its terms.

The proposed order satisfies the applicable requirements of section 113(d)

of the Clean Air Act (the Act). If the order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provisions of the Act (section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether EPA should issue the order. Testimony given at any public hearing concerning the order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the order in 40 CFR Part 65.

The provisions of 40 CFR 65 will be promulgated by EPA soon,[1] and will contain the procedures for EPA's issuance, approval, and disapproval of an order under section 113(d) of the Act. In addition, part 65 will contain sections summarizing orders issued, approved, and disapproved by EPA. A prior notice proposing regulations for part 65, published at 40 FR 14876 (April 2, 1975), will be withdrawn, and replaced by a notice promulgating these new regulations.

(42 U.S.C. 7413, 7601.)

Dated: September 22, 1978.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.240, Federal delayed compliance orders issued under Section 113(d) (1), (3), and (4) of the Act, to reflect approval of the following order:

[Order No. A-SS-78-649]

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION I

In the matter of town of Mars Hill, Mars Hill, Maine, proceedings under section 113 of the Clean Air Act, 42 U.S.C. § 7413, order No. A-SS-78-649.

This order is issued pursuant to section 113(d)(1) of the Clean Air Act, 42 U.S.C. § 7413(d)(1). This order contains a schedule for compliance, interim requirements, and reporting requirements. Public notice, opportunity for a public hearing, and 30 days notice to the State of Maine have been provided pursuant to section 113(d)(1) of the Act.

FINDINGS

1. Former § 100.2.2 of the Maine Air Pollution Control Regulations ("Regulations") stated, in pertinent part, as follows:

Open burning of waste of any kind shall be prohibited after July 1, 1974, except that municipalities qualifying for an extension under the Solid Waste Management Plan shall cease open burning as a means of solid waste disposal by July 1, 1975.

2. Section 100.2.2 of the regulations is part of the Maine implementation plan submitted to and approved by EPA pursuant to section 110 of the Act. Although Maine has revised § 100.2.2, EPA disapproved this revision. Therefore, the implementation plan remains unchanged and § 100.2.2 of the regulations is still a "requirement of an applicable plan," as that phrase is used in section 113(a)(1) of the Act.

3. The town of Mars Hill, Maine, owns and operates an open burning disposal site which receives refuse from the towns of Mars Hill, Blaine, Bridgewater, and East Plantation.

4. On August 10, 1978, the Regional Administrator of EPA issued a notice of violation, pursuant to section 113(a)(1) of the Act, to the town of Mars Hill alleging violation of the above-cited regulation. Information received from the town manager of Mars Hill in a letter dated August 28, 1978, discussing the town's open burning of refuse, served as the basis for the issuance of this notice.

5. Representatives of the town of Mars Hill were afforded an opportunity to confer with EPA concerning the alleged violation, in accordance with section 113(a)(4) of the Act. The conference was held on September 7, 1978.

6. Comments made by the town manager of Mars Hill at the September 1978 conference concerning the town's continued open burning indicate that the violation of § 100.2.2 of the regulations has continued more than 30 days beyond Mars Hill's receipt of the notice of violation.

ORDER

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this order is as expeditious as practicable, and that the terms of this order comply with section 113(d) of the Act.

Definitions: For the purpose of this order:

1. "Solid waste facility" shall mean any land area or structure or combination of land area and structures, used for storing, salvaging, processing, reducing, or incinerating all solid waste projected to be generated by the town of Mars Hill. The system shall safisfy all applicable regulations and procedures prescribed by the Maine Department of Environmental Protection (DEP).

2. "Major system components" shall mean all components required for the proper operation of the solid waste facility. Such components shall include, but are not limited to: land, land disposal equipment, buildings, utilities, roadways, and fencing.

3. "Site location application" shall mean all information required for DEP Bureau of Solid Waste Management review of the proposed solid waste facility. Such information is specified in chapter IV, sections 406 and 407 of the DEP Solid Waste Management Regulations (Title 38, M.R.S.A. sec. 1304).

4. "Site preparation" shall mean all necessary physical modifications to the land disposal site in accordance with site engineering and design specifications that have been approved by the DEP.

5. "Progress report" means a written report outlining, as applicable, schedules for or progress toward: site approval by the Maine DEP, site preparation, and purchase and delivery of major system components.

It is hereby ordered:

I. That the town of Mars Hill will comply with the Maine implementation plan regulations in accordance with the following schedule for implementation of plans for a solid waste facility to dispose of the town's refuse on or before the dates specified:

(A) Submit a site location application to the DEP for approval not later than November 1, 1978.

(B) Submit a progress report to the Director of the Enforcement Division not later than May 1, 1979.

(C) Commence site preparation not later than May 15, 1979.

(D) Cease operation of the town's open burning dump in violation of all applicable state and federal emission limitations and commence operation of a solid waste facility not later than June 15, 1979.

II. That the town of Mars Hill shall comply with the following interim requirements which have been found to be reasonable and practicable and will avoid an imminent and substantial endangerment to the public health.

A. Burning shall be restricted to those times when wind conditions are favorable (considering residents living in the immediate area), and in no event shall exceed 3 days per week.

B. The Mars Hill dump shall be protected by a locked gate and a dump attendant on full-time duty.

III. That the town of Mars Hill is not relieved by this order from compliance with any requirement imposed by the Maine implementation plan, EPA, and/or the courts pursuant to section 303 during any period of imminent and substantial endangerment to the health of persons.

IV. That the town of Mars Hill shall comply with the following reporting requirements on or before the dates specified below:

A. Not later than 5 days after any date for achievement of an incremental step or final compliance specified in this order, the town of Mars Hill shall notify EPA in writing of its compliance, or noncompliance and reasons therefore, with the requirement. If delay is anticipated in meeting any requirement of this order, the town shall immediately notify EPA in writing of the anticipated delay and reasons therefore. Notification to EPA of any anticipated delay does not excuse the delay.

B. All submittals and notifications to EPA pursuant to this order shall be made to: Director, Enforcement Division, U.S. Environmental Protection Agency, J.F.K. Federal building, Room 2103, Boston, Mass. 02203, Attention: Air Compliance Clerk.

V. That while section 113(d)(1)(C) of the Act normally requires emission monitoring in an order, no reasonable system of emission monitoring for the town of Mars Hill's open burning dump site exists.

VI. The town of Mars Hill is hereby notified that failure to achieve final compliance by July 1, 1979, may result in a requirement to pay a noncompliance penalty under section 120 of the Act. In the event of such failure, the town will be formally notified, pursuant to section 120(b)(3) and any regulations promulgated thereunder, of its noncompliance.

VIII. This order shall be terminated in accordance with section 113(d)(8) of the Act if

[1] Published at 43 FR 44522 (Sept. 28, 1978).

the Administrator determines on the record, after notice and hearing, that an inability to comply with § 100.2.2 of the regulations no longer exists.

IX. Violation of any requirement of this order shall result in one or more of the following actions:

A. Enforcement of such requirement pursuant to sections 113(a), (b), or (c) of the Act, including possible judicial action for an injunction and/or penalties and, in appropriate cases, criminal prosecution.

B. Revocation of this order, after notice and opportunity for a public hearing, and subsequent enforcement of § 100.2.2 of the regulations in accordance with the preceding paragraph.

C. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to section 120 of the Act.

X. This order is effective upon publication in the FEDERAL REGISTER.

The town of Mars Hill, Maine, consents to the issuance of the subject order and acknowledges that it is a reasonable means to comply with the applicable regulations.

Dated: October 4, 1978.

THOMAS SAUCIER,
Authorized Source Signature.

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 78-31748 Filed 11-13-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-34-M]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

JAPANESE BEETLE

Availability of Final Environmental Impact Statement on the Control of the Japanese Beetle at Airports, Including Treatment of Aircraft Interiors Using Insecticides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability of the final environmental impact statement on the control of the Japanese beetle at airports, including treatment of aircraft interiors using insecticides.

SUMMARY: This gives notice that the Department has prepared the final environmental impact statement (EIS) on the control of the Japanese beetle at airports, including treatment of aircraft interiors using insecticides. The EIS (USDA, APHIS, (ADM)-78-1-F) was sent to the Environmental Protection Agency (EPA) on November 13, 1978, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

ADDRESS: Requests for a copy of the EIS should be addressed to the Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, Md. 20782.

Copies are available for public inspection at the following locations.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 302-E Administration Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 3505 25th Avenue, Gulfport, Miss. 39501.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 505 South Lenola Road, Blason II, First Floor, Moorestown, N.J. 08057.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 103, Building 2B, 620 Central Avenue, Alameda, Calif. 94501.

Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 2100 Boca Chica Boulevard, Suite 400, Brownsville, Tex. 78520.

FOR FURTHER INFORMATION CONTACT:

E. E. Crooks, 301-436-8249.

SUPPLEMENTARY INFORMATION: A notice of the Department's intent to prepare a draft environmental impact statement (DEIS) on the control of the Japanese beetle at airports, including treatment of aircraft interiors using insecticides, was published in the FEDERAL REGISTER (43 FR 17515) on April 25, 1978. After consideration of comments received in response to this notice, a preliminary DEIS was prepared and a notice of availability of the preliminary DEIS for review was published in the FEDERAL REGISTER (43 FR 21709) on May 19, 1978. Comments were invited from Federal, State, and local agencies and from members of the public.

All comments received were fully considered in the preparation of the draft environmental impact statement (DEIS) and the notice of availability of the DEIS for comment was published in the FEDERAL REGISTER (43 FR 26069) June 16, 1978. This provided a second opportunity for interested persons to participate in the preparation of the DEIS. Comments were due August 7, 1978.

All comments received pursuant to the notice of availability of the DEIS published June 16 were considered in the preparation of this document and the final EIS has been transmitted to the Environmental Protection Agency.

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

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

[FR Doc. 78-32158 Filed 11-13-78; 8:45 am]

[3410-15-M]

Rural Electrification Administration

DRAFT ENVIRONMENTAL IMPACT STATEMENT AND PUBLIC INFORMATION MEETINGS

Notice is hereby given that the Rural Electrification Administration (REA) intends to prepare an environmental impact statement in connection with a possible loan guarantee for East Kentucky Power Cooperative, P.O. Box 707, Winchester, Ky., 40391, (hereinafter referred to as "East Kentucky"), which would provide financing for construction of or otherwise acquiring generation facilities and associated transmission lines in the State of Kentucky. In connection with the proposed East Kentucky project, REA intends to hold public information meetings on December 5 and 6, 1978, to aid in the Federal decisionmaking process and formulation of issues to be addressed in the EIS.

East Kentucky has been and is exploring all viable alternatives and their environmental impacts for meeting the increasing power requirements of its member electric distribution cooperatives. Such studies are being conducted in consultation with and using input from Federal, State and local agencies and officials. East Kentucky has proposed the construction of two 600 MW coal-fired generating units and ancillary facilities at one of six new site locations in the State of Kentucky adequate for the installation of a minimum of two 600 MW class units.

In discussion among Federal agencies who may have responsibilities with respect to the proposed project, including REA, the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and U.S. Fish and Wildlife Service, the Rural Electrification Administration has been tentatively identified as lead agency and the other agencies as cooperating agencies in the preparation of a joint Federal environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969. REA will consider the need for additional generating capacity and the environmental effects of both structural and nonstructural alternatives. The environmental impact statement will consider the construction of two 600 MW generating units at a new location and, as is necessary to satisfy a cooperating agency's needs, the ultimate planned capacity at such location if it is adequate for the installation of additional units. East Kentucky has tentatively identified as preferred locations two site areas east of Beattyville; one area equidistant from Beattyville and Jackson; one area west of Jackson; one

area west of Irvine; and one area equidistant from Winchester and Irvine, Ky.

Public information meetings will be held in order to receive public input and comments concerning the need for the project, finalist alternatives and sites proposed by east Kentucky, other potential alternatives, significant issues that should be addressed in the Federal environmental impact statement and other matters concerning the proposal. A representative of the Rural Electrification Administration will act as chairperson for said meetings, and other involved Federal and State agencies have been invited to send representatives. The schedule for the meetings is:

December 5, 1978, 7:30 p.m. at the Lee County Circuit Court Room, Court House, Main Street, Beattyville, Ky.

December 6. 1978, 7:30 p.m. at the Hargett Elemenatry School, Highway 89, Hargett, Ky.

The Rural Electrification Administration encourages the public to attend these meetings and provide their input. Any person, group, or governmental entity which desires to make its comments, questions, and/or recommendations in writing may do so either at the meeting or by submitting them to Mr. Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. A record will be made of each meeting and comments made will be responded to in the draft environmental impact statement. In addition, the records of the proceedings will be held open through January 1, 1979.

Any questions prior to the meetings concerning the nature of the project or meetings should be directed to East Kentucky at the address given above or by calling 606-744-4812.

Any loan or loan guarantee which may be made pursuant to this potential application will be subject to, and release of funds thereunder will be contingent upon, REA's reaching satisfactory conclusions with respect to environmental effects. Final action will be taken only after compliance with the environmental statement procedures required by the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 9th day of November, 1978.

JOSEPH VELLONE,
Acting Administrator, Rural Electrification Administration.

[3510-04]

DEPARTMENT OF COMMERCE

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314.

Patent 3,984,839: Low Height VLF Antenna System; filed May 15, 1975, patented October 5, 1976.

Patent 3,984,980: Intergral Heater Thermal Energy Storage Device; filed August 5, 1975, patented October 12, 1976.

Patent 3,985,398: Fluidic Antiskid Circuit; filed April 8, 1975, patented October 12, 1976.

Patent 3,985,420: Mechanical Step Scanner; filed October 10, 1975, patented October 12, 1976

Patent 3,985,579: Rib and Channel Vertical Multijunction Solar Cell; filed November 26, 1975, patented October 12, 1976.

Patent 3,986,082: Universal Temperature Controlled Reference Junction; filed February 14, 1975, patented October 12, 1976.

Patent 3,986,127: Integrated Feedback Active Filter/Integrator; filed May 27, 1975, patented October 12, 1976.

Patent 3,986,129: Generation of Submicrosecond Pulses in a Long Laser; filed July 25, 1972, patented October 12, 1976.

Patent 3,986,139: Isothermal Gas Dynamic Laser Nozzle; filed March 29, 1974, patented October 12, 1976.

Patent 3,986,139: Radioactively Preionized Electrical Discharge Laser; filed February 18, 1975, patented October 12, 1976.

Patent 3,986,241: In-Place Bearing Staking Device; filed November 18, 1975, patented October 19, 1976.

Patent 3,986,683: Jet Tab Steerable Missile; filed March 27, 1974, patented October 19, 1976.

Patent 3,986,690: Laser Defense and Countermeasure System for Aircraft; filed October 28, 1975, patented October 19, 1976.

Patent 3,987,016: Method for the Preparation of Polyarylene Sulfides Containing Pendant Cyano Groups by Polymerizing M-Benzenedithiol, Dibromobenzene, and 2, 4-Dichlorobenzonitrile; filed January 16, 1975, patented October 19, 1976.

Patent 3,987,288: Time Multiplexing Hybrid Sample Data Filter; filed April 22, 1975, patented October 19, 1976.

Patent 3,987,453: Balanced Exciter for Wideband Antenna Element; filed August 18, 1975, patented October 19, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 3,970,791: Voice Controlled Disappearing Audio Delay Line; filed May 27, 1975, patented July 20, 1976.

Patent 3,978,444: Seafloor Mapping System; filed May 30, 1975, patented August 31, 1976.

Patent 3,978,483: Stable Base Band Adaptive Loop; Filed December 26, 1974, patented August 31, 1976.

Patent 3,980,395: Liquid Crystal Switch for Optical Waveguide; filed December 2, 1974, patented September 14, 1976.

Patent 3,981,561: Optically Activated Exciplax Shutter/Attenuator, filed October 16, 1975, patented September 21, 1976.

Patent 3,986,003: Multi Position Solid State Touch Switch; filed March 21, 1975, patented October 12, 1976.

Patent 3,986,111: Inverted Voltage Gerdien Condenser; filed December 24, 1974, patented October 12, 1976.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent 3,984,730: Method and Apparatus for Neutralizing Potentials Induced on Spacecraft Surfaces; patented October 5, 1976.

[FR Doc. 78-31890 Filed 11-13-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314

Patent 3,986,149: High Power Reciprocal Co-Planar Waveguide Phase Shifter; filed August 29, 1975, patented October 12, 1976.

Patent 3,986,688: Variable Effectiveness Stabilizing/Controlling Surface; filed June 16, 1975, patented October 19, 1976.

Patent 3,987,003: Thermally Stable Dioxo and Dithio-Benzisoquinoline Compositions

and Process of Synthesizing Same; filed June 6, 1975, patented October 19, 1976.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,949,596: Leak Test Fixture and Method for Using Same; filed December 11, 1974, patented April 13, 1976.
Patent 3,950,216: Falling Film Evaporator; filed January 18, 1974, patented April 13, 1976.
Patent 3,951,074: Secondary Lift for Magnetically Levitated Vehicles; filed September 27, 1974, patented April 20, 1976.
Patent 3,951,082: Countercurrent Flow Afterburner; filed April 22, 1975, patented April 20, 1976.
Patent 3,951,327: Ceramic to Metal Seal; filed January 28, 1975, patented April 20, 1976.
Patent 3,952,263: Fission Fragment Excited Laser System; filed October 4, 1974, patented April 20, 1976.
Patent 3,953,285: Nickel—Chromium—Silicon Brazing Filler Metal; filed April 25, 1973, patented April 27, 1976.
Patent 3,953,355: Preparation of uranium Nitride; filed May 29, 1974, patented April 27, 1976.
Patent 3,954,321: Miniature Electrical Connector; filed August 13, 1975, patented May 4, 1976.
Patent 3,955,150: Active-R Filter; filed January 15, 1975, patented May 4, 1976.
Patent 3,955,505: Detonating Apparatus; filed May 31, 1950, patented May 11, 1976.
Patent 3,955,509: Fuel-Air Munition and Device; filed March 21, 1969, patented May 11, 1976.
Patent 3,955,755: Closed Continuous-Flow Centrifuge Rotor; filed April 25, 1975, patented May 11, 1976.
Patent 3,956,039: High Explosive Compound; filed January 13, 1956, patented May 11, 1976.
Patent 3,957,197: Centrifuge Apparatus; filed April 25, 1975, patented May 18, 1976.
Patent 3,957,460: Oxidation of Coal—Water Slurry Feed to Hycrogasifier; filed September 9, 1975, patented May 18, 1976.
Patent 3,957,496: Molybdenum Sealing Glass-Ceramic Composition; filed September 23, 1975, patented May 18, 1976.
Patent 3,957,532: Method of Preparing an Electrode Material of Lithium—Aluminum Alloy; filed June 20, 1974, patented May 18, 1976.
Patent 3,960,083: Igniter Containing Titanium Hydride and Potassium Perchlorate; filed March 6, 1975, patented June 1, 1976.
Patent 3,961,016: Method of Removing Carbon Monoxide from Gases; filed April 26, 1974, patented June 1, 1976.
Patent 3,963,598: Flash Hydrogenation of Coal; filed October 15, 1974, patented June 15, 1976.
Patent 3,963,626: Fire Extinguishant for Fissionable Material; filed March 22, 1974, patented June 15, 1976.
Patent 3,963,826: Low Temperature, Low Pressure Hydrogen Gettering; filed March 21, 1975, patented June 15, 1976.
Patent 3,963,994: Slit Injection Device; filed January 15, 1975, patented June 15, 1976.
Patent 3,964,792: Explosive Fluid Transmitted Shock Method for Mining Deeply Buried Coal; filed January 28, 1975, patented June 22, 1976.
Patent 3,964,914: Electromarking Solution; filed August 16, 1974, patented June 22, 1976.
Patent 3,965,351: Differential Auger Spectrometry; filed October 30, 1974, patented June 22, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent 3,925,648: Apparatus for the Generation of a High Capacity Chirp-Z Transform; filed July 11, 1974, patented December 9, 1975.
Patent 3,986,681: Cylindrical Manifold for EGD Channels of a Static Discharge System; filed September 15, 1975, patented October 19, 1976.

[FR Doc. 78-31891 Filed 11-13-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF THE AIR FORCE, AF/JACP, Washington, D.C. 20314

Patent 3,993,269: Toroidal Tail Structure for Tethered Aeroform Balloon. Filed December 18, 1975, patented November 23, 1976.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,953,288: Gas Venting; filed May 24, 1970, patented April 27, 1976.
Patent 3,952,204: Film Holder for Radiographing Tubing; filed January 14, 1975, patented April 20, 1976.
Patent 3,953,922: Method of Eliminating the Training Effect in Superconducting Coils by Post-Wind Preload; filed February 24, 1975, patented May 4, 1976.
Patent 3,955,757: Ultracentrifuge for Separating Fluid Mixtures; filed September 28, 1960, patented May 11, 1976.
Patent 3,955,943: Diffusion Method of Separating Gaseous Mixtures; filed June 16, 1948, patented May 11, 1976.
Patent 3,958,096: Welding Arc Gap Ionization Device; filed December 23, 1974, patented May 18, 1976.
Patent 3,959,172: Process for Encapsulating Radionuclides; filed September 26, 1973, patented May 25, 1976.
Patent 3,961,197: X-ray Generator; filed August 21, 1974, patented June 1, 1976.
Patent 3,961,917: Method of Independently Operating a Group of Stages within a Diffusion Cascade; filed July 13, 1949, patented June 8, 1976.
Patent 3,962,082: Liquid Metal Cold Trap; filed March 28, 1975, patented June 8, 1976.
Patent 3,963,921: Method for Producing Uranium Atomic Beam Source; filed April 16, 1974, patented June 15, 1976.
Patent 3,964,667: Diffusion Bonding; filed January 19, 1966, patented June 22, 1976.
Patent 3,965,250: Separation of Sulfur Isotopes; filed July 3, 1974, patented June 22, 1976.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets, Washington, D.C. 20240

Patent 3,992,153: Dosimeter for Oxides of Nitrogen; filed May 20, 1976, patented November 16, 1976.
Patent 3,992,327: Catalysts and Adsorbents Having High Surface Area to Weight; filed November 1974, patented November 16, 1976.
Patent 3,993,517: Thin Cell Electromembrance Separator; filed October 31, 1975, patented November 23, 1976.
Patent 3,993,838: Wax or Plastic Coated Phosphor Grains; filed March 3, 1975, patented November 23, 1976.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 3,976,274: Permanent Attachment for Suction Cups; filed May 27, 1975, patented August 24, 1976.
Patent 3,984,673: External Lighting System for Hypobaric and Hyperbaric Chambers; filed June 30, 1975, patented October 5, 1976.
Patent 3,989,475: Composite Superconductors; filed May 30, 1975, patented November 2, 1976.

TENNESSEE VALLEY AUTHORITY, Division of Law, Muscle Shoals, Ala. 35660

Patent 3,985,538: Pipe Reactor-Continuous Ammoniator Process for Production of Granular Phosphates; filed May 16, 1975, patented October 12, 1976.
Patent 3,991,225: Method for Applying Coatings to Solid Particles; filed December 12, 1974, patented November 9, 1976.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546

Patent 3,750,035: Frequency Discriminator and Phase Detector Circuit; patented July 31, 1973.
Patent 3,990,860: High Temperature Oxidation Resistant Cermet Compositions; patented November 9, 1976.
Patent 3,990,987: Smoke Generator; patented November 9, 1976.

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Availability for Licensing

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Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,949,048: Separation by Solvent Extraction; filed July 24, 1950, patented April 6, 1976.
Patent 3,953,567: Exp 82 Sr—Exp 82 Rb Radioisotope Generator; filed September 27, 1974, patented April 27, 1976.
Patent 3,954,655: Method of Tagging Sand with Ruthenium 103 and the Resultant Product; filed December 27, 1974, patented May 4, 1976.
Patent 3,954,661: Calcination Process for Radioactive Wastes; filed September 19, 1974, patented May 4, 1976.
Patent 3,955,093: Targets for the Production of Radioisotopes and Method of Assembly; filed April 25, 1975, patented May 4, 1976.
Patent 3,955,860: Journal Bearing; filed February 7, 1949, patented May 11, 1976.
Patent 3,956,658: Low Impedance Switch; filed November 28, 1945, patented May 11,1976.
Patent 3,957,676: Chemical Digestion of Low Level Nuclear Solid Waste Material; filed September 22, 1972, patented May 18, 1976.
Patent 3,958,948: Dissolver Vessel Bottom Assembly; filed January 8, 1975, patented May 25, 1976.
Patent 3,960,468: Fluid Lubricated Bearing Assembly; filed July 16, 1946, patented June 1, 1976.
Patent 3,965,237: Dissolution Process for ZrO, sub 2—UO sub 2—OaO Fuels; filed April 11, 1975, patented June 22, 1976.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Weswood Building, Bethesda, Md. 20014

Patent 3,987,281: Method of Radiation Therapy Treatment Planning; filed July 29, 1974, patented October 19, 1976.

U.S. DEPARTMENT OF INTERIOR, Branch of Patents, 18th and C Streets, NW., Washington, D.C. 20240

Patent 3,991,367: Detection of Potential on High-Voltage Transmission Lines; filed January 20, 1976, patented November 9, 1976.
Patent 3,991,419: Receiver System for Locating Transmitters; filed January 26, 1976, patented November 9, 1976.
Patent 3,933,138: Fire Prevention System; filed April 24, 1975, patented November 23, 1976.
Patent 3,994,390: Intermediate Drive for Belt Conveyor with Center Vertebrae; filed November 18, 1975, patented November 30, 1976.

[FR Doc. 78-31893 Filed 11-13-78; 8:45 am]

[3510-04-M]

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $.50 each. Requests for copies of patents must include the patent number.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent 3,948,735: Concentration and Purification of Plutonium or Thorium; filed June 1, 1973, patented April 6, 1976.
Patent 3,949,050: Method of Absorbing UF sub 6 from Gaseous Mixtures in Alkamine Absorbents; filed September 20, 1948, patented April 6, 1976.
Patent 3,951,573: Fluid Lubricated Bearing Construction; filed July 16, 1946, patented April 20, 1976.
Patent 3,955,753: Gas Centrifuge with Driving Motor; filed April 13, 1961, patented May 11, 1976.
Patent 3,957,577: Hydraulic Control Rod; filed June 23, 1955, patented May 18, 1976.
Patent 3,957,945: Chemical Isolation of exp 82 Sr from Protor-Irradiated Mo Targets; filed August 21, 1974, patented May 18, 1976.
Patent 3,957,956: Closed Cycle Ion Exchange Method for Regenerating Acids, Bases, and Salts; filed June 20, 1974, patented May 18, 1976.
Patent 3,958,699: Charging Machine; filed July 13, 1954, patented May 25, 1976.
Patent 3,959,069: Method of Preparing Gas Tags for Identification of Single and Multiple Failures of Nuclear Reactor Fuel Assemblies; filed June 5, 1974, patented May 25, 1976.
Patent 3,959,070: Method of Operating a Neutronic Reactor; filed November 18, 1952, patented May 25, 1976.
Patent 3,959,455: Labeling of Indocyanine Green with Carrier-Free Iodine-123; filed July 1, 1975, patented May 25, 1976.
Patent 3,962,114: Method for Solidifying Liquid Radioactive Wastes; filed April 11, 1975, patented June 8, 1976.
Patent 3,963,936: Neutronic Reactor Thermal Shield; filed March 14, 1955, patented June 15, 1976.
Patent 3,964,967: Tag Gas Capsule with Magnetic Piercing Device; filed February 24, 1975, patented June 22, 1976.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240

Patent 3,981,962: Decomposition Leach of Sulfide Ores with Chlorine and Oxygen; filed June 30, 1975, patented September 21, 1976.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546

Patent 3,994,128: Dual Output Variable Pitch Turbofan Actuation System; patented November 30, 1976.
Patent 3,995,476: Miniature Biaxial Strain Transducer; patented December 7, 1976.
Patent 3,995,644: Percutaneous Connector Device; patented December 7, 1976.
Patent 3,995,789: Reel Safety Brake; patented December 7, 1976.
Patent 3,995,877: Fifth Wheel; patented December 7, 1976.
Patent 3,996,064: Electrically Rechargeable Redox Flow Cell; patented December 7, 1976.
Patent 3,996,070: Thermocouple Installation; patented December 7, 1976.
Patent 3,996,464: Mass Spectrometer with Magnetic Pole Pieces Providing the Magnetic Fields for Both the Magnetic Sector and an Ion-Type Vacuum Pump; patented December 7, 1976.
Patent 3,996,468: Electron Microscope Aperture System; patented December 7, 1976.

[FR Doc. 78-31894 Filed 11-13-78; 8:45 am]

[3510-60-M]

National Telecommunications and Information Administration

FREQUENCY MANAGEMENT ADVISORY COUNCIL

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council will meet from 9:30 a.m. to 3:30 p.m. on December 1, 1978, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street NW., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street NW.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be

enhanced. The council consists of 11 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Briefing on "INTELPOST, An International Electronic Message System";
(2) Report on results of the special meeting of the International Radio Consultative Committee (CCIR) preparatory to WARC 1979;
(3) Report on foreign coordination for WARC 1979;
(4) Discussion of a new study program in support of the FMAC advisory role to NTIA; and
(5) Briefing on "Radio Noise Emanating from Power Lines."

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each. More extensive questions or comments should be submitted in writing before November 29th. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request.

Inquires may be addressed to the Council Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information administration, Room 298, 1325 "G" Street NW., Washington, D.C. 20005, telephone 202-724-3307.

Dated: November 7, 1978.

CLOYD C. DODSON,
Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 78-31879 Filed 11-13-78; 8:45 am]

[3710-05-M]

DEFENSE COMMUNICATIONS AGENCY

SCIENTIFIC ADVISORY GROUP

Closed Meeting

The DCA Scientific Advisory Group will hold a closed meeting on December 6, 1978. The December 6 meeting will be at the Defense Communications Agency, Director's Management Information Center at Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Va.

The agenda will be the Report of the Defense Science Board Task Force on Command and Control Systems Management.

Any person desiring information about the Advisory Group may telephone (area code 202-692-1765) or write Chief Scientist—Associate Director, Technology, Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Va. 22204.

This meeting is closed because the material to be discussed is classified requiring protection in the interest of National Defense. (Freedom of Information Act, 5 U.S.C. 552b(c)(1).)

MARGARET E. ANDERSON,
Committee Management Officer.

Requisition No. 317H.

[FR Doc. 78-31918 Filed 11-13-78; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 6, 1978.

The USAF Scientific Advisory Board Ad Hoc Committee on Missile Basing Verification in Terms of SALT will hold meetings at the National Security Agency, Ft. Meade, Md. on December 7-8, 1978. The meetings will convene at 9 a.m. and adjourn at 5 p.m. each day.

The Committee will receive classified briefings and hold classified discussions in relation to reviewing the technical aspects of missile basing verification. The meetings will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at 202-697-4648.

Dated: November 6, 1978.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-31895 Filed 11-13-78; 8:45 am]

[3710-08-M]]

DEPARTMENT OF DEFENSE

Department of the Army

ARMY SCIENCE BOARD

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

NAME OF COMMITTEE: Army Science Board.

DATE OF MEETING: December 7, 1978.

PLACE: Fort Shafter, Hawaii (exact location can be determined by contacting LTC Persons at 808-438-1431.

TIME: 0800 to 1700 hours, December 7, 1978.

PROPOSED AGENDA: The ASB Standing Committee on Ballistic Missile Defense will hold classified discussions of briefings they have received on the threat and other studies done which relate to strategic issues in ICBM, and the offensive and defensive postures of the United States and other nations. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof. The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

ROBERT F. SWEENEY,
Lieutenant Colonel, GS, Executive Secretary, Army Science Board.

[FR Doc. 78-31948 Filed 11-13-78; 8:45 am]

[3810-71-M]

DEPARTMENT OF DEFENSE

Department of the Navy

NAVY RESALE SYSTEM ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Navy Resale System Advisory Committee will meet on November 13, 1978, at the Crystal Room, Plaza Hotel, New York, N.Y. The first session will commence at 9 a.m. and terminate at approximately 10 a.m. The second session will commence at 10 a.m. and terminate at approximately 12 noon. The second session of the meeting will be closed to the public.

The agenda will consist of an overview of the Navy Exchange Program, the Navy Commissary Program, the Navy Ships Store Program, and the Navy Lodge Program, highlighting sales and earnings.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting, which will involve discussion of information relating solely to either internal agency personnel rules and practices or trade secrets, or confidential and privileged business information, be closed to the public. These matters fall within the exemptions listed in subsections 552 (c)(2)

and (c)(4) of title 5, United States Code. The first session of the meeting, which will involve other non-privileged matters related to the Navy Exchange Resale System, will be open to the public.

FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT:

Commander J. D. Felt, USN, Navy Supply Systems Command, NAVSUP 09B, Room 801, Crystal Mall, Building No. 3, Arlington, VA 20376, telephone 202-695-5457.

Dated: November 9, 1978.

P. B. WALKER,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-32092 Filed 11-13-78; 8:45 am]

[3810-70-M]

Office of the Secretary of Defense

DEFENSE INTELLIGENCE AGENCY SCIENTIFIC ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee will be held as follows: Friday, December 8, 1978, Pomponio Plaza, Rosslyn, Va. The entire meeting, commencing at 0830 hours is devoted to the discussion of classified information as defined in section 552d(c)(1), Title 5 of the United States Code and therefore will be closed to the public. Subject matter will be used in a study on current and projected DoD HUMINT collection activities.

November 7, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-31806 Filed 11-13-78; 8:45 am]

[3128-01-M]

DEPARTMENT OF ENERGY

NATIONAL PETROLEUM COUNCIL, COORDINATING SUBCOMMITTEE AND TASK GROUPS OF THE SUBCOMMITTEE ON REFINERY FLEXIBILITY

Meetings

Notice is hereby given that the Coordinating Subcommittee and the task groups of the Subcommittee on Refinery Flexibility of the National Petroleum Council will meet on Wednesday, November 15, 1978, at the following times and locations at the National Petroleum Council, 1625 K Street NW., Washington, D.C. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. The Subcommittee on Refinery Flexibility will make an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes, and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the task groups listed in this notice, whose efforts will be coordinated by the Coordinating Subcommittee. The Coordinating Subcommittee of the Committee on Refinery Flexibility will meet in suite 601 at 1 p.m. Its tentative agenda is as follows:

1. Introductory remarks by the Chairman and Government Cochairman.
2. Discussion of scope of the NPC Study on Refinery Flexibility.
3. Discussion of the study methodology to be employed in the study.
4. Discussion of the timetable of the study groups.
5. Discussion of any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The Task Groups will meet at the National Petroleum Council at the following times:

9:00 a.m.—Refinery Capability Task Group.
10:00 a.m.—Oil Supply, Demand and Logistics Task Group.

The agenda for the task groups sessions will be:

1. Introductory remarks.
2. Discussion of scope of the assignment of the task group.
3. Discussion of the study methodology of the task group.
4. Discussion of the timetable of the task group.
5. Discussion of any other matters pertinent to the overall assignment of the task group.

The meetings are open to the public. The chairmen of the Coordinating Subcommittee and task groups are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee or task groups will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Frank A. Verrastro, Office of Policy and Evaluation, 202-252-5688, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Transcripts of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcripts from the reporter.

Issued in Washington, D.C., November 8, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-32049 Filed 11-13-78; 8:45 am]

[3128-01-M]

Economic Regulatory Administration

[ERA Docket No. 78-008-NG]

ST. LAWRENCE GAS CO., INC.

Petition To Amend Order Authorizing Importation of Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of receipt of petition and invitation to submit petitions to intervene in the proceedings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of a petition of St. Lawrence Gas Co., Inc. (St. Lawrence), and an amendment thereto, to amend the Federal Power Commission's (FPC) Order of December 8, 1966, in FPC Docket No. G-17500. The St. Lawrence petition has been assigned ERA Docket No. 78-008-NG. The petition, as amended, requests that St. Lawrence be authorized to increase its imports of natural gas from Canada to a maximum daily volume of 30,000 Mcf and a maximum annual volume of 6,500,000 Mcf from the 23,000 Mcf daily and 5,519,987 Mcf annually as authorized by FPC. The increased maximum daily volume would be for the period through and including October 31, 1978, and the increased annual volume would be for the year ending December 31, 1978. Petitions to intervene are invited.

DATES: Petitions to invervene—Tenth day after date of publication of this notice in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, Director, Import/Export Division, 2000 M Street NW., Washington, D.C. 20461, telephone 202-254-9730.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1978, St. Lawrence Gas Co., Inc., 56-58 Main Street, Massena, N.Y., 13662, filed in Docket No. 78-008-NG (FPC Docket No. G-17500, now ERA Docket No. 77-005-NG) a petition to amend FPC Opinion No. 347 and Order of December 8, 1966, which authorizes the importation of a maximum daily volume of 23,000 Mcf and annual volumes of 5,519,987 Mcf of natural gas from Canada. St. Lawrence requests that the maximum daily volumes be increased to 30,000 Mcf for the period from and after the date of issuance of an order authorizing the requested increase, to and including October 31, 1978, and that the maximum annual imported volume be not more than 6,235,000 Mcf during the year ending December 31, 1978. St. Lawrence filed an amended petition on October 10, 1978, which changed the maximum annual volume requested from 6,235,000 Mcf to 6,500,000 Mcf during the year ending December 31, 1978.

St. Lawrence states that the additional supply is required to avoid unnecessary curtailment of interruptible customers, and that it has been advised by its sole supplier, Niagara Gas Transmission Ltd. (Niagara), that sufficient quantities of natural gas will be available to meet St. Lawrence's requirements.

Niagara has filed with the National Energy Board of Canada a request for an amendment to its Licence GL-6, which authorizes exportation of natural gas to St. Lawrence, the requested amendment would permit exportation of not more than 30,000 Mcf in any one day up to and including October 31, 1978, and not more than 6,500,000 Mcf for the 12-month period ending October 31, 1978. No increase in the maximum quantity of natural gas during the term of the licence was requested.

OTHER INFORMATION: The St. Lawrence petition and the amendment thereto in ERA Docket No. 78-008-NG are on file with the ERA and open to inspection in the Public Docket Room at 2000 M Street NW., Washington, D.C., Room B-110, between the hours of 8 a.m. to 5 p.m., Monday through Friday, except for Federal holidays.

The ERA is hereby inviting petitions for intervention in the proceedings. Such petitions are to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street NW., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m. on the 10th day after the date of publication of this notice in the FEDERAL REGISTER.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the St. Lawrence petitions should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Pursuant to the authority contained in section 3 of the Natural Gas Act, as delegated to the ERA, in the Department of Energy Delegation Order Nos. 0204-4 (42 FR 60726, November 29, 1977) and 0204-25 (43 FR 47769, October 17, 1978), and the rules of practice and procedure, a formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is deemed required, due notice will be given.

Issued in Washington, D.C., on November 13, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-32012 Filed 11-13-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. ER79-36]

CENTRAL ILLINOIS LIGHT COMPANY

Notice of Filing

NOVEMBER 3, 1978.

Take notice that Central Illinois Light Company (CILCO) on October 26, 1978, tendered for filing proposed Modification No. 1 between CILCO and City of Springfield, Illinois. CILCO states that the Commission has previously designated the December 15, 1976, Agreement as Central Illinois Light Co. Rate Schedule FPC No. 21.

CILCO further states that Modification No. 1 provides for a proposed increase in the charges for maintenance, short-term firm and short-term nonfirm power transactions between City of Springfield and CILCO.

CILCO proposes an effective date of November 1, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNTH F. PLUMB,
Secretary.

[FR Doc. 78-31976 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-2712, et al.]

CITIES SERVICE CO. (SUCCESSOR TO CITIES SERVICE OIL CO.), ET AL.

Notice of Redesignation

NOVEMBER 6, 1978.

On February 13, 1978, as amended May 11, 1978, an application was filed by Cities Service Co. (Applicant), as successor in interest to all oil and gas properties owned by Cities Service Oil Company throughout the United States, to amend the certificates held by Cities Service Oil Co. by substituting Applicant as certificate holder, and to redesignate the related rate schedules in the name of the Applicant, all as more fully set forth in the Appendix hereto.

Effective January 1, 1978, Cities Service Oil Co. assigned its remaining interests in real property, equipment, and facilities associated with the processing of natural gas and casinghead gas to Applicant.[1]

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties

[1] Prior assignments dated 4-1, 7-1, and 10-1-77, transferred the bulk of Cities Service Oil Co.'s properties to Applicant.

to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

APPENDIX

New: Cities Service Co. FERC gas rate schedule No.	Certificate docket No.	Old: Cities Service Oil Co. FERC gas rate schedule No.	Purchaser
42	G-4579	42	Cities Service Gas Co.
43	G-4579	43	El Paso Natural Gas Co.
105[1]	G-13450	[1]105	Do.
213[2]	CI61-1332	[2]213	Transwestern Pipeline Co.
214	CI65-561	214	Natural Gas Pipeline Co. of America.
216[1]	G18279	[1]216	Kansas-Nebraska Natural Gas Co.
320[2]	CI70-691	[2]320	Tennessee Gas Pipeline Co.
321[2]	CI70-691	[2]321	Do.
324	CI69-168	324	Montana-Dakota Utilities Co.
352[2]	G-2712	[2]352	United Gas Pipe Line Co.
390[1]	CI61-1094	[1]390	Do.

[1](Operator).
[2](Operator) et al.

[FR Doc. 78-31977 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER78-610]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Notice of Filing of Tariff

NOVEMBER 3, 1978.

Take notice that Consolidated Edison Company of New York, Inc. ("Con Edison") on October 23, 1978 tendered for filing a rate schedule for the sale to Central Hudson Gas and Electric Corporation ("Central Hudson") of capability and associated energy during the 1975-1976 winter capability period.

Con Edison requests waiver of the Commission's notice requirements to allow for an effective date of October 26, 1975.

Copies of the filing were served upon Central Hudson and the New York Public Service Commission, according to Con Edison.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31978 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-38]

CONSUMERS POWERS COMPANY

Notice of Proposed Tariff Change

NOVEMBER 3, 1978.

Take notice that Consumers Powers Company (Consumers Power) on October 27, 1978, tendered for filing Supplement Agreement No. 11 to the Interconnection Agreement dated September 1, 1973 between Consumers Powers and Northern Michigan Electric Cooperative, Inc., Wolverine Electric Cooperative, Inc., city of Grand Haven, Michigan, and city of Traverse City, Mich., collectively denoted the MMCPP members. Consumers Power states that the Interconnection Agreement is designated Consumers Power Rate Schedule FERC No. 34.

Consumers Power further states that Supplemental Agreement No. 11 provides for the establishment of a sixth interconnection point between the electric systems of Consumers Power and the MMCPP members, and is dated March 1, 1978. Consumers Power indicates that construction of the facilities needed to effect the interconnection was completed on April 7, 1978.

Consumers Power further indicates that Supplemental Agreement No. 11 does affect the rates charged for electric energy interchanged under the terms of the Interconnection Agreement. Consumers Power states that it does provide, however, that Wolverine Electric Cooperative, Inc., will pay to Consumers Power annual charges consisting of annual carrying on the capital cost of certain facilities to be provided and owned by Consumers Power and annual operation and maintenance expense of these facilities.

Consumers Power proposes an effective date of August 18, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said Supplemental Agreement No. 11 should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31979 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP78-530]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

NOVEMBER 3, 1978.

Take notice that on September 19, 1978,[1] Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Fla. 32790, filed in Docket No. CP78-530 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 12,500 MMBtu equivalent of natural gas per day for Southern Natural Gas Company (SNG), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is indicated that SNG has contracted with Union Oil Company of California for the purchase of natural gas from the Vermilion Area, offshore Louisiana, and needs to transport the

[1]The application was initially tendered for filing on September 19, 1978. However, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 23, 1978. Thus, the filing was not completed until the latter date.

gas to its pipeline facilities and, thence, to its customers. Under the transportation arrangement proposed herein, Transcontinental Gas Pipeline Corporation (Transco) would deliver to Applicant for SNG's account up to 12,500 MMBtu equivalent of natural gas per day at the flange or weld connecting Applicant's existing facilities with those of Transco in Vermilion Parish, La. Applicant would then redeliver equivalent volumes on a Btu basis to SNG at the existing interconnection of Applicant's and SNG's facilities in Washington Parish, Louisiana, or at any other mutually agreeable existing point of interconnection, it is indicated.

Pursuant to a transportation agreement dated August 16, 1978, SNG would pay Applicant 11.1 cents per MMBtu for each MMBtu redelivered at the point of redelivery, it is stated. Applicant indicates that the rate is composed of a facility charge (8.6 cents per MMBtu), and a service charge (2.5 cents per MMBtu).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc 78-31980 Filed 11-13-78; 8:45 am]

[6740-02-M]

Docket No. RI77-22

HENRY GRACE PRODUCTION CO.

Notice of Amended Petition for Special Relief

NOVEMBER 6, 1978.

Take notice that on September 5, 1978, Henry Grace Production Co. (Grace), 813 City National Bank Building, Wichita Falls, Tex. 76301, filed an amended petition for special relief in Docket No. RI77-23, requesting authorization to charge the lower rate of $1.105 MMBTU for the sale of gas from the following producing propeties: A. R. King and A. R. King D. Leases, Lipscomb County, Tex.; and W. J. Godwin Lease, Cimarron County, Okla. The pipeline purchaser is Transwestern Pipeline Co. Originally, Grace requested a special relief rate of $1.52 per MMBTU.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31981 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP75-104 et al.]

HIGH ISLAND OFFSHORE SYSTEM

Notice of Petition To Amend

NOVEMBER 3, 1978.

Take notice that on October 19, 1978[1], High Island Offshore System (Petitioner), One Woodward Avenue, Detroit, Mich. 48226, filed in Docket No. CP75-104, et al., a petition to amend the order of June 4, 1976, as amended, issued in the instant docket (55 FPC)[2] pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to render, within the limits of its present facilities, interruptible overrun service in excess of its present certificated firm capacity of 988, Mcf per day, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of June 4, 1976, Petitioner was granted authorization to construct, own, and operate a system to transport natural gas from the High Island Area, offshore Texas, to a point of interconnection at West Cameron Island Area, offshore Louisiana, with the facilities of U-T Offshore System (U-TOS) and Michigan Wisconsin Pipe Line Co. (Michigan Wisconsin) and to transport up to an aggregate of 988,000 Mcf per day of natural gas for Michigan Wisconsin, Natural Gas Pipeline, Co. of American (Natural), Texas Gas Transmission Corp. (Texas Gas), Transcontinental Gas Pipe Corp. (Transco) and United Gas Pipe Line Co. (United). It is further indicated that pursuant to the order of June 12, 1978, Petitioner gas granted, inter alia, blanket authorization to transport, within the limits of its certificated capacity (988,000 Mcf per day), natural gas for shippers was affiliated with Petitioner. Pursuant to such authorization, Petitioner has excecuted transportation agreements with the following nonaffiliated shippers: Columbia Gas Transmission Corp., Consolidated Gas Supply Corp., Tennessee Gas Pipeline Co., a Division of Tenneco, Inc., El Paso Natural Gas Co., Trunkline Gas Co., Northern Natural Gas Co. and National Fuel Gas Supply Corp., it is said.

Petitioner states that all of its shipper (both affiliated and nonaffiliated) have requested firm capacity in the Petitioner system which, in aggregate, substantially exceeds the certificated firm capacity of 988,000 Mcf per day. It is stated that pursuant to the provisions of the shippers' transportation agreements with Petitioner, the currently effective contract demand of each has been reduced below that which was originally requested. It is anticipated that, in the near future, the gas supply available to Petitioner

[1] The application was initially tendered for filing on October 19, 1978; however, the fee required by § 159.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 25, 1978; thus, filing was not completed until the latter date.

[2] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977, (10 CFR 1000.1), it was transferred to the FERC.

shippers from the High Island area would exceed the presently certificated firm capacity of 988,000 Mcf per day, it is said.

Petitioner states that in view of this, it is undertaking a study of the need for an expansion of its presently certificated firm capacity. In the meantime, Petitioner, through the instant Petition proposes, as an interim measure, to transport, on an interruptible overrun basis, volumes in excess of 988,000 per day, to the extent that its existing facilities will permit.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31982 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-78]

LIBERTY OIL & GAS CORP.

Notice of Amended Petition for Special Relief

NOVEMBER 6, 1978.

Take notice that on September 26, 1978, Liberty Oil & Gas Corp. (Petitioner), Suite 809, 234 Loyola Building, New Orleans, La. 70112, filed an amended petition for special relief in the above-captioned docket which amends its previous petition for special relief filed July 11, 1978 and noticed on September 26, 1978. In its previous petition Petitioner sought authorization to charge United Gas Pipeline Co. a total rate of $2.10 per Mcf at 15.025 psia for gas produced from the Simoneaux No. 9 Well, Bayou Des Allemands Field, St. Charles Parish, La. Now Petitioner seeks authorization to sell its gas at the reduced total rate of $2.02 per Mcf at 15.025 psia to the above-named purchaser.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31983 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RI79-2]

LOGUE AND PATTERSON

Notice of Petition for Relief From Refund Obligation

NOVEMBER 3, 1978.

Take notice that on October 4, 1978, Logue and Patterson (L and P), 1300 One Energy Square, Dallas, Tex. 75206, filed a petition for relief from its obligation to make refunds to Tennessee Gas Pipe Line Co. of moneys collected for sales of gas produced in West Taft Field, San Patricio County, Tex., which were in excess of the area rate for the sale of gas established in Texas-Gulf Coast Area Rate Proceeding, Docket Nos. AR64-2, et al. L and P state that the refund obligation is approximately $35,000 in principal and $38,000 in interest to date. L and P further state that it has incurred a net loss of $208,000 for these sales of gas to Tennessee Gas Pipe Line Co. and should therefore be relieved of this refund obligation.

Any person desiring to be heard or to make any protest with reference to said petition should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31984 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-77]

MISSISSIPPI RIVER TRANSMISSION CORP.

Notice of Extension of Time

NOVEMBER 6, 1978.

On October 18, 1978, Commission Staff Counsel filed a motion for an extension of time to file top sheets as required by the Commission order of July 31, 1978 in this proceeding. The motion states that additional time is needed because of certain questions related to storage losses and because technical staff analysis has been delayed for various reasons. The motion further states that Mississippi River Transmission Corp. has no objection to be requested extension.

Upon consideration, notice is hereby given that an extension of time is granted to and including December 15, 1978 for staff to file top sheets in this proceeding.

KENNETH F. PLUMB,
Secretary.

[6740-02-M]

[Docket Nos. ER78-460, ER78-483]

POTOMAC EDISON CO.

Notice of Filing

NOVEMBER 3, 1978.

Take notice that Potomac Edison Co. on October 25, 1978, tendered for filing:

(1) Monthly billing determinants, by customer, during Period II under the present and proposed rate.

(2) A summary of cost of service (Statement N) showing the effect of the wholesale revenues under the proposed rates and its effect on the cost of service.

(3) Explanation of the apparent discrepancy in wholesale Kwhr sales for Period II.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31986 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER76-149, E-9537]

PUBLIC SERVICE CO. OF INDIANA, INC.

Notice of Intent To Act

NOVEMBER 3, 1978.

On October 4, 1978, Public Service Co. of Indiana filed a Motion for Order On Remand in Docket Nos. ER76-149 and E-9537. On October 19, 1978, the Indiana Municipal Electric Association Cities filed a reply to this motion. These pleadings raise issues which the Commission will decide in a forthcoming order in this docket. Therefore, the motions shall not be denied under section 1.12(e) of the Commission's Rules.

By Direction of the Commission.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-31987 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Project No. 663]

PUERTO RICO WATER RESOURCES AUTHORITY

Notice of Issuance of Annual License(s)

NOVEMBER 6, 1978.

On July 5, 1978, Puerto Rico Water Resources Authority, Licensee for the Rio Blanco Project No. 663, located on the Blanco River in Maguabo municipality, Puerto Rico, filed a request for extension of time to file an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 663 was issued effective November 7, 1928, for a period ending November 6, 1978. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Puerto Rico Water Resources Authority.

Take notice that an annual license is issued to Puerto Rico Water Resources Authority for the period November 7, 1978, to November 6, 1979, or until the issuance of a new licensee for the project, whichever comes first, for the continued operation and maintenance of the Rio Blanco Project No. 663, subject to the terms and conditions of the original license. Take further notice that if issuance of a new license does not take place on or before November 6, 1979, a new annual license will be issued each year thereafter, effective November 7 of each year, until such time as a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31988 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-42]

SEA ROBIN PIPELINE CO., TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application

NOVEMBER 3, 1978.

Take notice that on October 25, 1978, Sea Robin Pipeline Co. (Sea Robin), P.O. Box 1478, Houston, Tex. 77001, and Transcontinental Gas Pipe Line Corp. (Transco), P.O. Box 1396, Houston, Tex. 77001 (Applicants) filed in Docket No. CP79-42 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, ownership and operation of certain pipeline facilities, all as more fully set forth in the application to file with the Commission and open to public inspection.

Applicants state that they have acquired the right to purchase natural gas supplies produced in Eugene Island Area, Blocks 261 and 262, offshore Louisiana (Eugene Island 261 Field). The following table is said to list the producers having interests in the Eugene Island 261 Field, said producers' respective percentage interests, and the pipeline purchasers which have acquired the right to purchase gas attributable to such producers' interests:

Block	Producers	Pipeline purchasers	Percent interest
Eugene Island blocks 261 and 262.	POGO Producing Co	Sea Robin	9.99
	Pennzoil Oil & Gas, Inc	do	6.67
	Pennzoil Louisiana & Texas Offshore, Inc	do	16.67
	Louisiana Land & Exploration Co	Transcontinental Gas Pipe Line Corp.	20.00
	Diamond Shamrock Corp	Uncommitted	13.33
	Mobil Oil Corp	Sea Robin Pipeline Co	33.34
		Total	100.00

Applicants are requesting authorization herein to construct, own and operate approximately 2.7 miles of 12-inch pipeline and related facilities (block 261 lateral) to connect the Eugene Island 261 Field to a sub-sea tap in Block 273, Eugene Island Area, on Sea Robin's 24-inch pipeline. It is stated that Sea Robin would own 80 percent of said facilities, which facilities are acquired in order to transport reserves in Eugene Island 261 Field to Sea Robin's offshore system for further transportation. Applicants estimate the cost of constructing the proposed facilities to be $3,884,400, which facilities would be financed by Applicants from funds on hand.

The application states that proved and potential reserves in the Eugene Island 261 Field are presently estimated to be some 69,018,000 Mcf with maximum daily deliverability from the Eugene Island 261 Field estimated to be some 80,000 Mcf, and that initial deliveries from the Eugene Island 261 Field are scheduled to commence in January 1979. It is indicated that the proposed block 261 lateral would be constructed by Sea Robin, owned jointly by Applicants and operated by Sea Robin pursuant to a construction, ownership and operating agreement between the two companies, which agreement is being negotiated at this time. The cost, ownership and capacity entitlements of the proposed facilities would be based on the individual ownership percentages, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and sub-

ject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will de duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31989 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RI78-32]

SOUTHLAND ROYALTY CO.

Notice of Amended Petition for Special Relief

NOVEMBER 6, 1978.

Take notice that on September 13, 1978, Southland Royalty Co. (Petitioner), 1000 Fort Worth Club Tower, Forth Worth, Tex. 76102, filed an amended petition for special relief requesting permission to charge the lower rate of $1.625 per Mcf for the sale of gas produced from the Hofferber No. 1 Well located in Texas County, Okla. In its original petition for special relief in this proceeding, petitioner requested authorization to charge $2.9627 per Mcf for the sale of the subject gas. Petitioner's original Petition for special relief was noticed on March 3, 1978. Panhandle Eastern Pipeline Co. is purchaser of the subject gas.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31990 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-34]

SOUTH TEXAS NATURAL GAS GATHERING CO., COASTAL STATES GAS PRODUCING CO.

Notice of Application

NOVEMBER 3, 1978.

Take notice that on October 16, 1978, South Texas Gas Gathering Co. (South Texas), and Coastal States Gas Producing Co. (Coastal States), Five Greenway Plaza East, Houston, Tex. 77046 (Applicants), filed in Docket No. CP79-34 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation service rendered by South Texas for Coastal States and the exchange of gas between Applicants, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants indicate that pursuant to FPC Opinion No. 683 and order issued Janury 14, 1974, Applicants filed on March 13, 1974, a joint application requesting authorization to cover the transportation of natural gas from the Santellana Field, Texas, to a point near Falfurrias, Tex., which transportation is covered by a transportation agreement dated January 1, 1973. An amendment dated September 18, 1967, provided for an exchange of volumes, it is said.

It is stated that pursuant to the order Affirming and Adopting Initial Decision issued September 14, 1976, which order affirmed the initial decision of December 20, 1974, by which the FPC granted South Texas certificate authorization in Docket No. CP74-258 to transport 15,600 Mcf of natural gas per day for Coastal States from a point on the South Texas line near the Santellana Field, Tex., to a point near Falfurrias, Tex., at a rate of one cent per Mcf per 100 miles for the volume of gas transported under an agreement providing for interruptible service subordinate to South Texas' existing contracts to provide firm service to Natural Gas Pipeline Company of America and to Transcontinental Gas Pipe Line Corp. It is stated that the said order also authorized the continuation of service which had been provided for years by South Texas by means of its existing facilities. It is further stated that the gas which was delivered to South Texas at the Santellana delivery point was produced by Texaco Inc. and sold by that company to Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), and that Coastal States processed the gas at Falfurrias. After processing, the gas was delivered to Tennessee for Texaco Inc.'s account, it is said.

The application states that on March 21, 1978, Applicants discontinued the transportation service authorized in Docket No. CP74-258 because of the discontinuance of the processing of this volume of gas by Coastal States. Tennessee now receives the Texas Santellana Field volume of gas at its delivery point in the Santellana Field, it is said. Applicants state that the gas processing agreement covering this volume of gas was cancelled by a letter agreement dated September 15, 1978. It is indicated that the transportation agreement, dated January 1, 1963, and amended September 18, 1967, between South Texas and Coastal States was cancelled effective August 1, 1978 by a letter agreement dated September 15, 1978.

Any person desiring to be heard or to make any protest with reference to said application should no or before November 27, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, fur-

ther notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31991 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-37]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Filing

NOVEMBER 3, 1978.

Take notice that on October 27, 1978, Southern California Edison Co. (Edison) tendered for filing an Agreement, dated October 17, 1978, with Portland General Electric Co. (Portland), Oregon, which Agreement is entitled "Edison-Portland 1978-1981 Exchange Agreement". Edison states that under the terms of this Agreement, Edison will make available 225 Mw of firm capacity and associated energy to Portland during the period October 15, 1978 through January 15, 1979. Edison further states that Portland will take a minimum of 170 million kWh during this period. Edison indicates during the period June 1, 1981 through September 30, 1981, Portland then will make available to Edison 225 Mw of firm capacity and an amount of associated energy equal to 1.27 times the amount of energy provided by Edison in 1978.

Edison requests an effective date of October 15, 1978, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were seryed upon Portland and the Public Utilities Commission of the State of California, according to Edison.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31992 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Project No. 405]

THE SUSQUEHANNA POWER CO., PHILADELPHIA POWER CO.

Notice of Application for Change in Land Rights

NOVEMBER 2, 1978.

Public notice is hereby given that an application was filed on August 17, 1978, under the Federal Power Act, 16 U.S.C. sections 791a-825r, by the Susquenhanna Power Co. and the Philadelphia Electric Power Co. (Applicants) (Correspondence to: Mr. Edward G. Bauer, Vice President and General Counsel, Philadelphia Electric Co., 2301 Market Street, Philadelphia, Pa. 19101; and Mr. Peyton G. Bowman III and Mr. Brian J. McManus, Reid and Priest, 1701 K Street NW., Washington, D.C. 20006) for a change in land rights at Project 405 known as the Conowingo Project. The project is located on the Susquehanna River in Harford and Cecil Counties, Md. and York, Lancaster, Montgomery, Chester, and Delaware Counties, Pa.

The Applicants request Commission approval of an agreement executed by the Susquehanna Power Co. and its wholly owned subsidiary, the Susquehanna Electric Co. (SEC) with the Mayor and City Council of Harve de Grace, Md. (Harve de Grace). The agreement provides for the sale of two contiguous tracts of project land of 6.945 acres, located within the city's limits, to the city of Harve de Grace. The land to be sold contains certain improvements (principally a lockhouse and canal locks) built on part of the Susquehanna and Tidewater Canal. The lockhouse is listed on the National Register of Historic Places. Harve de Grace intends to maintain the lockhouse as a museum. The rest of the property will be maintained as part of an existing park.

The Applicants also request Commission Approval of an agreement executed by SEC with the Arundel Corp. (Arundel). The agreement would grant an easement to Arundel across project property between the Conowingo Dam and Harve de Grace. Approval of the easement would provide Arundel access to the Susquehanna River to facilitate the loading of crushed or sized stone from a quarry on Arundel property outside the project boundary. The project lands to be leased to Arundel are situated on the westerly side of the Susquehanna River at the distance of approximately 1,000 feet northwest of the Baltimore and Ohio RR. bridge extending northwestwardly approximately 5,000 feet.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's rules. Any protest or petition to intervene must be filed on or before December 15, 1978. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31993 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RP75-73 (AP No. 78-3)]

TEXAS EASTERN TRANSMISSION CORP.

Notice of Further Extension of Time

NOVEMBER 6, 1978.

On October 24, 1978, Texas Eastern Transmission Corp. filed a motion for suspension of the procedural schedule in this proceeding as established in Commission's order of September 1, 1978, and modified by notices of October 5 and 24, 1978. The motion states that it is anticipated that a settlement agreement resolving all outstanding issues will be finalized by December 23, 1978, and that Staff concurs in the motion.

Upon consideration, an extension of time is granted to and including December 27, 1978, for Texas Eastern to file its case-in-chief Staff shall file its statement of position on or before February 8, 1979. Since neither the settlement agreement nor case-in-chief will be filed before late December, the Chief Administrative Law Judge has advised the Secretary that the designation of a Presiding Judge will be made at a later date.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31994 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. RP75-30]

UNITED GAS PIPE LINE CO.

Notice of Extension of Time

NOVEMBER 3, 1978.

On November 1, 1978, United Gas Pipe Line Co. filed a motion for extension of time for all parties to file initial and reply comments on the settlement agreement in this proceeding as established in the notice issued October 6, 1978. United states that it has discussed possible modifications of the settlement agreement with Commission Staff Counsel and that additional time is necessary for parties to comment on the modifications prior to submittal of comments on the settlement.

Upon consideration, notice is hereby given that an extension of time is granted to and including November 14, 1978, for receipt by the Commission of initial comments. Reply comments shall be received by the Commission on or before December 5, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31995 Filed 11-13-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-35]

VIRGINIA ELECTRIC & POWER CO.

Notice of Cancellation

NOVEMBER 3, 1978.

Take notice that Virginia Electric & Power Co. (Vepco) on October 16, 1978, tendered for filing a Notice of Cancellation of service to its Catawaba Delivery Point (FERC Rate Schedule No. 78-5 dated January 13, 1969).

Vepco requests an effective date of September 12, 1978, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31996 Filed 11-13-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1005-7]

ADMINISTRATOR'S TOXIC SUBSTANCES ADVISORY COMMITTEE

Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: There will be a meeting of the Administrator's Toxic Substances Advisory Committee from 9 a.m. to 4:30 p.m. on Thursday, November 30, 1978. The meeting will be held in room 3906, Waterside Mall, EPA, 401 M Street SW., Washington, D.C., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan Vogt, Executive Secretary, Administrator's Toxic Substances Advisory Committee, Office of Toxic Substances (TS-793), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-4880.

SUPPLEMENTAL INFORMATION: The purpose of this meeting is to discuss matters related to EPA's implementation of the Toxic Substances Control Act (Pub. L. 94-469). The agenda includes:

1. EPA procedures concerning risk assessment;

2. Proposed section 5 premanufacture notification rules;

3. Reports from work groups;

4. Other matters concerning the implementation of the Toxic Substances Control Act.

The meeting will be open to the public. Any member of the public wishing to attend or present an oral or written statement should contact Ms. Susan Vogt at the address or phone number listed above.

Dated: November 7, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

[FR Doc. 78-31880 Filed 11-13-78; 8:45 am]

[6560-01-M]

[FRL 1006-5]

RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

President Carter's Reorganization Plan No. 1 (see President's Message of July 15, 1977) transferred certain functions from the Council on Environmental Quality (CEQ) to the Environmental Protection Agency (EPA). Some of these functions relate to operational duties associated with the administrative aspects of the environmental impact statement (EIS) process. In Memorandum of Agreement No. 1 entered into between CEQ and EPA, dated March 29, 1978, it was agreed that EPA would be the official recipient of EIS's and would publish the availability of each EIS received on a weekly basis. This is the duty formerly carried out by CEQ pursuant to § 1500.11(c) of the CEQ Guidelines.

Review periods for draft and final EIS will be computed as follows: the 45 day review period for draft EIS's will be computed from the Friday following the week which is being reported; the 30 day wait period for final EIS's will be computed from the date of receipt of the EIS by EPA and commenting parties.

The following is a list of environmental impact statements received by the Environmental Protection Agency from October 30, 1978 through November 3, 1978; the date of submission of comments on draft EIS's as computed from November 10, 1978 is December 25, 1978.

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: November 8, 1978.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Draft

Vegetation management with herbicides, several counties, Oct. 31: Proposed is the use of herbicides on national forest system lands in the eastern region of the Forest Service which includes the States of Illinois, Indiana, Maine, Michigan, Minnesota, Missouri, New Hampshire, New York, Ohio, Vermont, Pennsylvania, West Virginia and Wisconsin. It is estimated that approximate-

ly 45,000 acres of land will be involved annually in chemical vegetation control activities. Vegetation management will aid in the management of roads and trails, grazing areas, recreation development, special use areas, timber management, and wildlife activities. (USDA-FS-R9-FES-ADM-77-10.) (EPA Order No. 81182.)

Quartz Mountain Land Management Plan, Bonner County, Idaho, Pend Oreille County, Wash., Oct. 31: Proposed is a land management plan for the Quartz Mountain Planning Unit of the Kaniksu National Forest within the Idaho Panhandle National Forests located in Bonner County, Idaho and Pend Oreille County, Wash. The plan contains a preferred alternative with a mix of land uses with emphasis on timber management, wildlife, recreation, and esthetic values. The plan will only effect the 64,920 acres of national forest lands within the unit. (USDA-FS-R1(04)-DES-ADM-79-02.) (EPA Order No. 81181.)

Ashland land management plan, Rosebud and Powder River Counties, Mont., October 31: Proposed is the selection and implementation of a land management plan for the Ashland Division Planning Unit, Custer National Forest, Rosebud and Powder River Counties, Mont. The planning unit contains 502,152 acres of Federal and other owned land. Six management alternatives are considered, which in addition to consideration of population, provide emphasis on: (1) partial accomodation of local livestock range demand with restriction of other resources; (2) national and local demands for beef and timber output; (3) population increase; (4) roadless and undeveloped areas; (5) energy and population growth; and (6) livestock range, recreation and timber management (R1-79-01) (EPA Order 81179).

Bridger-Teton National Forest timber management plan, several counties, Utah, November 3: Proposed is a timber management plan for the Bridger-Teton National Forest in Lincoln, Sublette, Teton, Fremont, and Park Counties, Wyo. The plan will encompass approximately 3,423,412 acres and replaces 2 existing plans approved in the mid-sixties. Seven alternatives are considered. The preferred alternative includes: (1) timber management and production; (2) wilderness area management; (3) maintenance of rural communities; and (4) reduction of losses from insects, disease, and fire (USDA-FS-DES-(ADM)-R4-79-1) (EPA Order 81195).

Final

Silvies-Malheur unit, Malheur/Ochoco National Forest, several counties, Oreg., November 2: Proposed is a land management plan for the Silvies-Malheur planning unit in the Malheur and Ochoco National Forests. Approximately 57 percent of the unit is in Harney County, 43 percent in Grant County, and 5 percent in Baker County, with the remainder in Crook and Malheur Counties. The preferred alternative calls for the allocation of land for purposes of resource management, recreation, and optimum resource management with timber and range emphasis. The plan will involve 958,890 acres of land (USDA-FS-R6-FES-(ADM)-77-6). Comments made by: AHP, FPC, USDA, COE, DOI, HUD, EPA, State agencies, groups, individuals, and businesses (EPA Order 81191).

Ashley National Forest timber management plan, several counties, Utah and Wyoming, November 3: Proposed is a timber management plan for the 1,377,000-acre Ashley National Forest located in Daggett, Duchesne, Summit, Uintah, and Wasatch Counties, Utah, and Sweetwater County, Wyo. while the proposed plan is based on the 1969-72 multiple use plans, it is consistent with management decisions in two land-use plans being developed, and the vernal land-use plan approved in 1974. By component, the potential yield is: Standard, 15.78 million board feet; special, 2 million board feet; and marginal, 8.08 million board feet for a total of 25.86 million board feet (USDA-FS-FES-(ADM)-R4-77-4). Comments made by: EPA, USDA, DOI, AHP, State agencies, groups (EPA Order 81194).

Soil Conservation Service

Draft

Salt Lick Creek Watershed, Bath and Menifee Counties, Ky., November 2: Proposed are several plans for watershed protection, flood prevention, and recreation with the Salt Lick Creek Watershed in Bath and Menifee Counties, Ky. The planned project will consist of land treatment on about 1,865 acres of cropland, 1,340 acres of Grassland, and 1,555 acres of forest. Structural measures include five floodwater retarding structures and one multiple-purpose structure. Recreational opportunities for bank fishing and small boat use will be made available at a 40-acre lake located at the multiple-purpose structure (USDA-SCS-EIS-WS-(ADM)-78-1(D)-KY) (EPA Order 81188).

Big Sandy Creek Watershed, several counties, Tex., October 30: Proposed is a watershed plan for the Big Sandy Creek Watershed in Clay, Jack, Montague, Tarrant and Wise Counties, Tex. The plan, which is partially completed, includes: (1) 57 floodwater retarding structures, (2) 31 grade stabilization structures, (3) land treatment measures on upland soils, (4) land stabilization measures or area land treatment measures on 2,925 acres of privately owned land, and (5) stabilization measures on 1,450 acres of the JBL national grasslands (USDA-SCS-EIS-WS-(ADM)-78-4-(D)-TX) (EPA Order 81174).

Final

Muzingo Creek Watershed, Nudaway County, Mo., October 31: This statement concerns the Muzingo Creek Watershed located in Nudaway County, Mo. The proposed plan calls for accelerated land treatment along with the one multiple-purpose structure and four grade-stabilization structures. In addition, 70 gully beaches will be treated with grade stablization structures. The watershed is 18 miles long, ranges in width from one to 3.5 miles, and includes an area of 23,988 acres, 19,415 of which will be adequately protected at the end of the installation period. Comments made by: DOI, USA, HEW, EPA, USDA, FERC, State, and local agencies (EPA Order 81183).

U.S. Army Corps of Engineers

Contact: Dr. C. Grant Ash, Office of Environmental Policy, ATTN: DAEN-CWR-P, Office of the Chief of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

Cleveland Harbor navigation project, Cuyahoga County, Ohio, November 3: Proposed is the Cleveland Harbor navigation project, Cleveland, Ohio. Project plans involve widening and deepening the east basin, and creating an east basin lake approach and entrance channel. Adverse effects include disturbance of benihic habitat and associated biota resulting from dredging new navigation channels and deepening existing channels (Buffalo District). Comments made by: HEW, DUT, DOC, DOI, USCG, State, and local agencies, businesses (EPA order 81193).

Draft supplement

Hartwell Lake, 5th unit installation, Savannah River, several counties, Georgia and South Carolina, October 30: Proposed is the installation of a 80,000 kilowatt fifth generating unit at Hartwell Lake Dan in Hart County, Ga. and Anderson County, S.C. The installation would include modification and additions to the existing power intake and powerhouse structures and a transformer and transformer deck pull-off tower to carry the electrical transmission line to the switchyard. The area potentially affected extends from the damsite into Elbert and Hart Counties, Ga. and Abbeville and Anderson Counties, S.C. (Savannah District) (EPA Order 81177).

Federal Energy Research Commission

Contact: Dr. Jack M. Heinemann, Advisor on Environmental Quality, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-6569.

Final

Western LNG project, construction and operation, Alaska, November 3: Proposed is the construction and operation of facilities to collect and liquefy natural gas; the transportation of liquefied natural gas (LNG) in interstate commerce, and the sale of natural gas to Pacific Gas Co. and Electric Co., and to Southern California Gas Co. Natural gas would be purchased from gas fields in the Cook Inlet region of Alaska and transported through a 291.6-mile pipeline to a proposed LNG plant in the Nikiski industrial complex. A receiving terminal for the LNG is proposed at Point Conception, Calif. Construction of the Point Conception area facility will result in the loss of ancient and sacred Indian burial and spiritual grounds. (FERC/EIS-0002F). Comments made by: AHP, COE, HUD, USCG, USDA, DOC, DOI, EPA, State, and local agencies, groups, individuals, and businesses (EPA Order 81196).

Department of HUD

Contact: Mr. Richard H. Broon, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, 202-755-6308.

Draft

Memorial Chase Subdivision, Harris County, Tex., Nov. 3: Proposed is the issuance of home mortgage insurance for the memorial chase subdivision, Harris County, Tex. The subdivision will encompass approximately 209 acres. The development plan for the project provides for the construction of approximately 825 single family units on 206 acres and 3 acres of recreational area. (HUD-R06-EIS-78-46D.) (EPA Order No. 81192.)

Final

Southbridge Subdivision, Housing, Harris County, Tex., Oct. 31: The proposed action is for the Department of Housing and Urban Development to accept for HUD-FHA home mortgage insurance purposes some 224 acres of land located in the city of of Houston, Harris County, Tex. It is proposed that this tract of land be developed into a subdivision composed primarily of single family dwellings to provide approximately 1,000 units for an expected population of some 3,500 people. (HUD-R06-EIS-78-36-F.) Comments made by: AHP, DOT, EPA, DOI, COE, USDA State agencies groups. (EPA Order No. 81180.)

Silver Firs-Snohomish Cascade Masier Plan, Snohomish County, Wash, Nov. 2: The proposed project concerns the Silver Firs-Snohomish Cascade Residential Development in Snohomish County, Wash. The development consist of 500 acres in Silver Firs, approximately 1,300 acres of the Snohomish Cascade area and will provide a full range of housing, recreation, schools, community business and service facilities. The project when completed, within 20 to 30 years, will provide approximately 6,000 housing units. In addition to a no-build alternative, lower and higher density alternatives are considered. (HUD-RIO-EIS-78-5F.) Comments made by: COE, USDA, EPA, AHP, DOI, State and local agencies. (EPA Order No. 81189.)

SECTION 104H(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 executive. Copies are not available from HUD.

Draft

Chinatown Redevelopment Project, Los Angeles County, Calif., Nov. 3: Proposed as a development and rehabilitation project for the Chinatown area of the city and county of Los Angeles, Calif. The project will involve approximately 303 acres of the Chinatown area. Some of the actions considered are: (1) Revitalization of old and development of new residential and commercial structures. (2) development of community facilities and open space, and (3) improvement of the local street system. (EPA Order No. 81190.)

Navy Yard City, Bremerton, Kitsap County, Wash., Oct. 30: Proposed is the rehabilitation of existing housing and improvement of public services in and around Navy Yard City, Kitsap County, Wash. The project will include: (1) Improvement/resurfacing of streets along WA-3, (2) construction of sidewalks, (3) installation of a storm drainage system, (4) improvement of coverage of the sanitary sewer system, (5) construction of a new fire station, (6) construction of a covered play area, and (7) rehabilitation of existing housing. (EPA Order No. 81176.)

Final

Corcoran Fringe Wastewater Facilities, Kings county, Calif. October 30, 1978: Proposed is the release of Federal funds by HUD for the construction of the Corcoran Fringe Wastewater Facility in Kings County, Calif. Three alternatives are under consideration as follows: (1) Construction of a community collection system and connection to the existing facility, (2) construction of a community collection system and a treatment facility which would be independent of the existing city facility, and (3) rehabilitation of individual disposal systems and implementation of a maintenance district (no-project). (HUD-R09). Comments made by: DOI, State and local agencies, and individuals (EPA Order No. 81175).

Bristol, Pa.-Golf Ranch/Centennial Industrial Park, Bucks County, Pa. October 31, 1978: Proposed is the borough of Bristol's use of $428,000 from the 1975-76 and 1976-77 community development block grant program for the acquisition of leasehold interests in the borough-owned property generally known as the Gulf Ranch. The intent is to terminate existing long-term leases in order to make the land available for the proposed development of the site as an industrial park; the site is approximately 94 acres in size. Comments made by: DOI, EPA, HUD, State and local agencies, groups and businesses (EPA Order No. 81185).

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.

Final

Southern Pacific, discontinuance of operation, San Mateo, Santa Clara, and San Francisco Counties. October 31, 1978: The Southern Pacific Transportation Co. proposes to discontinue its passenger train service between San Francisco, San Francisco County, through San Mateo County to San Jose, Santa Clara County, Calif., a distance of 47 miles. If discontinuance is authorized, the primary inter-urban mass transportation system in the west bay corridor of northern California will be eliminated. The Southern Pacific serves 24 intervening communities along peninsula route. This petition does not consider the elimination of freight service. Comments made by: EPA, DOI, HUD, DOT, AHP, State and local agencies (EPA Order No. 81184).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL AVIATION ADMINISTRATION

Draft

Bloomington-Normal Airport, McLean County, Ill. November 1, 1978: Proposed is a development program for the Bloomington-Normal Airport located in Bloomington, McLean County, Ill. Several parcels of land will be acquired for development of the proposed runway 3R-2IL, including the clear zones and land within areas where the noise level will exceed 85DB(A). Approximately 360 acres will be purchased, construction of the runway will also include installation of runway end identification lights and medium intensity runway lighting. (EPA Order No. 81187).

FEDERAL HIGHWAY ADMINISTRATION

Final

Maryland Route 404 (Denton by-pass) Caroline County, Md. October 30, 1978: Proposed is the relocation and/or reconstruction of Maryland 404 to provide a multilane highway facility around Denton, Md., from 1.2 miles east of Maryland 328 to Maryland 16, south of Denton. When on new locations, a four-lane freeway with a wide median section is envisioned. The freeway will have full control of access. Where the alternate follows the existing road, the construction will be a four-lane expressway with a lesser median width. (FHWA-MD-EIS-77-02-F). Comments made by: COE, DOI, EPA, USDA, DOC, USCG, State and local agencies, groups (EPA Order No. 81178).

NC 24-27 (Albemarle Road), SR 3128-NC 51, Mecklenburg County, N.C. November 1, 1978: Proposed is the improvement of the existing two-lane NC 24-27 (Albemarle Road) to a multilane facility from SR 3128 (Lawyers Road) to NC 51 (Blair Road). The proposed project is approximately 5.9 miles in length. Subject to the alternate selected, project implementation will require the relocation of 14 families and 12 Businesses, and the land uses which are presently within the 70 DBA contour will experience a 3 to 7 DBA increase from the projected traffic noise. (region 4) (FHWA-NC-EIS-77-01-F). Comments made by: USCG, USDA, COE, DOI, EPA, HEW, HUD, State and local agencies (EPA Order No. 81186).

NOTICE OF OFFICIAL RETRACTIONS

It has recently came to EPA's attention that the following draft EIS was not made available to the Federal agencies. The applicant filed the draft EIS with EPA on July 18, 1978 and EPA published notice of availability in the FEDERAL REGISTER dated July 31, 1978. The EPA will reissue this notice upon notification by the applicant that complete distribution has been made.

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-6308.

Draft

Eagle-Market Street Development Project (UDAG), Buncombe County, N.C. This proposal concerns an application for HUD funding through the urban development action grant program by the city of Asheville, Buncombe County, N.C. The renewal plan as drafted includes project details such as land acquisition, relocation, land use, public works improvements, site plans, and financing. The purpose of this project is to attract private investment in an attempt to solve problems of migration and declining tax base. (EPA Order No. 80777).

It has also come to EPA's attention that the following final EIS, filed with EPA on September 14, 1978 and published in the September 25, 1978 FEDERAL REGISTER was not distributed to commenting parties until October 20, 1978. Therefore the 30-day review period is calculated from October 20, 1978.

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, attention: DAEN-CEW-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Final

Santa Ana R. Main Stem and Santiago Creek, Orange, Riverside, and San Bernadino Counties, Calif. October 20, 1978: The project includes the construction of a new reservior upstream of Prado Dam; modification and expansion of the existing Prado Reservior; improvement of the existing Santa Ana River channel; improvement of the Lower Santiago Creek channel; development of water conservation, recreational and wildlife enhancement facilities in and along the above; acquisition and protection of natural amenities in Santa Ana Canyon; and acquisition and preservation of a 92 acre salt marsh area. (Los Angeles district). Comments made by: DOC, EPA, HEW, DOI, USDA, USCG, HUD, State and local agencies (EIS Order No. 81002).

NOTICE OF OFFICIAL CORRECTIONS

The following final EIS was received by the EPA on October 27, 1978, and inadvertently omitted from the notice published in the November 6, 1978 FEDERAL REGISTER. Notice of availability is hereby published with calculation of the 30-day review period beginning November 6, 1978.

GENERAL SERVICES ADMINISTRATION

Contact: Mr. Andrew E. Kauders, Executive Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202-566-0405.

Final

Mount Vernon Campus Square, University of DC, District of Columbia, October 27, 1978: The proposal discussed concerns the granting of funds to the University of the District of Columbia. The university is presently housed in 14 buildings in various sections of the District. Plans are being prepared by the university to consolidate the programs in new facilities located in downtown Washington, D.C. The new campus would accomodate 6,517 full time equivalent students and would be located on four blocks directly north of Mount Vernon Square in the northwest section of the city. (EDC-78005) (EPA Order No. 81173).

The following final EIS, published in October 25, 1978, FEDERAL REGISTER notice, was printed and distributed by the FHWA with the incorrect agency reference number. Please note that the correct number is FHWA-NC-EIS-76-07-F.

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-4357.

Title

Southward extension of Dawson and McDowell Streets and related improvements to Wilmington and South Sanders Streets from Cabarrus Street to the U.S. 70-401 interchange, Raleigh, Wake County, N.C. (EPA No. 81104).

[FR Doc. 78-32013 Filed 11-13-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 4, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreements. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-2640-12.

Filing party: H. H. Wittren, Manager, Waterfront Real Estate, Port of Seattle, P.O. Box 1209, Seattle, Wash. 98111.

Summary: Agreement No. T-2640-12, between the Port of Seattle (Port) and American President Lines, Ltd. (APL) modifies the parties' basic agreement which provides for the 20-year lease to APL of Terminal 25 in Seattle, Wash. The purpose of the modification is to change the amortization schedule of payments contained in Agreement No. T-2640-10 from 224 months to 225 months. The parties also desire to provide for the Port's reimbursement to APL, in an amount not to exceed $196,800 of costs expended by APL for certain additions and modifications to the Reefer Outlet System at Terminal 25. Total monthly rent for land, cranes and other improvements is increased to $123,465.98 and the lease bond will increase to $1,482,000.00.

Agreement No.: T-3740.

Filing party: W. L. Hann, Assistant Director of Operations Port Services, Georgia Ports Authority, P.O. Box 2406, Savannah, Ga. 31402.

Summary: Agreement No. T-3740, between the Georgia Ports Authority (Port) and United States Lines, Inc. (USL), provides for the Port's 5-year lease to USL (with renewal options) of a portion of container berth No. 60 storage area, Garden City Terminal, Chatham County, Ga., to be used for the storage and handling of containers, including trailers and chassis used to transport containers. As compensation, USL shall pay Port a fixed monthly rental charge of $9,029.16 plus wharfage charges according to the Port's tariff, subject to a guaranteed minimum of 150,000 short tons. For tonnage generated by USL during any 365-day guarantee period in excess of 150,000 short tons, USL shall pay wharfage to Port at a reduced rate as outlined in the agreement. USL shall pay Port dockage and all others charges incurred according to the Ports tariff.

Agreement No. 8240-14.

Filing party: Mr. Wade S. Hooker, Jr., Burlingham Underwood & Lord, One Battery Park Plaza, New York, N.Y. 10004.

Summary: Agreement No. 8240-14, entered into among the member lines of the Atlantic and Gulf-Singapore, Malaya and Thailand Conference, amends Article 8 of the basic agreement to read as follows (was insertions indicated by underlining):

"8. There shall be no absorption of wharfage, storage or other charges against the cargo and no absorption at loading or discharge ports of rail, truck or water freights, except as authorized by the Conference."

By Order of the Federal Maritime Commission.

Dated: November 8, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31949 Filed 11-13-78; 8:45 am]

[6730-01-M]

SECURITY FOR THE PROTECTION OF THE PUBLIC; INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OF TRANSPORTATION

Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Phaidon Navegacion S.A., c/o Chandris, Inc., 666 Fifth Avenue, New York, N.Y. 10019.

Dated: November 8, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-31951 Filed 11-13-78; 8:45 am]

[6730-01-M]

SECURITY FOR THE PROTECTION OF THE PUBLIC; FINANCIAL RESPONSIBILITY TO MEET LIABILITY INCURRED FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS ON VOYAGES

Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Phaidon Navegacion S.A., c/o Chandris Inc., 666 Fifth Avenue, New York, N.Y. 10019.

Dated: November 8, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 31950 Filed 11-13-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

CITIZENS BAN-CORPORATION

Acquisition of Bank

Citizens Ban-Corporation, Rock Port, Mo., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 95.31 percent of the voting shares of Farmers and Merchants Bank of Elmo, Elmo, Mo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 7, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31923 Filed 11-13-78; 8:45 am]

[6210-01-M]

FIRST CITY BANCORP. OF TEXAS, INC.

Acquisition of Bank

First City Bancorporation of Texas, Inc., Houston, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of First City Bank—Bear Creek, Harris County, Tex., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 4, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 3, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-31924 Filed 11-13-78; 8:45 am]

[6210-01-M]

LOCKNEY BANCSHARES, INC.

Formation of Bank Holding Company

Lockney Bancshares, Inc., Lockney, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank in Lockney, Lockney, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842 (c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than November 29, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31926 Filed 11-13-78; 8:45 am]

[6210-01-M]

MARSH INVESTMENTS, N.V., ET AL.

Formation of Bank Holding Companies

Marsh Investments, N.V., Curacao, Netherlands Antilles, Marsh Investments, B.V., Rotterdam, The Netherlands, and M.F.G. Investments, Inc., Hialeah, Fla., have 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 bank holding companies by acquiring 80 percent or more of the voting shares of First National Bank of Greater Miami, Hialeah, Fla. 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 Atlanta. 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, not later than December 6, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31925 Filed 11-13-78; 8:45 am]

[6210-01-M]

NORTHWEST OHIO BANCSHARES, INC.

Acquisition of Bank

Northwest Ohio Bancshares, Inc., Toledo, Ohio, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per-

cent or more of the voting shares of the Willard United Bank, Willard, Ohio. 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 Reseve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 7, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 7, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31927 Filed 11-13-78; 8:45 am]

[6210-01-M]

SOUTHWEST FLORIDA BANKS, INC.

Acquisition of Bank

Southwest Florida Banks, Inc., Fort Myers, Fla., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Charlotte County National Bank, Charlotte County, Fla. 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 Atlanta. 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, not later than December 5, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office on or before December 14, 1978, and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 6, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31928 Filed 11-13-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Notice of Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on November 7, 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 each 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 CFTC and ICC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before December 4, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. 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.

COMMODITY FUTURES TRADING COMMISSION

The CFTC requests clearance of a new "Futures Commission Merchant Form, CFTC-145." This report will be required to be filed monthly by futures commission merchants who qualify, in accordance with the provsions of 32.12 of the CFTC's regulations, to offer to sell options on physicals (so-called dealer options) to option customers in the United States and are actually offering or selling such options to option customers. The CFTC will require the first monthly reports in January 1979, covering data for December 1978. The reports will be due by the 10th business day of the month following the month covered by the report. The CFTC estimates respondents will number approximately 9 but may eventually number more than 10 and that reporting burden will average 4 hours per report.

INTERSTATE COMMERCE COMMISSION

The ICC requests an extension without change clearance of form OSB, quarterly Report of Revenue Traffic, required to be filed by 42 class I railroads, pursuant to section 20 of the Interstate Commerce Act. The report form collects data on freight revenue, passenger revenue, freight tonnage, passengers carried and related statistics. Data collected by form OSB are used for economic regulatory purposes. The ICC states that no change is made in the data requirements. The ICC estimates reporting burden averages 68 hours per report. Reports are mandatory and available for use by the public.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-32001 Filed 11-13-78; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

EMPLOYEES OF SOUTHERN METHODIST UNIVERSITY

Research on Mental Health; Authorization of Confidentiality

Under the authority vested in the Secretary of Health, Education, and Welfare by section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) all persons who:

1. Are employed by Southern Methodist University, Dallas, Tex., and

2. Have, in the course of their employment, access to information which would identify individuals who are the subjects of the research on mental health which is asssisted by the Department of Health, Education, and Welfare grant numbered RO1 MH 31711 titled "The Attrition-of-Justice in Rape/Sexual Assault Cases"

are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

As provided in section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)):

Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

This authorization does not authorize employees of Southern Methodist University to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare for the purpose of management or financial audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to the Department of Health, Education, and Welfare grant numbered RO1 MH 31711. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare grant numbered RO1 MH 31711 which would identify individuals who are subjects of the research conducted under the grant.

Dated: October 23, 1978.

THOMAS F. PLAUT,
Deputy Director, National Institute of Mental Health.

Dated: October 23, 1978.

KARST BESTEMAN,
Acting Director, National Institute on Drug Abuse.

Dated: October 22, 1978.

DAVID F. KEFAUVER,
Acting Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-31915 Filed 11-13-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

ADVISORY COMMITTEES

Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the annual reports required by the act for Food and Drug Administration advisory committees have been filed with the Library of Congress.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Office (HFA-27), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Copies of the annual reports are available for public inspection at (1) the Library of Congress, Special Forms Reading Room, Main Building, First Street and Independence Avenue SE., Washington, D.C. 20540 (2) the Department of Health, Education, and Welfare Library, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, on weekdays between 9 a.m. and 4:30 p.m.; and (3) the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 3, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31615 Filed 11-13-78; 8:45 am]

[4110-03—M]

PATIENT PACKAGE INSERTS

Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the Conference on Patient Package Inserts—Content and Format, to be held December 11 and 12, 1978, at the Shoreham Americana Hotel in Washington D.C. The purpose of the meeting is to consider what and how information in patient package inserts (PPI's) should be designed for the most benefit to the patient.

DATES: December 11, 1978: 8 a.m. to 5 p.m. December 12, 1978: 9 a.m. to adjournment.

ADDRESS: The Shoreham Americana Hotel, 2500 Calvert Street NW., Washington D.C. 20008.

FOR FURTHER INFORMATION CONCERNING ATTENDANCE OR REGISTRATION, CONTACT:

Ann Myers, Bureau of Drugs (HFD-107), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4893.

SUPPLEMENTARY INFORMATION: Workshops and speakers will discuss drafting PPI's for five specific classes of drugs, including minor tranquilizers, antihypertensives, anitbiotics, antiinflammatories and antidepressants. Input from health professionals, consumers, and all interested parties will be solicited. There is no registration fee and the conference is open to the public. However, participation in the workshops on the afternoon of December 11 is limited to space available and preregistration is encouraged.

Dated: November 7, 1978.

WILLAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-31886 Filed 11-13-78; 8:45 am]

[4110-03-M]

WALNUT GROVE PRODUCTS

Rootin' Iron Blocks (Ferrous Fumarate); Withdrawal of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of a new animal drug application (NADA) providing for use of Rootin' Iron Blocks (ferrous fumarate) for the prevention of iron deficiency anemia in baby pigs. The sponsor, Walnut Grove Products, requested this action.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

David N. Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1846.

SUPPLEMENTARY INFORMATION: Walnut Grove Products, Division of W. R. Grace & Co., 201 Linn Street, Atlantic, Iowa 50022, is sponsor of NADA 31-513, which provides for the use of Rootin' Iron Blocks (ferrous fumarate) for the prevention of iron deficiency anemia in baby pigs. By letter of June 5, 1978, the firm requested that approval of NADA 31-513 be withdrawn because the product had not been marketed for several years.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 Withdrawal of approval of applications (21 CFR 514.115), notice is given that approval of NADA 31-513 and all supplements for Rootin' Iron Blocks is hereby withdrawn, effective November 14, 1978.

Dated: November 3, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31758 Filed 11-13-78; 8:45 am]

[4110-03-M]

[NADA 39-862V]

WALNUT GROVE PRODUCTS

Tylosin Premix; Withdrawal of Approval of New Animal Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine withdraws approval of a new animal drug application (NADA) providing for manufacture of a tylosin premix. The sponsor, Walnut Grove Products, has requested this action.

EFFECTIVE DATE: November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Beaulieu, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: Walnut Grove Products, division of W. R. Grace & Co., 201 Linn Street, Atlantic, Iowa 50022, is sponsor of NADA 39-862V, which provides for manufacture of a 2-gram-per-pound tylosin premix for subsequent use in the manufacture of a complete swine feed. The premix bears indications for increased rate of weight gain and improved feed efficiency. The Food and Drug Administration originally approved the application by letter of August 8, 1969. In a letter dated August 1, 1977, Walnut Grove Products requested that approval of the NADA be withdrawn because the product is no longer being marketed, and waived opportunity for a hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84) and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 39-862V and all supplements thereto for Walnut Grove "4X4" Automatic A-V Booster Mix-T Medicated is hereby withdrawn, effective November 14, 1978.

Dated: November 3, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 78-31887 Filed 11-13-78; 8:45 am]

[4110-84-M]

Health Services Administration

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 December 1978:

Name: Interagency Committee on Emergency Medical Services.

Date and Time: December 13, 1978—9 a.m. to 4 p.m.

Place: Conference Rooms G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857.

Open for entire meeting.

Purpose: the Committee provides for the communicaton and exchange of information necessary to maintain the coordination and effectiveness among such Federal programs and activities and makes recommendations to the Secretary respecting the administration of grants and contracts under Title XII, including making regulations for the emergency medical services systems program.

Agenda: Proposed agenda items for this meeting include a status report on the National Registry for: (1) EMTs, (2) Paramedic Recertification, and (3) National Park Service. Also discussed will be an update of Combined Federal Funding, Poison Control Information, Proposed Federal Aviation Administration Air Ambulance Standards, Report on the National EMS symposium—February 20-23, 1979, and discussion on a standard EMS logo.

The meeting is open to the public for observation. Anyone wishing to attend, obtain the roster of members, minutes of meeting, or other relevant information should contact Mr. Lee Shuck, Division of Emergency Medical Services, Bureau of Medical Services, Suite 11-64D, 6525 Belcrest Road, Hyattsville, Md. 20782, telephone 301-436-6295. Public seating is limited to forty (40). Please contact at least 72 hours before the meeting.

Agenda items are subject to change as priorities dictate.

Dated: November 3, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

[FR Doc. 78-31899 Filed 11-13-78; 8:45 am]

[4110-84-M]

ANNUAL REPORTS OF FEDERAL ADVISORY COMMITTEES

Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Services Administration Federal Advisory Committee has been filed with the Library of Congress:

Indian Health Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health, Education, and Welfare, Department Library, North Building, Room 1436, 330 Independence Avenue SW., Washington, D.C. 20201, telephone 202-245-6791. Copies may be obtained from Mr. Mose E. Parris, Room 5A-43, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, telephone 301-443-1104.

Dated: November 3, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

[FR Doc. 78-31898 Filed 11-13-78; 8:45 am]

[4110-08-M]

National Institutes of Health

REPORT ON BIOASSAY OF 1,2-DIBROMOETHANE FOR POSSIBLE CARCINOGENICITY

Availability

1,2-Dibromoethane (CAS 106-93-4) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary. A bioassay for possible carcinogenicity of technical-grade 1,2-dibromoethane was conducted using Osborne-Mendel rats and B6C3F1 mice. Applications of the chemical include use as a gasoline additive and fumigant. 1,2-Dibromoethane in corn oil was administered by gavage, at either of two dosages, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, 1,2-dibromoethane was carcinogenic to Osborne-Mendel rats and B6C3F1 mice. The compound induced squamous-cell carcinomas of the forestomach in rats of both sexes, hepatocellular carcinomas in female rats, and hemangiosarcomas in male rats. In mice of both sexes the compound induced squamous-cell carcinomas of the forestomach and alveolar/bronchiolar adenomas.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research.)

Dated: November 6, 1978.

DONALD S. FREDRICKSON,
Director, National Institutes of Health.

[FR Doc. 78-31765 Filed 11-13-78; 8:45 am]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Correction

The FEDERAL REGISTER notice (4110-02-M) on Friday, October 20, 1978 (Vol. 43, No. 204, pages 49056 and 49057) of the meeting of the National Advisory Council on Extension and Continuing Education indicates that the meeting of the Committee on International Dimensions of Continuing Education will be held on Thursday, November 16 in the Council's office: 425 Thirteenth Street NW., Suite 529, Washington, D.C. 20004.

Due to unanticipated changes in the schedules of Council members, the meeting of the Committee on International Dimensions of Continuing Education has been rescheduled for Tuesday, November 28, 1978, in the Council's office.

The meeting is open to the public. However, because of limited space, those interested in attending should inform the Council's office no later than November 17 by calling 202-376-8888.

Dated: November 8, 1978.

WILLIAM G. SHANNON,
Executive Director.

[FR Doc. 78-31953 Filed 11-13-78; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

WETLAND-RIPARIAN AREA PROTECTION AND MANAGEMENT

Policy and Protection Procedures—Interim Guidelines

Correction

In FR Doc. 78-31601 appearing at page 52179 in the issue of Wednesday, November 8, 1978, first column, the comment date should read "January 8, 1979".

[4310-09-M]

Bureau of Reclamation

[INT FES 78-32]

McGEE CREEK PROJECT, OKLAHOMA

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the authorized McGee Creek Project, Oklahoma.

The environmental statement concerns a water supply to meet expanding municipal and industrial water needs of Oklahoma City and parts of south-central Oklahoma. Flood control, fish and wildlife, and environmental enhancement are other project purposes. McGee Creek dam would be located on McGee Creek in Atoka County, Okla.

Copies are available for inspection at the following locations:

Office of Environmental Affairs, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, 202-343-4991.
Division of Engineering Support, Technical Services, and Publications Branch, E. & R. Center, Denver Federal Center, Denver, Colo. 80225, 303-234-3006.
Office of the Regional Director, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, Tex. 79101, 806-376-2401.
Planning Office, Bureau of Reclamation, P.O. Box 495, Oklahoma City, Okla. 73101, 405-231-4515.
City of Atoka Library, Atoka, Okla.
Central State University Library, Edmond, Okla.
East Central Oklahoma State University Library, Ada, Okla.
Murray State College Library, Tishomingo, Okla.
Oklahoma Baptist University Library, Shawnee, Okla.
University of Oklahoma Library, Norman, Okla.
Southeastern Oklahoma State University Library, Durant, Okla.

The following libraries in Oklahoma City, Okla.:

Oklahoma County Library System.
Oklahoma Christian College Library.
Oklahoma City University Library.
Oklahoma State University Technical Institute Library.
University of Oklahoma—Health Science Center Library.
Southwestern College Library.

Single copies of the final environmental statement may be obtained on request to the Commissioner of Reclamation, Regional Director, or Oklahoma City Planning Officer. Please refer to the statement number above.

Dated: November 8, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc 78-31916 Filed 11-13-78; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before November 3, 1978. Pursuant to § 60.13(a) of 36 CFR part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by November 24, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

CONNECTICUT

New London County

Groton Vicinity, *Yeomans, Edward, House,* E of Groton on Brook St.

GEORGIA

Baldwin County

Milledgeville vicinity, *Borrowville,* E of Milledgeville on GA 22/24.

Dougherty County

Albany, *U.S. Post Office and Courthouse, 337 Broad Ave.*

Jasper County

Monticello, *Monticello High School,* College St.

Lumpkin County

Dahlonega, *Fields Place-Vicery House,* W. Main St. and Vickery Dr.

Rabun County

Clayton, *Second Rabun County Courthouse, Bleckley House,* Warwoman Rd.

ILLINOIS

Cook County

Evanston, *Dryden, George B., House,* 1314 Ridge Ave.

Kane County

Wayne, *Oaklawn Farm,* Army Trail and Durham Rds.

Monroe County

Columbia, *Gundlach-Grosse House*, 625 N. Main St.
Waterloo vicinity, *Fountain Creek Bridge*, off IL 156.

Peoria County

Peoria, *Central National Bank Building*, 103 SW. Adams St.

Sangamon County

Springfield, *Brinkerhoff, George M., House*, 1500 N. 5th St.

KENTUCKY

Bath County

Sharpsburg vicinity, *Springfield Presbyterian Church*, S of Sharpsburg on Springfield Rd.

Daviess County

Maceo vicinity, *Archeological Site 15 Da 39*, W of Maceo.

Fayette County

Lexington, *McCracken-Wilgus House*, 327 Wilgus St.

Gallatin County

Sparta vicinity, *Turley, Benjamin F., House*, 2.5 mi. N of Sparta on KY 35.

Jefferson County

Louisville, *Eclipse Woolen Mill*, 1044 E. Chestnut St.
Louisville, *Presentation Academy*, 861 S. 4th St.

Menifee County

Frenchburg, *Frenchburg School Campus*, U.S. 460.

NEBRASKA

Jefferson County

Powell vicinity, *District No. 10 School*, W of Powell.

Sarpy County

Bellevue vicinity, *McCarty-Lilley House*, W of Bellevue on Quail Dr.

NEW MEXICO

Otero County

Tularosa, *Tularosa Original Townsite District*, U.S. 54/70.

NEW YORK

New York County

New York, *Gilsey Hotel*, 1200 Broadway.
New York, *Queensboro Bridge*, 59th St. (also in Queens County).

Richmond County

Staten Island, *New Brighton Village Hall*, 66 Lafayette Ave.

NORTH DAKOTA

Renville County

Tolley vicinity, *McKinney Cemetery*, N of Tolley.

RHODE ISLAND

Providence County

Central Falls, *Valley Falls Mill Complex*, 1359-1363 Broad St. (boundary increase).
Pawtucket, *Art's Auto*, 5-7 Lonsdale Ave.

TEXAS

Dickens County

Dickens, *Dickens County Courthouse and Jail*, Public Sq.

Dimmit County

Carrizo Springs, *Dimmit County Courthouse*, Public Sq.

Harrison County

Jonesville vicinity, *Locust Grove*, NW of Jonesville of TX 134.

Jasper County

Jasper, *Jasper County Courthouse*, Public Sq.

Jefferson County

Beaumont, *Sanders House*, 479 Pine St.

Kendall County

Boerne, *Kendall County Courthouse and Jail*, Public Sq.

McLennan County

Waco, *McLennan County Courthouse*, Public Sq.

Wharton County

Wharton, *Wharton County Courthouse*, Public Sq.

Wilbarger County

Odell vicinity, *Doan's Adobe House*, E of Odell off U.S. 283.

UTAH

Emery County

Castle Dale vicinity, *Buckhorn Wash Rock Art District*, 22 mi. SE of Castle Dale.

Morgan County

Morgan, *Heiner, Daniel, House*, 543 N. 700 East.

Salt Lake County

Salt Lake City, *Immanuel Baptist Church*, 401 E. 200 South.
Salt Lake City, *Irving Junior High School*, 1179 E. 2100 South.
Salt Lake City, *Whipple, Nelson Wheeler, House*, 564 W. 400 North.

Sevier County

Richfield vicinity, *Jenson, Jens Larson Lime Kiln*, 2 mi. N of Richfield.
Salina vicinity, *Sudden Shelter*, E of Salina on UT 4.

Wasatch County

Heber City, *Fisher, David, House*, 124 E. 400 South.
Heber City, *Heber Second Ward Meetinghouse*, 1st West and Center Sts.

Weber County

Ogden, *Maguire, Don, Duplex*, 549-551 25th St.

VERMONT

Rutland County

Rutland, *Rutland Downtown Historic District*, roughly bounded by State, Elm, Washington, Strongs, and Pine Sts.

WISCONSIN

Iowa County

Dodgeville, *Old Rock School*, 914 Bequette St.

La Crosse County

La Crosse vicinity, *Overhead Site*, S of La Crosse.

Langlade County

Antigo, *Antigo Public Library and Deleglise Cabin*, 404 Superior St.

Oconto County

Oconto, *Jones, Huff, House*, 1345 Main St.

Ozaukee County

Cedarburg, *Hilgen and Wittenberg Woolen Mills*, Bridge Rd.

Waupaca County

Waupaca, *Cresent Roller Mills*, 213 Oborn St.

Winnebago County

Oshkosh, *Hooper, Jessie Jack, House*, 1149 Algoma Blvd.

WYOMING

Natrona County

Arminto, *Big Horn Hotel*, Main St.

[FR Doc. 78-31785 Filed 11-13-78; 8:45 am]

[4310-05-M]

Office of Surface Mining Reclamation and Enforcement

PROPOSED DECISION TO APPROVE COAL MINING AND RECLAMATION PLAN WITH STIPULATIONS, BLACK BUTTE FEDERAL COAL LEASE NO. W-6266

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Proposed Decision to Approve Coal Mining and Reclamation Plan With Stipulations—Black Butte Mine, Federal Coal Lease No. W-6266.

SUMMARY: Pursuant to section 211.5 of Title 30, Code of Federal Regulations, notice is hereby given that the Office of Surface Mining has performed a technical review of a mining and reclamation plan submitted by Black Butte Coal Co. (P.O. Box 98, Point of the Rocks, Wyo. 82942) to disturb up to 13,842 acres of a total permit area of 38,616 acres comprised of federally owned and privately owned coal. The mine is located about 25 miles east of Rock Springs, Wyo. and south of Point of the Rocks, Wyo.

(T)9N, R100W, sections 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; T19N, R101W, sections 24, 25, 36; T18N, R100W, sections 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 15, 16 (in part), 17, 19, 20 (in part), 21, 22, 23, 27, 28, 29, 30, 31, 32, 33; T18N R101W, sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 27, 35). It is proposed to mine this, and perhaps adjacent, coal over a period of about at least 26 years.

The purpose of this notice is to inform the public that the Regional Director, Region V, Office of Surface Mining, has recommended, based on staff and other reviews; including those of the Wyoming Department of Environmental Quality, the Bureau of Land Management, and the Geological Survey; approval of the mining and reclamation plan with stipulations. Any persons having an interest which is or may be adversely affected may, in writing, request a public meeting to discuss their views regarding this mining and reclamation plan.

This particular mine was the subject of a site-specific analysis of impacts and alternatives in an Environmental Impact Statement, titled "Development of Coal Resources in Southwestern Wyoming". The Final Environmental Statement was submitted on September 17, 1978.

DATES: All requests for public meeting must be made on or before the date of publication of this notice. No decision on the mine plan will be made by the Assistant Secretary, Energy and Minerals, prior to the expiration of the 20-day period.

ADDRESSES: The stipulations are available for review in the Region V Office of Surface Mining upon request. Requests for a public meeting must include the name and address of the requestor and must be submitted to the Regional Director, Region V, Office of Surface Mining, Room 217, 1823 Stout Street, Denver, Colo. 80202.

FOR FURTHER INFORMATION CONTACT:

John Hardaway, Office of Surface Mining, Region V, 1823 Stout Street, Denver, Colo. 80202.

PAUL L. REEVES,
Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 78-31955 Filed 11-13-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. V. EVEREST & JENNINGS INTERNATIONAL, ET AL.

Written Comments Upon Consent Judgment and Department of Justice Response Thereto

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the following written comments on the proposed judgment filed with the U.S. District Court in the Central District of California in Civil Action No. 77-1648-R, *United States of America* v. *Everest & Jennings International; Everest & Jennings, Inc., and The Jennings Investment Co.*, were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: November 6, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.
SEPTEMBER 22, 1978.

ANTITRUST DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, D.C. 20530.

Attention: Douglas E. Rosenthal, Esquire, Chief, Foreign Commerce Section.

Re: *United States* v. *Everest & Jennings International*

GENTLEMEN: We are writing on behalf of the Paralyzed Veterans of America, Inc. ("PVA") and the California Association of the Physically Handicapped ("CAPH"), pursuant to section 5 of the Clayton Act, as amended by the Antitrust Procedure and Penalties Act (15 U.S.C. § 16(b)-(h)) ("APPA")[1], to comment on the proposed consent judgment [2] in *United States* v. *Everest & Jennings International*, Civ. No. 77-1648-R, C.D. Cal.

I. STATEMENT OF INTEREST

Both PVA and CAPH are vitally interested in the subject matter of the proposed decree. The price, durability, innovativeness, and diversity of wheelchairs sold in the United States—all adversely affected by the long-standing wheelchair monopoly charged against defendants by the Justice Department—determine, in large measure, the personal mobility and the way of life of hundreds of thousands of paralyzed or disabled Americans. PVA and CAPH represent many of those persons.

PVA is a nonprofit, national organization whose membership consists of approximately 12,000 paralyzed individuals who have performed military service. CAPH is a nonprofit organization with over 4,000 physically handicapped members. Defendants' wheelchair monopoly has caused direct and serious injury to members of both PVA and CAPH, as well as innumerable other wheelchair users.

As a result of the monopoly, wheelchairs sold in the United States are extremely expensive—far more expensive than they would be in a competitive market. For example, we understand that defendants' former British joint venture has, in the recent past, sold virtually the same wheelchair in the United Kingdom as defendants' U.S.-manufactured wheelchair for one-third the U.S. price. And, according to the Department's own contentions, defendant's gross profit margins—substantially above 50 percent for premium wheelchairs and over 100 percent on accessories and parts—are the highest in the industry.[3] Moreover, this monopoly has financed extremely high salaries and returns on equity to defendants' corporate officers and certain shareholders.[4]

Monopolistic prices alone impose a heavy burden on both private and public purchasers of wheelchairs, accessories, and spare parts. But there are other, equally grave, consequences of defendants' monopoly that are visited upon wheelchair users.

Wheelchair design innovation and basic product durability affect the daily lives of PVA and CAPH members. Design innovation means increased personal mobility for handicapped people in ways that enhance their ability to perform at work and to interact socially. Wheelchair durability is similarly crucial to a handicapped person's work performance and social activities because needless breakdowns frustate personal mobility.

Here too, defendants' monopoly has produced clear injury. Defendants' West German subsidiary (formerly a joint venture), which often manufactured a higher quality wheelchair than the comparable product made by defendants in the United States, was intentionally precluded from exporting its superior wheelchair to the United States.[5] Likewise, in 1962, defendants eliminated a potential Canadian competitor from the U.S. market by acquiring it and then prohibiting it from exporting to the United States.[6] At that time, the Canadian firm, a likely competitor in the eastern United States, manufactured high quality wheelchairs incorporating features superior to those of defendants' products.[7]

It is also noteworthy that defendants have been able to hold their enormous market and submarket shares without the benefit of an existing, significant wheelchair patent.[8] Additionally, we understand that defendants' monopoly has permitted it to manufacture wheelchairs without regard to basic engineering standards—a deficiency resulting in extremely poor durability characteristics of certain components which lead

[1] Due to the length of this submission, we have provided a brief outline of our comments, as follows:
I. Statement of interest.
II. Summary of position.
III. Economic and legal background.
IV. Objectives of the proposed decree.
V. Inadequacies of the proposed decree.
VI. Divestiture is the only adequate relief.
Conclusion.

[2] Filed May 10, 1978, 43 FR 21740 (May 19, 1978) (hereinafter referred to in text as "decree" or "proposed decree", and cited as "Decree").

[3] Plaintiff's Memorandum of Contentions of Fact and Law Pursuant to Local Rule 9(e), dated January 29, 1978, at 36 (hereinafter "Plaintiff's Memorandum").

[4] *Id.* at 35-36.

[5] *Id.* at 21.

[6] *Id.* at 27.

[7] *Id.* at 27.

[8] *See* Everest & Jennings International Annual Report, Form 10-K, Securities and Exchange Commission, file No. 2-28577, December 25, 1977, at 3 (hereinafter "Annual Report").

to frequent breakdowns and expensive, time-consuming repairs.

Finally, PVA and CAPH members, along with other wheelchair users, have been harmed by the absence of wheelchair alternatives, the natural result of defendants' exclusion of foreign and domestic competition. Defendants' highly successful exclusionary efforts have resulted in overwhelming market dominance. Defendants admit they are the only manufacturer of custom wheelchairs in the world and claim to have sold 90 percent of first-line wheelchairs to U.S. veterans.[9] Defendants have a 90-percent share of the wheelchair submarkets most crucial to the well-being of long-term disabled persons (premium, custom, prescription wheelchairs).[10] The exclusion of foreign and domestic competition is the principal reason that PVA and CAPH members have been forced to select wheelchairs suitable for long-term disabled users from submarkets in which defendants' products are the overwhelming if not the only "choice."

Against this background of actual injury to their members and other wheelchair users, PVA and CAPH wish to present their views about the inadequacy of the proposed consent decree.

II. Summary of Position

In bringing its lawsuit, the Government charged that defendants, several entities comprising the world's largest wheelchair manufacturer, had monopolized or attempted to monopolize the U.S. wheelchair market and its submarkets for over 20 years. Yet, the proposed decree neither ends the monopoly nor eliminates its effects.

The proposed decree focuses solely on defendants' exclusion of foreign competition from the U.S. wheelchair market, particularly competition from their own joint ventures or subsidiaries. The major premise of the decree is that if foreign competition increases, defendants' monopoly will end and competitive benefits will be achieved in the marketplace. Even if this premise is correct, it is unreasonable to believe that the proposed decree will bring about increased foreign competition with the U.S. parent.

The Government apparently believes that requiring the defendants to direct their foreign subsidiaries actively to seek export opportunities in the United States will increase foreign competition. This belief is unreasonable for several reasons. First, the proposed decree contains only amorphous, unenforceable export obligations; it fails to impose any substantive obligations on the subsidiaries to compete in the U.S. wheelchair market. Second, and most importantly, it is wholly unrealistic to believe that the defendants' foreign subsidiaries will actively seek to sell wheelchairs in the United States, contrary to the long-standing and well-known desire of defendants, when successful entry into the United States market can only come at the expense of the latter's profitability.

Accordingly, the inescapable conclusion is that nothingless than divestiture of the defendants' Canadian and West German subsidiaries, those most capable of exporting wheelchairs to the United States, will end the monopoly and its effects.

In sum, unless the proposed decree is modified to require divestiture of the Canadian and West German subsidiaries, it will not terminate defendants' monopoly and its effects, and the public interest will not be served.

III. Economic and Legal Background

The proposed consent decree is properly viewed against the economic background of Everest & Jennings,[11] dominance of the wheelchair market in North America and Europe for over two decades. Legal proceedings in the monopolization suit brought by the United States against defendants in 1977 are also important. Although the relief proposed in the decree can only be assessed against that background, the relevant facts that were developed during the Government's discovery and that are essential to a comprehensive assessment have been withheld.

Three factors have stifled access to the basic evidentiary and other materials generated in the Government's lawsuit. First, we have been informed that all or virtually all of the depositions and answers to interrogatories in that action are sealed pursuant to a Stipulated Protective Order of Confidentiality entered by the District Court.[12]

Second, although the APPA requires that the Jusitice Department place on the public record, at the time it publishes a proposed consent decree, all materials and documents "considered determinative in formulating" the decree,[13] no documents were made available in this instance. The conclusory reason given by the Department was that no materials or documents were considered determinative.[14]

Finally, an attempt by a Washington-based public interest organization to obtain relevant factual and documentary information under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, has, to date, proved entirely unsuccessful.[15]

Consequently, the "meaningful public comment" contemplated by the APPA[16] has been severely frustrated. The discussion herein is necessarily limited to information that can be gleaned from the pleadings and related materials available for public scrutiny. But, even with these stringent limitations on available information, it is clear that the proposed decree and its attempted justification in the Department's Competitive Impact Statement[17] are on their face grossly inadequate to provide relief from the violations alleged.

A. The Economic Background

In 1954, Everest and Jennings, which had been a major manufacturer of wheelchairs since the 1930's, lost the protection afforded by a U.S. patent covering the single most important feature of its wheelchairs—a cross brace located underneath the seating platform which allowed a wheelchair to be folded and to negotiate small obstacles in outdoor settings. When its patent expired in that year, Everest & Jennings embarked on a two-decade long pattern of anticompetitive conduct having grave consequences for competition in the U.S. wheelchair market and for handicapped individuals who must buy or rent wheelchairs.

In 1955, shortly after the patent expired, Everest & Jennings entered into two joint ventures with Franklin I. Saemann, who owned the Orthopedic Equipment Co., a major American manufacturer of fracture and rehabilitation equipment. Everest & Jennings and Saemann established joint venture companies to manufacture wheelchairs and rehabilitation equipment in the United Kingdom (Zimmer Orthopedic Ltd.) and West Germany (Orthopedia GmbH). Saemann in the 1950's was a potential competitor of Everest & Jennings in the manufacture and sale of wheelchairs both in North America and in Europe.

Within several years after their formation, the British and West German joint venture companies had become the largest volume wheelchair manufacturers in Europe, and have had the highest export volume of wheelchairs in the world.[18] Everest & Jennings, however, prevented them from exporting wheelchairs into the United States or Canada from 1956 until 1975, when litigation between Everest & Jennings and Saemann resulted in Saemann's full ownership of the smaller British company and Everest & Jennings' acquiring control of the West German company. Subsequently, Everest & Jennings established a new British wheelchair company, Everest & Jennings, Ltd., which has not exported wheelchairs to the United States.

If the Government's case had gone to trial, according to its pretrial statement, it would have contended that Everest & Jen-

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[9] Plaintiff's Memorandum at 32.

[10] *Id.* at 30.

[11] The defendants in the Government action are Everest & Jennings International, Everest & Jennings, Inc. and the Jennings Investment Co. These business entities are referred to collectively as "Everest & Jennings" or "defendants," and are indistinguishable for purposes of the Government's suit. Plaintiff's Memorandum at 5. Defendant's corporate structure is as follows: Everest & Jennings, International owns 100 percent of Everest & Jennings, Inc., which in turn owns 100 percent of the Jennings Investment Co.; Everest & Jennings, Inc. owns 100 percent of one foreign subsidiary, E & J Canadian, Ltd., the leading Canadian wheelchair manufacturer; and the other foreign subsidiaries are owned by the Jennings Investment Co., including 100 percent of the voting rights and 91 percent of the equity of Ortopedin Kiel, a large wheelchair manufacturer in West Germany, 100 percent of Everest & Jennings, Ltd., a wheelchair manufacturer in Great Britain, and the controlling interest in Arva-Everest & Jennings, the dominant wheelchair manufacturer in Mexico. *Id.* at 4-5. Defendant's foreign subsidiaries are not parties to the instant suit.

[12] See also Affidavit of Carl A. Cira, Jr. Dated July 5, 1978, at 1-2.

[13] 15 U.S.C. § 16(b).

[14] Competitive Impact Statement, filed May 10, 1978, at 15. 43 FR 21743, 21745 (May 19, 1978) (hereinafter "CIS").

[15] Rather than expeditiously supplying information subject to disclosure under the FOIA, the Department cited administrative backlogs as causing an indeterminate delay in response to a request for documents pertaining to the proposed decree made by the Disability Rights Center, Inc. Letter from Department of Justice to Deborah Kaplan, dated June 12, 1978. A FOIA action brought by that organization to compel disclosures has not resulted in release of a single document to date. *Disability Rights Center, Inc. v. Dept. of Justice*, Civ. No. 78-1194 (D.D.C. filed June 28, 1978).

[16] 15 U.S.C. § 16(c)(iii).

[17] 43 FR 21743-45. Except as otherwise stated, the information in section III. A. and B. below is contained in the CIS.

[18] Plaintiff's Memorandum at 22.

nings (wheelchairs) and Saemann (fracture and rehabilitation equipment) entered into an agreement in 1955 that they would not compete against each other in their respective product areas, as evidenced by the failure of the joint ventures to export wheelchairs to the United States or Canada and Saemann's failure to manufacture wheelchairs in the United States. To support this contention the Government had evidence of a written admission by defendants' attorney that the sole and singular purpose of [commencing foreign wheelchair manufacturing in 1955 was] * * * to prevent some other manufacturers, based in Europe, from exporting wheelchairs to the United States, in competition with those made by Everest & Jennings, Inc.[19]

The Government would also have contended that Everest & Jennings entered into the two joint venture agreements with Saemann in order to prevent him from entering the U.S. market with wheelchairs manufactured in the United States or abroad, as part of an illegal territorial allocation scheme. Moreover, the Government planned to prove that defendants' intent to monopolize the U.S. wheelchair market was demonstrated by an acquisition plan in effect as late as 1976.[20]

As a result of Everest & Jennings' 1955 European joint ventures, today it owns the largest wheelchair manufacturers in both Europe and North America. Its West German subsidiary, over which Everest & Jennings gained full control after the 1975 legal settlement, has continued to refuse to export to the United States.

During the 1960's, Everest & Jennings' exclusionary conduct was further evidenced by two acquisitions in North America. It acquired Canada's only wheelchair manufacturer in 1962 for the purpose of monopolizing the manufacture and sale of wheelchairs in Canada.[21] The acquired company, which became Everest & Jennings Canadian, Ltd., has not sold any wheelchairs in the United States.

The second acquisition involved the takeover in 1969 of the only significant wheelchair manufacturer in Mexico, again for the purpose of monopolizing the manufacture and sale of wheelchairs in Mexico.[22] That company, now named Arva-Everest & Jennings S.A. de D.V., has not exported any wheelchairs to the United States.

By creating or acquiring four major foreign wheelchair manufacturers in the 1950's and 1960's and excluding their wheelchairs from the U.S. market, Everest & Jennings preserved its position as the dominant U.S. wheelchair manufacturer. Defendants' share of the total U.S. wheelchair market (dollar volume sales) during those years was approximately 70 percent. From 1970–75 its share of the total U.S. wheelchair market was approximately 60 percent. In 1976, Everest & Jennings had about 61 percent of the total wheelchair market revenue in the United States.[23] In that year the next largest manufacturer in terms of dollar sales had significantly less than half Everest & Jennings' share of the U.S. market. The six other U.S. manufacturers of wheelchairs had a combined total of only about 15 percent of the U.S. market. Foreign wheelchair sales in the United States are a negligible part of the market since there is only one seller, a British manufacturer selling a small number of highly specialized, motorized wheelchairs.

Most significant from the standpoint of PVA and CAPH is the fact that Everest & Jennings' 90 percent [24] share of the premium, custom, or prescription wheelchair submarket—those wheelchairs used by long-term disabled individuals—has not declined during the 1970's. Thus, while Everest & Jennings remains dominant in the overall U.S. wheelchair market, it completely dwarfs its few competitors in the premium, custom, or prescription wheelchair submarkets.

Everest & Jennings' dominance of the overall wheelchair market and these submarkets is based upon its entrenched position with major medical dealers who sell wheelchairs in the United States. Moreover, the source of its power in the submarkets for premium, custom, and prescription wheelchairs is its marketing activity aimed at dealer, doctor, and therapist indoctrination. Defendants' entrenched wheelchair marketing position continues at present.

B. THE LEGAL BACKGROUND

The United States brought suit against Everest & Jennings in May 1977. The complaint alleged that defendants had violated section 2 of the Sherman Act, 15 U.S.C. 2, by monopolizing and attempting to monopolize the manufacture and sale of wheelchairs and wheelchair submarkets in the United States since 1955. (¶ 12)

The complaint further alleged that defendants' violations had the following effects: (1) Competition in the sale of wheelchairs between Everest & Jennings and Zimmer Orthopedic Ltd., Orthopedia GmbH, and Saemann had been restrained; (2) wheelchair imports into the United States had been restricted; (3) a monopoly of wheelchair and wheelchair submarket sales in the United States was achieved and maintained, (4) wheelchair purchasers were denied the benefits of a free and competitive market, and (5) innovation and improvement in the manufacture and sale of wheelchairs was restrained and suppressed. (¶ 13)

Following discovery, a Pretrial Conference Order was signed by the District Court and filed on February 13, 1978, but before the case went to trial a proposed settlement was reached.

IV. OBJECTIVES OF THE PROPOSED DECREE

The Justice Department has submitted a proposed consent decree which it states will substantially achieve the objective of its lawsuit. The CIS states that the objectives of the proposed decree are to dissipate the effects of Everest & Jennings' anticompetitive conduct and to insure that Everest & Jennings' foreign subsidiaries, "as well as other domestic and foreign wheelchair manufacturers, can compete freely in the United States." [25] The CIS further explains that the principal means of accomplishing these objectives is "to encourage and enable Everest & Jennings' independently managed foreign subsidiaries to actively compete in the United States." [26] A major premise of the CIS is that the proposed decree "should serve the public interest by providing additional alternatives to United States wheelchair purchasers." [27]

The proposed decree attempts to accomplish its objectives through three categories of provisions. Section V prohibits agreements between Everest & Jennings and other persons which: (1) Limit wheelchair imports into the United States, (2) allocate customers, territory or product markets in the United States, or (3) prevent sales to certain customers or territories in the United States.[28]

Section VI focuses on unilateral action. It prohibits Everest & Jennings from preventing or inhibiting its foreign subsidiaries from exporting wheelchairs to the United States or selling wheelchairs to any person for shipment to the United States.[29]

Section VII requires Everest & Jennings to adopt and communicate several policies to its foreign subsidiaries in a letter set forth as an attachment to the decree.[30] The policies, which need remain in effect no more than 10 years, state that: (1) Export sales by those subsidiaries to the United States are not be be restricted, (2) any arrangements giving the parent, Everest & Jennings, exclusive U.S. distribution rights for the subsidiaries' wheelchairs are terminated and banned, (3) opportunities to export wheelchairs to the United States by the subsidiaries are to be sought actively, (4) the subsidiaries have full discretion concerning the prices and terms of export sales to the United States, (5) the subsidiaries have discretion to designate U.S. dealers and distributors, (6) the subsidiaries may use trademarks other than those owned by Everest & Jennings for U.S. sales, and (7) the policies are to be communicated to the subsidiaries' officers and personnel. In the Department's view, the most significant provision of section VII is the policy that the foreign subsidiaries are to actively seek opportunities to export to the United States.[31]

The remaining sections of the proposed decree provide for an annual report of U.S. sales by the foreign subsidiaries (section VIII), prohibit Everest & Jennings from discouraging U.S. wheelchair dealers from carrying its competitors' wheelchairs (section IX), require Everest & Jennings to give a list of its U.S. dealers to anyone requesting it for 1 year (section X), enjoin Everest & Jennings from acquiring an interest in other wheelchair manufacturers without advance Justice Department approval (section XI), and require Everest & Jennings to send a copy of the decree to its dealers (section XII), its subsidiaries, and all Veterans Administration hospitals.[32]

Remarkably, the decree also prohibits the Department from recommending to other Federal agencies the filing of additional antitrust lawsuits based on the allegations of the complaint (section XIII).[33] This prohibition includes the Veterans Administration, a major purchaser of wheelchairs. In section XIV, the Justice Department receives visitation rights to obtain defendants'

[19] Id. at 25, quoting from letter of James B. Rives, Esq., to the Internal Revenue Service, dated December 11, 1967.
[20] Id. at 35.
[21] Id. at 27.
[22] Id. at 28.
[23] Id. at 37.
[24] Id. at 30.
[25] CIS at 6, 43 FR at 21744.
[26] Id.
[27] Id.
[28] Decree at 3–4, 43 FR at 21741–742.
[29] Id. at 4, 43 FR at 21742.
[30] Id. at 4–5, 43 FR at 21742.
[31] CIS at 8, 43 FR at 21744.
[32] Decree at 5–7, 43 FR at 21742.
[33] Id. at 7, 43 FR at 21742.

documents or information,[34] and agrees to limited dissemination of the information it obtains. Finally, the decree's coverage expires automatically in 10 years (section XVI).[35]

V. Inadequacies of the Proposed Decree

The proposed decree assertedly will bring about an end to the monopoly and its effects principally by increasing foreign competition in the United States from defendants' foreign subsidiaries.[36] It is unclear, however, why the Government has preliminarily agreed to this novel,[37] but patently unreasonable and ineffective form of relief.

A. It is unreasonable to believe that defendants' foreign subsidiaries will enter and compete in the U.S. market when the proposed decree contains only amorphous obligations, the subsidiaries' parents have long expressed a firm desire to exclude the subsidiaries' wheelchairs, and profits garnered by subsidiaries in the U.S. market will largely be at their parents' expense.

The proposed decree fails to insure that foreign competition in the U.S. wheelchair market will increase. This deficiency stems from the Government's groundless assumption that defendants' foreign subsidiaries will enter and compete in the U.S. market in the face of compelling disincentives to do so.

First, the proposed decree requires defendants to direct their foreign subsidiaries to seek actively wheelchair export opportunities to the United States.[38] As noted, this form of relief is viewed by the Justice Department as one which may "serve as a precedent in future cases where dominant U.S. firms have ownership interests in potential competitors abroad." [39] Yet this is an undefined, amorphous "obligation" for which there can be no effective enforcement mechanism.

Plainly the concept of "actively seeking export opportunities" to the United States is not a usable standard either for the subsidiaries or for enforcement purposes. The foreign subsidiaries are given no guidance as to their export obligations. And the degree of effort or expenditures called for by a requirement to "actively seek export opportunities" logically stretches across a broad spectrum of corporate responses. The concept is so vague as to be unenforceable because there is no objective way to determine in advance what constitutes an "active" export marketing program.

Moreover, the Department's construction of this obligation as being one "to actively compete" [40] in the United States is not literally called for by the language of the decree. Actively seeking export opportunities, the language used in the decree, does not necessarily imply an obligation to "compete"—i.e., meeting competitors' pricing, marketing, distribution, and service practices in order to obtain a share of a market. Thus, the foreign subsidiaries might satisfy the direction of their parents by making wheelchairs available for export to the United States under terms and conditions that are not competitive. This uncertainty highlights the vagueness of the obligation which the Justice Department identifies as the best hope for restoring competition in this important industry.

Aside from the fundamentally vague obligation to seek export opportunities, another basic problem with this aspect of the decree is the apparent uncertainty about defendants' legal authority to direct their foreign subsidiaries to take such action. In the Pretrial Conference Order, filed February 13, 1978, at 119-20, defendants listed among the issues of law to be litigated the question "[w]hether a parent that has effective control of a subsidiary can direct the subsidiary where to sell its products." Defendants apparently hold the position that they lack legal authority to give their subsidiaries the direction contained in the proposed decree. Although the Justice Department surely holds a contrary view, the nature of defendants' commitment must be deemed questionable.

Another crucial factor bearing on the efficacy of competition from defendants' foreign subsidiaries under the proposed decree is simply the background against which it was created. For over two decades, defendants successfully excluded foreign-made wheelchairs from entering the U.S. market. Defendants' opposition to entry into the U.S. market by its subsidiaries has been well-known to its subsidiaries. It is, therefore, patently unreasonable to assume that the foreign subsidiaries' management will perceive the decree's direction to seek exports to the United States as a valued policy of their parent corporations, warranting their full support and cooperation.

This natural reluctance can only be reinforced by the practical effect of the subsidiaries' U.S. market entry on defendants. If the foreign subsidiaries compete effectively with defendants' U.S. manufacturer, any gains will come largely at the expense of their parents' profits.

Hence, in view of the limited duration of the non-exclusionary policy mandated by the decree, the foreign subsidiaries, as well as defendants, have every reason to do nothing more than is required by a narrow reading of the proposed decree and to delay their entry into the U.S. market in every way.

In sum, the proposed decree fails to provide any assurance that the monopoly and its effects will cease as it does not mandate any significant effort by defendants' foreign subsidiaries to enter and compete in the U.S. market.

B. Everest & Jennings' grip on its loyal dealers is not dissipated or weakened by the decree.

As noted earlier, the Government also contended that key factors in maintaining Everest & Jennings' market strength are its grip on loyal medical equipment dealers and its concentrated marketing effort to indoctrinate dealers, doctors, and therapists who advise consumers on wheelchair purchases. The proposed decree, however, includes little relief in these areas. Furthermore, the relief proposed is wholly ineffective.

Under section XII of the decree defendants must send a copy of the judgment to its dealers, its subsidiaries, and to V.A. hospitals. Defendants must also provide for a period of 1 year a dealer list to any person making such a request under section X. Finally, defendants are prohibited from preventing U.S. dealers from carrying wheelchairs made by any competitor, conduct that is illegal in any event. Together with the unenforceable obligation to "actively seek" export opportunities, this is the sum of the relief granted to break down the core of defendants' dominant U.S. market position.

The proposed relief marginally, if at all, affects defendant's relationship with its dealers. Sending dealers a document which briefly describes in legal terminology defendants' obligations under the consent decree, in the face of 20 years or more of marketing indoctrination, does not make it reasonably likely that entrenched patterns will be abandoned and new avenues of wheelchair supply will be explored. The decree fails to give dealers any incentive to modify their sales patterns, such as providing them access to information about foreign manufacturers' prices, designs (including technical advancements), availability of wheelchairs and parts, and repair service.

The CIS assumes apparently that *possession* of a copy of the decree by dealers and V.A. hospitals alone will work to create new wheelchair supply possibilities. It states that such possession "ensures that the Final Judgment's provisions will be known to the trade, to doctors and therapists, and to volume purchasers and that those most likely to be interested in exploring purchases of wheelchairs from Everest & Jennings' foreign subsidiaries will be alerted to the possibility."[41]

In fact, it is hard to see how any such procompetitive result is "ensured." The only doctors, therapists, and mass purchasers who would receive the decree are those at V.A. hospitals. Doctors, therapists, and mass purchasers in the private sector, and those associated with State or local government entities, would not receive it. Nor would individual wheelchair purchasers receive the decree. The principal recipients of a copy of the decree are, instead, the loyal dealers upon whom defendants' market strength has depended. Thus, it is not reasonable to assume that so little relief will offset effectively the entrenched position of defendants in U.S. wheelchair markets and submarkets.

C. Unless the proposed decree is modified, the monopoly and its effect will continue.

As demonstrated above, the proposed decree does not contain adequate relief to end the monopoly and its effects. The decree appears to contemplate an enforcement mechanism initiated by annual Justice Department monitoring of sales or lack of sales in the U.S. market by the foreign subsidiaries. It is unclear, however, what purpose the annual reports will serve because there is no affirmative standard of U.S.

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[34] It appears, however, that visitation rights regarding defendants' foreign subsidiaries are not provided in section XIV.

[35] Decree at 9, 43 FR at 21742.

[36] CIS at 6, 43 FR at 21744.

[37] The Department states that: "[t]his is an innovative form of relief which should serve as a precedent in future cases where dominant U.S. firms have ownership interests in potential competitors abroad." Id. Notwithstanding the possible merits of such relief under different factual conditions, the misapplication of this relief to the eggregious anticompetitive violations of this case would create a disastrous precedent.

[38] Section VII of the decree states in part that:

3. Opportunities to export wheelchairs manufactured by each [foreign subsidiary] to the United States shall actively be sought by the management of each [foreign subsidiary] * * *.

[39] CIS at 6, 43 FR at 21744.

[40] Id.

[41] CIS at 9, 43 Fed. Reg. at 21744.

market entry to be met. Even if the Department attempts to apply the concept of "actively seeking export opportunities," the main thrust of the decree—to bring about U.S. market competition by the foreign subsidiaries—is unlikely to be accomplished for the reasons described in section V. A. above. The decree also will have little or no effect on defendants' grip on its loyal dealers. In these circumstances, the proposed decree provides no assurances that the monopoly, the related exclusionary practices, or their harmful effects will end.

VI. The modifications proposed by PVA and CAPH are essential to attainment of the decree's objectives because divestiture is the only form of relief that guarantees an independent opportunity for defendant's foreign subsidiaries to enter and compete in the U.S. wheelchair market.

The basic objectives of the proposed decree are to put an end to the defendants' monopoly position in the U.S. wheelchair market and to dissipate the effects of the monopoly, most importantly, lack of price competition and the stiffling of wheelchair innovation and improvement. As discussed above, the proposed decree fails to accomplish these objectives. Only prompt and effective divestiture will satisfy the public interest.

Few circumstances more strongly warrant divestiture, described as the "most drastic, but the most effective" of the antitrust remedies.[42] Everest & Jennings' intentional monopolization of the U.S. wheelchair industry over several decades, and the entrenched monopoly position it has obtained, as outlined in the Government's pre-trial papers, are the kind of extreme anticompetitive activities which justify the most serious remedy. Compounding defendants' violations is the unique nature of the products monopolized and the actual injury caused to thousands of wheelchair users. Plainly, these circumstances demand nothing less than the "most effective" relief—divestiture.

Only divestiture will create a realistic possibility that defendants' monopoly will end. To achieve that goal in the context of a litigated decree or a consent decree that satisfies the public interest, "the objects of the decree * * *[that is,] to extirpate practices that have caused or may hereafter cause monopolization, and to restore workable competition in the market",[43] must be carried out in a reasonable manner. In failing to provide divestiture, the proposed decree does not meet that test.

The Government's rationale for entering into a consent decree that does not include divestiture depends primarily on the assumption that the decree will result in wheelchair sales in the United States by defendants' foreign subsidiaries.[44] Arguing from that assumption with reference to possible divestiture of the Canadian subsidiary, the CIS states that the proposed decree comes "much closer to assuring new competition from abroad" because "divestiture would not have carried any guarantee that the divested company would enter the American market."[45]

We have demonstrated above, however, that, because of reinforcing disincentives, it is unreasonable to believe that defendants' foreign subsidiaries will sell wheelchairs in the United States as long as they remain tied to defendants. Lack of concrete obligations to do so in the proposed decree, the long-standing, well-known desire of the parent corporations that the foreign subsidiaries refrain from U.S. exports, and the probability that effective entry by the subsidiaries would come only at the expense of their parents' profits are compelling reasons for the foreign subsidiaries to delay entry into the U.S. market by every available means.

Nonetheless, the sole reason given by the CIS for the supposed superiority of the proposed decree over divestiture is that the divested companies could choose not to enter the U.S. market.[46] Even if that speculation is correct, it does not support superiority of the approach adopted by the consent decree because, for the reasons stated, it is unreasonable to assume that defendants' foreign subsidiaries will enter the U.S. market in any event as long as they are tied to defendants.

On the contrary, there are strong reasons suggesting that the major foreign subsidiaries, if divested, would hasten to enter the U.S. wheelchair market, the world's largest. The Canadian subsidiary which, according to the CIS, produces wheelchairs equal in quality to defendants' and is located much closer to most major U.S. population centers than defendants' U.S. manufacturing facility,[47] would, if divested, have every conceivable incentive to make U.S. wheelchair sales. And the Canadian subsidiary, if divested, would be capable of producing wheelchairs that are price competitive in the United States with defendants' wheelchairs.[48] In addition, as the Government has suggested,[49] wheelchairs made by defendants' West German subsidiary may be technically superior to defendants' wheelchairs and thus have a competitive advantage that would make U.S. sales attractive to a divested, independent German company.

Hence, it is clear that divested subsidiaries would most likely enter the U.S. market. The Canadian subsidiary is suitable for divestiture because it has a large manufacturing capacity and would be able to make an immediate, effective U.S. market entry. The West German company is also suitable because of its large export capacity and superior product. Although that company may face currency and transportation barriers, it should be able, once independent, to overcome them by marketing an extremely high quality wheelchair. Because defendants have stifled the supply of innovative and high quality wheelchair products, it is most fitting that the West German subsidiary also be divested.

Divestiture of these subsidiaries, and divestiture alone, will foster actual competition in the U.S. wheelchair market, the only result which satisfies the public interest.[50]

Conclusion

In sum, because defendants' foreign subsidiaries will not realistically enter the U.S. market under the proposed decree, the only adequate relief is divestiture. Accodingly, the Government cannot uphold the public interest in ending the monopoly it has alleged and its injurious effects, unless it obtains divestiture of the defendants' major foreign subsidiaries—most appropriately, the Canadian and the West German companies. PVA and CAPH contend that this conclusion follows inevitable from an analysis of the terms of the Government's proposed decree and CIS.

Because entry of the proposed decree will effectively bar the possibility of divestiture and handicapped users of wheelchairs face continued injury from the effects of monopolization, the closest reexamination of the proposed decree is warranted. We strongly urge the Department to reconsider its acceptance of the decree and to withdraw consent to any decree which does not include the divestitures outlined here.

Respectfully submitted,

C. Coleman Bird,
Alfred M. Wurglitz,
Attorneys for Paralyzed Veterans of America, Inc., and California Association of the Physically Handicapped.

Of Counsel:
James N. Adler, Esquire; Ronald I. Olson, Esquire; Munger, Tolles & Rickerhauser, Suite 1100, Western Federal Building, 606 South Hill Street, Los Angeles, Calif. 90014.

U.S. Department of Justice,
Anti-Trust Division,
Washington, D.C. 20530.

September 18, 1978.

Attention: Douglas E. Rosenthal, Esquire, Chief, Foreign Commerce Section.

Re: *United States* v. *Everest & Jennings International, et. al.* Civ. No. 77-1648-R (C.D.Cal).

These comments are submitted pursuant to section 5 of the Clayton Act, as amended by the Anti-Trust Procedures and Penalties Act (15 U.S.C. § 16 (b)-(h)), concerning the proposed consent judgment in the above-titled action.

The Disability Rights Center (D.R.C.) was founded to conduct reearch, disseminate information, and represent the views of disabled persons with respect to the implementation of Federal and State legislation intended to protect the employment rights of disabled persons, to promote accessible mass transportation for the disabled and elderly and to protect consumers of medical devices and equipment. D.R.C.'s activities in these areas include conducting research on the implementation of legislation by Federal departments and agencies; providing general advice to disabled persons in the United States concerning their substantive and procedural rights; publishing reports; summarizing research and making recommendations for reform; testifying before Congressional Committees and Federal agencies; and providing backup services to attorneys engaged in litigation involving D.R.C.'s areas of expertise.

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[42] *United States* v. *E. I. duPont de Nemours & Co.*, 366 U.S. 316, 326 (1961).

[43] *United States* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, 346-47 (D. Mass. 1953), *aff'd per curiam*, 347 U.S. 521 (1954).

[44] CIS at 11, 14-15, 43 Fed. Reg. at 21744-745.

[45] CIS at 15, 43 Fed. Reg. at 21745.

[46] Id.

[47] CIS at 14, 43 Fed. Reg. at 21745.

[48] *Id.*

[49] Plaintiff's Memorandum at 21.

[50] Moreover, it is vital theat the Government pursue divestiture since it appears that private parties may not be entitled to seek such relief in this Circuit. *Bosse* v. *Crowell Collier and MacMillan*, 565 F. 2d 602, 607 (9th Cir. 1977); *Calnetics Corp.* v. *Volkswagen of America, Inc.*, 532 F. 2d 674, 692 (9th Cir.), *cert. denied*, 429 U.S. 940 (1976); *International Telephone and Telegraph Corp.* v. *General Telephone & Electronic Corp.*, 518 F. 2d 913, 920 (9th Cir. 1975).

When D.R.C. was founded in 1976, the Center began extensive research in the area of consumer protection for users of medical devices, including wheelchairs, and medical equipment. In December 1976, D.R.C. published a report entitled "Medical Devices and Equipment for the Disabled: An Examination," which included a survey of wheelchair consumers. Responses to the survey focused upon criticisms of the high cost and low quality of wheelchairs available on the market, as well as complaints concerning inadequate servicing and repair work by manufacturers and distributors. Many of the critical comments identified Everest & Jennings as the chief offender in the marketing of high-priced, yet low-quality wheelchairs. The Center's chief concern in commenting on the proposed consent decree is the effect that it will have on the lives of wheelchair consumers, and whether it will lessen their forced dependence on a company that has time and again shown a callous disregard for their needs and complaints.

The Disability Rights Center has been interested in the proposed consent judgment since it was published in the FEDERAL REGISTER on May 19, 1978. After reviewing it and the included Competitive Impact Statement, the Center decided that more information would be necessary regarding how the proposed consent judgment was developed and how the case had progressed in general before the Center could prepare meaningful and informed comments.

The Competitive Impact Statement does not provide sufficient information upon which to properly assess and evaluate the proposed consent judgment. It fails to reveal information about market shares, market and submarket structure, patents that are held, or knowledge that could be made available to other manufacturers. Therefore, we filed a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(b)(A)(i), the Department of Justice informed us that it would not process our request for an unspecified period of time. Because the comment period on this proposed consent judgment was initially scheduled to expire on July 18, 1978, we determined that an extension of the comment period would be desirable, in order to have sufficient time to receive and review the requested documents and then to write informed comments. After requesting such an extension from the Department of Justice, which was denied, we filed suit against the Department on June 28, 1978, in the United States District Court for the District of Columbia, *Disability Rights Center* v. *Department of Justice, et al.*, Civil Action No. 78-1194 (D.D.C.) seeking: (1) to enjoin the wrongful withholding of the background documents sought under the FOIA; (2) to enjoin the Department of Justice from continuing to violate the Anti-Trust Procedures and Penalties Act (APPA), (5 U.S.C. § 16(b)), by failing to make public any of the documents which were determinative in formulating the proposed decree, and (3) to enjoin the close of the comment period pending the resolution of D.R.C.'s claims that it is entitled to access to background records under the FOIA and the APPA. The District Court by oral order of July 13, 1978, denied D.R.C.'s motion, finding that the Federal District Court in the Central District of California, where the Department of Justice's case is now pending, was a more appropriate forum to consider whether an extension of the comment period is warranted. We have filed the appropriate papers with that Court and are awaiting its decision.

However, the litigation over DRC's entitlement to the background documents is proceeding in the District Court in the District of Columbia. Rather than allowing the merits of D.R.C.'s claims to be promptly adjudicated, the Department of Justice has devised and implemented a strategy designed to forestall resolution of those claims by refusing to even process D.R.C.'s FOIA request, resisting the most routine discovery, and repeatedly asking for stays of the proceeding. It is not difficult to see that the Department intends to stall resolution of this case until the consent judgement is final, thereby cutting off any chance the D.R.C. and other groups representing wheelchair consumers may have had to review crucial documents before filing comments in this action which has the potential of bringing about much needed reform.

In responding to the request for documents made by the Center, and in legal briefs responding to our legal action, the Department of Justice has displayed an alarmingly cynical and arrogant attitude. The Department has reacted as though the Disability Rights Center were a large anti-trust law firm attempting to capitalize on the action against Everest and Jennings, refusing to recognize our long standing interest in protecting the rights of disabled persons. The Department has responded that it knows best what is in the public interest; this stance is the height of arrogance. The Department has refused to consider the views of organizations with long standing and legitimate ties to the disabled community, who have asserted that this proposed judgement is certainly not in *their* interest.

It is distressingly clear that the Department of Justice never intended to take this case to trial. It is clear that the Department of Justice intends to settle this case regardless of what the disabled community and its anti-trust analysts say in their comments.

Unfortunately, this is not a unique isolated instance, but is part of a pattern of false promises made to disabled citizens by an Administration that has shown an overall lack of true concern. The hopes of disabled people were raised when the Department of Justice filed its complaint in this case against Everest & Jennings. The need for reform and relief against this monopolist had long been established in their minds. Now they have discovered that they have been made the butt of a cruel joke, and that they will have to look else where for a champion.

Another alarming aspect of the Department of Justice's conduct in this matter is that the Department had made representations in a previous lawsuit that it would seek to extend the comment period in cases where the entitlement to documents is in dispute. In *Kramer* v. *Antitrust Division*, No. 75-2095 (D.D.C.) *aff'd* No. 76-1895 (D.C. Cir. June 7, 1977) the Department of Justice was involved in a dispute for documents relating to another proposed consent decree. The case was dismissed as moot because the Department eventually released the requested documents to the plaintiff one day after the comment period had elapsed and the decree had been entered. The Department's position in its briefs, arguing that the case was moot, was that in future cases revolving around similar issues the Department would seek for an extension of the comment period if it were requested. Perhaps the Department would be wise to release the documents that the D.R.C. is seeking *two* days after entry of the judgment in this case, lest their actions in evading legitimate requests for documents relating to consent decrees suggest a pattern.

D.R.C.'s substantive comments on the merits of the proposed consent judgment will unfortunately be brief, since we had not had access to documents that would provide us with background information that would be helpful to assess the proposed terms or suggest others in any detail. Basically we believe that the proposed consent judgement amounts to little more than a slap on the wrist, a prohibition against breaking the law again, and a mandate for action that is vague and unenforceable.

We have considerable doubts that the Department of Justice will actually commit the necessary staff time to monitor and oversee the terms of this proposed judgment, even if its terms were measurable or enforceable. A naive reader might get the impression that Department of Justice investigators will be constantly vigilant in searching for infractions; however, judging by the amount of effort the Department has put into ensuring that his case will be settled and thereby disposed of, we are not so impressed.

We have compared the terms of the proposed decree with the five effects that were listed as resulting from the defendants' alleged violations of the Sherman Act in the complaint that the Department of Justice filed against Everest & Jennings.

The first effect was that competition in the sale of wheelchairs between Everest & Jennings and Zimmer Orthopedic Ltd., Orthopedia GmbH, and Saemann had been restrained. Section V and VI of the proposed consent judgment address this concern by prohibiting the making of agreements to restrict competition and prohibiting Everest & Jennings' from preventing or inhibiting its foreign subsidiaries from exporting wheelchairs to the United States or selling wheelchairs to any person for shipment to the United States. Of course, the Sherman Act already prohibits such activities, which were engaged in nonetheless.

The second effect was that wheelchair imports into the United States had been restricted. Again, section V and VI address this concern. Section VII addresses it by requiring Everest & Jennings to communicate several policies to its foriegn subsidiaries in a letter set forth as an attachment to the decree, the main thrust of which is that subsidiaries are to actively seek opportunities to export wheelchairs to the United States. Section VIII requires Everest & Jennings to submit a yearly report to the Department of Justice on the progress of implementation of section VII and other information.

Unfortunately the major requirement of the proposed consent judgment depends on the phrase, "actively seek opportunities to export wheelchairs to the United States", which is too vague to measure or enforce. The foreign subsidiaries are given no definite instructions as to their export obligations. The degree of effort of expense required to comply with this mandate can be extremely negligible. Far less can be done that will fit into that requirement than anything that comes close to actually competing, in the sense of meeting competitors' pricing, marketing, distribution and service

practices in order to attract the United States market. There is also, apparently, some question regarding the legal authority of Everest & Jennings to direct such action from their foreign subsidiaries. See Pre-trial Conference Order, filed February 13, 1978, at 119-20. Defendants listed among the issues of law to the litigated, "whether a parent that has effective control of a subsidiary can direct the subsidiary where to sell its products."

The third effect of the alleged anti-trust violations listed in the complaint was the achievement and maintenance of a monopoly of wheelchair and wheelchair submarket sales in the United States. Amazingly the proposed consent decree may have no impact on this concern. Any inroads on Everest & Jennings' monopoly would have to come by way of a vague obligation on foreign subsidiaries, discussed above, or on a prohibition against Everest & Jennings' discouraging United States Wheelchair dealers from carrying its competitors' wheelchairs (Section IX), or on requiring Everest & Jennings to send a copy of the decree to dealers, its subsidiaries, and all Veterans' Administration (V.A.) hospitals. This, we feel, is not enough.

We favor the remedy of divestiture to break-up the Everest & Jennings monopoly, and also to remedy the fourth effect listed in the complaint, that wheelchair purchasers have been denied the benefits of a free and competitive market. Because it is unreasonable to expect that defendants' foreign subsidiaries will sell wheelchairs in the United States, it is much more probable that divestiture will achieve that goal. If all ties with Everest & Jennings are severed, it is very likely that the present foreign subsidiaries, especially those close to the United States, would have a very strong incentive to enter into what is a lucrative market.

The fifth effect listed in the complaint was the restraint and suppression of innovation and improvement in the manufacture and sale of wheelchairs. To remedy this problem, which the proposed consent judgment only peripherally addresses if at all, we recommend two requirements of Everest & Jennings.

The first is that Everest & Jennings be required to expend a certain fixed percent of its profits on research and development. While we cannot recommend a specific percentage due to lack of information about current practices and expenditures, we believe it should reflect a substantial investment into research and development and should be comparable to a large research and development budget in comparable industries.

The second is that Everest & Jennings pay a court appointed master, who will arrange for an expert consultant from outside of the industry to prepare and distribute a useable descriptive survey of foreign-made wheelchairs so that wheelchair consumers, medical personnel, and dealers are informed of actual alternatives. This will broaden the choices available to consumers, and should eventually serve to stimulate competition and innovation.

For the above-stated reasons, the Disability Rights Center is opposed to the proposed consent judgment unless substantial modifications, as discussed, are adopted.

Sincerely,

DEBORAH KAPLAN,
Director.

To: Douglas E. Rosenthal, Chief, Foreign Commerce Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

From: Marilyn Holle, Legal Director, Western Law Center for the Handicapped, Eastern Columbia Building, 849 South Broadway, Suite 1201, Los Angeles, Calif. 90014.

Re: *United States* v. *Everest & Jennings International, et al.*, Civ. No. 77-1648—$ (C.D. Cal.). Comments on proposed consent judgment pursuant to section 5 of the Clayton Act, as amended by the Antitrust Procedure and Penalties Act, 15 U.S.C. section 16 (b)-(h).

The Western Law Center for the Handicapped opposes the proposed consent judgment in the above-captioned case because the Center believes it is not in the public interest in that the remedies therein will not expeditiously dissipate the effect of Everest & Jennings' monopolization on disabled wheelchair users.

The Western Law Center is a non-profit public interest law firm representing persons with disabilities with respect to legal problems related to those disabilities. The Center is also one of the counsel representing purchasers of Everest & Jennings wheelchairs and wheelchair parts who are seeking to recover for themselves and for others similarly situated the differential between the inflated monopoly price they paid and the price they would have paid in a free and competitive market. For instance, while the 1976 price in England of a Zimmer Premier adult model chair was U.S. $161, the price in the United States for a comparable Everest & Jennings chair was $496.

In the Federal court case—*Good et al.*, v. *Everest & Jennings International, et al.*, Civ. No. 77-3890-$ (C.D. Cal.)—the Center sought to have certified a Rule 23(b)(2), F. R. Civ. P., class of Everest & Jennings wheelchair users, a class distinct from wheelchair and wheelchair parts purchasers. We argued that people who used wheelchairs, regardless of who purchased them, were directly and proximately injured and subject to threat of continuing and recurring monopoly injury and therefore such persons were entitled to injunctive relief under section 16 of the Clayton Act, 15 U.S.C. section 26. The injuries complained of resulted from the lack of a free and competitive wheelchair market: Disabled wheelchair users have not choice—9 out of 10 wheelchairs used by disabled persons are Everest & Jennings; there has been no incentive to design and manufacture wheelchairs which will not break down with regularity; there has been no incentive to manufacture a chair needing minimum maintenance; there has been no incentive to develop a repair and parts delivery system responsive to the needfs of disabled persons who live in their chairs; there has been no incentive for innovation in wheelchair design. See attached Exhibit "A".

The Honorable Manuel L. Real, in denying certification of a (b)(2) class, indicated that the forum for securing appropriate relief for disabled wheelchair users was via the proposed consent judgment. (page 3, line 14, through page 4, line 17, transcript of March 20, 1978, hearing on class certification). However, the consent judgment, as proposed, does not address the continuing effects of the monopoly on disabled wheelchair users, nor—by its rejection of divestiture—does it effectively foster a free and competitive market so that in the future the disabled will not have to pay a monopoly premium for wheelchairs and wheelchair parts, and so that in the future there will be an incentive for the marketplace to address the disabled wheelchair user and purchaser's need for a wheelchair that will hold up under normal usage with a minimum of maintenance and repair, and with a repair delivery system responsive to the needs of the nonhousebound disabled wheelchair user.

A. *The nature of the monopolized product and the need it serves magnify the consumer injury resulting from Everest & Jennings' anticompetitive conduct.*

For the disabled person there is no mobility alternative to the wheelchair. For the mobility impaired disabled, the wheelchair is a necessity. The alternative to the wheelchair is simply not being able to get around, being held a prisoner by one's physical limitations, being denied access to work, being stuck in bed, stuck in one's house.

Because there is no real competition in the market of wheelchairs for permanently disabled persons, disabled wheelchair users are literally and figuratively a captive of Everest & Jennings. The lack of competition for wheelchair customers has meant that the disabled cannot buy a chair that holds up under normal use by a disabled person who takes himself and his chair out of the house. One San Francisco user had his Premier Everest & Jennings chair break apart four times in the 18 months following purchase, with one break pitching him out onto the street. Users uniformly report that the back, arm rests and seat have to be replaced after less than a year's use. Another user reports that the balance on her chair was so poor that it would tip over going over sidewalk cracks.

Wheelchair users consistently complain of the long delays in securing wheelchair parts and the unreasonably high price of the parts. For instance, the retail price of a Cinch-Jones connector sold by Everest & Jennings is $16.25; that same item can be secured at an electronics retail outlet for under $2. Everest & Jennings' retail price for one motor plug is $6; that same item can be purchased at an electronic retail outlet for about a dollar. A pair of Everest & Jennings power transistors retail for $103.50; comparable power transistors are available at about $20 a pair retail. Power transistor failure is probably one of the most common types of electronic failure in powered wheelchairs. Only a tiny minority of wheelchair users have the technical expertise to search out substitute parts. On the problems of delay in securing parts, one San Joaquin Valley user reports she lost 2 weeks of work and was trapped in her house for that same period because it took 2 weeks for the needed part to come the 500 miles from Los Angeles despite repeated phone calls to Everest & Jennings.

B. *An evidentiary hearing, or perhaps further discovery, is required because the parties do not know enough about the monopoly injuries to be able to fashion a remedy to dissipate the effects of Everest & Jennings' anticompetitive conduct on the market and on wheelchair users and purchasers.*

The pretrial papers make apparent that liability issues were the focus of discovery

and would have been the focus of any litigation. Pretrial papers virtually ignore the impact of the monopoly on the consumer. Indeed, looking at the papers, it would appear that the parties had contemplated a bifurcation of the litigation between the liability and remedy phase, with further discovery needed before embarking on the remedy portion once liability was established.

The Competitive Impact Statement (CIS) focuses on dissipating "the effect of Everest & Jennings' anticompetitive conduct to ensure that Everest & Jennings' [foreign] subsidiaries, as well as other domestic and foreign wheelchair manufacturers, can compete freely in the United States." (CIS, page 6) That objective is belied by the CIS rejection, after a cursory treatment of the remedy with the best potential for expeditiously opening up the market: divestiture. (CIS, pages 13-14) Indeed, the CIS considers only divestiture of the Canadian company; the Center believes that divestiture of *both* the Canadian and the West German companies is required if the present generation of disabled wheelchair users and purchasers is to have the benefit of a free and competitive market. Under the consent judgment as proposed, the next generation of disabled wheelchair users perhaps may have access to a free and competitive market.

In addition, until the parties understand the impact of the monopoly on wheelchair purchasers and users, they will be unable to set out criteria to measure whether or not the effect of Everest & Jennings' anticompetitive conduct is in fact being dissipated. Unless such criteria are set out in the proposed settlement judgment itself, the reports requested and access to records provided become meaningless.

Further, wheelchair users continue to suffer substantial injury from the effects of Everest & Jennings' monopolization. The parties should explore whether and what relief might be fashioned to expedite the dissipation of the monopoly injury presently being borne by wheelchair users. This is not a monopoly like most monopolies. The target of the monopoly, wheelchair users and purchasers, need relief that will come to them within the foreseeable future.

There are a number of remedy possibilities that should be considered in addition to those incorporated in the proposed consent settlement and in addition to divestiture of the West German and Canadian subsidiaries, which latter remedy the Center believes essential to any consent judgment in this case:

(a) Requiring Everest & Jennings to undertake informational advertising about all the wheelchairs available to consumers on a scope comparable to Everest & Jennings; advertising of its own wheelchairs;

(b) Requiring independent preparation of comparative specifications on all American and foreign-made wheelchairs and distribution of such information to professionals;

(c) Requiring Everest & Jennings to act as the distributor in the United States for previously excluded chairs and parts;

(d) Requiring Everest & Jennings sales and field personnel to distribute information about competitive chairs wherever they distribute information about their own chairs.

In addition, there are remedy possibilities that would assist the dissipation of the monopoly effects on wheelchair users:

(a) Requiring independent preparation of and distribution to Everest & Jennings' wheelchair users and purchasers detailed specifications on their chair and information about alternate sources of parts;

(b) Imposing repair and part replacement warrantees on Everest & Jennings' wheelchairs used by disabled persons to the extent necessary to enable the Everest & Jennings wheelchair user to have, in effect, the benefit of a wheelchair as durable as those produced by Orthopedia GmbH;

(c) Requiring the introduction of maintenance reducing features, as lifetime ball bearings.

C. *Conclusion.*

The Western Law Center for the Handicapped urges the United States to withdraw its consent to the proposed final judgment on the ground that its entry is not in the public interest particularly in that the judgment as proposed does not provide for divestiture of the West German and Canadian companies.

EXHIBIT "A"

Excerpt from the deposition of Eunice Fiorito for the American Coalition of Citizens with Disabilities, Inc., one of the plaintiffs in *Good et al.*, v. *Everest & Jennings, et al.*, Civ. No. 77-3890 (Central District of California), in which Eunice Fiorito explains why the ACCD became involved in the Everest & Jennings wheelchair litigation:

"[T]he reasons [for becoming involved] were that disabled people felt and feel that they have no option. They have no choice. That there is but one concern that sells, manufactures and sells, repairs wheelchairs, and you know, it's not like going to the supermarket and being able to select from ten different cans of soup. And secondly, the service is abominable with people having to wait months with no guarantees, and thirdly, that when the wheelchairs were "repaired" and returned, they were often not done so correctly or not functional, and they had to send the chairs back. The long wait for repair. The long wait for ordering. The high cost, and the perils that people were put through in not being able to get a chair reasonably repaired in any reasonable length of time, and being deprived and often in situations of being unable to go to work, or having to buy a second chair so that you can go to work, or that you can go to school, or you can just not have to lay in bed, and in some situations even of not having to go into hospitals.

"*Question.* Were each of these complaints that you have just mentioned all connected to and directed toward Everest & Jennings?

"Answer. Yes, sir.

"*Question.* You have mentioned that one of them was that there was no choice or basically one concern. To your knowledge, are there members of the American Coalition or individuals who are members of organizations that are members of the American Coalition that are in wheelchairs that are not manufactured by Everest & Jennings?

"Answer. Sir, I have been in this business for almost eight years, and consider myself to be one of the most knowledgeable people about the different disabilities and their needs, physical, social, and to some degree medical, and very openly and veryu honestly, and I worked in a hospital for eight years before that, and up until yesterday was the first time that I knew there were other wheelchair manufacturers" (pp. 53 and 54).

Excerpt from the deposition of plaintiff Margaret Caufield in *Good et al.* v. *Everest & Jennings, et al., supra:*

"This [chair I am sitting in] is a custom-made chair, and that each time I have ordered brake assemblies, and the experience with the axle, they just didn't seem to have * * * a correct diagram or schematic of this chair to refer to, because each time that I have ordered brake assemblies, one little piece has been wrong, so that they are not usable. They have to be returned.

"Last May Pledge Medical took a photograph of my brake assembly as it is on the chair in order to assure that I got the correctly constructed piece * * *" (pp. 39-40).

Excerpt from the deposition of plaintiff Louis Rigdon II in the same case:

"I felt * * * that wheelchairs usually are made for [and] the concept of wheelchairs is oriented toward people who are attached to an institution, like a hospital or something, rather than for people who are not attached to an institution but use them to get around like cars are used to get around, like shoes are used to get around. And consequently they have to be built of a better quality, more durable quality and a cheaper price made available to more people who wanted to live independently" (p. 70).

PENN ACRES SOUTH,
New Castle, Del.,
August 3, 1978.

JUSTICE DEPARTMENT,
ANTI-TRUST DIVISION,
Todd Building, Washington, D.C.

GENTLEMEN: I am a quadriplegic dependent upon an electric wheelchair for maneuverability and independence. Being familiar with the wheelchair market, I am quite dismayed at the recent settlement of an antitrust suit against Everest & Jennings with just apparently just a slap on the wrist.

Everest & Jennings monopolizes the wheelchair market, especially the electric wheelchair sector. This monopoly has resulted in unjustifiable high prices that have cost the public millions of dollars. The burden of these high prices has placed financial strains on many handicapped individuals and their families. Often, individuals who have no maneuverability without an electric wheelchair, cannot afford to purchase one.

This monopoly also effects the taxpaying public, which purchases electric wheelchairs through various governmental agencies for individuals. These purchases of an overpriced product places an additional burden on a public already fed-up with high taxes.

An example of these rip-off prices is the Power Drive 3P Electric Wheelchair put out by Everest & Jennings. This chair costs just over $2,000, batteries included. The batteries in this new chair are made only by Everest & Jennings, which increases your dependence upon them. Previously, in other electric wheelchairs manufactured by Everest & Jennings, automobile batteries could be used, which enabled the consumer to shop around when a new battery is needed and possibly, buy one on sale. Now, when you need a battery for this 3P Electric Wheelchair, you have to buy one from an Everest & Jennings dealer, who have only one price, "High".

Besides batteries, you also have to buy your tires from Everest & Jennings when you need a replacement. The tires for this chair (picture enclosed)[1] are $100 per tire for the rear and $20 per tire for the front. Tires for this wheelchair are available only from Everest & Jennings. Older model chairs manufactured by Everest & Jennings could use a bicycle tire on the rear at a cost of only $5.00. Therefore, Everest & Jennings is increasing its monopoly at the expense of the handicapped public. Tires for a wheelchair should not cost more than a steel belted radial tire for an automobile and electric wheelchairs should not cost more than most used cars.

I sincerely hope you will do something to correct this situation, a situation which the handicapped individual finds himself again "Trapped".

Sincerely,

ED BAKER.

DEPARTMENT OF MICROBIOLOGY,
THE MOUNT SINAI HOSPITAL,
New York, N.Y., June 8, 1978.

DOUGLAS E. ROSENTHAL,
Chief, Foreign Commerce Section, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530

Re: Civil No. 77-1648-R, *United States v. Everest & Jennings International, et al.*

DEAR MR. ROSENTHAL: I have thoroughly studied the proposed final Judgment and Competitive Impact Statement involving the defendants Everest & Jennings International, *et al.* As a handicapped (paraplegic) consumer and citizen, I would like to comment on this consent agreement, particularly since I have and continue to be a victim of past and present violations of the Sherman Antitrust Act by the defendants.

I am totally opposed to the proposed consent agreement for the following reasons:

(1) Sections V through XIV of the proposed Final Judgment purport to foster competition and pricing in the manufacture and sale of wheelchairs. In fact, the effect will be directly the opposite because the agreement does not require the divestiture of any of the divisions or subdivisions of Everest & Jennings International. Instead, the Department of Justice requires that Everest & Jennings International and its wholly-owned corporations, Everest & Jennings, Inc. and the Jennings Investment Corporation, including any of their foreign subsidiaries, act independently in the sale, manufacture, pricing, distribution, and export of wheelchairs to the U.S. Will this foster true competition in the wheelchair industry? The obvious answer is "No!" For it matters not that the defendants are required to act independently. The fact is that they are, and will continue to be, part of one corporation, Everest & Jennings International. Thus, even if some subsidiaries prosper and grow while other subsidiaries suffer and lose a share of their markets, the wheelchair monopoly will still remain in the hands of Everest & Jennings International by virtue of the fact that it already owns all the corporations that will be involved in the manufacture and sale of wheelchairs. It will still be impossible for independent corporations to enter the wheelchair market or to compete with the various E&J interests. Eventually, at the end of 10 years when Section VII of the proposed Final Judgment expires, the defendants will still be part of E&J International and the exclusive monopoly this corporation now holds on the wheelchair industry will revert back to it and will, in all probability, have grown rather than diminished.

(2) Only Section XI of the proposed Final Judgment, which enjoins the defendants and their subsidiaries "• • • from the acquisition of any financial, equity or management interest in any other person manufacturing or selling wheelchairs in the United States, Canada, Western Europe or the British Isles without the prior approval of the plaintiff" has any merit as bonafide antitrust legislation.

(3) As it stands, the proposed settlement is an obvious soft-handed, "slap-on-the-hand" approach toward criminal acts and will only serve to erode and undermine public confidence in the law. It is time to put an end to corporate crimes against the consumer. The public no longer accepts the argument that a corporation, unlike an individual, is a nonentity and is, alas, out of the reach of the law. If the courts continue to encourage corporations to hide behind this smoke screen, they the public's faith and trust in equal justice, already sorely tried during the past decade or so, may be irrevocably destroyed. Legislation must be enacted to hold corporate executives (the "decision makers") accountable for a corporation's crimes against the consumer but, in the interim, existing laws designed to protect the public must be enforced.

(4) No more plea-bargaining with criminals, be they individuals or corporations! The proposed Final Judgment is tantamount to a plea-bargaining arrangement in which the defendants, Everest & Jennings International, *et al.*, have, in effect, been allowed to plead "nolo contendere." In return, the U.S. Dept. of Justice agrees not to take the defendants to trial. By so doing, the Dept. of Justice denies its mandate to protect the public and to sue for damages on behalf of the consumer where evidence warrants it.

(5) No monetary damages have been assessed on the corporate offenders involved in this case, despite clear and documented evidence of the defendants' illegal activities against the American consumer. I, and countless others have been bilked millions of dollars since 1955. We demand that Everest & Jennings pay back what they stole and pay treble damages to boot as a deterrent to future crimes against the consumer.

In sumary, the proposed Final Judgement is a mockery of justice and an example of the public-bedamned attitude. It is based on the principle, now pervasive among government and business, that corporations must be punished lightly, if at all, because corporations produce our nation's wealth and employ our nation's laborers. We are afraid to punish corporations severely because we are afraid that this will have a deleterious effect on our economy. But can our society survive at all as a democratic entity if a double standard is allowed to permeate our thinking and our concept of what we know to be right and wrong? Can we let corporations get away with fixing prices, giving (or taking) bribes to foreign and domestic agents, creating and using illegal slush funds, making illegal political payments, resorting to corporate spying, etc., and at the same time expect our citizens to obey the laws? It seems to me that when we tamper with justice and show partiality or favoritism in our laws, i.e., when we create unequal justice, then we are destroying the very basis of a true democracy. In the final analysis then, the case involving Everest & Jennings International does not merely concern wheelchairs and monopolistic enterprise—the ramifications and significance of this case concern our very existence as a democratic nation and so merits careful and serious attention.

Sincerely yours,

NICHOLAS MIHALAKIS, Ph. D.

Encl.

P.S. I would like to request to have the enclosed letter be made part of the record and that it be published in the FEDERAL REGISTER as being pertinent to the above case.

CROMWELL, CONN.
May 22, 1978.

Attorney General GRIFFIN BELL,
Washington, D.C.

DEAR MR. BELL: I have recently read that you are considering settling the case against Everest & Jennings out of court. I would like to urge you to continue a solid case against the E&J Company. In my work as a Physical Therapist I am well aware of the monopoly that the E&J Company has had on handicapped products. Their wheelchair costs have almost doubled in the past few years—however quality and responsibility on their part has not. The handicapped of the U.S. deserve better quality and care. Thank you.

Sincerely yours,

MRS. JEAN ZIMMERMAN, RPT.

ASSOCIATION FOR THE SUPPORT
OF HUMAN SERVICES, INC.
Westfield, Mass., June 6, 1978.

MR. DOUGLAS E. ROSENTHAL,
Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, Washington, D.C. 20530

DEAR MR. ROSENTHAL: In reference to notification on page 21740 of the Friday, May 19, 1978, FEDERAL REGISTER entitled "United States v. Everest & Jennings International, Everest & Jennings, Inc., and the Jennings Investment Co.", the Association endorses such judicial decisions.

It has been our observation that no major innovations have been made in either wheelchair design or adaption. Perhaps this ruling by the United States District Court, Central District of California will encourage individual design initiative which will eventually benefit those citizens bound to wheelchairs, temporarily or otherwise.

Sincerely yours,

RICHARD W. ELLIOTT,
Executive Director.

CARL A. CIRA, JR.,
RICHARD E. GRIMM,
O. RUSSEL MURRAY,
Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, telephone 202-633-4712.

CAROLYN D. WULFSBERG,
Antitrust Division, U.S. Department of Justice, 3101 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012, telephone 213-798-1449.

Attorneys for Plaintiff.

U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

United States of America, *Plaintiff*, v. Everest & Jennings International; Everest

[1] Picture filed as part of the original document.

& Jennings, Inc.; and The Jennings Investment Co., *Defendants:* Civil No. 77-1648-R.

PLAINTIFF'S RESPONSE TO COMMENTS ON PROPOSED FINAL JUDGMENT RECEIVED PURSUANT TO THE ANTITRUST PROCEDURES AND PENALTIES ACT, 15 U.S.C. 16 (b)-(h)

Table of Contents

I. Introduction

This responds to all of the comments received on the proposed Final Judgment in *United States* v. *Everest & Jennings International, et al.*, as required by the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. 16(b)-(h).

The complaint in this action was filed on May 6, 1977, charging the Everest & Jennings group of companies with monopolization and attempted monopolization, under Section 2 of the Sherman Act, 15 U.S.C. 2, of the manufacture and sale of wheelchairs in the United States. The principal restraint of trade alleged was that Everest & Jennings, from 1955 to 1975, had understandings with its half-owned European joint venture affiliates, Zimmer Orthopedic Ltd. of Britain (Zimmer) and Ortopedia GmbH of West Germany (Ortopedia), and with its joint venture partner, Franklin I. Saemann, barring the joint ventures from selling wheelchairs in the United States. Secondly, we alleged that defendants secured Saemann's agreement not to manufacture or sell wheelchairs in the United States. In 1975 in an agreed settlement of differences between Everest & Jennings and Saemann, full control of Zimmer was given to Saemann and full control of Ortopedia was given to Everest & Jennings. Everest & Jennings also has smaller subsidiaries manufacturing wheelchairs in Canada and Mexico. Recently it formed a new company in England to produce wheelchairs in competition with Zimmer.

Intensive investigation, discovery under the Federal Rules of Civil Procedure, and preparation for trial were undertaken by the Justice Department. Shortly before the scheduled trial date, a proposed Final Judgment (or decree) was agreed upon by the parties. On May 10, 1978, the decree and the Department's Competitive Impact Statement were filed with the Court as required by the APPA. The decree forbids every kind of anticompetitive activity alleged in the complaint and also provides for affirmative relief.

The public comment period mandated by the APPA originally was to expire in July. However, due to the failure of the Los Angeles Herald Examiner to print a legal notice about the decree, the period ran an additional sixty days, until September 24. Comments on the proposed decree were received from the Western Law Center for the Handicapped (WLCH), the Disability Rights Center, Inc. (DRC), the Association for the Support of Human Services, Inc., Dr. Nicholas Mihalakis, Edward J. Baker, Jr., Mrs. Jean Zimmerman, and, in a joint submission, Paralyzed Veterans of America, Inc. and the California Association of the Physically Handicapped (PVA/CAPH). The Department of Justice has given these comments careful attention. We have concluded that prompt entry of the decree would be in the public interest.

The common thread in most of the comments that are critical of the decree is the suggestion that it should have provided that Everest & Jennings divest one or more of its remaining foreign subsidiaries. We address this suggestion and others in detail after briefly discussing certain procedural questions that have been raised under the APPA.

II. Comments Relating to Procedures Under the Antitrust Procedures and Penalties Act

Disability Rights Center, Inc., suggests in its comments that the public comment period be re-opened. Recently DRC petitioned the Court to extend the comment period and to intervene in the suit in order to oppose entry of the decree. Hon. Manuel L. Real, United States District Judge, denied this request in his order of October 16, 1978. The public comment period in effect ran for more than double the sixty days required by the APPA. Every person wishing to comment on the decree has had an adequate opportunity to do so.

PVA/CAPH and DRC criticize the Justice Department for not filing, as provided by the APPA, any document the Department considers was determinative in reaching its agreement with defendants on the proposed decree. PVA/CAPH maintains that our decision that there was no such document was "conclusory." Any such determination is necessarily conclusory since the statute asks the Justice Department to make a subjective assessment of the impact, if any, of particular documents on its own thinking about whether to settle a lawsuit. In this instance, our decision was not difficult. No particular document or documents convinced us to settle the case rather than proceed to trial.

DRC and PVA/CAPH also assert that background information pertaining to the lawsuit is unavailable to the public. DRC has filed a request with the Justice Department under the Freedom of Information Act (FOIA), 5 U.S.C. 552b, for documents pertaining to the case. The request is being processed at DRC already has reviewed about fifteen thousand pages of documents, nearly all the documents to which it may be given access under the FOIA and without violating the Protective Order entered by the Court. DRC's Director, Deborah Kaplan, also has had access to discovery and investigation material in two private class action antitrust lawsuits against Everest & Jennings in which she has been counsel of record. The Justice Department has also made the more than forty depositions taken in the case available for inspection by any person. As required by the APPA, we have publicly published and distributed a Competitive Impact Statement explaining the proposed decree. We have also expressed our willingness to meet with any person wishing to discuss the decree and we have met with representatives of PVA/CAPH.

III. Comments Relating to Everest & Jennings' Foreign Subsidiaries

Substantive criticism of the proposed decree by several commentators focuses on Section VII, which requires Everest & Jennings to direct its foreign subsidiaries to seek export opportunities into the United States. Section VII, it should be noted, is only one among a number of provisions in the decree providing affirmative and injunctive relief. It supplements the prohibition of Section VI of the decree that enjoins Everest & Jennings from preventing its subsidiaries from exporting to the United States. Most commentators, including DRC, WLCH, and PVA/CAPH, claim that divestiture of the foreign subsidiaries would be preferable to the agreed upon relief. We dispute this assertion, but, even if it were so, we believe for the reasons stated below and in the Competitive Impact Statement that the agreed formula is a reasonable compromise.

Although Everest & Jennings is the dominant firm in the wheelchair industry, it presently has only about a 60 percent dollar share of the overall U.S. wheelchair market as defined by the Justice Department. While there is no precise legal formulation of what minimum market share percentage in necessary to sustain a charge of monopolization under Section 2 of the Sherman Act, 60 percent is on the low side, particularly where there has been a decline from former levels. For example, in *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 424 (2d Cir. 1945), Judge Learned Hand expressed the view that 60 percent of a market was a "doubtful" indication of monopoly power. Defendants contend that their share is substantially less, about 49 percent. Only one commentator has offered an independent estimate. WLCH asserts that "9 out of 10 wheelchairs used by disabled persons" are made by defendants. This figure is unsubstantiated.

Defendants' overall market share has declined since the 1950's and 1960's, the period in which most acts evidencing the alleged restraints occurred. We could not be certain, given the decline to the present 60 percent market share, that the Court either would sustain a finding of monopolization under the Sherman Act or would grant divestiture. See *United States* v. *International Harvester Company*, 274 U.S. 693, 709 (1927).

Although we have also contended that Everest & Jennings has a 90 percent share of the high-price premium, custom, and prescription wheelchair submarkets, discovery and investigation have convinced us that there are definitional and other problems that would make it difficult to prove that these submarkets are sufficiently distinct as a matter of law to sustain a finding of monopolization or attempted monopolization under the antitrust laws. For example, many of the features that used to be available only on high-priced wheelchairs are now available in various manufacturers' lower-priced lines. Furthermore, it is no longer true, as asserted by PVA/CAPH, that Everest & Jennings is the only domestic company making custom wheelchairs.

The proposed decree's treatment of the foreign subsidiaries is preferable to divestiture in the factual situation presented in this case. The foreign subsidiaries are not directly before the Court in this litigation except insofar as they are subject to direction by Everest & Jennings. Thus, were the subsidiaries to be divested they would be

under no obligation to sell into the United States, nor would the Justice Department be able to ascertain under the decree to what extent they did so. This is to be contrasted with divestiture of a firm's American subsidiary. In such an event there is no question that a new competitor in the domestic market would be created.*

This case also differs from divestiture of a foreign subsidiary that already exports to the United States. In the *Alcoa* litigation divestiture of Alcoa's Canadian subsidiary was premised on the company's having become "an important factor in the [United States] domestic economy." *United States v. Aluminum Co. of America*, 91 F. Supp. 333, 392 (S.D.N.Y. 1960). Everest & Jennings' foreign subsidiaries might presently be disinclined to seek export opportunities were they not directed to do so by their parent and were their efforts not to be monitored by the Department of Justice and the Court.

It is believed that Everest & Jennings Canadian Ltd. and Ortopedia can find commercially feasible sales opportunities in this country. However, prevailing United States tariffs and international currency exchange rates would have some effect on whether they presently would initiate the process on their own were they to be divested.

Under Section VII of the decree all of Everest & Jennings' subsidiaries would have an affirmative obligation to seek opportunities to export into the United States. Certain commentators criticize this obligation as too vague. More precise requirements, however, such as imposing specific export quotas or requiring Everest & Jennings to act as distributor for the subsidiaries, would be undesirable, because they would interfere unduly with free market forces. The seriousness of the subsidiaries' obligation is underscored by supplemental provisions in Section VII, including those forbidding exclusive dealing arrangements with the parent company, giving the subsidiaries full discretion over prices and terms of export sales, and giving them full discretion to select and employ trademarks different from Everest & Jennings trademarks. The proposed Final Judgment goes further than merely enjoining Everest & Jennings from preventing its subsidiaries' exporting to the United States In circumstances similar to those in this case, relief has been limited after trial to an injunction against an American parent company preventing its foreign subsidiaries from entering into competition in the United States. *United States v. General Electric Co.*, 115 F. Supp. 835 (D. N.J. 1953). The affirmative action required by the decree is subject to reporting and policing provisions specified in Sections VII and XIV.

A significant factor ignored by commentators advocating divestiture is that Everest & Jennings already has divested its interest in Zimmer of Britain. We are convinced from our investigation that Franklin I. Saemann, owner of Zimmer since 1975, is not bound by any residual restraint in competing with Everest & Jennings. Zimmer has taken initial steps to market its wheelchairs in competition with Everest & Jennings in the United States.

Finally, a common theme in the arguments of those commentators calling for divestiture is that Everest & Jennings must be "punished." This lawsuit did not charge criminal violations of the antitrust laws. Restoration and encouragement of competition rather than punishment, therefore, is the relevant consideration. In *United States v. Timken Roller Bearing Co.*, 341 U.S. 593 (1951), the Supreme Court stated, in overturning a trial court's order divesting Timken's interests in two foreign firms:

> [D]ivestiture is a remedy to restore competition and not to punish those who restrain trade, it is not to be used indiscriminately, without regard to the type of violation or whether other effective methods, less harsh, are available. [341 U.S. at 603]

IV. Comments Relating to Alleged Indications of Everest & Jennings' Monopoly Power and Other Alleged Abuses by Defendants

The WLCH submission and others emphasize alleged design, construction, and repair defects in wheelchairs manufactured by Everest & Jennings. Several commentators, including Mr. Baker, Mrs. Zimmerman and WLCH are critical of the high cost of Everest & Jennings wheelchairs and wheelchair parts and of the allegedly high profits made by defendants. WLCH, Mr. Edward J. Baker, Jr., and other commentators also point out that many wheelchair users complain about inconvenience and high costs in getting their Everest & Jennings wheelchairs repaired. However, none of these allegations are related to issues that would have been presented at trial.

V. Comments Suggesting Additional Forms of Relief

DRC suggests that the decree should make defendants reveal their "knowledge that could be made available to other manufacturers." Discovery does not support the contention that Everest & Jennings' market position is protected by its patents. Nor would competiton be promoted by Everest & Jennings sharing technology with other manufacturers. However, Section X of the proposed decree does require defendants to share their list of independent dealers with any person requests it. This provision already had generated a number of inquiries. In addition, Section IX of the decree provides that Everest & Jennings shall not agree with any dealer that it carry Everest & Jennings products exclusively.

WLCH suggests that Everest & Jennings be required to distribute wheelchairs produced by its foreign subsidiaries and be required to advertise and disseminate literature on all competing manufacturers' wheelchairs. To give Everest & Jennings this task would not be consistent with maintenance and development of competition; nor would Everest & Jennings' competitors likely wish to entrust promotion of their products to their major competitor.

WLCH recommends that the Final Judgment require defendants to give customers stronger warranties and to incorporate improved design features such as lifetime ball bearings in their wheelchairs. Such matters are better left to the market place and, in any event, do not reflect issues that would have been raised at a trial of this case.

DRC recommends that Everest & Jennings be required to expend a fixed percentage of its profits on research and development. This suggestion is outside the scope of the issues in this lawsuit. WLCH and DRC suggest independent preparation and dissemination of specifications describing foreign and domestic wheelchairs so that those buying and using wheelchairs may be better informed. An antitrust consent decree is not the appropriate vehicle for such an initiative. Specifications for wheelchair brands now sold in the United States are currently available in catalogs and other literature, including test reports published by the Veterans Administration.

VI. Conclusion

In sum, the suggested revisions to the decree either are ill-advised from the standpoint of encouraging competition, are unrelated to the issues of this lawsuit, or reflect drastic solutions that may not be attainable if this case were tried. It has been suggested to us by attorneys for PVA/CAPH that the Department of Justice should not support this settlement with Everest & Jennings unless we are convinced that our case would be dismissed at trial. This unrealistic position must be rejected. The public interest here is best served by the two basic objectives of the decree. First, it enjoins every kind of anticompetitive understanding alleged in the complaint. Second, it provides Court-supervised affirmative relief reasonably likely to promote competition.

In light of the charges of the complaint, the state of the evidence and the condition of the relevant market, entry of the proposed Final Judgment is in the public interest.

Dated: November 3, 1978

Respectfully submitted,
Carl A. Cira, Jr.,
Richard E. Grimm,
O. Russel Murray,
Carolyn D. Wulfsberg,
Attorneys, Antitrust Divison, Department of Justice, Washington, D.C. 20530.

[FR Doc 78-31896 Filed 11-13-78; 8:45 am]

[4410-18-M]

Law Enforcement Assistance Administration

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive research grant program aimed at producing new knowledge about the comparative processing of the adult female offender through the criminal justice system. Specifically, the goal of the program is to determine whether the administration of criminal justice discriminates against women.

The solicitation asks for the submission of concept papers rather than full proposals. Full proposals will be requested following reviews of concept papers. In order to be considered, a concept paper must be received by the National Institute no later than February 1, 1979. One grant will be awarded under this announcement. A maximum of $165,000 will be awarded for a project to run for 15 to 18 months. Because this is a research grant program,

profitmaking organizations are prohibited by LEAA policy from receiving funding support.

Additional information and copies of the solicitation can be obtained by contacting Dr. Patrick A. Langan, Center for the Study of Crime Correlates and Determinants of Criminal Behavior, NILECJ, 633 Indiana Avenue NW., Washington, D.C., 20531, 301-492-9126.

BLAIR G. EWING,
Acting Director, NILECJ.

[FR Doc. 78-31947 Filed 11-13-78; 8:45 am]

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

STATE FUNDING ALLOCATIONS FOR MIGRANT AND SEASONALLY EMPLOYED FARMWORKERS PROGRAMS

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Pursuant to 29 CFR 97.204 and 97.211 the Employment and Training Administration must announce State funding allocations for programs sponsored under Title III, Section 303 of the Comprehensive Employment and Training Act (CETA) of 1973, as amended.

FOR FURTHER INFORMATION CONTACT:

Harry Kranz, Acting Director, Office of Farmworker Programs, 601 D Street, NW., Room 6308, Washington, D.C. 20213, Telephone: 202-376-6128.

SUPPLEMENTARY INFORMATION: State planning estimates for Program Year 1978-79 were published in the August 8, 1978, FEDERAL REGISTER (43 FR 35124). The total amount available to fund section 303 programs has since been increased to $48,809,400 by action of Congress. Certain State allocations are changed due to this increase and as a result of the use of social security records for 1975, the most current year for which records are available. The data base remains social security records of employees of agricultural establishments who earned less than $3,000 while employed in agriculture. Grantees affected by the changes in allocations should prepare proposals based on the allocations published herein. Where this is not practical, changes in the proposals will be negotiated to comply with the new allocations. The allocations of the States affected are as follows: Alaska, $2,200; Arizona, $682,000; Arkansas, $844,900; California, $8,931,500; Colorado, $549,600; Connecticut, $322,400; Florida, $3,011,000; Idaho, $789,400; Illinois, $1,407,200; Kansas, $848,000; Louisiana, $771,100; Maine, $414,600; Massachusetts, $266,900; Michigan, $893,900; Mississippi, $813,900; Montana, $494,500; Nebraska, $752,700; Nevada, $79,500; New Hampshire, $61,200; New Jersey, $525,100; North Dakota, $377,900; Ohio, $881,600; Oklahoma, $500,700; Oregon, $810,800; Pennsylvania, $1,225,900; Utah, $248,600; Washington, $1,738,800; Wyoming, $205,800.

The planning estimates published on August 8 for all other States remain unchanged.

Signed at Washington, D.C., this 1st day of November, 1978.

LAMOND GODWIN,
Administrator,
Office of National Programs.

[FR Doc. 78-32003 Filed 11-13-78; 8:45 am]

[4510-29-M]

Pension and Welfare Benefit Programs

PROPOSED REVISION OF SCHEDULE B (ACTUARIAL INFORMATION) AND PROPOSED PERMANENT WAIVER OF CERTAIN ACTUARIAL INFORMATION

Hearing

By notice published in the FEDERAL REGISTER (43 FR 43696, Sept. 26, 1978), the Department of Labor announced proposed revisions of schedule B (actuarial information), which must be filed as an attachment to the annual return/report by certain employee benefit pension plans subject to the minimum funding standards of the Employee Retirement Income Security Act of 1974 (ERISA). The Department also announced that if certain proposed changes to the schedule B are adopted, the Department contemplates issuing a permanent waiver from the requirements of section 103(d)(6) of ERISA. That section provides that the actuarial statement required by section 103(d) must include the present value of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories set forth in section 4044 of ERISA.

The Department received a number of comments concerning the proposals.

A hearing will be held on the proposals on Monday, November 20, 1978, beginning at 10 a.m. in the Department of Labor Auditorium, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. Any interested person who desires to present oral comments at the hearing may schedule an oral presentation in advance of the hearing by notifying Mervyn Schwedt, 202-523-8769 (not a toll free number) by telephone no later than 3:30 p.m. e.s.t., Friday, November 17, 1978. In addition, an opportunity to schedule an oral presentation will be provided at the hearing itself. All oral comments will be limited to 10 minutes. Oral comments may be supplemented by written comments submitted at the hearing.

An agenda will be prepared containing the order of presentation of oral comments and the time allotted to each commentator. The public hearing will be transcribed.

Persons making oral comments should be prepared to answer questions relating to the proposals and their comments.

DATE: The hearing will be held on Monday, November 20, 1978, beginning at 10 a.m. e.s.t.

ADDRESSES: The hearing will be held in the Department of Labor Auditorium, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

All written comments will be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4077, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Mervyn Schwedt, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8769. This is not a toll free number.

Signed at Washington, D.C., this 13th day of November 1978.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-32214 Filed 11-13-78; 11:40 am]

[6820-35-M]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

NOVEMBER 6, 1978.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project."

The Legal Services Corporation hereby announces publicly that it is

considering the grant application submitted by:

Petersburg Legal Aid Society in Petersburg, Va., to serve the counties of Charles City and Prince George and cities of Hopewell, Petersburg, and Colonial Heights.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the regional office of the Legal Services Corporation at: Legal Services Corporation, Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600, Arlington, Va. 22209.

THOMAS EHRLICH,
President.

[FR Doc. 78-31889 Filed 11-13-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-373 and 374]

AVAILABILITY OF THE FINAL ENVIRONMENTAL STATEMENT FOR LASALLE COUNTY NUCLEAR POWER STATION, UNIT NOS. 1 AND 2

Pursuant to the National Environmental Policy Act of 1969 and the U.S. Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that the Final Environmental Statement (FES) (NUREG-0486) prepared by the Commission's Office of Nuclear Reactor Regulation, related to the operation of LaSalle County Nuclear Power Station, Unit Nos. 1 and 2, in LaSalle County, Ill., is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C., and in the Illinois Valley Community College Library, Rural Route No. 1, Olglesby, Ill. The FES is also being made available at the State Clearinghouse, Bureau of the Budget, 103 State Street, Springfield, Ill. 62706.

The notice of availability of the Draft Environmental Statement (DES) for the LaSalle County Nuclear Power Station, Unit Nos. 1 and 2, and request for comments from interested persons was published in the FEDERAL REGISTER on April 21, 1978 (43 FR 17047). The comments received from Federal, State, and local agencies and interested members of the public have been included as an appendix to the FES.

Copies of the FES (Document No. NUREG-0486) may be purchased, at current rates, from the National Technical Information Service, Springfield, Va. 22161 (printed copy: $9.25; microfiche: $3).

Dated at Bethesda, Md., this 7th day of November 1978.

For the Nuclear Regulatory Commission.

RONALD L. BALLARD,
Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 78-31902 Filed 11-13-78; 8:45 am]

[7590-01-M]

EXPORTATION OF NUCLEAR FACILITIES OR MATERIALS

Applications for Licenses

Pursuant to 10 CFR 110.70, "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street NW., Washington, D.C.

Dated this day November 6, 1978, at Bethesda, Md.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Name of applicant, date of application, date received, and application No.	Special Nuclear material in kilograms				Country of ultimate destination
	Material type	Total element	Total isotope	End-use	
Transnuclear October 19, 1978, October 19, 1978, XSNMO1393.	Enriched uranium	37,160	1,007	Reload fuel for Brunsbuttel	West Germany.
Transnuclear, October 19, 1978, October 19, 1978, XSNMO1394.	do	18,951	635.034	Reload fuel for Stade	Do.
Transnuclear, October 13, 1978, October 16, 1978, XSNMO1389.	do	802	484.408	Reload fuel for KNK-II reactor	Do.
Transnuclear, October 13, 1978, October 16, 1978, XSNMO1390.	do	15.038 50.125	13.594 35.288	For safety related irradiation experiments in BR-2, HFR and KNK-II.	Do.
Transnuclear, October 13, 1978, October 16, 1978, XSNMO1391.	do	113.182	105.599	Fuel for BR-2 Reactor	Belgium.

[FR Doc. 78-31906 Filed 11-13-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-250 and 50-251]

FLORIDA POWER & LIGHT CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 38 and 31 to Facility Operating Licenses Nos. DPR-31 and DPR-41, respectively, issued to Florida Power and Light Company which revised Technical Specifications for operation of the Turkey Point Nuclear Generating Units Nos. 3 and 4, located in Dade County, Fla. The amendments are effective as of the date of issuance.

The amendments change the Technical Specifications for Turkey Point Unit Nos. 3 and 4 in connection with the refueling of Unit 4 Cycle 5 operation and authorize the operation of Turkey Point Unit Nos. 3 and 4 with up to an average of 25 percent of the tubes in the three steam generators in each unit in a plugged condition. In addition, the steam generators in Turkey Point Unit 4 have been inspected by FPL and reported on September 6, 1978. The steam generators have been found satisfactory by the NRC for an additional 6 equivalent months.

The operating limits regarding the steam generators for Unit 4, which were previously governed by NRC Orders for Modification of License dated August 3 and 11, 1977 and March 8, 1978, are superseded by this amendment.

The requirements of the NRC Order for Modification of Licenses dated June 7, 1978 are satisfied by the licensee's submittal dated August 9, 1978 and supplemented on September 13, 1978. The augmented surveillance procedures in the April 10, 1978 letter

from FPL and incorporated in the June 7, 1978 order will no longer be required.

The application for the 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 the steam generator inspection was not required since the amendments do not involve a significant hazards consideration. Notice of Proposed Issuance of Amendments to Facility Operating License in connection with the Unit 4 Cycle 5 reload and the 25 percent steam generator tube plugging was published in the FEDERAL REGISTER on August 9, 1978 (43 FR 35406). 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 these amendments 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 these amendments.

For further details with respect to this action, see (1) the application for amendments dated June 19, 1978, supplemented on July 10 and 20, August 9 and 16 and September 13, 1978; (2) Amendment Nos. 38 and 31 to Licenses Nos. DPR-31 and DPR-41 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 Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199. 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 22nd day of September, 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-31903 Filed 11-13-78; 8:45 am]

[7590-01-M]

[Docket No. 50-263]

NORTHERN STATES POWER CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 37 to Provisional Operating License No. DPR-22 issued to Northern States Power Co. (NSP) (the licensee) which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant (the facility) located in Wright County, Minn. The amendment is effective as of its date of issuance.

This amendment: (1) authorizes operation with a fuel type (8x8R) not previously used in the Monticello plant, (2) incorporated revised MCPR limits in response to plant specific analyses of the new (cycle 7) operating cycle, (3) imposes conditions for continued plant operation in the event of misloaded bundle indication, (4) incorporates new MAPLHGR limits in response to plant specific LOCA analyses, and (5) incorporates new limits on safety/relief valve setpoints to improve simmer margin.

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. Notice of Proposed Issuance of Amendment to Provisional Operating License in connection with item (1) above was published in the FEDERAL REGISTER on July 10, 1978 (43 FR 29633). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action. Prior public notice of items (2) through (5) above was not required since they do 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 amendments dated March 21, 1978, as supplemented August 10 and September 28, 1978, and applications dated September 30, 1977 and August 16, 1978, (2) Amendment No. 37 to License No. DPR-22, 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 Environmentl Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minn. 55401. 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 6th day of November 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-31904 Filed 11-13-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION ISSUANCES

Availability of Semiannual Hardbound Volume

The Nuclear Regulatory Commission hs issued Volume 6, Pages 1-524, of the Nuclear Regulatory Commission Issuances, covering the period July 1, 1977, to September 30, 1977. This publication is a semiannual compilation of adjudicatory decisions and other issuances of the Commission, the Atomic Safety and Licensing Appeal Boards, and the Atomic Safety and Licensing Boards.

A copy of Volume 6, Pages 1-524, is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. This publication, designated Nuclear Regulatory Commission Issuances, Volume 6, Pages 1-524, Opinions and Decisions, July 1, 1977, to September 30, 1977, may also be purchased at a cost of $9.25 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The GPO Stock number is 052-010-005006.

Dated at Bethesda, Md. this 6th day of November 1978.

For the Nuclear Regulatory Commission.

JOSEPH M. FELTON,
Director, Division of Rules and Records, Office of Administration.

[FR Doc. 78-31907 Filed 11-13-78; 8:45 am]

[7590-01-M]

[Docket No. 50-344SP]

PORTLAND GENERAL ELECTRIC CO., ET AL. (TROJAN NUCLEAR PLANT)

Order Regarding Conclusion of Evidentiary Hearing on Interim Operation

NOVEMBER 6, 1978.

Pursuant to notice (43 FR 48090), an evidentiary hearing on the issue of interim operation of the Trojan nuclear facility was held in Salem, Oreg., October 23-25 and October 30-November 3, 1978.[1] All testimony offered by any party to this proceeding was heard by the Licensing Board before the hearing was adjourned, and all exhibits were received and ruled upon.

The Licensee, PGE, presented the testimony of Richard C. Anderson; George Katanics; Theodore E. Johnson; William H. White; Myle J. Holley, Jr.; Boris Bresler; S.R. Christensen; Donald J. Broehle; Bart D. Withers and John Frewing. The State of Oregon offered the testimony of Harold I. Laursen. The Staff presented the testimony of Robert T. Dodds, James E. Knight, Kenneth S. Herring and Charles Trammell, III. All of these witnesses were cross-examined by the other parties, and they were interrogated by the Board. The Intervenors participated in cross-examination by counsel or pro se, although they offered no direct testimony.[2]

Only one issue was excepted from cross-examination at this evidentiary hearing, on the grounds that the analysis had not been completed and all direct testimony filed 15 days in advance of the session of the hearing at which the testimony was to be presented. This issue relates to the analysis and review by the Licensee of all safety-related components, piping, and systems in the Control-Auxiliary-Fuel Building Complex, to confirm that they are qualified to original FSAR criteria under the new STARDYNE floor response spectra. A further response to the NRC Staff technical questions was prepared by the Bechtel Power Corporation and served by hand on all parties by the Licensee on October 27, 1978. The Staff filed additional questions relating to floor response spectra and equipment qualifications on October 31, 1978. On November 2, 1978, the Licensee filed its response to these additional Staff questions.

On the last day of the evidentiary hearing (November 3, 1978), the Licensee presented testimony regarding this new floor response spectra by the witnesses S.R. Christensen and William H. White. The Board questioned these witnesses extensively on their testimony. All of the other parties elected not to cross-examine on this issue or testimony, because they had not had sufficient time to analyze this evidence or prepare cross-examination. Accordingly, such cross-examination or testimony related thereto will be taken at the conclusion of the evidentiary hearing commencing December 11, 1978. All such direct written testimony shall be filed and served upon the Board and parties at least 15 days prior to December 11, 1978 (November 25, 1978).

The Staff is granted leave, as requested, to extend time to respond to interrogatories filed by Intervenor Columbia Environmental Council to and including November 10, 1978.

The parties are requested to file proposed findings of fact and conclusions of law on the evidentiary record to date with the Board by November 20, 1978. If the parties can agree to complete the evidence regarding the excepted matter, the new floor response spectra and equipment qualifications, by means of depositions prior to the December 11, 1978 concluding hearing on interim operation, they are granted leave to do so.

Please take notice that the concluding session of the evidentiary hearing concerning interim operation of the Trojan facility will commence on December 11, 1978 at 9 a.m., local time, at the State Capitol, Hearing Room A, Court Street, Salem, Oreg. 97310.

It is so ordered.

Dated at Bethesda, Md. this 6th day of November 1978.

For the Atomic Safety and Licensing Board.

MARSHALL E. MILLER,
Chairman.

[FR Doc. 78-31905 Filed 11-13-78; 8:45 am]

[1] A hearing to receive limited appearances, oral or written, was also held in Portland, Oreg., on October 26-27, 1978.

[2] Nina Bell on behalf of the Consolidated Individual Intervenors offered a written exhibit (Section 6., "Earthquakes", taken from NUREG CR-0-400), which was admitted into evidence.

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

FOOD FAIR, INC.

Notice of Suspension of Trading

NOVEMBER 6, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Food Fair, Inc., being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9:45 a.m., e.s.t., on November 6, 1978, through November 15, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-31929 Filed 11-13-78; 8:45 am]

[8010-01-M]

[Release No. 34-15297; File No. SR-DTC-78-14]

SELF-REGULATORY ORGANIZATIONS

The Depository Trust Co.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C 78s (b)(1), as amended by Pub. L. No. 94-298, 16 (June 4, 1975), notice is hereby given that on October 27, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENTS OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change modifies the administration of The Depository Trust Co.'s (DTC) Conditional Deliver Order service by expanding it to enable participants to conditionally borrow securities to cover urgent withdrawals of securities from their DTC accounts (COD's). Participant Operating Procedures are attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-78-14.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to enable DTC Participants to use the already existing Conditional Deliver Order service to conditionally borrow securities to assure timely completion of their urgent withdrawals of securities (COD's). Conditional Deliver Orders have previously been used by Participants to conditionally borrow securities to assure timely completion of their deliveries in the Institutional Delivery (ID) System. Securities borrowed by Conditional Deliver Order are automatically returned to the lender if they turn out not to be needed.

The proposed rule change would carry out the purposes of Section 17A of the Securities Exchange Act of 1934 (the Act) by increasing the opportunities of using DTC's Conditional Deliver Order Service, which reduces unnecessary costs to persons facilitating

transactions by and acting on behalf of investors and facilitates the prompt and accurate clearance and settlement of transactions in securities by decreasing the number of fails-to-deliver between broker/dealers and their institutional customers.

The proposed modification to expand the Conditional Deliver Order service was publicized in DTC's August 1978 newsletter. No written comments were received from participants. The substance of oral comments was that the expanded service will be useful for expediting physical deliveries versus payment to institutions not participating in depositories.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before December 5, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 3, 1978.

[FR Doc 78-31930 Filed 11-13-78; 8:45 am]

[8010-01-M]

[Release No. 34-15294; File No. SR-PHLX-78-21]

SELF-REGULATORY ORGANIZATIONS

Philadelphia Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 23, 1978, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the terms of substance of the proposed rule change.

The Philadelphia Stock Exchange, Inc., proposes to amend rule 1049 with respect to advertisements, market letters, and sales literature relative to options to provide specific uniform standards, developed by the options exchanges, in approving and commenting upon options related advertisements and sales literature. The proposed rule follows: (Brackets indicate deletions; italics indicate new material.)

SALES COMMUNICATIONS

Rule 1049. *(a) Approval by Registered Options Principal. All advertisements and sales literature issued by a member or member organization pertaining to options shall be approved in advance by a general partner or officer of the member organization who is a Registered Options Principal, and copies thereof, together with the names of the persons who prepared the material and, in the case of sales literature, the source of any recommendations contained therein shall be retained by the member or member organization and be kept readily available for examination by the Exchange for a period of three years.*

(b) Standards of Approval. No advertisement or sales literature shall be approved under paragraph (a) of this Rule which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) contains hedge clauses or disclaimers which are not easily identifiable, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such advertisement or sales literature;

(iv) fails to meet general standards of good taste, judgment and truthfulness common to the securities industry;

(v) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(c) Exchange Approval Required for Options Advertisements. In addition to the approval by a Registered Options Principal required by paragraph (a) of this Rule, every advertisement of a member or member organization pertaining to options shall be submitted to the Committee on Business Conduct of the Exchange at least ten days prior to use (or such shorter period as the Committee may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made and further, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) advertisements submitted to and approved by another self-regulatory organization having identical requirements regarding approval of advertisements pursuant to an arrangement approved by the Exchange;

(ii) advertisements in which the only reference to options is contained in a listing of the services of a member organization; and

(iii) advertisements approved within the last six months.

(d) Except as otherwise provided in the Commentary hereunder, no written materials respecting options may be disseminated to any person without prior or contemporaneous dissemination to such person of a current prospectus of the Options Clearing Corporation.

(e) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The term "advertisement" shall include any material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, billboards, signs or through letters designed for customer mailing not accompanied or preceded by a current prospectus of The Options Clearing Corporation.

(ii) The term "sales literature" shall include any communication for distribution to customers or the public (or which may be made accessible to customers or the public) which contains any analysis, report, recommendation, opinion, prediction or comment with respect to options, underlying securities or market conditions, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events, or any exchange-produced materials pertaining to options.

Commentary

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any ad-

vertisement or sales literature which purports to discuss the uses or advantages of options. In the preparation of communications respecting options, the following guidelines should be observed:

A. Any statement referring to the opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his risk of loss", should be balanced by a statement such as "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time".

B. It should not be suggested that options are suitable for most investors or for small investors. Indeed, it is strongly suggested that there be included in all literature discussing the use of options a warning to the effect that options are not for everyone.

C. Statements suggesting the certain availability of a secondary market for options should not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a prospectus of The Options Clearing Corporation) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current prospectus of The Options Clearing Corporation may be obtained. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is The Options Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of The Options Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any State law or administrative authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type spaces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of performance figures, including annualized rates of return, are not permitted in any advertisement pertaining to options.

.03 Sales literature pertaining to options must be preceded or accompanied by a current prospectus of The Options Clearing Corporation and shall conform to the following standards:

A. Such literature may contain projected performance figures (including projected annualized rates of return in connection with covered call option writing programs) provided that:

(i) no suggestion of certainty of future performance is made;

(ii) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(iii) commissions, transaction costs and interest charges (if applicable with regard to margin transactions) are included in all calculations; and such returns are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(iv) any assumptions made in such calculations are clearly identified (e.g., "assume option expires", "assume option unexercised", "assume option exercised", etc.); and

(v) further provided, in the case of literature relating to annualized rates of return, that such returns are not calculated on any more than four (4) consecutive three-month option periods; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated.

B. Sales literature featuring records and statistics concerning past recommendations shall include the date of each initial recommendation, the price(s) of such security at that date and at the end of the period when liquidation of the security position(s) was suggested, and the trend of the market during that period. Records and statistics must be confined to a specific "universe"; e.g., (i) the work of one research analyst for a period of at least one year; (ii) the work of an entire firm for a period of at least one year; (iii) the results of all accounts under management for a period of at least one year; or (iv) some other clearly definable area which can be fully isolated and circumscribed. All such sales literature shall state that the results persented should not and cannot be viewed as an indicator of future performance.

C. All sales literature shall state that supporting documentation for any claims, comparisons, recommendations, statistics or other technical data will be supplied upon request.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the proposed rule change is to amend PHLX Rule 1049 "Advertisements, Market Letters and Sales Literature Relating to Options", to conform with similar proposals of other options exchanges and to reflect uniform policies and standards applicable to options sales communications directed to public investors by Exchange members and member organizations.

As used herein, communications with the public involving options include, in a broad sense, both advertisements and sales literature (as those terms are defined in paragraph (e) of proposed Rule 1049). Basically, a communication which meets the standards of an advertisement may be disseminated to the public without a prospectus; sales literature, however, must be preceded or accompanied by a prospectus.

The proposed rule sets forth the several procedures and standards which member firms must follow in preparing (and obtaining approval, where required) of options related advertisements and sales literature. In part, the rule incorporates traditional standards of truthfulness and good taste required of non-options marketing material and clarifies certain specific requirements pertaining to exchange-traded options.

While all options exchanges presently have rules similar to PHLX Rule 1049, the exchanges have sought to further refine such rules in light of experiences gained since the establishment of their respective options program. In recognition of the need for uniformity in the area of communications with the public relating to exchange-traded options, representatives of the AMEX, CBOE, MSE, PSE and PHLX have conducted, during the past several months, an in-depth review of present rules. Two of the objectives of the review were: (1) to prepare rule changes which would reflect uniform policies and standards applicable to communications with the public concerning options; and (ii) to prepare an industry-wide publication which would amplify on such rules and assist firms in their preparation of such communications.

In addition to retaining certain specific requirements (such as general standards of truthfulness and good taste discussed above) the proposed rule seeks to: (1) expand the definitions of the terms "advertising" and

"sales literature" (see Rule 1049(e); (2) eliminate, in the case of dual members, the need for approval of advertisements by more than one exchange and permit a firm to submit advertisements to any one exchange in which it maintains a membership for necessary pre-publication approval (see Rule 1049(c); and (3) establish uniform standards to be used in discussion of rates of return, annualized returns, recommendations and performance figures (see Rule 1049: Commentary .02 and .03).

Following Commission approval of the proposed rule change, the options exchanges intend to jointly publish a booklet, tentatively entitled "Guidelines for Options Communications" (see draft of booklet attached as Exhibit II) which is designed to assist member firms in maintaining proper standards in their preparation of communications with the public. The booklet will also serve to explain and amplify upon exchange rules relating to option sales communications and ensure a uniform reference source applicable to all firms who communicate with the public respecting options.

The basis for the proposed rule change is found in Section 6(b)(5) of the Securities Exchange Act of 1934, as amended, which provides, in pertinent part, that the rules of the Exchange be designated to prevent fraudulent and manipulative acts and to protect investors and the public interest.

Comments were neither solicited nor received.

The PHLX has determined that the proposed amendment will not impose any burden on competition.

Within 35 days of the November 14, 1978, publication of this notice in the FEDERAL REGISTER (on or before December 19, 1978), or within such longer period (i) as the Commission may designate up to 90 days of such date (by February 12, 1978) if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 15, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

NOVEMBER 3, 1978.

[FR Doc. 78-31931 Filed 11-13-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 06/06-0206]

CADDO CAPITAL CORPORATION

Notice of Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)), under the name of Caddo Capital Corp., 214 Huntington Office Park, Pines Road and Buncome Road, Shreveport, La. 71109, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are as follows:

Harvey D. McLean, Jr., President, Director, 100% shareholder, 911 Delaware Street, Shreveport, La. 71106.

Thomas L. Young, Jr., Secretary, General Manager, Director, 4731 Fairfield, Shreveport, La. 71106.

James A. McDaniel, Director, 724 Coachlight Road, Shreveport, La. 71106.

There is to be only one class of stock with 10,000 shares of common stock authorized. Mr. Harvey D. McLean, Jr. will be the sole stockholder.

The Applicant Licensee proposes to commence operations with private capital of $510,000. Applicant proposes to conduct its operations principally within the State of Louisiana.

Applicant will make loans to, and investments in, qualified small businesses with no concentration in any particular industry.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than November 29, 1978, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Shreveport, Louisiana.

(Catalog Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31960 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 04/04-0150]

CORPORATE CAPITAL, INC.

On September 19, 1978, a Notice was published in the FEDERAL REGISTER (43 FR 42053) stating that an application had been filed by Corporate Capital, Inc., 2001 Broadway, Riviera Beach, Fla. 33404, with the Small business Administration, pursuant to § 107.102 of the Regulations governing small business investment companies (SBIC).

Interested parties were given until the close of business October 4, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, the SBA issued License No. 04/04-0150 to Corporate Capital, Inc., to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.

Dated: November 7, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31961 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 09/09-0223]

MONTGOMERY STREET PARTNERS CORPORATION

Notice of Issuance of Small Business Investment Company License

On September 22, 1978, a Notice of application for a license as a small business investment company was published in the FEDERAL REGISTER (Vol. 43, No. 185) stating that an application had been filed with the Small Business Administration pursuant to Section 107.201 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1978)), for a license to operate as a small business investment company by Montgomery Street Partners Incorporated, 44 Montgomery Street, San Francisco, Calif. 94104.

Interested parties were given until the close of business on October 10, 1978, to submit their comments. No comments were received.

Notice is hereby given that pursuant to section 301(c) of the Small Business Investment Act of 1948, as amended, after having considered the application and all other pertinent information and facts with regard thereto, SBA issued License No. 09/09-0223, to Montgomery Street Partners Incorporated on October 30, 1978.

(Catalog of Federal Assistance Program No. 59011, Small Business Investment Companies.)

Dated: November 7, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31962 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 04/04-0145]

MOUNTAIN VENTURES, INC.

Application for a License as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration, pursuant to § 107.102 of the Regulations (13 CFR 107.102 (1978)), under the name of Mountain Ventures, Inc., 911 North Main Street, London, Ky. 40741, for a license to operate in the Commonwealth of Kentucky and areas of Tennessee and West Virginia as an SBIC under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 et seq.)

The proposed officers, directors and stockholders are as follows:

Name, Title, and Percentage

Frederick J. Beste III, Route 5, Box 204, Berea, Ky. 40403, President, none.
David R. Schroder, 147 Lorraine Court, Berea, Ky. 40403, Vice President, none.
Robert H. Nice, Route 1, Berea, Ky. 40403, Treasurer, none.
Iris L. widener, Route 3, Box 515, Corbin, Ky. 40701, Secretary, none.
Thomas F. Miller, Route 5, 220, Berea, Ky. 40403, Director, none.
Joseph M. Frye, Jr., 100 Bridge Avenue, Berea, Ky. 40403, Director, none.
W. Wayne Stewart, Lewis Street, Mount Vernon, Ky. 40456, Director, none.
William Singleton, 223 Wildwood Place, Frankfort, Ky. 40601, Director, none.
Harvey E. Hensley, 123 Town Square, Manchester, Ky. 40962, Director, none.
Robert L. Druin, Route 1, Box 133, Albany, Ky. 42602, Director, none.
John E. Bertam, Route 2, Albany, Ky. 42602, Director, none.
Kentucky Highlands Investment Corp. (KHIC), 90.87 percent.
Cooperative Assistance Funds (CAF), 9.13 percent.

KHIC, a Community Development Corporation funded under Title VII of the Community Services Act of 1974 (CSA), as amended (a Federal agency) has no beneficial stockholders.

CAF is funded from various foundations.

The Applicant will begin operations with a capitalization of $1,300,000. One million dollars of this capitalization will be from a Federal grant received by KHIC from CSA, $195,000 from KHIC of which $45,000 is a grant received by KHIC from the Edna McConnell Clark Foundation and $105,000 from CAF. These funds will be a source of equity-oriented (common stock and long term subordinated indebtedness) for qualified small concerns in a wide range of industries.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed company to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in London, Ky.

(Catalog of Federal Domestic Assistance Program, No. 59.011, Small Business Investment Companies)

Dated: September 13, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31963 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 01/02-0218]

NUTMEG CAPITAL CORP.

Notice of Filing of Application for Transfer of Control of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to 13 CFR 107.701 (1978) for transfer of control of Nutmeg Capital Corp. (Nutmeg) a Connecticut corporation, and a Federal Licensee under the Small Business Investment Act of 1958, as amended (ACT), with its office presently located at 35 Elm Street, New Haven, Conn. 06510.

Pursuant to an agreement entered into between John R. Gamm and Lawrence M. Liebman as Trustees (Purchaser) and the present holders of Capital Stock of Nutmeg (Shareholders), the Purchaser has agreed to purchase, and the Shareholders have agreed to sell to the Purchaser, all of the issued and outstanding shares of Capital Stock of Nutmeg.

The Purchaser intends to make a private offering of Nutmeg's shares of Capital Stock the proceeds of which, less related expenses, will be utilized for the purpose of paying the entire purchase price of Nutmeg's shares of Capital Stock from the present Shareholders, and increasing Nutmeg's paid-in capital and paid-in surplus from $333,300 to at least $500,000.

Upon completion of the foregoing transactions, it is proposed that the Officers and Directors of Nutmeg will be:

Lawrence M. Liebman, Chairman, 49 Tumblebrook Road, Woodbridge, Conn. 06525.
John R. Gamm, President and Director, 149 Santa Fe Avenue, Hamden, Conn. 06517.
Donald L. Pelroth, Treasurer and Director, 24 Abby Lane, Hamden, Conn. 06514.
Hyman Hyatt, Vice President, Director and General Manager, 11 Tumblebrook Road, Woodbridge, Conn. 06525.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed new Officers and Directors, and the probability of a successful operation of Nutmeg under their control in accordance with the ACT and Regulations promulgated thereunder.

Notice is hereby given that any person may, not later than (15 days after the date of publication of this Notice), submit written comments on this Application to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published by the Purchaser in a newspaper of general circulation in New Haven, Conn.

(Catalog of Federal Domestic Program No. 59.011, Small Business investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31964 Filed 11-13-78; 8:45 am]

[8025-01-M]

[License No. 09/14-0085]

OCEANIC CAPITAL CORP.

Notice of Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Oceanic Capital Corp. (Oceanic), 300 Montgomery Street, Suite 908, San Francisco, Calif. 94104, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1978)), for approval of a conflict of interest transaction.

On June 10, 1977, Oceanic invested $50,000 in Barbara Colvin & Co. (BCC), a limited partnership. The General Partner, Colvin-Hoopes, Inc., is a corporation wholly-owned by Mr. Spencer Hoopes and Mrs. Barbara Colvin Hoopes, his wife. On June 23, 1977, Oceanic loaned $100,000 to BCC, and committed an additional $100,000. On July 1, 1977, Mr. Hoopes became an employee of The Merchants Group Limited, an associate of Oceanic. Therefore, Mr. Hoopes became an Associate of Oceanic, as defined by § 107.3 of the SBA Regulations. As a result, Oceanic's financing of BCC falls within the purview of § 107.1004(b)(1) of the SBA Regulations. Oceanic's investment in BCC requires the written approval of SBA.

Notice is hereby given that any person may not later than (15 days from date of publication of this Notice) submit written comments to SBA on the transaction. Any such comments should be addressed to Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

(Catalog of Federal Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: November 6, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31965 Filed 11-13-78; 8:45 am]

[8025-01-M]

SAVINGS VENTURE CAPITAL CORP.

[License No. 06/06-0200]

Notice of Issuance of License To Operate as a Small Business Investment Company

On May 23, 1978, a notice was published in FEDERAL REGISTER (43 FR 22121) stating that Savings Venture Capital Corp. 6001 Financial Plaza, Shreveport, La. 71130, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Rules and Regulations governing small business investment companies (13 C.F.R. 107.102 (1978)) for a license to operate as a small business investment company (SBIC).

The public was given to the close of business June 7, 1978, to submit written comments to SBA. No comments were received.

Notice is hereby given that, having considered the application and all other information, SBA has issued License No. 06/06-0200 to Savings Venture Capital Corp., pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended. The effective date of the license is October 24, 1978.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 7, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-31966 Filed 11-13-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1457; Amendment No. 11]

TEXAS

Declaration of Disaster Loan Area

The above numbered Declaration (See 43 FR 16584), Amendment No. 1 (See 43 FR 20070), Amendment No. 2 (See 43 FR 24641), Amendment No. 3 (See 43 FR 26511), Amendment No. 4 (See 43 FR 29205), Amendment No. 5 (See 43 FR 30634), Amendment No. 6 (See 43 FR 33984), Amendment No. 7 (See 43 FR 35777), Amendment No. 8 (See 43 FR 37294), Amendment No. 9 (See 43 FR 40583) and Amendment No. 10 (See 43 FR 48750) are amended by a change in the incidence period for Bowie County, Tex. from Jan. 11-13, 1977 to Jan. 11-13, 1978 for excessive sleet and ice. All information remains the same, i.e., the termination dates for filing applications for physical damage is close of business on November 13, 1978, and for economic injury until the close of business on January 11, 1979.

Dated: November 3, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-31959 Filed 11-13-78; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Office of the Commissioner of Customs

[T.D. 425]

REIMBURSABLE SERVICES

Excess Cost of Preclearance Operations

NOVEMBER 6, 1978.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning November 19, 1978.

Installation	Biweekly excess cost
Montreal, Canada	$14,935
Toronto, Canada	29,191
Kindley Field, Bermuda	5,454
Freeport, Bahama Islands	12,563
Nassau, Bahama Islands	17,483
Vancouver, Canada	8,261
Calgary, Canada	5,614
Winnipeg, Canada	1,664

JACK T. LACY,
Assistant Commissioner of Customs (Administration).

[FR Doc. 78-31997 Filed 11-14-78; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 511-78-1]

COAL LINE PROJECT

Extension of Comment Period

The Federal Railroad Administration ("FRA"), Department of Transportation, hereby extends for an additional 60 days (from November 13, 1978, to January 12, 1978) the public comment period published in the notice of receipt of the coal line project application, 43 FR 41126 (September 14, 1978), which notice presented a detailed description of the project. The application was filed by the Chicago and North Western Transportation Co. ("C&NW") and its wholly-owned subsidiary, Western Railroad Properties, Inc. ("WRPI") for $532 million in loan guarantees under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 831.

Because large portions of the application have been claimed to be confi-

dential business information by the C&NW, and public inspection of the application has been delayed by Freedom of Information Act proceedings (5 U.S.C. 552 et seq.), the comment period is hereby extended for 60 days to afford a fair opportunity for comments on the application.

Written comments may be submitted to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, not later than the comment closing date of January 12, 1978. Submissions shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

To the extent permitted by law, the application will be made available for inspection during normal business hours in room 5415 at the above address of the FRA in accordance with the regulations of the Office of the Secretary of Transportation set forth in Part 7 of Title 49 of the Code of Federal Regulations. The FRA has neither approved nor disapproved this application nor has it passed upon the accuracy or adequacy of the information contained therein.

(Sec. 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94-210), as amended.)

Issued in Washington, D.C., on November 8, 1978.

Comment closing date: January 12, 1978.

CHARLES SWINBURN,
Associate Administrator for Federal Assistance, Federal Railroad Administration.

[FR Doc. 78-31998 Filed 11-13-78; 8:45 am]

[4910-06-M]

[Docket No. FRA 511-78-1]

COAL LINE PROJECT

Intent To Prepare an EIS

The Federal Railroad Administration ("FRA"), Department of Transportation, hereby gives notice of its intent to prepare an environmental impact statement ("EIS") for a proposed project involving 625 miles of rail rehabilitation and construction in Wyoming and Nebraska.

The Chicago and North Western Transportation Co. ("C&NW") and its wholly-owned subsidiary, Western Railroad Properties, Inc. ("WRPI") are seeking approximately $532 million in loan guarantees under section 511 of the Railroad Revitialization and Regulatory Reform Act of 1976, 45 U.S.C. 831, to finance the proposed project. The primary purpose of the project is to provide additional efficient transportation for low-sulfur coal from the Southern Powder River Basin in Converse and Campbell counties in Wyoming to electric generating plants in other areas of the country. The coal is presently moving on the Burlington Northern ("BN") line and the proposed C&NW line will provide additional transportation capacity as well as direct competition to the BN.

The project involves two elements: (1) C&NE's share of the construction of a new 106 mile line, to be shared with the BN, extending southward from Coal Creek Junction (approximately 20 miles southeast of Gillette) to Shawnee, Wyo. (in January, 1976 construction of this line was approved by the Interstate Commerce Commission in Finance Docket No. 27579 (348 I.C.C. 388) and despite ongoing litigation the line has been under construction by the BN since 1976); and (2) rehabilitation of 519 miles of existing trackage owned by C&NW between Shawnee, Wyo., and Fremont, Nebr. From Fremont, the coal would be moved to various points of consumption in the Midwest, Southwest and Southeast via Omaha and Kansas City gateways and proposed rail to water transfer points.

After reviewing the environmental assessments provided by the C&NW, the Office of National Freight Assistance Programs of the FRA has concluded that the proposed project would be a major Federal action significantly affecting the quality of the human environment, and that therefore section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), and Department of Transporation Order No. 5610.1B (39 FR 35234 (September 30, 1974)) require the preparation and filing of a detailed EIS.

The FRA invites comments from all interested parties on the environmental impacts of the proposed project, or alternatives thereto, and especially on the scope and depth of analysis desirable for the draft EIS. Commenters will have an additional opportunity to comment on environmental impacts after the draft EIS is prepared.

The project will affect roughly 82,000 people in 50 communities along the right of way, including Fremont, Chadron, and Norfolk. There are 770 highway-rail grade crossings and 436 bridges involved. The present density of 2 trains/day would increase to 33 trains/day by the year 1990. Some potential adverse effects from the project include: noise and vibration impacts, traffic disruption, fire hazards, ecological impacts, and secondary impacts such as the effects of coal distribution beyond the C&NW line. A primary potential benefit is that the project promises to make an important contribution to the national environmental effort of meeting the country's electrical demand through use of a greater proportion of low sulfur, clean burning coal.

Written comments may be submitted to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590. Such submission should indicate the docket number shown on the notice.

To the extent permitted by law, the C&NW application will be made available for inspection during normal business hours in room 5415 at the above address of the FRA in accordance with the regulations of the Office of the Secretary of Transportation set forth in Part 7 of Title 49 of the Code of Federal Regulations.

Comments received by December 4, 1978 will be taken into consideration by the FRA in preparing the draft EIS. Comments received after December 4, 1978 will be considered to the extent practicable. Formal acknowledgement of the comments will not be provided.

This notice is issued in furtherance of section 102(2)(c) of the National Environmental Quality Act of 1969, 42 U.S.C. 4332(c); the Department of Transportation Order No. 5610.1B (39 FR 35234 (Sept. 30, 1974)); the Council on Environmental Quality proposed guidelines (43 FR 25232 (June 9, 1978)); the FRA proposed Procedures for Considering Environmental Impacts (42 FR 5171 (Jan. 27, 1977)).

Issued in Washington, D.C. on November 1, 1978.

CHARLES SWINBURN,
Associate Administrator for Federal Assistance, Federal Railroad Administration.

[FR Doc. 78-31897 Filed 11-13-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 44]

DECISION-NOTICE

Decided: October 24, 1978.

The following applications are governed by Special rule 247 of the Commission's rules of practice (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application is published in the FEDERAL REGISTER. Failure to file a protest, on or before December 14, 1978, will be considered as a waiver of opposition to the application. A protest under these rules should comply with Rule 247(e)(3) of the rules of practice which

requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the public convenience and necessity, that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy; and that each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

It is ordered: In the absence of legally sufficient protests, filed on or before December 14, 1978 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain conditions which may be noted in the publication and certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

By the Commission, Review Board Number 2, Members Boyle, Eaton, and Liberman (Review Board Member Boyle not participating).

H. G. HOMME, Jr.,
Acting Secretary.

MC 8535 (Sub-62F), filed September 20, 1978. Applicant: GEORGE TRANSFER & RIGGING CO., INC., P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Wheeling-Pittsburgh Steel Corp., at (a) Canfield, Mingo Junction, Martins Ferry, Steubenville, and Yorkville, OH, (b) Beechbottom, Benwood, Follansbee, and Wheeling, WV, and (c) Allenport and Monessen, PA, to points in Al, AR, FL, GA, LA, MS, NC, OK, SC, TN, and TX. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 11207 (Sub-448F), filed September 8, 1978. Applicant: DEATON, INC., a Delaware Corporation, 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel doors, steel door frames, and hardware*, from the facilities of Ceco Corp., at or near Milan, TN, to points in FL, GA, MS, NC, SC, and TN. (Hearing site: Nashville, TN, or Birmingham, AL.)

MC 11207 (Sub-449F), filed September 8, 1978. Applicant: DEATON, INC., a Delaware corporation, 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building materials*, and (2) *materials* and *supplies* used in the manufacture of building materials, between Meridian, MS, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, MO, NC, OK, SC, TN, TX, VA, and WV. (Hearing site: Meridian, MS, or Birmingham, AL.)

MC 11207 (Sub-450F), filed September 8, 1978. Applicant: DEATON, INC., a Delaware corporation, 317 Avenue W, P.O. 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, (except commodities which because of size or weight require the use of special equipment), from the facilities of Mc-B Steel, Inc., at or near Birmingham, AL, to points in VA, WV, and TX. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 23618 (Sub-37F), filed October 10, 1978. Applicant: McALISTER TRUCKING CO., A corporation, d.b.a. MATCO, P.O. Box 2377, Abilene, TX 79604. Representative: E. Larry Wells, Suite 1125 Exchange Park, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture and installation of oil well drilling masts and derricks, between the facilities of Lee C. Moore Corp. at or near Neville Island, PA, and, points in TX, OK, and LA, restricted to the transportation of traffic originating at and destined to the named points. (Hearing site: Pittsburgh, PA or Dallas, TX.)

MC 27817 (Sub-144F), filed September 6, 1978. Applicant: H.C. GABLER, INC., R.D. 3, P.O. Box 220, Chambersburg, PA 17201. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A. Division of H.J. Heinz Co., at Pittsburgh, PA, to points in NC and VA, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 28088 (Sub-42F), filed October 11, 1978. Applicant: NORTH & SOUTH LINES, INC., 2710 South Main Street, Harrisonburg, VA 22801. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425 13th Street NW, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Harrisonburg, VA, to points in DE, MD, NC, NJ, PA, and DC. (Hearing site: Roanoke, VA, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 32882 (Sub-98F), filed August 8, 1978. Applicant: MITCHELL BROS. TRUCK LINES, P.O. Box 17039, 3841 North Columbia Boulevard, Portland, OR 97217. Representative: Edward G. Rawle, 1229 North Blue Gum Avenue, Anaheim, CA 92806. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Blades, edges,* and *accessories* for blades and edges (except commodities in bulk); and (2) *equipment, materials,* and *supplies* used in the manufacture, distribution, and installation of the commodities in (1) above (except commodities in bulk), between West Jordan, UT, and Bucyrus, OH, on the one hand, and, on the other, points in ND, SD, NE, KS, OH, NM, MI, IN, IL WI, MN, IA, CO, KY, TN, AL, MS, LA, AR, TX, OK, MO, and UT, restricted to the transportation of traffic originating at or destined to the facilities of Chromalloy Farm & Industrial Equipment Co.—Shunk Blade Division, at West Jordan, UT, and Bucyrus, OH. (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 40971 (Sub-2F), filed August 29, 1978. Applicant: UTAH-WYOMING FREIGHT LINE, INC., 2818 West 2700 South, Salt Lake City, UT 84119. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Rock Springs, WY, and Rawlins, WY, over Interstate Hwy. 80, serving all intermediate points. (Hearing site: Salt Lake City, UT, or Rawlings, WY.)

MC 42487 (Sub-883F), filed September 5, 1978. Applicant: CONSOLIDATED FREIGHTWAYS CORP. OF DELAWARE, a Delaware corporation, 175 Linfield Drive, Menlo Park, CA 94025. Representative: H. P. Strong, P.O. Box 3062, Portland, OR 97208. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Cynthiana, KY, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Louisville, KY, or Chicago, IL.)

MC 48948 (Sub-9F), filed October 6, 1978. Applicant: THE HOCKING CARTAGE CO., A corp., R.R. No. 2, P.O. Box 373, Logan, OH 43138. Representative: James M. Burtch, Jr., 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *clay sewer pipe, drain tile, flue liners, and wall coping,* from points in Hocking County, OH, to those points in MD west of the Susquehanna, River, those points in NY west of Interstate Hwy 81, and DC. (Hearing site: Columbus, OH, or Washington, DC).

MC 55896 (Sub-89F), filed August 21, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobile parts,* between Cadillac, Lyons, Ludington, Grand Rapids, and Spring Lake, MI, on the one hand, and, on the other, St. Louis, MO, and Belvidere, IL. (Hearing site: Lansing or Detroit, MI.)

NOTE.—The person or persons who appear to be engaged in common control between applicant and another regulated carrier must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 58549 (Sub-25F), filed October 10, 1978. Applicant: GENERAL MOTOR LINES, INC., P.O. Box 13727, Roanoke, VA 24034. Representative: Jerry D. Beard (same address as applicant). To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Ridgeway, VA, and the junction of U.S. Hwy 601 and NC Hwy 268, from Ridgeway over U.S. Hwy 220 to junction NC Hwy 770, then over NC Hwy 770 to junction NC Hwy 704, then over NC Hwy 704 to junction NC Hwy 89, then over NC Hwy 89 to junction U.S. Hwy 601, then over U.S. Hwy 601 to junction NC Hwy 268, and return over the same route, (2) between Stuart, VA, and junction NC Hwys 8 and 704, from Stuart over VA Hwy 8 to the VA-NC State line, then over NC Hwy 8 to junction NC Hwy 704, and return over the same route, (3) between junction of VA Hwys 8 and 103 and the junction of NC Hwy 103 and U.S. Hwy 601, from junction VA Hwy 8 and 103 over VA Hwy 103 to the VA-NC State line, then over NC Hwy 103 to junction U.S. Hwy 601, and return over the same route, (4) between junction VA Hwys 103 and 773, near Claudville, VA, and junction NC Hwy 104 and U.S. Hwy 601, from junction VA Hwys 103 and 773 over VA Hwy 773 to the VA-NC State line, then over NC Hwy 104 to junction U.S. Hwy 601, and return over the same route, (5) between Pulaski, VA, and junction U.S. Hwy 601 and U.S. Hwy 52, from Pulaski over VA Hwy 100 to junction U.S. Hwy 221, then over U.S. Hwy 221 to junction U.S. Hwy 52, then over U.S. Hwy 52 to junction U.S. Hwy 601, and return over the same route, (6) between Galax, VA, and junction U.S. Hwy 601 and NC Hwy 89, from Galax over VA Hwy 89 to the VA-NC State line, then over NC Hwy 89 to junction U.S. Hwy 601, and return over the same route, (7) between junction NC Hwys 89 and 18 and West Jefferson, NC, from junction NC Hwys 89 and 18 over NC Hwy 18 to junction NC Hwy 88, then over NC Hwy 88 to junction NC Hwy 16, then over NC Hwy 16 to junction U.S. Hwy 221, then over U.S. Hwy 221 to West Jefferson, and return over the same route, (8) between Independence, VA, and the junction of NC Hwy 16 and U.S. Hwy 221, (a) over U.S. Hwy 221, and (b) from Independence over U.S. Hwy 58 to junction VA Hwy 16, then over VA Hwy 16 to the VA-NC State line, then over NC Hwy 16 to junction U.S. Hwy 221, and return over the same route, serving all intermediate points on routes (1) through (8) above, and serving points in Ashe, Alleghany, Surry, and Stokes Counties, NC, as off-route points. (Hearing site: Roanoke, VA.)

MC 59135 (Sub-36F), filed September 22, 1978. Applicant: RED STAR EXPRESS LINES OF AUBURN, INC., d.b.a. RED STAR EXPRESS LINES, 24-50 Wright Avenue, Auburn, NY 13021. Representative: Donald G. Hichman (same address as applicant.) To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Bata Shoe Co., Inc., at Belcamp, MD, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Baltimore, MD, or Syracuse, NY.)

MC 61396 (Sub-356F), filed August 21, 1978. Applicant: HERMAN BROS., INC., 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE 68101. Representative: John E. Smith, II (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement,* from Clarksville, MO, to points in NE. (Hearing site: Omaha, NE, or St. Louis, MO.)

NOTE.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 63417 (Sub-171F), filed September 6, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plumbing supplies, vanities, and vanity cabinets*, (except commodities in bulk), from the facilities of Peerless Pottery, Inc., and Peerless Plastics Industries, at Evansville, IN, and the facilities of Rockport Sanitary Pottery, Inc., at Rockport, IN, to points in the United States (except AL, AK, GA, HI, KY, MD, MS, NC, SC, TN, VA, WV, and DC), restricted to the transportation of traffic originating at the named origin facilities; and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), from points in the United States (except AK and HI), to the facilities of Peerless Pottery, Inc. and Peerless Plastics Industries, at Evansville, IN, and the facilities of Rockport Sanitary Pottery, Inc., at Rockport, IN, restricted to the transportation of traffic destined to the named destination facilities. (Hearing site: Evansville, IN, or Roanoke, VA.)

MC 66886 (Sub-66F), filed July 31, 1978. Applicant: BELGER CARTAGE SERVICE, INC., 2100 Walnut Street, Kansas City, MO 64108. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tanks, bins, conveyors, bag houses, coolers, and mixers*, and (2) *parts, attachments, and accessories for the commodities named in (1) above* between the plantsite of Standard Havens, Inc., at or near Glasgow, MO, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Kansas City, MO.)

MC 69281 (Sub-46F), filed August 28, 1978. Applicant: THE DAVIDSON TRANSFER & STORAGE CO., a Corporation, 698 Fairmount Avenue, Towson Plaza, Baltimore, MD 21204. Representative: Henry J. Bouchat, P.O. Box 58, Baltimore, MD 21203. To operate as a *common carrier*, by motor vehicle over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Dillsburg, PA, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Washington, DC.)

MC 78228 (Sub-93F), filed October 6, 1978. Applicant: J MILLER EXPRESS, INC., an Ohio corporation, 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys*, from the facilities of Chemetals Corp., at Kingwood, WV, to points in CT, IL, IN, KY, MD, MI, NJ, NY, and PA. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 82079 (Sub-66F), filed October 6, 1978. Applicant: KELLER TRANSFER LINE, INC., 5635 Clay Avenue SW., Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, MI 49503. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery*, in vehicles equipped with mechanical refrigeration, from the facilities of M. & M./Mars, Inc., at Chicago, IL, to points in MI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Lansing or Detroit, MI.)

MC 82841 (Sub-235F), filed August 22, 1978. Applicant: HUNT TRANSPORTATION, INC., 10770 I Street, Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Building, 7171 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies* used in the manufacture of bulk handling equipment (except commodities in bulk), from points in GA, IA, IL, IN, KS, MO, and OR, to York, NE. (Hearing site: Omaha, NE.)

MC 95084 (Sub-126F), filed August 21, 1978. Applicant: HOVE TRUCK LINE, a corporation, Stanhope, IA, 50246. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumwa, IA 52501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural and industrial equipment, and agricultural implements*, (2) *parts and accessories* for the commodities in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture, sale, or distribution of the commodities in (1) and (2) above, between Graettinger, IA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Des Moines, IA, or Chicago, IL.)

MC 98327 (Sub-31F), filed August 28, 1978. Applicant: SYSTEM 99, a corporation, 8201 Edgewater Drive, Oakland, CA 94621. Representative: Michael J. O'Neill (same address as applicant.) To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Arcata, CA and the junction of Interstate Hwy 5 and OR Hwy 58, near Eugene, OR: over U.S. Hwy 101 to junction U.S. Hwy 199, then over U.S. Hwy 199 to junction OR Hwy 99 to junction Interstate Hwy 5, then over Interstate Hwy 5 to junction OR Hwy 58 and return over the same route, serving no intermediate points, and serving the termini for purposes of joinder only, as an alternate route for operating convenience only. (Hearing site: San Francisco, CA, or Portland, OR.)

MC 102567 (Sub-213F), filed September 8, 1978. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 2040 North Loop West, Suite 208, Houston, TX 77018. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank vehicles, from the facilities of Union Carbide Corp., at or near Texas City, TX, to points in AL, AR, CA, CO, CT, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WV, WI, and WY, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Houston, TX.)

MC 105566 (Sub-180F), filed August 31, 1978. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406 Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Resin impregnated paper*, in vehicles equipped with mechanical refrigeration, from Sunset Whitney Ranch, CA, to Cincinnati, OH. (Hearing site: Cincinnati, OH.)

MC 105733 (Sub-66F), filed September 6, 1978. Applicant: H. R. RITTER TRUCKING CO., INC., 928 East Hazelwood Avenue, Rahway, NJ 07065. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, from New Haven, CT, to points in MA, NY, and RI. (Hearing site: Boston, MA.)

MC 106398 (Sub-840F), filed October 2, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular

routes, transporting: *Lumber, lumber mill products, gypsum products, and building materials,* from the facilities of Temple Industries, at (a) Monroeville, AL, (b) West Memphis, AR, and (c) Pineland and Diboll, TX, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Houston, TX.)

NOTE.—In view of the findings in MC 106398 (Sub-741), of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date, unless prior to its expiration (but not less than 6 months prior to its expiration) application files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106398 (Sub-841F), filed October 3, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Pipe, and* (2) *pipe fittings and valves,* from the facilities of United States Pipe & Foundry Co., at (a) Birmingham and Bessemer, AL, and (b) Chattanooga, TN, to points in AZ, CO, ID, KS, MI, MT, NE, NM, ND, OK, SD, TX, UT, and WY. (Hearing site: Birmingham, AL.)

NOTE.—In view of the findings in MC 106398 (Sub-741), of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106398 (Sub-842F), filed October 3, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Paneling, lumber, and lumber mill products,* from Boston, MA, and Bridgeport, CT, to points in the United States (except AK and HI). (Hearing site: Boston, MA.)

NOTE.—In view of the findings in MC 106398 (Sub-741), of which official notice is taken, the certificate to be issued in this proceeding will be limited to a period expiring 3 years from its effective date unless, prior to its expiration (but not less than 6 months prior to its expiration) applicant files a petition for the extension of said certificate and demonstrates that it has been conducting operations in full compliance with the terms and conditions of its certificate and with the requirements of the Interstate Commerce Act and applicable Commission regulations.

MC 106644 (Sub-266F), filed August 16, 1978. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Frank Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Commodities* which because of size or weight require the use of special equipment, (2) *self-propelled articles,* each weighing 15,000 pounds or more, (3) *general commodities* (except articles of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), when moving in mixed shipments with the commodities in (1) or (2) above, and (4) *machinery and parts thereof,* between points in MI, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, KY, LA, MS, MO, NC, OK, SC, TN, VA, WV, and TX. (Hearing site: Washington, DC, or Atlanta, GA.)

MC 106674 (Sub-333F), filed August 22, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum products,* in containers, from the facilities of Texaco, Inc., in Jefferson County, TX, to points in IL, IN, KY, MI, OH, TN, WV, and WI. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 106674 (Sub-334F), filed August 21, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chemicals,* in containers, (1) from Rosenberg, TX, to points in LA, and (2) from Old Bridge, NJ, to Rosenberg, TX. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 106674 (Sub-335F), filed August 21, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant.) To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel articles,* from Middletown, OH, to those points in TN on and west of Interstate Hwy 65 and those points in IL on and south of Interstate Hwy 70. (Hearing Site: Chicago, IL or Indianapolis, IN.)

MC 107496 (Sub-1153F), filed July 18, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia,* in bulk, from the port of entry on the international boundary line between the United States and Canada, at Port Huron, MI, to points in MI and NY, restricted to the transportation of traffic originating at Sarnia, ON, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Chicago, IL, or Des Moines, IA.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled "Notice to Interested Parties of New Requirements Concerning Application for Operating Authority to Handle Traffic to and from points in Canada" published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 107496 (Sub-1161F), filed August 21, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Lactic acid,* in bulk, from Texas City, TX, to Grandview, MO; and (2) *liquid chemicals,* in bulk, in tank vehicles, from Marshall, TX, to points in the United States (except AK and HI). (Hearing site: Kansas City, MO, or Milwaukee, WI.)

MC 107515 (Sub-117F), filed September 25, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 5th Floor-Lenox Towers South, 3390 Peachtree Road NE, Atlanta, GA 30326. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel grinding balls, and grinding and polishing pebbles,* from the facilities of The Carborundum Co., Pangborn Division, at Butler, PA, to points in AL, FL, GA, LA, MS, NC, SC, TN, and TX. (Hearing site: Pittsburgh, PA, or Washington, DC.)

NOTE.—Dual operations are involved in this proceeding.

MC 107515 (Sub-1178F), filed September 25, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 5th Floor-Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by drug stores, and cosmetic dealers, (except commodities in bulk), (1) from the facilities of Clairol, Inc., at Stamford, CT, to Chicago, IL, Dallas, TX, Cleveland and Columbus, OH, Indianapolis, IN, Louisville, Lexington, and Scottsville, KY, Camarillo and LaMirada, CA, Portland, OR, and points in FL, GA, and NC, (2) from the facilities of Clairol, Inc., at Atlanta, GA, to points in FL, and (3) from the facilities of Clairol, Inc., at Camarillo, LaMirada, and Los Angeles, CA, to Dallas, TX, Chicago, IL, Stamford, CT, and Atlanta, GA. (Hearing site: New York, NY.)

NOTE.—Dual operations are involved in this proceeding.

MC 107515 (Sub-1179F), filed September 21, 1978 Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers South, 3390 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by grocery and food business houses, (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, from the facilities of Kraft, Inc., at Detroit, MI, to points in KY, OH, WV, and those in PA on and west of U.S. Hwy 15, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Detroit, MI.)

NOTE.—Dual operations are involved in this proceeding.

MC 107743 (Sub-50F), filed September 5, 1978. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456 T.A., Spokane, WA 99220. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Collapsible plastic bins*, from Dawson Springs, KY, and Liberty Center, OH, to points in CA, OR, WA, ID, NV, AZ, UT, MT, WY, CO, NM, and TX. (Hearing site: Dallas, TX, or Seattle, WA.)

MC 109064 (Sub-34F), filed August 22, 1978. Applicant: TEX-O-KAN TRANSPORTATION CO., INC., 3301 East Loop 820 South, Box 8367, Fort Worth, TX 76112. Representative: Thomas F. Sedberry, 1102 Perry-Brooks Building, Austin, TX 78701. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles, and accessories* used in the installation of iron and steel articles, from points in Houston County, TX, to points in OK, LA, and AR. (Hearing site: Dallas or Houston, TX.)

MC 110563 (Sub-239F), filed September 7, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *Frozen prepared foods*, from the facilities of Durkee Foods, Division of SCM Corp., in Gloucester County, NJ, to points in OH, IN, MI, IL, WI, MN, IA, MO, KY, KS, CO, NE, ND, and SD, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 111611 (Sub-36F), filed August 28, 1978. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Avenue, P.O. Box 786, Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. To operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by retail shoe stores, from the facilities of Kinney Shoe Corp., at or near Camp Hill and Mechanicsburg, PA, to points in AZ and CA. (Hearing site: San Francisco, CA, or Harrisburg, PA.)

MC 112223 (Sub-115F), filed September 5, 1978. Applicant: QUICKIE TRANSPORT CO., a corporation, 1700 New Brighton Boulevard, Minneapolis, MN 55413. Representative: Earl Hacking (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, in bulk, from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA, to points in MN, WI, ND, SD, and NE. (Hearing site: Minneapolis or St. Paul, MN.)

MC 112304 (Sub-150F), filed August 16, 1978. Applicant: ACE DORAN HAULING & RIGGING CO., a corporation, 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: David A. Turano, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fabricated metal articles*, from the facilities of Brown-Minneapolis Tank & Fabricating Co., at Minneapolis, MN, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX; (2) *materials and supplies* used in the manufacture and construction of fabricated metal articles, and *materials and supplies* used in the manufacture of construction equipment and supplies, from points in the United States in and east of ND, SD, NE, KS, OK, and TX, to the facilities of Brown-Minneapolis Tank & Fabricating Co., at Minneapolis, MN; and (3) *construction equipment and supplies* between those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC.)

MC 112713 (Sub-220F), filed August 30, 1978. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, 10990 Roe Avenue, Shawnee Mission, KS 66207. Representative: Leonard R. Kofkin, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Keene and Portsmouth, NH, from Keene over NH Hwy 101 to junction NH Hwy 101A, then over NH Hwy 101A to junction NH Hwy 111, then over NH Hwy 111 to junction NH Hwy 101, then over NH Hwy 101 to Portsmouth, and return over the same route, serving all intermediate points, (2) between the MA-NH State line at or near Salem Depot, NH, and Littleton, NH over Interstate Hwy 93 serving all intermediate points, (3) between Westmoreland Station and Rochester, NH, from Westmoreland Station over NH Hwy 12 to junction NH Hwy 10, then over NH Hwy to junction NH Hwy 9, then over NH Hwy 9 to junction U.S. Hwy 202, then over U.S. Hwy 202 to Rochester, serving all intermediate points, (4) between the VT-NH State line at or near Cold River, NH, and junction NH Hwys 123 and 101, over NH Hwy 123, serving all intermediate points, (5) between Portsmouth, NH, and junction U.S. Hwys 4 and 202 over U.S. Hwy 4, serving all intermediate points, (6) between the VT-NH State line at or near Lebanon, NH, and Nashua, NH, from the VT-NH State line over Interstate Hwy 89 to junction Interstate Hwy 93, then over Interstate Hwy 93 to junction U.S. Hwy 3, and then over U.S. Hwy 3 to Nashua, and return over the same route, serving all intermediate points, (7) between the NH-VT State line at or near West Claremont, NH, and Concord, NH, from the NH-VT State line over NH Hwy 103 to junction Interstate Hwy 89, then over Interstate Hwy 89 to Concord, and return over the same route, serving all intermediate points, (8) between junction Interstate Hwy 93 and U.S. Hwy 3, near Tilton, NH, and Rochester,

NH, from junction Interstate Hwy 93 and U.S. Hwy 3 over U.S. Hwy 3 to junction NH Hwy 11, then over NH Hwy 11 to Rochester, and return over the same route, serving all intermediate points; and serving all points in NH (except those points south and west of a line beginning at the VT-NH State line and extending along NH Hwy 9 to junction NH Hwy 12, at Keene, NH, and then along NH Hwy 12 to the NH-MA State line), as off-route points in connection with the routes in (1) through (8). Conditions: (1) The regular-route authority granted here shall not be severable, by sale or otherwise, from applicant's retained pertinent irregular-route authority. (2) Applicant must request, in writing, the imposition of restrictions on its underlying irregular-route authority precluding service between any two points authorized to be served here pursuant to regular-route authority. (Hearing site: Boston, MA, or Washington, DC.)

NOTE: The purpose of this application is to convert a portion of applicant's existing irregular-route authority to regular-route authority.

MC 114211 (Sub-371F), filed August 28, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products, forest products, and wood products* from points in Douglas County, NV, to points in AL, AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MO, MS, NE, NM, OH, ND, OK, SD, TN, TX, UT, WI, and WY. (Hearing site: Albuquerque, NM.)

MC 114273 (Sub-469F), filed September 8, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as above). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles, paper products, plaster articles, aluminum articles, electrical parts and hardware, trolleys, and paint*, (except commodities in bulk, in tank vehicles), from the facilities of UNISTRUT, at or near Wayne, MI, to Omaha, NE, Davenport, IA, and Minneapolis, MN. Condition: In view of the findings in MC 114273 (Sub-147 and Sub-252), of which official notice is taken, the certificate to be issued herein shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-470F), filed September 11, 1978. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, dairy products, and articles distributed by meat-packing houses*, as described in sections A, B, and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766, (except commodities in bulk and hides), from the facilities of Swift & Co., at or near Rochelle and St. Charles, IL, to points in NY and WV. Condition: In view of the findings in No. MC 114273 (Sub-147 and 252), of which official notice is taken, the certificate to be issued here shall be limited in point of time to a period expiring 2 years from its date of issue, unless, prior to its expiration (but not less than 6 months prior to its expiration), applicant files a petition for permanent extension of the certificate showing that it has been in full compliance with applicable regulations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114569 (Sub-249F), filed October 10, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heating and air conditioning equipment, and parts and accessories* for heating and air conditioning equipment (except commodities the transportation of which because of size and weight require the use of special equipment), from Nashville, TN, to points in IL, IN, MD, MI, NJ, NY, OH, and PA. (Hearing site: Nashville, TN, or Washington, DC.)

NOTE: Dual operations may be involved in this proceeding.

MC 115001 (Sub-6F), filed August 28, 1978. Applicant: WESTERN OIL TRANSPORTATION CO., INC., P.O. Box 1183, 2000 South Post Oak, Houston, TX 77001. Representative: Mike Cotten, P.O. Box 1148, Austin, TX 78767. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude oil*, in bulk, in tank vehicles, between points in TX on and east of U.S. Hwy 281, and points in LA. (Hearing site: Houston or Dallas, TX.)

MC 115311 (Sub-297F), filed August 24, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cast iron products, and materials and supplies* used in the manufacture and distribution of cast iron products, (except commodities in bulk), between Lynchburg, VA, on the one hand, and on the other, points in OH, IN, MI, IL, WI, MN, IA, ND, SD, NE, TX, NM, CO, WY, MT, ID, UT, AZ, CA, NV, OR, WA, ME, VT, NH, MA, RI, and CT. (Hearing site: Roanoke, VA, or Houston, TX.)

MC 115491 (Sub-137F), filed August 29, 1978. Applicant: COMMERCIAL CARRIER CORP., P.O. Drawer 67, Auburndale, FL 33823. Representative: Tony G. Russell, (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles, and concrete forming systems*, between points in Florida. (Hearing site: Tampa, FL.)

MC 115523 (Sub-176F), filed September 7, 1978. Applicant: CLARK TANK LINES, a corporation, P.O. Box 1895, 1450 North Beck Street, Salt Lake City, UT 84110. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, from points in Sweetwater County, WY, to points in the United States (including AK, but excluding HI). (Hearing site: Salt Lake City, UT.)

MC 115904 (Sub-118F), filed August 14, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber mill products, forest products, and wood products*, (1) from points in ID, MT, OR, and WA, to points in IL, IN, IA, KS, MI, MN, MO, NE, NM, ND, OH, SD, and WI; and (2) from points in CA to points in IL, IN, IA, KS, MI, MN, MO, NE, NM, OH, and WI. (Hearing site: Portland, OR.)

MC 115904 (Sub-119F), filed August 21, 1978. Applicant: GROVER TRUCKING CO., a corporation, 1710 West Broadway, Idaho Falls, ID 83401. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from points in the United States (except AK and HI) to the facilities of Piper Industries, Planet Jr. Division, at or near Clearfield, UT; and (2) *agricultural implements, and parts and accessories* for agricultural implements, from the facilities of Piper Industries, Planet Jr. Division, at or near Clearfield, UT, to points in the United States (except AK and HI). (Hearing

site: Salt Lake City, UT, or Washington, DC.)

MC 115931 (Sub-66F), filed August 24, 1978. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe*, and (2) *fittings and accessories* for the commodities named in (1) above, from Footville, WI, to those points in the United States in and west of MN, IA, IL, MO, AR, and TX (except AK and HI). (Hearing site: Chicago, IL.)

MC 116077 (Sub-396F), filed August 11, 1978. Applicant: DSI TRANSPORTS, INC., 4550 Post Oak Place Drive, P.O. Box 1505, Houston, TX 77001. Representative: Pat H. Robertson, 500 West Sixteenth Street, P.O. Box 1945, Austin, TX 78767. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals, petroleum, and petroleum products* (except liquefied petroleum gases), in bulk, in tank vehicles, from points in LA and those in Bee, Brazoria, Calhoun, Cameron, Chambers, Fort Bend, Galveston, Goliad, Hardin, Harris, Jackson, Jasper, Jefferson, Jim Wells, Kenedy, Kleberg, Liberty, Matagorda, Montgomery, Nueces, Orange, Refugio, San Patricio, Victoria, Wharton, and Willacy Counties, TX, to points in the United States (except AK and HI); and (2) *bulk; commodities in bulk*, in tank vehicles, from points in the United States (except AK and HI), to points in AR, LA, MS, NM, OK, and TX. (Hearing site: Atlanta, GA, or Houston, TX.)

MC 116273 (Sub-216F), filed September 5, 1978. Applicant: D. & L. TRANSPORT, INC., 3800 South Laramie Avenue, Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, (1) from the facilities of Gage Products Co., at Ferndale, MI, to Fenton, MO, Belvidere and Chicago, IL, Louisville, KY, Newark, DE, Lorain, OH, and Mahwah, NJ; and (2) from Doe Run, KY, Kingsport, TN, Sewaren, NJ, and Wood River, IL, to Detroit, MI. (Hearing site: Detroit, MI, or Chicago, IL.)

MC 117344 (Sub-277F), filed August 22, 1978. Applicant: THE MAXWELL CO., a corporation, 10380 Evendale Drive, Cincinnati, OH 45215. Representative: James R. Stiverson, 1396 West Fifth Avenue, Columbus, OH 43212. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pellets*, in bulk, in tank vehicles, from Owensboro, KY, to points in MS. (Hearing site: Columbus, OH.)

MC 117574 (Sub-317F), filed August 4, 1978. Applicant: DAILY EXPRESS, INC., P.O. Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Representative: James W. Hagar, P.O. Box 1166, 100 Pine Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel reinforcing bars and accessories* for steel reinforcing bars, from the facilities of Bethlehem Steel Corp. at Clearing, IL, to points in IN, IA, KY, MI, MN, MO, OH, and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Chicago, IL, or Washington, DC.)

MC 118838 (Sub-34F), filed September 29, 1978. Applicant: GABOR TRUCKING, INC., R.R. No. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Gypsum and gypsum products*, and (2) *materials and supplies* used in the manufacture, installation, and distribution of gypsum and gypsum products, between the facilities of Georgia-Pacific Corp., Gypsum Division, at Cuba, MO, on the one hand, and, on the other, points in the United States (including AK, but excluding HI). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 119634 (Sub-28F), filed August 14, 1978. Applicant: DICK IRVIN, INC., 218 12th Avenue North, P.O. Box F, Shelby, MT 59474. Representative: Joe Gerbase, 100 Transwestern Building, 404 North 31st Street, Billings, MT 59101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural chemicals*, in containers, from Great Falls, MT, to (1) points in NE, IA, MO, CO, NM, KS, WI, ND, SD, WA, and OR, and (2) to those ports of entry on the international boundary line between the United States and Canada in ID and MT, and restricted in part (2) above to the transportation of traffic destined to the Canadian Provinces of BC, AB, and SK. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Great Falls or Billings, MT.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the Federal Register on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of Canada regarding this issue. If the policy statement is changed, appropriate notice will appear in the Federal Register and the Commission will consider all restrictions or conditions which were imposed pursuant the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no further force or effect.

MC 119726 (Sub-141F), filed August 21, 1978. Applicant: N.A.B. TRUCKING CO., INC., 1644 West Edgewood Avenue, Indianapolis, IN 46217. Representative: James L. Beattey, 130 East Washington Street, Suite One Thousand, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard, fibreboard, and corrugated boxes*, from the facilities of Container Corporation of America, at or near Fernandina Beach, FL, to those points in the United States in and east of ND, SD, NE, CO, OK, and TX. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 119741 (Sub-109F), filed August 28, 1978. Applicant: GREEN FIELD TRANSPORT CO., INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). To operate as a *common carrier* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk, in tank vehicles), from the facilities of Miami Margarine Co., at or near Albert Lea, MN, to points in CO, IL, IA, KS, MO, NE, ND, OK, SD, and TX, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Minneapolis, MN, or Cincinnati, OH.)

MC 119988 (Sub-154F), filed August 24, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Building, Fort Worth, TX 76102. To operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Expanded plastic articles*, from the facilities of Huntsman Container Corp., at or near Memphis, TN, to those points in the United States in and west of OH, KY, TN, and AL (except AK and HI); and (2) *agricultural supplies, horticultural supplies, molded pulp and peat packing materials*, between the facilities of Keyes Fiber Co., at or near New Iberia, LA, on the one hand, and, on the other, those points in the United States in and west of OH, KY, TN, and AL (except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

MC 120092 (Sub-4F), filed July 21, 1978. Applicant: JENNEY FREIGHT LINE, INC., 1224 North Main Avenue, Tucson, AZ 85705. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, over regular routes, transporting: (A) *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Tucson, AZ, and Douglas, AZ: (1) From Tucson over Interstate Hwy 10 to Benson, AZ, then over U.S. Hwy 80 to Douglas, and (2) from Tucson over Interstate Hwy 10 to junction AZ Hwy 90, then over AZ Hwy 90 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Douglas, and return over the same route, serving all intermediate points, and the off-route points of Curtis, AZ and those in that portion of Cochise County, AZ on and south of a line extending from the Santa Cruz and Cochise County boundary line along AZ Hwy 82 to junction U.S. Hwy 80, then along U.S. Hwy 80 to Tombstone, then along unnumbered Hwy via Gleeson and Courtland to junction U.S. Hwy 666, then along U.S. Hwy 666 to McNeal, then along unnumbered Hwy east and south to the United States-Mexico boundary at Douglas, AZ; and (B) *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment and cement), between Sierra Vista, AZ, and Tucson, AZ: From Sierra Vista over AZ Hwy 90 to junction AZ Hwy 82, then over AZ Hwy 82 to junction AZ Hwy 83 at Sonoita, AZ, then over AZ Hwy 83 to junction Interstate Hwy 10 at Mt. View, then over Interstate Hwy 10 to Tucson, and return over the same route, serving all intermediate points. Special condition for issuance of a certificate: prior or coincidental cancellation at applicant's written of request of its Certificate of Registration in MC 120092 (Sub-1). (Hearing site: Tucson or Douglas, AZ.)

MC 120257 (Sub-47F), filed September 1, 1978. Applicant: K. L. BREEDEN & SONS, INC., P.O. Box 207, Ore City, TX 75683. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry fertilizer*, in containers, and (2) *pesticides*, in containers, in mixed loads with the commodity in (1) above, from the facilities of Swift Agricultural Chemicals Corp., at or near Shreveport, LA, to points in MS. (Hearing site: Dallas, TX, or Shreveport, LA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 123329 (Sub-39F), filed October 2, 1978. Applicant: H. M. TRIMBLE & SONS, LTD., P.O. Box 3500, Calgary, AB, Canada T2P 2P9. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dimethylamine*, in bulk, from Pace, FL, to ports of entry on the International boundary line between the United States and Canada in ND, restricted to the transportation of traffic destined to points in the Provinces of Alberta, Saskatchewan, and Manitoba, Canada. Condition: Any certificate issued in this proceeding shall be limited in point of time to a period expiring 5 years from the date of issuance of the certificate. (Hearing site: Great Falls, MT.)

NOTE.—The restriction contained in the grant of authority in this proceeding is phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate officials of the Provinces of AB, SK, and MB regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

MC 124606 (Sub-6F), filed August 14, 1978. Applicant: FORD TRUCK LINE, INC., 240 East Trigg, P.O. Box 529, Memphis, TN 38101. Representative: Daniel C. Sullivan 10 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Memphis, TN and Jackson, MS, over U.S. Hwy 51, serving all intermediate points between the northernmost junction of MS Hwy 7 and U.S. Hwy 51, (b) from Memphis over U.S. Hwy 78 to Hamilton, AL, then over AL Hwy 17 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Jackson, and return over the same route, serving Meridian, MS, and points on AL Hwy 17 as intermediate points and the off-route point of Haleyville, AL, (c) from Memphis over U.S. Hwy 61 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Jackson, MS, and return over the same route, serving the intermediate points of Cleveland, Boyle, Shaw, Indianola, and Vicksburg, MS, (2) between Winona, MS and junction U.S. Hwy 82 and U.S. Hwy 61, over U.S. Hwy 82, serving all intermediate points, and (3) between Jackson, MS and New Orleans, LA, over U.S. Hwy 51, serving the intermediate points of Amite and Hammond, LA. (Hearing site: Memphis, TN, or Jackson, MS.)

MC 124692 (Sub-233F), filed August 9, 1978. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood* and *hardboard*, from the facilities of Weyerhaeuser Corp., at or near Denver, CO, to points in SD. (Hearing site: Denver, CO.)

MC 124692 (Sub-234F), filed August 9, 1978. Applicant: SAMMONS TRUCKING, a corporation, P.O. Box 4347, Missoula, MT 59806. Representative: J. David Douglas (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel articles*, from Kansas City, KS, to points in AZ, CO, IL, MI, MN, AND WI. (Hearing site: Kansas City, KS.)

MC 127042 (Sub-224F), filed August 14, 1978. Applicant: HAGEN, INC., P.O. BOX 98—Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products*, and *meat byproducts*, and *articles* distributed by meat-packing houses, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, (except hides and commodities in bulk, in tank vehicles), from National Stock Yards, IL, to points in IA, KS, MN, NE, ND, SD, and WI. (Hearing site: St. Louis, MO.)

MC 127274 (Sub-49F), filed August 21, 1978. Applicant: SHERWOOD TRUCKING, INC., 1517 Hoyt Avenue, Muncie, IN 47302. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *common carrier*, over irregular routes, transporting: *Paper, paper products, and woodpulp*, from the facilities of Bowater Southern Paper Corp. at or near Calhoun, TN, to points in OH, KY, and points in that part of IN on and south of U.S. Hwy 40. (Hearing site: Memphis, TN, or Washington, DC.)

MC 127598 (Sub-5F), filed October 4, 1978. Applicant: HARRY M.

MOWREY, 5865 Pleasant Hill Road, Milford, OH 45150. Representative: Harry M. Mowrey (same address as applicant). To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dairy products* (except frozen poultry and poultry products), (2) *dairy pland equipment* (except articles which because of size or weight require the use of special equipment), and (3) *materials and supplies* used in the manufacture and distribution of dairy products, between Lousiville, KY, on the one hand, and, on the other, St. Louis, MO, those points in IL on and south of Interstate Hwy 74, and those points in MO on, east, and north of a line beginning at the IL-MO State line and extending along U.S. Hwy 60 to junction U.S. Hwy 67, then along U.S. Hwy 67 to the MO-IL State line, under continuing contract(s) with Beatrice Foods, of Lousiville, KY. (Hearing site: Louisville, KY, or Cincinnati, OH.)

MC 128021 (Sub-32F), filed August 21, 1978. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Unfrozen foodstuffs* (except dairy products, meats, meat products, meat byproducts, and articles distributed by meat packinghouses), in containers, from Cedar Rapids, IA, to points in the United States (except AK and HI), and (2) *Equipment, materials, and supplies* used in the manufacture of unfrozen foodstuffs (except commodities in bulk, in tank vehicles, dairy products, meats, meat products, meat byproducts, and articles distribtuted by meat packinghouses), in containers, from points in the United States (except AK and HI), to Cedar Rapids, IA, under continuing contract(s) with the National Oats Co., Inc., of Cedar Rapids, IA. (Hearing site: Chicago, IL or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 128021 (Sub-33F), filed August 21, 1978. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Avenue, Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Floor scrubbing machines, vacuum cleaner bags, vacuum cleaner belts, pressure washers, and such commodities* as are dealt in by cleaning compound manufactures, from French Lich, IN, and points in Marion County, IN, to points in the United States (except AK and HI); and (2) and equipment, materials, and supplies used in the manufacture and distribution of commodities named in (1) above, from the destinations named in (1) above to the origins named in (1) above, under a continuing contract(s) with Earl Grissmer Co., of Indianapolis, IN. (Hearing site: Indianapolis, IN, or Washington, D.C.)

NOTE: Dual operations are at issue in this proceeding.

MC 128273 (Sub-317F), filed September 1, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *paper boxes* (except corrugated, knocked down, and folded flat paper boxes), (1) between the facilities of Potlatch Corp. at or near Fort Wayne, IN, and Skieston, MO, and (2) from the facilities of Potlatch Corp. at or near Fort Wayne, IN, and Skieston, MO, to points in AZ, CA, NV, and UT, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Seattle, WA.)

MC 129414 (Sub-5F), filed August 10, 1978. Applicant: BELL & MOONEY, INC., P.O. Box 925, Gillette, WY 82716. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Asphalt and residual fuel oil*, in bulk, in tank vehicles, (1) between points in CO and WY, and (2) from points in CO and WY to points in NE on and west of U.S. Hwy 183, and points in SD on and west of a line beginning at the NE-SD State line, then along U.S. Hwy 83 to junction Interstate Hwy 90, then north along U.S. Hwy 83 to the SD-ND State line. (Hearing site: Denver, CO.)

MC 133095 (Sub-198F), filed September 21, 1978. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 432, Euless, TX 76039. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers*, from Clarion, PA, to points in LA. (Hearing site: Chicago, IL, or Dallas, TX.)

MC 133453 (Sub-16F), filed September 1, 1978. Applicant: TROJAN TRANSPORTATION, INC., 1616 Walnut Street, 24th Floor, Philadephia, PA 19103. Representative: Richard M. Ochroch, 316 South 16th Street, Philadelphia, PA 19103. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Non-alcoholic beverages*, in containers, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of non-alcoholic beverages, between Philadelphia, PA, and Pennsauken, NJ, on the one hand, and, on the other, points in CO, MA, NY, OH, PA, RI, and VA, under a continuing contract(s) with Boulevard Beverage Co. of Philadelphia, PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 133566 (Sub-121F), filed August 18, 1978. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Charles W. Beinhauer, Suite 4959, One World Trade Center, New York, NY 10048, To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts*, as described in section A of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, between the facilities of Lykes Bros., Inc., at or near Albany, GA, and points in CT, MA, NJ, NY, OH, and PA. (Hearing site: Atlanta, GA, or New York, NY.)

MC 134224 (Sub-13F), filed July 17, 1978. Applicant: HAUSER TRUCKING CORP., Box 241, Cobleskill, NY 12043. Representative: Neil D. Breslin, 600 Broadway, Albany, NY 12043. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Shale aggregate*, from Cohoes, NY, to points in MD; (2) *ferro alloys*, from Albany, NY, to Providence, Cranston, and Phillipsdale, RI, Bridgeport, CT, and Reading, PA; and (3) *scrap materials*, from Boston, Greenfield, Tewksbury, and Worcester, MA, Albany, Syracuse, Chili, and Buffalo, NY, Newark, NJ, Williamsport, and Reading, PA, and New Haven and North Haven, CT, to those ports of entry on the international boundary line between the United States and Canada in NY and VT, restricted in part (3) above to the transportation of traffic destined to Laprairier, Quebec, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian authority or explaining why no such Canadian authority is necessary. (Hearing site: Albany, NY.)

NOTE.—The restriction and condition contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in

the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no further force or effect.

MC 134531 (Sub-12F), filed August 28, 1978. Applicant: AGGREGATE HAULERS, INC., Route 2, Box 559-A, West Columbia, SC 29169. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aggregates, sand, gravel, crushed stone, and concrete products*, from points in SC, to points in NC, GA, and TN. (Hearing site: Columbia, SC.)

MC 135152 (Sub-26F), filed August 9, 1978. Applicant: CASKET DISTRIBUTORS, INC., Rural Route No. 2, P.O. Box No. 327, West Harrison, IN 45030. Representative: Jack B. Josselson, 700 Atlas Bank Building, 524 Walnut Street, Cincinnati, OH 45202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toys, games, and children's vehicles*, from the facilities of Louis Marx & Co. at (1) Girard, PA, (2) Glendale, WV, and (3) Columbus, OH, to those points in the United States in and east of MT, WY, CO, and NM; and (2) *equipment, materials, and supplies* used in the manufacture of toys, games, and children's vehicles, from El Paso, TX, to the facilities of Louis Marx & Co. at (1) Girard, PA, (2) Glendale, WV, and (3) Columbus, OH. (Hearing site: Washington, DC.)

MC 135208 (Sub-3F), filed October 5, 1978. Applicant: GEORGE L. BIGELOW TRUCKING, INC., P.O. Box 421, 135 Wright Street, Delavan, WI 53115. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sheet steel*, between the facilities of Dalco Metal Products, Inc., at or near Walworth, WI, on the one hand, and, on the other, points in IL, IN, IA, MI, MN, and NE. (Hearing site: Milwaukee, WI or Chicago, IL.)

NOTE.—Dual operations are at issue in this proceeding.

MC 135283 (Sub-44F), filed September 5, 1978. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, 432 South Stuhr Road, Grand Island, NE 68801. Representative: Gailyn L. Larsen, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Co., at or near Grand Island, NE, to points in KS. (Hearing site: Chicago, IL or Lincoln, NE.)

MC 135568 (Sub-1F), filed October 6, 1978. Applicant: CHRISTIE RIGGING & TRUCKING CO., a corporation, 132 Oakwood Drive, Glastonbury, CT 06033. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fabricated steel enclosures*, between the facilities of Industrial Welding Co., at Hartford, CT, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Hartford, CT.)

MC 136318 (Sub-55F), filed September 29, 1978. Applicant: COYOTE TRUCK LINE, INC., a Delaware corporation, P.O. Box 756, Thomasville, NC 27360. Representative: David R. Parker, 717 17th Street, Suite 2600, Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are used or dealt in by home furnishing stores, between points in the United States (except AK and HI), under continuing contract(s) with the Wickes Corp. of San Diego, CA. (Hearing site: Chicago, IL.)

MC 136318 (Sub-56F), filed October 3, 1978. Applicant: COYOTE TRUCK LINE, INC., a Delaware corporation, P.O. Box 756, Thomasville, NC 27360. Representative: David R. Parker, 717 17th Street, Suite 2600, Denver, CO 80202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, new furnishings, and accessories* for new furniture and new furnishings, (1) from points in AL, GA, MS, NC, SC, TN, TX, and VA, to points in AZ, CA, CO, IL, IN, IA, MD, MI, MN, MO, NV, NY, OH, OK, OR, PA, VA, and TX, and (2) from points in CA to those points in the United States in and east of MN, IA, MO, AR, and LA, under continuing contract(s) with Montgomery Ward, of Chicago, IL. (Hearing site: Chicago, IL.)

MC 136408 (Sub-43F), filed October 6, 1978. Applicant: CARGO CONTRACT CARRIER CORP., a New Jersey corporation, P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals* (except in bulk, in tank vehicles), (a) from Riverside, PA, to points in AR, CA, IL, IN, IA, KS, MI, MN, MO, NE, OK, OH, TX, and WI, (b) from Rahway, NJ, to points in ID, TN, and TX, and (c) from Marsing, ID, and Sioux Falls, SD, to points in MO and TN; and (2) *plastic containers*, from Kansas City, MO, to Marsing, ID, under continuing contract(s) with Merck & Co. of Rahway, NJ. (Hearing site: Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 136553 (Sub-1F), filed September 1, 1978. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fertilizer and fertilizer materials*, in bulk, from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA, to points in MN, NE, ND, SD, and WI, and (2) *fertilizer*, from Prairie du Chien, WI, to MN. (Hearing site: Minneapolis, MN.)

MC 136803 (Sub-8F), filed September 11, 1978. Applicant: SIOUX CITY BULK FEED SERVICE, INC., 3324 Highway 75 North, Sioux City, IA 51105. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed ingredients*, between Magnolia, MN, on the one hand, and, on the other, points in IA, NE, and SD, restricted to the transportation of traffic originating at or destined to the named points. (Hearing site: Sioux City, IA or Omaha, NE.)

MC 136818 (Sub-39F), filed September 13, 1978. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, Suite 320, 4040 East McDowell Road, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts*, as described in section A of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except commodities in bulk), from Searcy, AR, to points in AZ, CA, CO, NM, NV, and UT. (Hearing site: Chicago, IL or Phoenix, AZ.)

NOTE.—Dual operations are at issue in this proceeding.

MC 138144 (Sub-34F), filed August 9, 1978. Applicant: FRED OLSON CO., INC., 6022 West State Street, Milwaukee, WI 53213. Representative: Wil-

liam D. Brejcha, 10 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe* and (2) *accessories for plastic pipe*, from points in Geneva County, AL, to those points in the United States in and east of MN, IA, MO, OK, and TX; and (3) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities in (1) and (2) above (except commodities in bulk), from those points in the United States in and east of MN, IA, MO, OK, and TX, to points in Geneva County, AL. (Hearing site: Mobile, AL or Chicago, IL.)

NOTE.—Dual operations are involved in this proceeding.

MC 138438 (Sub-33F), filed October 6, 1978. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials*, from Manassas, VA, to points in MD, PA, WV, and DC. (Hearing site: Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 138469 (Sub-83F), filed September 18, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from the facilities of Fox Manufacturing Co., Inc., at or near Rome, GA, to points in AR, KS, MO, OK, and TX, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Atlanta, GA or Montgomery, AL.)

MC 138882 (Sub-128F), filed August 3, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) (a) *Iron and steel articles, pipe, pipe fittings, valves, and hydrants*, and (b) *parts and accessories* for the commodities in (1) (a) above, from Birmingham, AL, to those points in the United States in and east of ND, SD, NE, KS, OK, and NM; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) (a) and (b) above, (except commodities in bulk), from the destinations in (1) (a) and (b) above, to Birmingham, AL. (Hearing site: Birmingham, AL.)

MC 138882 (Sub-129F), filed August 8, 1978. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Box 707, Troy, AL 36081. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plumbing fixtures, plumbing equipment, plumbing materials, and plumbing supplies*, from the facilities of Artesin Industries, at or near Shelby, OH, to points in KY, WV, VA, TN, SC, NC, LA, MS, AL, GA, and FL. (Hearing site: Mansfield, OH or Montgomery, AL.)

MC 139577 (Sub-27F), filed September 6, 1978. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, Friesland, WI 53935. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs (except commodities in bulk), between points in WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Madison or Milwaukee, WI.)

MC 140024 (Sub-125F), filed August 22, 1978. Applicant: J. B. MONTGOMERY, INC., a DE corporation, 5565 East 52nd Avenue, Commerce City, CO 80022. Representative: Jeffrey A. Knoll (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Clay products and brick*, from the facilities of Bowerston Shale Co., at or near (a) Bowerston and (b) Hanover, OH, to points in CO, IL, IA, KS, MO, NE, and WI, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Cincinnati or Columbus, OH.)

MC 140033 (Sub-66F), filed September 8, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bakery goods*, from Marietta, OK, to points in AZ, CA, CO, CT, GA, ID, KS, KY, LA, AR, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, OH, OR, PA, RI, TX, UT, VT, VA, WA, WI, and WY, and (2) *materials and supplies* used in the production of bakery goods (except commodities in bulk, in tank vehicles), from points in LA, TX, MI, WI, NJ, IL, MO, NY, and PA, to Marietta, OK. (hearing site: Dallas, TX.)

NOTE.—Dual operations are at issue in this proceeding.

MC 140871 (Sub-4F), filed August 23, 1978. Applicant: THOMAS S. BIANCO, 2300 North 16th Street, Springfield, IL 62702. Representative: Robert T. Lawlery, 300 Reisch Building, Springfield, IL 62701. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fabricated railroad grade crossings*, from Springfield, IL, to points in the United States (except AK and HI); and (2) *materials and supplies* used in the manufacture and installation of fabricated railroad grade crossings, between Springfield, IL, and Middlefield, OH, under continuing contracts in (1) and (2) above with Structural Rubber Products Co., of Springfield, IL. (Hearing site: Chicago, IL, or St. Louis, MO.)

MC 141804 (Sub-122F), filed August 9, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Hair care products, skin care products, and toilet preparations*, (except commodities in bulk, in tank vehicles), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), (a) between points in Ventura, Los Angeles, Orange, San Bernardino, and Riverside Counties, CA, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, NC, SC, AL, GA, MS, TN, FL, LA, AR, OK, TX, and DC, and (b) between Florence, KY, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, UT, VA, WV, NC, SC, GA, FL, AL, MS, LA, AR, OK, TX, KS, NM, ND, SD, NE, IL, and DC. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-126F), filed August 14, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electrical appliances* and (2) *parts and accessories* for electrical appliances, from Ashboro, NC, to Tukwila, WA, San Leandro and Garden Grove, CA, and Grand Prairie, TX. (Hearing site: Los Angeles or San Francisco, CA.)

MC 141804 (Sub-129F), filed August 22, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., a Nevada corporation, P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman, P.O. Box 3488, Ontario, CA 91761. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric storage batteries, parts for electric storage batteries, battery fluid, battery boxes, battery covers, and battery vents*, between the facilities of Gould, Inc., at or near Bowling Green, KY, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Los Angeles or San Francisco, CA.)

MC 141961 (Sub-1F), filed August 24, 1978. Applicant: CARMAN CARRIERS, INC., P.O. Box 2139, Clarksville, IN 47130. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bulk conveying equipment, feeding equipment, pressure vessels, tank lining, pipe fittings, and synthetic rubber coating for metals;* and (2) *materials and equipment* used in the manufacture of the commodities named in (1) above, between the facilities of Construction Machinery Corp., Acme Fisher Tank Linings Division of Broadway Rubber Corp., and Roark Mechanical Contractors, Inc., at Louisville, KY, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Roark Mechanical Contractors, Inc., Construction Machinery Corp., and Acme Fisher Tank Linings Division of Broadway Rubber Corp., all of Louisville, KY. (Hearing site: Louisville, KY, or Indianapolis, IN.)

MC 142292 (Sub-2F), filed August 4, 1978. Applicant: RICHARD WARREN WHITLEY, 53 Wilson Avenue, Belleville, ON, Canada K8N 5A2. Representative: William J. Hirsch, Suite 1125, 43 Court Street, Buffalo, NY 14202. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Precast and prestressed concrete structural products*, from ports of entry on the international boundary line between the United States and Canada, in MI and NY, to points in CT, DE, IL, IN, KY, ME, MD, MA, NH, NJ, MC, PA, RI, TN, VT, VA, WV, and DC, under continuing contract(s) with (1) Stanley Structures Ltd., of Belleville, ON, Canada, and (2) Pre-Con Co., Division of St. Mary's Cement Ltd., of Brampton, ON, Canada, restricted in both (1) and (2) above to the transportation of traffic originating at points in the province of ON, Canada. Condition: Prior receipt from applicant of a affidavit setting forth its appropriate Canadian authority, or explaining why no such authority is necessary.

NOTE.—The restrictions and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled "Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic" to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect. (Hearing site: Buffalo, NY.)

MC 142672 (Sub-24F), filed August 7, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are used or dealt in by grocery and food business houses, from the facilities of the Kroger Co., at Cincinnati, and Columbus, OH, to Little Rock, AR, Los Angeles, CA, Memphis, TN, and Dallas and Houston, TX. (Hearing site: Cincinnati, OH, or Little Rock, AR.)

NOTE.—Dual operations are at issue in this proceeding.

MC 142672 (Sub-27F), filed August 7, 1978. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Television sets, radios, phonographs, stereo systems, recorders players, speaker systems, and audio equipment;* and (2) *accessories and parts* for the commodities named in (1) above, from Bloomington and Indianapolis, IN, to points in AZ, AR, CO, FL, IL, IA, KS, LA, MN, MO, NE, NM, ND, OK, TX, and WI. (Hearing site: Indianapolis, IN, or Little Rock, AR.)

NOTE.—Dual operations are at issue in this proceeding.

MC 143031 (Sub-7F), filed August 31, 1978. Applicants: LLOYD PAUL MURPHY, JAMES EDWARD MURPHY, TIMOTHY PAUL MURPHY, AND EDWARD STEWART MURPHY, dba MURPHY & SONS, Route 2, Box 139, Spring City, TN 37381. Representative: Stan Guthrie, Suite 100, MacLellan Building, Chattanooga, TN 37402. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crated new household refrigerators*, from the facilities of Columbus Products, at Columbus, OH, to the facilities of Magic Chef, Inc., at Cleveland, TN, under continuing contract(s) with Magic Chef, of Cleveland, TN. (Hearing site: Chattanooga or Nashville, TN.)

MC 143963 (Sub-2F), filed October 2, 1978. Applicant: DONAHUE TRUCKING, INC., 2211 Steward Street, Des Moines, IA 50317. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from Utica, MO, and Sheffield, IA, to those points in MN on the south of a line beginning at the SD-MN State line and extending along U.S. Hwy 212 to junction U.S. Hwy 12, then along U.S. Hwy 12 to the MN-WI State line, under continuing contract(s) with Sheffield Brick & Tile Co., of Sheffield, IA. (Hearing site: St. Paul, MN.)

MC 144027 (Sub-5F), filed September 5, 1978. Applicant: WARD CARTAGE AND WAREHOUSING, INC., Route No. 4, Glasgow, KY 42121. Representative: Walter Harwood, P.O. Box 15215, Nashville, TN 37215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tobacco, tobacco products, and cigarette making kits*, between Louisville, KY, and Chicago, IL. (Hearing site: Louisville, KY.)

MC 144122 (Sub-25F), filed August 14, 1978. Applicant: CARRETTA TRUCKING, INC., South 160, Route 17, North Paramus, NJ 07652. Representative: Joseph Carretta (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New York, NY and Chicago, IL. (Hearing site: New York, NY, or Chicago, IL.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144622 (Sub-13F), filed August 14, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn (same address as applicant). to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned pet food and canned tuna*, from San Diego, CA, to points in AL, IN, GA, FL, IL, IA, MI, MN, OH, and TN. (Hearing site: San Diego, CA.)

NOTE.—Dual operations are at issue in this proceeding.

MC-145234-F, filed August 16, 1978. Applicant: GEORGE E. FRISBEE, d.b.a. SEACOAST TRUCKING & MOVING CO., 105 Bartlett Street, Box 1283, Portsmouth, NH 03801. Representative: Robert J. Gallagher, 1000 Connecticut Avenue NW., Suite 1200, Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods* as defined by the Commission, restricted to the transportation of shipments having a prior or subsequent movement beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with the packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such shipments, between points in York County, ME, points in Belknap, Carroll, Strafford, Rockingham, Merrimack, and Hillsborough Counties, NH, and points in Middlesex and Essex Counties, MA. (Hearing site: Portsmouth, NH.)

MC-145262-F, filed August 7, 1978. Applicant: M. H. HEATON, INC., 19 Ashwood Road, Salem, NH 03079. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motorcycles*, in crates, and (2) *parts, and accessories* for motorcycles, in crates from points in Bergen, Camden, and Middlesex Counties, NJ, and Albany County, NY, to points in ME, MA, NH, and VT. (Hearing site: Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 145425F, filed September 25, 1978. Applicant: DAN'S MOVING & STORAGE, INC., 222 Lake Shore Drive West, Dunkirk, NY 14048. Representative: William J. Hirsch, 43 Court Street, Suite 1125, Buffalo, NY 14202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, unaccompanied baggage, and personal effects, between points in Chautauqua, Cattaraugus, Orleans, Erie, Niagara, Allegany, Wyoming, and Genesee Counties, NY, restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, and unpacking, uncrating, and decontainerization of such traffic. (Hearing site: Buffalo, NY.)

MC 145488F, filed October 2, 1978. Applicant: RANDALL R. VAUGHT, d.b.a. WEST PLAINS MOTOR LINES, P.O. Box 274, West Plains, MO 65775. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Mountain Home, AR, and West Plains, MO, from Mountain Home over AR Hwy 5 to the MO-AR State Line, then over MO Hwy 5 to junction U.S. Hwy 160, then over U.S. Hwy 160 to West Plains, and return over the same route, (2) between Mountain Home, AR, and junction U.S. Hwy 160 and MO Hwy 101, from Mountain Home over U.S. Hwy 62 to junction AR Hwy 101, then over AR Hwy 101 to the AR-MO State line, then over MO Hwy 101 to junction U.S. Hwy 160, and return over the same route, (3) between Bakersfied, MO and West Plains, MO, from Bakersfield over MO Hwy 142 to junction MO Hwy 17, then over MO Hwy 17 to West Plains, and return over the same route, (4) between Moody, MO, and South Fork, MO, over County Road E, (5) between West Plains, MO and Lanton, MO, over MO Hwy 17, (6) between Mountain Home, MO and Flippin, AR, over U.S. Hwy 62, serving all intermediate points in routes (1) through (6) above. (Hearing site: West Plains, MO, or Mountain Home, AR.)

BROKER

MC 130528F, filed September 13, 1978. Applicant: DORIS GOLDSTEIN, d.b.a. ART JOURNEYS, 345 East 56th Street, New York, NY 10022. Representative: Doris Goldstein (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at New York, NY, in arranging for the transportation, by motor vehicle, of: *Passengers and their baggage*, in round-trip special and charter operations, beginning and ending at New York, NY, and extending to points in CT, DE, MA, NJ, PA, and DC. (Hearing site: New York, NY).

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in Tauck Tours, Inc., Extension—New York, NY, 54 MCC 291 (1952).

[FR Doc. 78-31973 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Decisions Volume No. 45]

DECISION-NOTICE

Decided: October 31, 1978.

The following applications are governed by special rule 247 of the Commission's *Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the application in published in the FEDERAL REGISTER. Failure to file a protest, on or before December 14, 1978, will be considered as a waiver of opposition to the application. A protest under these rules should comply with rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, (as specifically noted below), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. A protestant should include a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, such request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

We find:

With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its pro-

posed service is required by the public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the national transportation policy. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of the Interstate Commerce Act and the Commission's regulations. This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national Commission which is hereby expressly reserved to impose such find necessary to insure that applicant's operations shall conform to the provisions of section 210 of the Interstate Commerce Act.

It is ordered:

In the absence of legally sufficient protests, filed on or before December 14, 1978 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied. By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

H. G. HOMME, Jr.,
Secretary.

MC 2860 (Sub-173F), filed August 25, 1978. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: W. Randall Tye, Suite 1400, Candler Building, Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as are dealt in and used by producers or distributors of alcoholic beverages* (except commodities in bulk, in tank vehicles), between the facilities of Heublein, Inc., at or near Paducah, KY, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, LA, MI, MS, MO, NC, OH, PA, SC, TX, VA, WV, and WI. (Hearing site: Washington, DC, or Philadelphia, PA.)

MC 4405 (Sub-581F), filed September 18, 1978. Applicant: DEALERS TRANSIT, INC., 522 South Boston Avenue, Tulsa, OK 74103. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pipe couplings, pilings, well casings and well screens, and tubing*, from the facilities of Stanron Supply, Inc., at or near Lubbock, TX, to points in the United States (except AK and HI), (2) *pipe, piling, and well screens and well casings*, from Fontana and Long Beach, CA, Valley, NE, Pueblo, CO, Houston, TX, and the ports of entry on the international boundary line between the United States and Canada at points in MT and ND, to points in the United States (except AK and HI), and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above (except commodities in bulk, in tank vehicles), from points in the United States (except AK and HI), to the facilities of Stanron Supply, Inc., at or near Lubbock, TX. (Hearing site: Lubbock or Amarillo, TX.)

MC 8535 (Sub-61F), filed September 26, 1978. Applicant: GEORGE TRANSFER AND RIGGING CO., INC., P.O. Box 500, Parkton, MD 21120. Representative: John Guandolo, 1000 Sixteenth Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the facilities of Feralloy Corp., at New Castle, DE, to points in SC. (Hearing site: Wilmington, DE, or Philadelphia, PA.)

MC 47583 (Sub-74F), filed September 6, 1978. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, closures for glass containers, and fiberboard boxes*, from the facilities of Owens Illinois, at or near Waco, TX, to points in CO, NM, and OK, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above, in the reverse direction. (Hearing site: Kansas City, MO.)

MC 49368 (Sub-103F), filed October 12, 1978. Applicant: COMPLETE AUTO TRANSIT, INC., East 4111 Andover Road, Bloomfield Hills, MI 48013. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles*, in initial movements, in truckaway service, from the facilities of General Motors Corp., at Flint, MI, to points in AL, FL, GA, MN, NC, and SC, under a continuing contract or contracts with General Motors Corp., of Warren, MI. (Hearing site: Detroit, MI, or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 51146 (Sub-630F), filed August 21, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Cleaning compounds and fabric softeners*, from Lima, OH, to points in IL (except points in Will, Lake, Cook, Kane, DuPage, and Kendall Counties), IA, WI, MN, and ND, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL.)

MC 51146 (Sub-631F), filed August 22, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by manufacturers and distributors of doors, between Green Bay, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 56244 (Sub-60F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, 410 North Third Street, P.O. Box 1146, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by grocery and food business houses (except commodities in bulk, and frozen foods), from points in York County, PA, to points in CT, IL, IN, KY, ME, MA, MI, NH, OH, RI, VT, WV, and those points in PA on and west of U.S. Hwy 15. (Hearing site: Harrisburg, PA or Washington, DC.)

MC 56244 (Sub-61F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Repre-

sentative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet foods*, from Zanesville, OH, to Camden, NJ. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 56244 (Sub-62F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by grocery and food business houses (except commodities in bulk, and frozen foods), from the facilities of Libby, McNeill & Libby, Inc., at Kokomo, IN, to points in MD, PA, and DC. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 56244 (Sub-64F), filed August 22, 1978. Applicant: KUHN TRANSPORTATION CO., INC., P.O. Box 98, R.D. No. 2, Gardners, PA 17324. Representative: John M. Musselman, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, additives, and materials and supplies* used in the manufacture and distribution of animal feed (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, on the one hand, and, on the other, points in NY, NJ, PA, MD, DE, VA, OH, IN, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL. (Hearing site: Harrisburg, PA, or Washington, DC.)

MC 61592 (Sub-425F), filed August 11, 1978. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard containers* and *pulpboard containers* (except commodities in bulk), from the facilities of Sonoco Products Co., at or near Alpha, OH, Henderson, KY, Houston, TX, St. Louis, MO, Chicago, IL, and Henderson, TN, to points in the United States (except AK and HI). (Hearing site: Atlanta, GA.)

MC 65941 (Sub-57F), filed August 30, 1978. Applicant: TOWER LINES, INC., 3rd and Warwood Avenue, Box 6010, Wheeling, WV 26003. Representative: K. Edward Wolcott, Post Office Box 872, Atlanta, GA 30303. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Granulated slag*, from the facilities of H. B. Reed & Co., Inc., at or near Cresap, WV, to points in DE, IL, IN, KY, MD, NC, NJ, NY, OH, PA, VA, and DC. (Hearing site: Wheeling, WV, or Washington, DC.)

MC 70832 (Sub-24F), filed August 3, 1978. Applicant: NEW PENN MOTOR EXPRESS, INC., P.O. Box 630, Lebanon, PA 17042. Representative: S. Harrison Kahn, Suite 733 Investment Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Reading, PA and Philadelphia, PA, over U.S. Hwy 422, serving all intermediate points and serving points in PA within 35 miles of Philadelphia, PA, as off-route points. (Hearing site: Harrisburg, PA.)

MC 71296 (Sub-1F), filed August 18, 1978. Applicant: FORT TRANSPORTATION & SERVICE CO., INC., 1600 Janesville Avenue, Fort Atkinson, WI 53538. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Automobile parts, truck parts, and tractor parts*, and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above (except commodities in bulk, in tank vehicles), between Edgerton and Janesville, WI, on the one hand, and, on the other, points in IL (except Chicago), IN, MI, OH, PA, MO, and KY. (Hearing site: Madison, WI, or Fort Wayne, IN.)

MC 78118 (Sub-39F), filed October 12, 1978. Applicant: W. H. JOHNS, INC., a Delaware corporation, 35 Witmer Road, Lancaster, PA 17602. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass fiber roving, glass fiber yarn, glass fiber strand, glass fiber mat or matting, glass fiber fabric, and glass fiber reinforced rigid polypropylene sheets*, from Lexington and Shelby, NC, to points in NJ, MD, PA, OH, and the Lower Peninsula of MI, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 82841 (Sub-236F), filed August 30, 1978. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 610 Xerox Building, 7171 Mercy Road, Omaha, NE 68106. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Light poles* and *light pole accessories*, from the facilities of K W Industries, Inc., at Houston, TX, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named facilities. (Hearing site: Houston, TX.)

MC 83539 (Sub-509F), filed October 11, 1978. Applicant: C & H TRANSPORTATION CO., INC., P.O. Box 270535, Dallas, TX 75227. Representative: Thomas E. James (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *parts and attachments for tractors*, (2) *fabricated steel products*, and (3) *equipment, parts and attachments* used in the logging, forestry and construction industries, from the facilities of Medford Steel Division of C.S.C., Inc., at or near Medford, OR, to points in the United States (except AK and HI). (Hearing site: Portland, OR, or Dallas, TX.)

MC 83835 (Sub-152F), filed September 15, 1978. Applicant: WALES TRANSPORTATION, INC., P.O. Box 6168, Dallas, TX 75222. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and materials, equipment, and supplies* used in the manufacture of pipe, between the facilities of Maverick Tube, at or near Union, MO, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. (Hearing site: St. Louis, MO, or Dallas, TX.)

MC 85255 (Sub-63F), filed September 18, 1978. Applicant: PUGET SOUND TRUCK LINES, INC., P.O. Box 24526, Seattle, WA 98124. Representative: Clyde H. MacIver, 1900 Peoples National Bank Building, 1415 Fifth Avenue, Seattle, WA 98171. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard, in rolls*, between the facilities of Western Kraft Paper Group, at or near Millersburg, OR, and Wheeler, WA. (Hearing site: Seattle, WA, or Portland, OR.)

NOTE.—The person or persons it appears may be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 85934 (Sub-82F), filed August 22, 1978. Applicant: MICHIGAN TRANSPORTATION CO., 3601 Wyoming,

Dearborn, MI 48120. Representative: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Soda ash,* in bulk, in hopper vehicles, from the facilities of BASF Wyandotte Corp., at Wyandotte, MI, to Tucker, GA. (Hearing site: Washington, DC, or Chicago, IL.)

MC 98952 (Sub-57F), filed August 10, 1978. Applicant: GENERAL TRANSFER CO., a DE corporation, 1880 North Woodford Street, Decatur, IL 62526. Representative: Paul E. Steinhour, 918 East Capitol Avenue, Springfield, IL 62701. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Animal feed, feed ingredients, and additives, materials, and supplies* used in the manufacture and distribution of animal feeds (except commodities in bulk), between the facilities of Kal Kan Foods, Inc., at or near Mattoon, IL, and Columbus, OH, on the one hand, and, on the other, those points in the United States on and east of U.S. Hwy 85, restricted to the transportation of traffic originating at or destined to the above named facilities. (Hearing site: Springfield or Chicago, IL.)

MC 105733 (Sub-67F), filed September 12, 1978. Applicant: H. R. RITTER TRUCKING CO., INC., 928 East Hazelwood Avenue, Rahway, NJ 07065. Representative: Chester A. Zyblut, Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Gasoline, kerosene, lubricating oils, and jet fuel,* in bulk, from Providence, RI, to points in CT, ME, MA, NH, VT, and NY, and (2) *gasoline and fuel oils,* in bulk, from Boston, MA, to points in CT, ME, NH, RI, and VT. (Hearing site: Boston, MA.)

MC 105886 (Sub-31F), filed August 23, 1978. Applicant: MARTIN TRUCKING, INC., East Poland Avenue, Bessemer, PA 16112. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Ground slag,* in bulk, from Neville Island, PA, to points in IL, IN, KY, MD, NY, OH, TN, VA, and WV. (Hearing site: Washington, DC, or Pittsburgh, PA.)

MC 106398 (Sub-845F), filed October 13, 1978. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Buildings,* complete, knocked-down, or in sections, from the facilities of Childers Manufacturing Co., at Houston, TX, to points in the United States (including AK, but excluding HI). (Hearing site: Houston, TX.)

NOTE.—The certificate to be issued shall be limited to 3 years from its date of issue, unless, prior to its expiration (but not less than 6 months nor more than 9 months prior to its expiration), application files a petition for permanent extension of the certificate.

MC 106644 (Sub-265F), filed August 17, 1978. Applicant: SUPERIOR TRUCKING CO., INC., P.O. Box 916, Atlanta, GA 30301. Representative: Frank Hall, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Commodities* which because of size or weight, require the use of special equipment or special handling, (2) *self-propelled articles,* each weighing 15,000 pounds or more, (3) *commodities* which because of size or weight do not require the use of special equipment or special handling when transported as part of the same shipment as the commodities in (1) or (2) above, and (4) *machinery and parts of such machinery,* between points in WV, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, KY, LA, MS, MO, NC, OK, SC, TN, VA, WV, and TX. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 107496 (Sub-1157F), filed August 24, 1978. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Cement,* in bulk, from Clarksville, MO, to points in NE, and (2) *ground aluminum scrap,* in bulk, from Henrietta, MO, to Channelview, TX. (Hearing site: Des Moines, IA, or Kansas City, MO.)

MC 107743 (Sub-51F), filed September 11, 1978. Applicant: SYSTEM TRANSPORT, INC., P.O. Box 3456 T.A., Spokane, WA 99220. Representative: J. Michael Alexander, 136 Wynnewood Professional Building, Dallas, TX 75224. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel tubing,* between Salt Lake City, UT, on the one hand, and, on the other points in OR and WA, restricted to the transportation of traffic originating at or destined to the facilities of Keystone Tubular Service at Salt Lake City, UT. (Hearing site: Salt Lake City, UT, or Denver, CO.)

MC 107818 (Sub-93F), filed July 7, 1978, previously noticed in the FEDERAL REGISTER issue of September 7, 1978. Applicant: GREENSTEIN TRUCKING CO., a corporation, 280 NW. 12th Avenue, P.O. Box 608, Pompano Beach, FL 33061. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. To operate as a *Common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from Albert Lea, MN, to points in AL, FL, GA, KY, and TN, restricted to the transportation of traffic originating at the named origin. (Hearing site: Cincinnati, OH.)

NOTE.—This republication shows TN in lieu of TX as the correct destination State.

MC 107839 (Sub-178F), filed October 13, 1978. Applicant: DENVER-ALBUQUERQUE MOTOR TRANSPORT, INC., 2121 East 67th Avenue, P.O. Box 16106, Denver, CO 80216. Representative: Edward T. Lyons, Jr., 1600 Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80216. To operate as a *Common carrier,* by motor vehicle, over irregular routes, transporting: *Tea,* from Houston and Galveston, TX, to Denver, CO. (Hearing site: Denver, CO.)

MC 108119 (Sub-103F), filed October 13, 1978. Applicant: E. L. MURPHY TRUCKING CO., a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *Common carrier,* by motor vehicle, over irregular routes, transporting: *Road construction equipment,* from Minneapolis, MN, to points in the United States (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 108676 (Sub-130F), filed August 24, 1978. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamauga Avenue, Knoxville, TN 37917. Representative: Louis J. Amato, P.O. Box E, Bowling Green, KY 42101. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber, veneer, and particleboard,* from points in CA, OR, and WA, to points in OK. (Hearing site: Oklahoma City, OK.)

MC 109689 (Sub-339F), filed October 13, 1978. Applicant: W. S. HATCH CO., a corporation, P.O. Box 1825, Salt Lake City, UT 84110. Representative: Mark K. Boyle, Suite 400, 10 W. Broadway Building, Salt Lake City, UT 84101. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Bentonite clay,* from points in Phillips County, MT, and Crook County, WY, to points in AZ, CA, CO, ID, KS, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY. (Hearing site: Salt Lake City, UT.)

MC 110563 (Sub-240F), filed September 13, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 North, Sidney, OH 45365. Representative: Joseph M.

Scanlan, 111 West Washington Street, Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Miami Margarine Company, Inc., at Albert Lea, MN, to points in AL, FL, GA, KY, LA, MS, NC, OH, TN, VA, and WV, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: St. Paul, MN, or Washington, DC.)

MC 110683 (Sub-131F), filed September 11, 1978. Applicant: SMITH'S TRANSFER CORP., P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, 1000 16th Street NW., Washington, DC 20036. To operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), Route 1: Between Richmond, VA and Raleigh, NC, from Richmond over Interstate Hwy 95 to Petersburg, then over Interstate Hwy 85 to Henderson, NC; then over U.S. Hwy 1 to Raleigh, and return over the same route, Route 2: Between Richmond, VA and Rocky Mount, NC, from Richmond, VA, over U.S. Hwy 95 to Rocky Mount, NC, then over U.S. Hwy 64 to Raleigh, NC, and return over the same route, Route 3: Between Henderson, NC and Durham, NC, over U.S. Hwy 85, Route 4: Between Rocky Mount, NC and the intersection of Interstate Hwy 95 and U.S. Hwy 74, near Lumberton, NC, over U.S. Hwy 95, Route 5: Between Monroe, NC and Wilmington, NC, over U.S. Hwy 74, Route 6: Between Wilson, NC and Wilmington, NC, over U.S. Hwy 117, Route 7: Between Raleigh, NC and Rockingham, NC, over U.S. Hwy 1, Route 8: Between Rocky Mount, NC and Wilmington, NC, from Rocky Mount over U.S. Hwy 64 to its intersection with U.S. Hwy 13 at or near Bethel, then over U.S. Hwy 13 to Greenville, NC; then over U.S. Hwy 11 to Kinston, NC, then over U.S. Hwy 258 to its intersection with U.S. Hwy 17 at or near Jacksonville, NC; then over U.S. Hwy 17 to Wilmington, and return over the same route, as alternate routes in 1-8 above, for operating convenience only, serving no intermediate points. (Hearing site: Washington, DC.)

MC 111045 (Sub-157F), filed September 18, 1978. Applicant: REDWING CARRIERS, INC., P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid resin solution*, in bulk, in tank vehicles, from the facilities of *U.S.S. Polyester*, at or near Bartow, FL, to points in AL, AR, GA, LA, NC, SC, and TN. (Hearing site: Tampa, FL, or Washington, DC.)

MC 111383 (Sub-46F), filed August 14, 1978. Applicant: BRASWELL MOTOR FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: John M. Records, (same address as applicant). To operate as a *common carrier*, by motor vehicle, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of the The Cabot Corp., at or near Tate Cove and Cabot, LA, as off-route points in connection with carrier's otherwise authorized regular route authority. (Hearing site: Boston, MA, or Washington, DC.)

MC 112822 (Sub-462-F), filed August 14, 1978. Applicant: BRAY LINES INC., P.O. Box 1191, 1401 North Little Street, Cushing, OK 74023. Representative: Dudley G. Sherrill, (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *malt beverages* (except commodities in bulk, in tank vehicles), from points in Jefferson County, CO, to points in MO. (Hearing site: Denver, CO.)

MC 113855 (Sub-451F), filed September 25, 1978. Applicant: INTERNATIONAL TRANSPORT, INC., a North Dakota corporation, 2450 Marion Road SE., Rochester, MN 55901. Representative: Alan Foss, 502 First National Bank Building, Fargo, ND 58102. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *tractors*, (2) *construction equipment*, (3) *agricultural equipment*, and (4) *accessories and parts* for the commodities in (1), (2), and (3) above, from Baltimore, MD, to points in the United States (including AK, but excluding HI). (Hearing site: Washington, DC.)

MC 114211 (Sub-369F), filed August 28, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by dealers and manufacturers of agricultural, industrial, and construction equipment, metal products, building materials, building supplies, lumber mills, and lumber yards, between points in Black Hawk County, IA, on the one hand, and, on the other, points in the United States (including AK but excluding HI), restricted to the transportation of traffic originating at or destined to Black Hawk County, IA. (Hearing site: Waterloo, IA.)

MC 114211 (Sub-373F), filed August 29, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *heating and cooling machinery*, and *heating and cooling equipment*, (2) *attachments, parts, and accessories* for the commodities named in (1) above (except commodities in bulk), from Omaha, NE, to points in the United States (including AK, but excluding HI); and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), in the reverse direction. (Hearing site: Omaha, NE.)

MC 114569 (Sub-250F), filed October 10, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *canned and bottled foodstuffs*, (except frozen), from the facilities of Wm. Underwood Co., at or near Hannibal, MO, to Great Falls, MT; Los Angeles and San Jose, CA; Phoenix, AZ; Portland, OR; Salt Lake City, UT; Seattle, WA; El Paso, TX; and Denver, Co., restricted to the transportation of traffic originating at the named origin, and (2) *equipment, materials, and supplies* used in the manufacture and sale of the commodities in (1) above, from Marion, AL, to the facilities of Wm. Underwood Co., at or near Hannibal, MO, restricted to the transportation of traffic destined to the named destination. (Hearing site: Boston, MA, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 114569 (Sub-251F), filed October 10, 1978. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by hardware stores, discount stores, department stores, and supermarkets (except commodities in bulk), from the facilities of Action Industries, Inc., at or near Pittsburgh and Cheswick, PA, to those points in the United States in and west of MI, OH, KY, TN, GA, and FL (except AK and HI), restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Pittsburgh, PA, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 115826 (Sub-339F), filed August 16, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *plastic products*, (2) *such commodities* as are dealt in or used by manufacturers and convertors of paper and paper products, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, from the facilities of Continental Bondware, at or near Los Angeles, CA, to points in AZ, ID, MT, NM, NV, OK, OR, TX, UT, and WA. (Hearing site: Denver, CO.)

MC 115826 (Sub-340F), filed August 17, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *plastic products*, (2) such commodities as are dealt in or used by manufacturers and converters of paper and paper products, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), from the facilities of the Continental Group, Inc., Bondware Division, at or near Fort Worth, TX, to points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, and WA; (4) *plastic beads* (except commodities in bulk), from the facilities of the Continental Group, Inc., Bondware Division, at or near Saginaw, TX, to the facilities of the Continental Group, Inc., Bondware Division, at or near San Pedro and La Mirada, CA; and (5) *containers*, from the facilities of the Continental Group, Inc., Bondware Division, at or near San Pedro and La Mirada, CA, to the facilities of the Continental Group, Inc., Bondware Division, at or near Saginaw, TX. (Hearing site: Denver, CO.)

MC 115826 (Sub-342F), filed August 21, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *pet foods*, in containers, from the facilities of Kal Kan Foods, Inc., at or near Columbus, OH, to those points in the United States on and east of U.S. Hwy 85. (Hearing site: Denver, CO.)

MC 115826 (Sub-343F), filed August 18, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *such commodities* as are dealt in by retail paint stores (except commodities in bulk), from the facilities of Standard T Chemical Co., at or near Chicago Heights, IL, to Kansas City and Leavenworth, KS, and points in MO, restricted to the transportation of traffic originating at the named origin facilities. (Hearing site: Denver, CO.)

MC 115826 (Sub-345F), filed August 28, 1978. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Avenue, Commerce City CO 80022. Representative: Howard Gore (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed and animal feed ingredients*, (except commodities in bulk), from the facilities of Kal Kan Foods, Inc., at or near Vernon, CA, to points in AZ. (Hearing site: Los Angeles, CA, or Denver, CO.)

MC 116325 (Sub-77F), filed September 18, 1978. Applicant: JENNINGS BOND, d.b.a. Bond Enterprises, P.O. Box 8, Lutesville, MO 63762. Representative: Ernest A. Brooks II, 1301 Ambassador Building, St. Louis, MO 63101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Sterling and Rock Falls, IL, to points in CO, KS, OK, AR, LA, MS, TN, KY, IA, NE, and AL. (Hearing site: St. Louis, MO.)

MC 116763 (Sub-427F), filed July 31, 1978, and previously published in the FEDERAL REGISTER issue of September 19, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, from the facilities of Bowater Southern Paper Corp., at or hear Calhoun, TN, to points in CT, IA, ME, MA, MN, NH, NJ, NY, PA, RI, and VT, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk, in tank vehicles), in the reverse direction. (Hearing site: Chattanooga, TN.)

NOTE.—This republication includes RI in part (1) of the destination points and adds "except commodities in bulk, in tank vehicles" to the commodities in part (2).

MC 116763 (Sub-437F), filed September 8, 1978. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except in bulk, in tank vehicles), from Cobb, DeForest, Merrill, Oconomowoc, Poynette, and Waunakee, WI, to those points in the United States in and east of ND, SD, NE, CO, and NM, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of foodstuffs, and *foodstuffs* (except in bulk, in tank vehicles), in the reverse direction. (Hearing site: Chicago, IL.)

MC 117119 (Sub-704F), filed October 13, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: M. M. Geffon, P.O. Box 338, Willingboro, NJ 08046. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Hartford, CT, to those points in the United States in and west of WI, IL, MO, TN, AR, and TX (except AK and HI), restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: New York, NY, or Washington, DC.)

MC 117416 (Sub-61F), filed August 24, 1978. Applicant: NEWMAN AND PEMBERTON CORP., 2007 University Avenue NW., Knoxville, TN 37921. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Felspar* (except in bulk), from Monticello, GA, to points in IL, IN, KY, MI, OH, and TN. (Hearing site: Washington, DC.)

MC 117815 (Sub-296F), filed September 18, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 Southeast 20th Street, Des Moines, IA 50317. Representative: Dewey Marselle (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Frozen foodstuffs* (except commodities in bulk, in tank vehicles), and (2) *inedible frozen meats and meat byproducts* (except commodities in bulk, in tank vehicles), from the facilities of Wiscold, Inc., at or near Beaver Dam and Milwaukee, WI, to points in IL, IN, IA, KS, MI, MN, MO, and NE, restricted to the transportation of traffic originating at the above named origins and destined to the indicated destinations. (Hearing site: Chicago, IL, or Milwaukee, WI.)

MC 118959 (Sub-180F), filed October 10, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic contain-*

ers, from points in Kent County, MI, to points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 118959 (Sub-183F), filed October 13, 1978. Applicant: JERRY LIPPS, INC., a Florida corporation, P.O. Drawer F, Cape Girardeau, MO 63701. Representative: Hazel Seabaugh (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products, cellulose products*, and *textile softeners* (except commodities in bulk), and (2) *equipment, materials, and supplies* used in the manufacture of the commodities in (1) above (except commodities in bulk), between Green Bay, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Cape Girardeau or St. Louis, MO.)

MC 119631 (Sub-29F), filed August 21, 1978. Applicant: DEIOMA TRUCKING CO., a corporation, P.O. Box 3315, Mt. Union Station, Alliance, OH 44601. Representative: Lawrence E. Lindeman, 425 13th St. NW., Suite 1032, Washington, DC 20004. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *buffing pads, cleaning cloths, polishing compounds, cleaning compounds, tools, putty, and paint* (except in bulk), (2) *parts and accessories* for polishing and cleaning machinery, from Canton, OH, to points in CT, DE, IL, IN, KY, MA, MD, ME, MI, NH, NJ, NY, PA, RI, VT, VA, WI, WV, and DC; and (3) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above (except commodities in bulk), from the destination territory named above to Canton, OH. (Hearing site: Cleveland, OH, or Pittsburgh, PA.)

MC 119689 (Sub-18F), filed October 12, 1978. Applicant: PEERLESS TRANSPORT CORP., a DE corporation, 2701 Railroad Street, Pittsburgh, PA 15222. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting (1) *chemicals* (except in bulk), from the facilities of National Starch & Chemical Corp., at or near Meredosia, IL, to points in PA, and (2) *equipment, materials and supplies* used in the manufacture and distribution of chemicals (except commodities in bulk), in the reverse direction. (Hearing site: Chicago, IL, or Washington, DC.)

MC 119789 (Sub-523F), filed October 12, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 MCC 209 and 766 (except hides in commodities in bulk), from the facilities of Thies Packing Co., at Great Bend, Topeka, and Wichita, KS, to points in AL, FL, GA, KY, MS, NC, SC, and TN. (Hearing site: Wichita, KS.)

MC 123054 (Sub-21F), filed August 23, 1978. Applicant: R&H CORP., a DE corporation, 295 Grand Avenue, Box 469, Clarion, PA 16214. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *foodstuffs* (except commodities in bulk), from Canajoharie, NY, to points in KY, OH, WV, and those points in PA on and west of U.S. Hwy 219. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 123383 (Sub-84F), filed September 13, 1978. Applicant: BOYLE BROTHERS, INC., RD 2, Box 329C, Medford, NJ 08055. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *composition board*, from Ashtabula, OH, to points in NJ. (Hearing site: Atlanta, GA.)

MC 123681 (Sub-35F), filed August 29, 1978. Applicant: WIDING TRANSPORTATION, INC., P.O. Box 03159, Portland, OR 97203. Representative: David C. White, 2400 SW. Fourth Avenue, Portland, OR 97201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *alcoholic beverages*, in bulk, in tank vehicles, from points in CA to points in OR. (Hearing site: Portland, OR.)

MC 123778 (Sub-42F), filed October 12, 1978. Applicant: JALT CORP., d.b.a. UNITED NEWSPAPER DELIVERY SERVICE, 802 Raritan Center, Edison, NJ 08817. Representative: Morton E. Kiel, 5 World Trade Center, Suite 6193, New York, NY 10048. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *magazine parts, sections and inserts, paper, and paper products*, from East Greenville, PA, to Old Saybrook, CT, Edison, NJ, and Glenn Dale, MD, under continuing contract(s) with Time, Inc., of New York, NY. (Hearing site: New York, NY.)

MC 124078 (Sub-889F), filed October 12, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *magnetite*, from the facilities of Reiss Viking Corp., at or near Monongah, WV, to points in MD. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 124078 (Sub-890F), filed October 13, 1978. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *slag*, in bulk, (1) from the facilities of the Calumite Co., at or near Warner, Bucks County, PA, to points in GA, MA, NJ, NY, PA, VA, and WV, and (2) from Middletown, OH, to Lakeland, FL, Hapeville, GA, Alton and Streator, IL, New Orleans, LA, Charlotte, MI, and Midway, Davidson County, NC. (Hearing site: Pittsburgh, PA.)

MC 124144 (Sub-20F), filed August 10, 1978. Applicant: ROBERT N. TOOMEY TRUCKING CO., a MD corporation, 1516 South George Street, York, PA 17403. Representative: Charles E. Creager, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting *chain, attachments and hardware for chain, cable, wire rope, and equipment* used in the manufacture of chain, from York, PA, to points in FL, GA, NC, SC, AR, AL, TN, MO, KS, LA, and MS, under a continuing contract or contracts with the Campbell Chain Co., of York, PA. (Hearing site: York, PA.)

NOTE.—Dual operations are invloved in this proceeding.

MC 124236 (Sub-91F), filed August 8, 1978. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 1200 Simons Building, Dallas, TX 75201 Representative: Sam Hallman, 4555 First National Bank Building, Dallas, TX 75202. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *cement*, from points in Comal County, TX, to points in AL, AR, AZ, CO, FL, GA, KS, LA, MO, MS, NM, OK, TN, and TX. (Hearing site: Dallas or San Antonio, TX.)

MC 124328 (Sub-123F), filed October 16, 1978. Applicant: BRINK'S, INC., a DE corporation, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. To operate as a *contract carrier*, by motor ve-

hicle, over irregular routes, transporting *precious metals*, between Rochester, MN, Cudahy, WI, Elk Grove Village, IL, Fairfield, CT, and El Monte, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Handy & Harman, of Fairfield, CT. (Hearing site: Washington, DC.)

MC 125023 (Sub-67F), filed September 11, 1978. Applicant: SIGMA-4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Richard C. McGinnis, 711 Washington Building, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1)(a) *Glass containers and accessories for glass containers*, and (b) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1)(a) above, from the facilities of Brockway Glass Co., Inc., in Jefferson and Clearfield Counties, PA, to points in Alamance, Caswell, Forsyth, Guilford, Rockingham, Stokes, and Vance Counties, NC, and Halifax, Henry, and Pittsylvania Counties, VA, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1)(a) above, in the reverse direction. (Hearing site: Washington, DC.)

MC 126679 (Sub-7F), filed October 10, 1978. Applicant: DENNIS TRUCK LINES, INC., P.O. Box 189, Vidalia, GA 30474. Representative: Ariel V. Conlin, 53 Sixth Street NE., Atlanta, GA 30308. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber*, (a) from points in Duvall and Clay Counties, FL, to those points in GA on and north of U.S. Hwy 80, and (b) from points in GA, to points in Shelby County, TN; and (2)(a) *sawdust and wood chips*, and (b) *bark* otherwise exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act when moving in mixed loads with sawdust and wood chips, between those points in GA on, south, and east of a line beginning at the SC-GA State line and extending along Interstate Hwy 85 to Atlanta, then along Interstate Hwy 75 to the GA-FL State line, on the one hand, and, on the other, those points in FL north of a line beginning at the GA-FL State line and extending along Interstate Hwy 75 to junction FL Hwy 10, then along FL Hwy 10 to junction FL Hwy 100, then along FL Hwy 100 to the Atlantic Ocean, and those in SC east of U.S. Hwy 1. (Hearing site: Atlanta, GA, or Jacksonville, FL.)

MC 127303 (Sub-47F), filed September 1, 1978. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: Elizabeth A. Purcell, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from Milwaukee, WI, to points in WA, OR, ID, MT, WY, CO, ND, SD, KS, MN, IA, IL, MI, IN, KY, and OH, and (2) *used malt beverage containers and pallets*, in the reverse direction. (Hearing site: Milwaukee, WI.)

MC 128273 (Sub-318F), filed September 13, 1978. Applicant: MIDWESTERN DISTRIBUTION, INC., P.O. Box 189, Fort Scott, KS 66701. Representative: Elden Corban (same address as applicant). to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products*, (except commodities in bulk, in tank vehicles), from the facilities of International Paper Co., at or near Pittsburg, KS, to points in the United States (except AK and HI), and (2) *equipment, materials, and supplies*, used in the manufacture and distribution of paper and paper products (except commodities in bulk, in tank vehicles), in the reverse direction, restricted to the transportation of traffic originating at or destined to the facilities of International Paper Co., at or near Pittsburg, KS. (Hearing site: New York, NY.)

MC 129631 (Sub-63F), filed June 19, 1978, previously noticed in the FEDERAL REGISTER of August 15, 1978, as MC 129621 (Sub-63F). Applicant: PACK TRANSPORT, INC., 3975 South 300 West, Salt Lake City, UT 84107. Representative: G. D. Davidson (same address as applicant). Authority granted to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building and construction materials*, between points in ID, MT, and WY, on the one hand, and, on the other, points in UT. (Hearing site: Missoula, MT.)

NOTE.—The purpose of this republication is to indicate the carrier's correct MC number.

MC 133189 (Sub-16F), filed October 10, 1978. Applicant: VANT TRANSFER, INC., 5075 Northeast Mulcare Drive, Minneapolis, MN 55421. Representative: John B. Van de North, Jr., 2200 First National Bank Building, Saint Paul, MN 55101. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal culverts, steel piling, steel posts, and steel fencing slats* (1) from the facilities of Wheeler Division, St. Regis Paper Co., at Shakopee and Bemidji, MN to points in IA, NE, SD, and WI, and (2) from Des Moines and Sioux City, IA, to the facilities of Wheeler Division, St. Regis Paper Co., at Shakopee and Bemidji, MN. (Hearing site: Minneapolis, MN or Des Moines, IA.)

MC 134286 (Sub-71F), filed August 23, 1978. Applicant: ILLINI EXPRESS, INC., a Nebraska corporation, P.O. Box 1564, Sioux City, IA 51102. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except commodities in bulk) and (2) *fibreboard boxes* (except commodities in bulk), from the facilities of Ocean Spray Cranberries, Inc., at or near (a) Kenosha, WI, and (b) North Chicago, IL, to points in KS, OR, and TX. (Hearing site: Chicago, IL or Sioux City, IA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 134286 (Sub-72F), filed August 23, 1978. Applicant: ILLINI EXPRESS, INC., a Nebraska corporation, P.O. Box 1564, Sioux City, IA 51102. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Slab zinc, zinc oxide, zinc dust, zinc dross, and metallic cadmium* (except commodities in bulk), from the facilities of St. Joe Zinc Co., in Beaver County, PA, to points in AL, CO, CT, FL, GA, IA, IL (except Chicago), IN, KY, MA, MO (except St. Louis), MI, MN, NE, NJ, NY, OH, OK, and RI, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Pittsburgh, PA or Sioux City, IA.)

NOTE.—The person or persons who appear to be engaged in common control must either file an application under section 5(2) of the Interstate Commerce Act, or submit an affidavit indicating why such approval is unnecessary.

MC 134404 (Sub-39F), filed July 31, 1978. Applicant: AMERICAN TRANSFREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. To operate as a *contract carrier*, by vehicle, over irregular routes, transporting: *Cleaning compounds, cleaning articles, toilet preparations, and nutritional foods* and (2) *materials, equipment, and supplies*, used in the manufacture or distribution of the commodities in (1) above (except commodities in bulk), (1) from East Stroudsburg, PA, and Franklin, KY, to Columbus, Fostoria, and Cincinnati, OH, and (2) from Urbana, Oh, to Pittsburgh, PA, Dallas, TX, Bedford Park, Chicago and Peoria, IL, Denver, CO, St. Louis, MO, and Kansas City, KS, under a continuing contract with

Drackett Products, Co., Division of Bristol-Meyers Co. of Cincinnati, OH. (Hearing site: New York, NY.)

NOTE.—Dual operations are involved in this proceeding.

MC 135861 (Sub-36F), filed August 28, 1978. Applicant: LISA MOTOR LINES, INC., P.O. Box 4550, Fort Worth, TX 76106. Representative: BILLY R. REID, P.O. Box 9093. Fort Worth, TX 76107. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Drugs*, from New Brunswick and South Plainfield, NJ, to Mission, KS, under a continuing contract with E. R. Squibb & Sons, Inc., of New Brunswick, NJ. (Hearing Site: Dallas, TX.)

MC 136605 (Sub-71F), filed September 26, 1978. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058 Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal building covering* and (2) *parts, components, and accessories*, used in the installation of the commodities in (1) above, from the facilities of Gifford-Hill and Co., at or near Brooklyn Park and Hopkins, MN, to points in the United States in and west of WI, IL, MO, OK, AND TX (except AK and HI). (Hearing site: Minneapolis, MN.)

MC 136714 (Sub-2F), filed August 10, 1978. Applicant: TENNESSEE EXPRESS, INC., 22 Stanley Street, Nashville, TN 37210. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials, equipment, and supplies*, used in the construction and maintenance of communications systems, between Nashville, TN, and points in Bedford, Coffee, Franklin, Giles, Hickman, Humphreys, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Perry, Warren, and Wayne Counties, TN, under a continuing contract or contracts with Western Electric Co., Inc., of Greensboro, NC. (Hearing site: Nashville, TN or Atlanta, GA.)

NOTE.—Dual operations are involved in this proceeding.

MC 138469 (Sub-85F), filed October 13, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Kitchen cabinets and vanities*, from the facilities of Triangle Pacific, at or near McKinney, TX, to points in AZ, AR, CA, LA, MS, NV, NM, OK, and TN. (Hearing site: Dallas TX.)

MC 138484 (Sub-19F), filed June 2, 1978, previously noticed in the FEDERAL REGISTER issue of July 25, 1978. Applicant: EDWARDS BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by grocery and food business houses (except commodities in bulk, in tank vehicles), (1) from the facilities of Kraft, Inc., at or near Pocatello, ID, to points in AZ, CA, CO, MT, NV, OR, UT, WA, and WY, and (2) from points in CA, MT, UT, and WA, to the facilities of Kraft, Inc., at or near Pocatello, ID, restricted to the transportation of traffic originating at the indicated origins and destined to the indicated destinations. (Hearing site: Boise, ID.)

NOTE.—This republication amends the destination territory in part (1) by including OR.

MC 138875 (Sub-107F), filed September 26, 1978. Applicant: SHOEMAKER TRUCKING CO., a corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick and adhesives* (except in bulk), from the facilities of H. B. Fuller Co., at or near Palatine, IL, to points in CA, ID, MT, OR, UT, and WA, restricted to the transportation of traffic originating at the named origins. (Hearing site: Chicago, IL or Washington, DC.)

MC 139482 (Sub-65F), filed August 18, 1978. Applicant: NEW ULM FREIGHT LINES, INC., County Road 29 West, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from the facilities of Hershey Chocolate Co., in Derry Township, Dauphin County, PA, to points in MI.(Hearing site: Minneapolis or St. Paul, MN.)

NOTE.—Dual operations are at issue in this proceeding.

MC 139495 (Sub-385F), filed September 14, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Tile, clay, earthenware, bathroom fixtures, and adhesives* and (2) *materials and supplies*, used in the installation of the commodities in (1) above, from the facilities of American Olean Tile Co., at or near (a) Olean, NY, (b) Quakertown and Lansdale, PA, (c) Lewisport and Cloverport, KY, and (d) Jackson, TN, to points in AR, AL, AZ, CA, CO, FL, GA, IA, ID, IL, IN, KS, KY, LA, MI, MN, MO, MS, MT, NE, NV, NM, ND, NY, OH, OK, OR, SD, SC, TX, TN, UT, WI, WA, and WY. (Hearing site: Washington, DC.)

MC 139495 (Sub-386F), filed September 18, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing paper*, from the facilities of Fitchburg Paper Co., at or near Fitchburg, MA, to points in CA, CO, GA, IL, IN, KS, MI, MO, OH, SC, TN, TX, VA, and WA. (Hearing site: Washington, DC.)

MC 139495 (Sub-387F), filed September 21, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Supplies and materials*, dealt in and distributed by janitorial and building maintenance supply houses (except commodities in bulk, in tank vehicles), from Chicago, IL, to points in CO, KS, NE, OK, and TX. (Hearing site: Washington, DC.)

MC 139495 (Sub-389F), filed September 25, 1978. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Floor coverings and wall coverings* and (2) *materials and supplies*, used in the installation and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), from points in AR, GA, IL, NJ, and PA, to points in KS and MO. (Hearing site: Washington, DC.)

MC 139526 (Sub-7F) filed August 18, 1978. Applicant: HARRY LINDBERY CO., INC., 6901 Maloney Avenue, Hopkins, MN 55343. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Poles and pilings*, between points in MN, on the one hand, and, on the other, points in IA, IL, MN, ND, SD, and WI. (Hearing site: St. Paul, MN.)

MC 140364 (Sub-3F), filed August 21, 1978. Applicant: ARMOUR FOOD EXPRESS CO., a DE corporation, 222 South 72d Street, Omaha, NE 68114. Representative: W. L. McCracken, Suite 1614, 111 West Clarendon Avenue, Phoenix, AZ 85077. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such merchandise*, as is dealt in by grocery and food business houses (except commodities in bulk), from the facilities of Hunt-Wesson Foods, Inc., at (a) Davis, (b) Fullerton, (c) Hayward, and (d) Oakdale, CA, to points in WA, OR, and ID; and (2) *meats, meat products and meat by-products, dairy products*, and *articles distributed by meat-packing houses*, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Armour Food Co. at Nampa, ID, to points in CA, NV, WA, and OR, under a continuing contract or contracts in (1) above with Hunt-Wesson Foods, Inc., of Fullerton, CA, and in (2) above with Armour Food Co. (a division of Armour & Co. of Amarillo, TX). (Hearing site: Los Angeles, CA or Phoenix, AZ.)

MC 140968 (Sub-5F), filed October 13, 1978. Applicant: VALLEY TRANSPORT, INC., P.O. Box 68, Drayton, ND 58225. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sugar*, from Drayton, ND, to points in MN, under a continuing contract or contracts with American Crystal Sugar Co. of Moorhead, MN. (Hearing site: Fargo, ND or Minneapolis, MN.)

MC 141402 (Sub-18F), filed August 17, 1978. Applicant: LINCOLN FREIGHT LINES, INC., Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from Joliet, IL, to points in OH, and PA, under a continuing contract(s) with Universal Glass-National Bottling Corp., of Philadelphia, PA. (Hearing site: Indianapolis, IN or Chicago, IL.)

MC 141599 (Sub-7F), filed July 10, 1978, and previously noticed in the FEDERAL REGISTER issue of August 22, 1978. Applicant: MOUNTAIN PACIFIC TRANSPORT, LTD. d.b.a. SHADOW LINES, 241 Schoolhouse Street, Coquitlam, BC, Canada V3K 4X9. Representative: R. Reid (same address as applicant). To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wall board*, between ports of entry on the international boundary line between the United States and Canada at or near Blaine, Lynden, and Sumas, WA, on the one hand, and, on the other, points in Whatcom, Skagit, Snohomish, King, and Pierce Counties, WA, restricted to the transportation of traffic moving in foreign commerce from or to points in BC, Canada. Condition: Prior receipt from applicant of an affidavit setting forth its complementary Canadian Authority or explaining why no such Canadian authority is necessary. (Hearing site: Seattle, WA.)

NOTE.—The restriction and conditions contained in the grant of authority in this proceeding are phrased in accordance with the policy statement entitled Notice to Interested Parties of New Requirements Concerning Applications for Operating Authority to Handle Traffic to and from points in Canada published in the FEDERAL REGISTER on December 5, 1974, and supplemented on November 18, 1975. The Commission is presently considering whether the policy statement should be modified, and is in communication with appropriate Canadian officials regarding this issue. If the policy statement is changed, appropriate notice will appear in the FEDERAL REGISTER and the Commission will consider all restrictions or conditions which were imposed pursuant to the prior policy statement, regardless of when the condition or restriction was imposed, as being null and void and having no force or effect.

NOTE.—The purpose of this republication is to show the addition of points in Snohomish County.

MC 141773 (Sub-6F), filed September 12, 1978. Applicant: THERMO TRANSPORT, INC., 156 East Market Street, Indianapolis, IN 46204. Representative: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. To operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fruit juices and fruit drink* (except canned and frozen fruit juices and fruit drink), from the facilities of Maplehurst Farms, Inc., Indianapolis, IN, to points in OH, PA, MO, KY, TN, NE, MI, IA, and IL, and (2) *materials, equipment, and supplies*, used in the manufacture and distribution of the commodities named in (1) above, from points in OH, PA, MO, KY, TN, NE, MI, IA, IL, and FL, to the facilities of Maplehurst Farms, Inc., at Indianapolis, IN, under a continuing contract or contracts with Maplehurst Farms, Inc., Indianapolis, IN. (Hearing site: Indianapolis, IN.)

MC 142059 (Sub-49F), filed October 10, 1978. Applicant: CARDINAL TRANSPORT, INC., a Delaware corporation, 1830 Mound Road, Joliet, IL 60436. Representative: Jack Riley, 1830 Mound Road, Joliet, IL 60436. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes and potato products*, from the facilities of American Potato Co., at or near Plover and Beaver Dam, WI, to points in the United States (except points in AK, HI, ID, IA, MN, MT, NE, ND, SD, WI, WY, and the Upper Peninsula of MI), restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations. (Hearing site: San Francisco, CA.)

MC 142513 (Sub-5F), filed September 11, 1978. Applicant: BIRK TRANSFER, INC., 360 Wheatland Avenue, Conemaugh, PA 15909. Representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from the facilities of Bethlehem Steel Corp., at or near Johnstown, PA, to points in NC and SC, and (2) *wire carriers*, from points in NC and SC, to the facilities of Bethlehem Steel Corp., at or near Johnstown, PA. (Hearing site: Pittsburgh, PA or Washington, DC.)

MC 142559 (Sub-60F), filed October 10, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs, equipment, materials, and supplies* used by manufacturers and distributors of foodstuffs (except commodities in bulk), between Lowell, MA and Detroit, MI, on the one hand, and, on the other those points in the United States in and east of MN, IA, MO, AR, and TX. (Hearing site: Columbus, OH or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 143205 (Sub-2F), filed September 25, 1978. Applicant: DAVE HAAS, INC., 203 East Birch Street, Thorp, WI 54771. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal articles, materials, equipment, and supplies* used in the manufacture, sale, and distribution of metal articles, between the facilities of Industrial Fabricators, Inc., at Thorp, WI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Madison, WI or Chicago, IL.)

MC 143478 (Sub-2F), filed October 13, 1978. Applicant: G. P. THOMPSON ENTERPRISES, INC., P.O. Box 146, Midway, AL 36053. Representative: Terry P. Wilson, 420 South Lawrence Street, Montgomery, AL 36104. To operate as a *contract carrier*, by motor vehicle, over irregular routes,

transporting: *Such commodities,* as are dealt in or used by restaurant chains (except commodities in bulk), between Jacksonville, FL, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Henry's Poultry Co., Inc., of Jacksonville, FL. (Hearing site: Jacksonville, FL or Montgomery, AL.)

MC 143552 (Sub-5F), filed August 8, 1978. Applicant: CELEWEND ASSOCIATES, INC., 1 Whitfield Street, Caldwell, NJ 07006. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Washing, cleaning, and scouring compounds* (except commodities in bulk), *fabric and textile softeners, and cellular and expanded plastic sheets,* from points in NJ, to Los Angeles, CA, Tacoma, WA, Dallas, TX, Denver, CO, New Orleans, LA, Atlanta, GA, Auburndale, FL, Salem and Roanoke, VA, Bristol, PA, Boston, MA, Toledo, OH, St. Louis, MO, Chicago, IL, and St. Paul, MN, under a continuing contract or contracts with Purex Corp., of Carson, CA. (Hearing site: Los Angeles, CA.)

MC 143786 (Sub-6F), filed August 24, 1978. Applicant: HAL MAST TRUCKING CO., INC., Route 1, Box 259, Sugar Grove, NC 28679. Representative: William P. Farthing, Jr., 301 South McDowell Street, 1100 Cameron-Brown Building, Charlotte, NC 28204. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Upholstered furniture,* from Boone, NC, to points in CA, CT, FL, GA, IL, IN, MA, MD, MI, MN, NJ, NY, OH, PA, TX, WI, and DC, under continuing contract(s) with Investments and Innovative Concepts, Inc., of Boone, NC. (Hearing site: Charlotte or Boone, NC.)

MC 143794 (Sub-9F), filed August 22, 1978. Applicant: EAST-WEST MOTOR FREIGHT, INC., P.O. Box 525, Selmer, TN 38375. Representative: Bruce M. Mitchell, Fifth Floor-Lenox Towers I, 3390 Peachtree Road, Atlanta, GA 30326. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of ITT Grinnell Corp., at or near (1) Clito, GA, (2) Henderson, TN, (3) Indianapolis, IN, (4) Princeton, KY, (5) Temple, TX, (6) Warren, OH, (7) Wrightsville, Columbia, and Lancaster, PA, and (8) Elmira, NY, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract or contracts with ITT Grinnell Corp., of Providence, RI. (Hearing site: Atlanta, GA or Washington, DC.)

MC 143912 (Sub-2F), filed August 7, 1978. Applicant: WESTERN CONTAINER TRANSPORT, INC., 95 Market Street, Oakland, CA 94607. Representative: David J. Marchant, One Maritime Plaza, Suite 300, San Francisco, CA 94111. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities,* (except classes A and B explosives), in ocean containers or ocean roll-on and ocean roll-off trailers, restricted to the transportation of traffic having an immediately prior or subsequent movement by water, between ports in CA, OR, WA, TX, and LA, on the one hand, and, on the other, points in AZ, CA, CO, ID, LA, MT, NV, NM, OR, TX, UT, WA, and WY. (Hearing site: San Francisco, CA.)

MC 144371 (Sub-1F), filed August 28, 1978. Applicant: PEERLESS WIRE GOODS CO., INC., 2702 Ferry Street, Lafayette, IN 47902. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Enamel products and frit* (except commodities in bulk), from Frankfort, IN, to points in AL, IA, IL, KY, MI, MO, OH, PA, TN, and WI; and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities named in (1) above (except commodities in bulk) in the reverse direction, under a continuing contract or contracts in (1) and (2) above with Ingram-Richardson Co., of Frankfort, IN. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 144622 (Sub-12F), filed August 16, 1978. Applicant: GLENN BROS. MEAT CO., INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip Glenn (same address as applicant). To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fatty-acid esters, breadmaking compounds,* and *buffing compounds,* (1) from Forest Park, IL, to Williamsport, PA, and (2) from Williamsport, PA, to points in TN, NC, SC, GA, FL, AL, MS, AR, LA, TX, NM, AZ, UT, NV, CA, OR, WA, CO, ID, MT, and WY. (Hearing site: Hartford, CT, or Washington, DC.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144645 (Sub-2F), filed September 26, 1978. Applicant: ROBERT C. HANSEN, d.b.a. ROBERT HANSEN TRUCKING, Route 5, Box 282, Delavan, WI 53115. Representative: Daniel R. Dineen, Suite 412, Empire Building, 710 North Plankinton Avenue, Milwaukee, WI 53203. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Electrical copper wire,* from the facilities of Techbestos, Inc., at or near Moonachie, NJ, to points in IL, IN, KY, MI, MN, OH, and WI, under a continuing contract with Techbestos, Inc., of Moonachie, NJ. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 144872 (Sub-1F), filed August 7, 1978. Applicant: RICE TRUCK LINES, a corporation, P.O. Box 2644, Great Falls, MT 59403. Representative: Ray F. Koby, 314 Montana Building, Great Falls, MT 59401. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Such commodities* as are dealt in by steel mills, (2) *such commodities* as are dealt in or used by hardware stores, (3) *scrap metals,* and (4) *hides* and *pelts,* (a) between the facilities of Pacific Hide & Fur Depot, at or near Billings, Bozeman, Butte, Glasgow, Great Falls, Havre, Helena, Kalispell, Miles City, Missoula, Lewistown, and Sidney, MT, Kennewick, Spokane, and Tacoma, WA, Mills, Riverton, Worland, and Gillette, WY, Salmon, Nampa, Sandpoint, Lewiston, and Twin Falls, ID, and Portland, OR, and (b) between the points named in (a) above, on the one hand, and, on the other, Wilton, IA, Denver, Loveland, and Pueblo, CO, Omaha and Norfolk, NE, Minneapolis and St. Paul, MN, Whitehall, MI, Cambridge City and Gary, IN, St. Louis, MO, Laredo, TX, and points in CA, IL, MT, OR, UT, WA, and WY, under a continuing contract with Pacific Hide & Fur Depot, of Great Falls, MT. (Hearing site: Great Falls or Billings, MT.)

NOTE.—Dual operations are at issue in this proceeding.

MC 144934F, filed June 15, 1978, previously noticed in the FEDERAL REGISTER issue of August 22, 1978. Applicant: BERGER TRANSPORTATION, INC., 2700 Sheffield Avenue, Hammond, IN 46320. Representative: Marshall D. Becker, 7171 Mercy Road, Suite 610, Omaha, NE 68106. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Commercial sewing machines, fertilizer spreaders, fertilizer applicators, metal tanks, metal conveyors, and parts for commercial sewing machines, fertilizer spreaders, fertilizer applicators, metal tanks, and metal conveyors,* between Humboldt, Red Oak, and Dakota City, IA, on the one hand, and, on the other, points in the United States (except AK and HI); (2) *automobile parts, and equipment used in the installation of automobile parts,* from Columbus, NE, Marianna, AR, Cleveland, MS, Red Oak, IA, Carrollton, Columbus, and Newnan, GA, Phenix City, AL, and Milan, TN, to (a)

MO, and (b) those points in the United States in and east of WI, IL, KY, TN, and MS; (3) *equipment, materials, and supplies used in the manufacture of automobile parts,* (a) between Columbus, NE, Marianna, AR, Cleveland, MS, Red Oak, IA, Carrollton, Columbus, and Newnan, GA, Phenix City, AL, and Milan, TN, and (b) from points in MO and those points in the United States in and east of WI, IL, KY, TN, and MS, to Columbus, NE, Marianna, AR, Cleveland, MS, Red Oak, IA, Carrollton, Columbus, Newnan, and Tucker, GA, Phenix City, AL, and Milan, TN; (4) *Sprayers, spray equipment, and conveyor systems, and equipment, materials, and supplies used in the manufacture of sprayers, spray equipment, and supplies used in the manufacture of sprayers, spray equipment, and conveyor systems* (except commodities in bulk, in tank vehicles), from Humboldt and Dakota City, IA, to points in the United States (except AK and HI); and (5) *iron and steel articles,* from points in AL, to Columbus, GA, under a continuing contract(s) with Douglas & Lomason Co., of Farmington, MI. (Hearing site: Chicago, IL, or Omaha, NE.)

NOTE.—This republication amends the destination territory in part (2)(b) by changing IN to IL and the origin territory in part (3)(b) by changing IN to IL.

MC 144942 (Sub-2F), filed August 10, 1978. Applicant: RWC TRUCKING, INC., 59 Lamoille Avenue, Haverhill, MA 01830. Representative: John Richard Barker, One Farragut Square South, Washington, DC 20006. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Coin, currency, securities, food stamps, negotiable* and *non-negotiable instruments, commercial papers,* and *business records,* between points in Strafford, Belknap, Merrimack, Hillsborough, and Rockingham Counties, NH, and Kittery, ME, on the one hand, and, on the other, points in Essex, Middlesex, and Suffolk Counties, MA, and that portion of Norfolk County, MA surrounded by Suffolk and Middlesex Counties, MA, under a continuing contract with banks, financial institutions, and other businesses. (Hearing site: Haverhill or Lawrence, MA.)

MC 145149 (Sub-4F), filed October 5, 1978, Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS 66612. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia,* in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, OK, to points in KS and TX.

MC 145285 (Sub-2F), filed September 11, 1978. Applicant: CLICK DELIVERY SERVICE, INC., 3710 Robertson Street, P.O. Box 683, Metairie, LA 70004. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in or used by cosmetic manufacturers, from Gulfport, MS, and Baton Rouge and New Orleans, LA, to points in MS in and south of Jefferson, Lincoln, Lawrence, Jefferson Davis, Covington, Jones, and Wayne Counties, and those in LA in and east of Pointe Coupee, Iberville, Assumption, and Terrebonne Parishes, under a continuing contract with Avon Products, Inc., of Atlanta, GA. (Hearing site: New Orleans, or Houston, TX.)

MC 145301F, filed August 31, 1978. Applicant: R.E.M. TRANSPORT CO., INC., Raritan Center, Building 431, Edison, NJ 08817. Representative: Brian S. Stern, 2425 Wilson Boulevard, Suite 327, Arlington, VA 22201. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Flat glass* and *automotive glass,* from Tulsa, OK, to points in AL, AZ, AR, CA, CO, DE, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NJ, NM, NY, NC, ND, OH, PA, SC, SD, TN, TX, VA, WV, WI, and DC. (Hearing site: Detroit, MI, or Washington, DC.)

NOTE.—Dual operations may be at issue in this proceeding.

MC 145319 (Sub-20F), filed October 12, 1978. Applicant: DALE BRADBURY and BILL BRADBURY, a partnership, d.b.a. BRADBURY BROS., P.O. Box 194A, Ft. Scott, KS 66701. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* from the facilities of Bill's Coal Co., Inc., near Garland and Fulton, KS, to rail facilities near Stotesbury, MO, restricted to the transportation of traffic having a subsequent movement by rail. (Hearing site: Kansas City, MO.)

MC 145345 (Sub-1F), filed September 25, 1978. Applicant: WATSON TRUCKING, INC., Route 1, Old Dunbar Rd., Byron, GA 31008. Representative: J. Michael May, Suite 508, 1447 Peachtree Street NE., Atlanta, GA 30309. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Sand, gravel, and construction aggregates,* in bulk, in dump vehicles, from the facilities of Clyde Owens Sand & Gravel, Inc., in Hardin County, TN, to points in MS on and north of U.S. Hwy 82 and those in AL on, north, and west of U.S. Hwys 82, 11, and 231, under a continuing contract with Clyde Owens Sand & Gravel, Inc., of Collierville, TN. (Hearing site: Memphis, TN, or Atlanta, GA.)

MC 145353F, filed September 11, 1978. Applicant: WAYNE O. NELSON, d.b.a. NELSON TRANSPORT, Box 251, Willmar, MN 56201. Representative: James T. Flescher, 1745 University Avenue, St. Paul, MN 55104. To operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, used household goods, and liquid commodities in bulk), between points in IL, IN, IA, MI, MN, MO, MT, NE, ND, SD, and WI, restricted to the transportation of traffic having a prior or subsequent movement by rail. (Hearing site: St. Paul or Minneapolis, MN.)

MC 145435F, filed September 18, 1978. Applicant: WESTERN AG INDUSTRIES, INC., 2750 North Parkway, Fresno, CA 93771. Representative: Miles L. Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting (1) *carpet and carpet padding,* from points in GA, to points in AZ, CA, OR, and NV, and (2) *congoleum resilient,* from points in NJ, to points in AZ, CA, OR, and NV, under a continuing contract with La Salle Deitch Co., Inc., of Tustin, CA. (Hearing site: Los Angeles, CA.)

MC 145455F, filed September 26, 1978. Applicant: BULK TRANSPORTATION, a corporation, 415 Lemon Avenue, Walnut, CA 91789. Representative: Melvin G. Thurman (same address as applicant). To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting *liquid animal feed preparations, supplements, and additives,* in bulk, in tank vehicles, from points in CA, to points in AZ, under continuing contracts with Snow Commodities Co., Inc., of South Pasadena, CA, Pacific Kenyon Corp., of Long Beach, CA, and Baker Commodities, Inc., of Los Angeles, CA. (Hearing site: Los Angeles, CA.)

NOTE.—Dual operations are at issue in this proceeding.

BROKER AUTHORITY

MC 12895 (Sub-2F), filed September 18, 1978. Applicant: HARMON TRAVEL SERVICE, INC., P.O. Box 7727, Boise, ID 83707. Representative: Randall Wallis, P.O. Box 1253, Boise, ID 83701. To engage in operation, in interstate or foreign commerce, as a *broker,* at Boise, Pocatello, Idaho Falls, Twin Falls, Lewiston, and Coeur d'Alene, ID, in arranging for the transportation, by motor vehicle, of *passen-*

gers and their baggage, in the same vehicle with passengers, in special or charter operations, in round-trip, and one-way all expense tours, between points in the United States (including AK and HI). (Hearing site: Boise or Twin Falls, ID.)

NOTE.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, NY,* 54 MCC 291 (1952).

MC 130512F, filed July 7, 1978, and previously published in the FEDERAL REGISTER issue of September 19, 1978. Applicant: PERCIVAL TOURS, INC., Continental Bank Building, Fort Worth, TX 76102. Representative: Harold E. Mesirow, 1220 Nineteenth Street NW., Washington, DC 20036. To engage in operations, in interstate or foreign commerce, as a *broker,* at Fort Worth, TX, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the United States (including AK and HI, but excluding IL, IN, IA, KY, MI, MN, ID, NE, ND, OH, SD, and WI). (Hearing site: Fort Worth, TX, or Washington, DC.)

NOTE.—(1) Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension*—New York, NY, 54 M.C.C. 291 (1954). (2) This republication deletes in round-trip.

[FR Doc. 78-31972 Filed 11-13-78; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 8, 1978.

These applications for long-and-short-haul relief have been filed with the Interstate Commerce Commission.

Protests are due at the ICC on or before November 29, 1978.

FSA No. 43623, Southwestern Freight Bureau, Agent's No. B-781, rates on cement and related articles, from origins in the Southwest, to points in Southern Territory, in Supp. 19 to its Tariff SW/S-327-1, ICC 5292, to become effective December 11, 1978. Grounds for relief—market competition and revised rate structure.

FSA No. 43624, Uni-Pacific Container Lines, Ltd., No. 1, intermodal rates on general commodities in containers, between rail carriers' terminals on the U.S. Atlantic and Gulf Coast and ports in the Far East, in its Tariffs Nos. 5 and 6, ICC Nos. 2 and 3 respectively, to become effective December 10, 1978. Grounds for relief—water competition.

FSA No. 43625, Seatrain International, S.A., No. 24, intermodal rates on general commodities in containers, between rail carrier's terminals on the U.S. Pacific Coast and ports in Venezuela and the Caribbean, in its Tariffs 716-A and 717-A, ICC Nos. 42 and 43, respectively, to become effective December 18, 1978. Grounds for relief—water competition.

FSA No. 43626, Southwestern Freight Bureau, Agent's No. B-778, rates on wrought iron and steel pipe and kindred articles, from Ft. Collins and Minnequa, CO, to Lone Star, TX, in Supp. 172 to its Tariff 259-F, ICC 5080, to become effective December 5, 1978. Grounds for relief—market competition and rate relationship.

FSA No. 43627, Southwestern Freight Bureau, Agent's No. B-784, rates on clay, from Warren, MT, to points in Southwestern Territory, in Supplement 8 to its Tariff 329-E, ICC 5297, to become effective December 14, 1978. Grounds for relief—rate relationship.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31968 Filed 11-13-78; 8:45 am]

[7035-01-M]

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY

Elimination of Gateway Applications

NOVEMBER 7, 1978.

The following application to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065(d)(2)), and notice thereof to all interested persons is hereby given as provided in such rules.

Carriers having a genuine interest in an application may file an original and three copies of *verified statements* in opposition with the Interstate Commerce Commission on or before December 14, 1978. (This procedure is outlined in the Commission's report and order in "Gateway Elimination," 119 MCC 530.) A copy of the verified statement in opposition must also be served upon applicant or its named representative. The verified statement should contain all the evidence upon which protestant relies in the application proceeding including a detailed statement of protestant's interest in the proposal. No rebuttal statements will be accepted.

MC 106497F (Sub-156G), filed October 23, 1978. Applicant: PARKHILL TRUCK CO., a corporation, P.O. Box 912, Joplin, MO 64801. Representative: A. N. Jacobs, P.O. Box 113, Joplin, MO 64801. Authority to operate as a *common carrier,* by motor vehicle, over irregular routes, in the transportation of (1): *commodities* which by reason of size or weight require the use of special equipment; and (2) *self-propelled articles,* each weighing 15,000 pounds or more, and *related machinery, tools, parts, and supplies* moving in connection therewith, between points in UT, on the one hand, and, on the other, points in NM, WY, OR, and WA, restricted in (2) to commodities which are transported on trailers. (Hearing site: Salt Lake City, UT.)

NOTE.—The purpose of this application is to eliminate the gateways in CO and WY.

Office of Proceedings

IRREGULAR-ROUTE MOTOR COMMON CARRIERS OF PROPERTY—ELIMINATION OF GATEWAY LETTER NOTICES

Notice

NOVEMBER 7, 1978.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's Gateway Elimination Rules (49 CFR 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission within 10 days from the date of this publication. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will not operate to stay commencement of the proposed operation.

Succesively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier,* by motor vehicles, over irregular routes.

MC 96324 (Sub-E29), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Representative: Harold G. Hernly, Jr., Esq., 118 North Street Asaph Street, Alexandria, VA 22314. *Glass containers and pottery containers,* from those points in PA on and north and west of a line beginning at the PA-OH State line, and extending along U.S. Hwy 22 to junction U.S. Hwy 219, then north along U.S. Hwy 219 to the PA-NY State line. (Gateways eliminated: Harrison County, and Short Gap, WV.)

MC 96324 (Sub-E52), filed February 9, 1976. Applicant: GENERAL DELIVERY INC., P.O. Box 1816, Fairmont, WV. Representative: Harold G. Hernly, Jr., Esq., 118 North Street Asaph Street, Alexandria, VA 22314. *Containers and closures for containers*, from points in Preston County, WV, to points in NC east of Surrey, Wilkes, Alexander, Catawba, Lincoln, and Cleveland Counties, NC. (Gateways eliminated: Short Gap, WV, and points in WV within the Cumberland, MD, commercial zone.)

MC 107515 (Sub-E671), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road NE., Atlanta, GA 30326. *Fresh and cured meats, and such commodities* as are classified as dairy products in the appendix to the report in Modification of Permits—Packing House Products, 46 MCC 23, and *fresh fruits and vegetables* (except in bulk), in vehicles with mechanical refrigeration, (1) from points in SC on, north or west of I Hwy 85 and Gaffney, SC, to points in Ga on or west of I Hwy 75 (except Macon, GA); (2) from points in SC on, south or east of a line beginning at Charleston, SC, and extending alone U.S. Hwy 78 to junction U.S. Hwy 178, then along U.S. Hwy 178 to junction U.S. Hwy 601, then along U.S. Hwy 601 to junction U.S. Hwy 378, then along U.S. Hwy 378 to junction I Hwy 95, then along I Hwy 95 to the NC-SC State line to points in GA on, north or west of a line beginning at the AL-GA State line and extending along Alternate U.S. Hwy 27 to junction GA Hwy 85, then along Ga Hwy 85 to junction I Hwy 285, then east along I Hwy 285 to junction I Hwy 75, then along I Hwy 75 to junction U.S. Hwy 411, then along U.S. Hwy 411 to the TN-GA State line, and points in Henry, Gwinnett, Fulton, DeKalb, and Rockdale Counties, GA; (3) from points in Richland, Sumter, Lee, Darlington, Florence, Marion, Horry, Calhoun, Lexington, Orangeburg, Aiken, Lexington, and Barnwell Counties, SC, to points in the territory in (2) above; (4) from points in SC to points in Fulton, DeKalb, Cobb, Rockdale, Henry, Gwinnett, Douglas, and Paulding Counties, GA. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of section 210 of the act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 107515 (Sub-E672), filed December 20, 1976. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 33050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers I-3390 Peachtree Road NE., Atlanta, GA 30326. (I) *Fresh and cured meats and such commodities* as are classified as dairy products in the appendix to the report in Modification of Permits—Packing House Products, 46 MCC 23, *frozen foods and fresh fruits and vegetables* (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from points in that part of NC on, south or east of a line beginning at the SC-NC State line, and extending along U.S. Hwy 301 to junction NC Hwy 41, then along NC Hwy 41 to junction NC Hwy 87, then east along NC Hwy 87 to junction U.S. Hwy 76, then east along U.S. Hwy 76 to the Atlantic Ocean at or near Wilmington, NC, to points in WI, MN, IA, MO, NE, KS, OK, AR, TX, IL, and points in TN on or west of a line beginning at the TN-GA State line, and extending along TN Hwy 74 to junction TN Hwy 60, then along TN Hwy 60 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 111, then along TN Hwy 111 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 56, then along TN Hwy 56 to the KY-TN State line; points in KY on or west of a line beginning at the KY-TN State line and extending along KY Hwy 87 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to junction KY Hwy 90, then along KY Hwy 90 to junction U.S. Hwy 31W, then along U.S. Hwy 31W to junction KY Hwy 1638, then along KY Hwy 1638 to junction KY Hwy 79, then along KY Hwy 79 to the KY-IN State line; and points in that part of IN on or west of a line beginning at the IN-KY State line, and extending along IN Hwy 135 to junction U.S. Hwy 150, then along U.S. Hwy 150 to junction IN Hwy 37, then along IN Hwy 37 to junction IN Hwy 46, then along IN Hwy 46 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction I Hwy 65, then along I Hwy 65 to junction U.S. Hwy 231, then along U.S. Hwy 231 to the IL-IN State line, and Bloomington, IN.

(2) From points in NC on or east of U.S. Hwy 301, to points in TX, AR, OK, MO, KS, NE, IA, MN, that part of WI on or west of a line beginning at the IA-WI State line, and extending along U.S. Hwy 61 to junction U.S. Hwy 53, then along U.S. Hwy 53 to Lake Superior at or near Superior, WI; points in IL on or west of a line beginning at the IL-IN State line, and extending along I Hwy 64 to junction IL Hwy 1, then along IL Hwy 1 to junction IL Hwy 130, then along IL Hwy 130 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IL Hwy 127, then along IL Hwy 127 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 29, then along IL Hwy 29 to junction IL Hwy 88, then along IL Hwy 88 to junction IL Hwy 78, then along IL Hwy 78 to the WI-IL State line; Evansville, IN; and points in that part of KY on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 68, then along TN Hwy 68 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 60, then along TN Hwy 60 to the GA-TN State line.

(3) From points in NC on or east of I Hwy 85 to points in TX, AR, OK, MO, KS, NE, points in MN on, west or north of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63 to the Mississippi River at or near Lake City, MN, points in IA on or west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line.

(4) From points in that part of NC on or east of a line beginning at the NC-SC State line, and extending along I Hwy 85 to junction U.S. Hwy 52, then along U.S. Hwy 52 to the VA-NC State line, to points in TX, AR, OK, KS, NE, MO; points in MN on or west of a line beginning at the MN-IA State line and extending along I Hwy 35 to junction U.S. Hwy 14, then along U.S. Hwy 14 to junction U.S. Hwy 71, then along U.S. Hwy 71 to junction I Hwy

94, then along I Hwy 94 to junction U.S. Hwy 59, then along U.S. Hwy 59 to the international boundary line; points in IA on or west of a line beginning at the IA-MN State line, and extending along U.S. Hwy 65 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 63, then along U.S. Hwy 63 to junction U.S. Hwy 34, then along U.S. Hwy 34 to the IL-IA State line; points in IL on or west of a line beginning at the IL-IA State line, and extending along IL Hwy 94 to junction U.S. Hwy 24; then along U.S. Hwy 24 to junction IL Hwy 125, then along IL Hwy 125 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 140, then along IL Hwy 140 to junction IL Hwy 127, then along IL Hwy 127 to junction IL Hwy 15, then along IL Hwy 15 to junction IL Hwy 142, then along IL Hwy 142 to junction IL Hwy 1, then along IL Hwy 1 to the IL-KY State line; points in Marshall, Calloway, McCracken, Graves, Hickman, Carlisle, and Ballard Counties, KY; points in TN on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 641 to junction TN Hwy 69, then along TN Hwy 69 to junction I Hwy 40, then along I Hwy 40 to junction TN Hwy 96, then along TN Hwy 96 to junction Alternate U.S. Hwy 41, then along Alternate U.S. Hwy 41 to junction TN Hwy 55, then along TN Hwy 55 to junction TN Hwy 8, then along TN Hwy 8 to junction U.S. Hwy 127, then along U.S. Hwy 127 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line.

(5) from points in NC on, east or south of a line beginning at the NC-TN State line, and extending along U.S. Hwy 64 to junction U.S. Hwy 441, then along U.S. Hwy 441 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction I Hwy 77, then along I Hwy 77 to VA-NC State line, to points in TX, AR, OK, KS, NE; that part of IA on and west of a line beginning at the IA-IL State line, and extending along U.S. Hwy 136 to junction U.S. Hwy 218, then along U.S. Hwy 218 to junction U.S. Hwy 34, then along U.S. Hwy 34 to junction U.S. Hwy 63, then along U.S. Hwy 63 to junction IA Hwy 163, then along IA Hwy 163 to junction IA Hwy 117, then along IA Hwy 117 to junction I Hwy 80, then along I Hwy 80 to junction IA Hwy 141, then along IA Hwy 141 to junction U.S. Hwy 59, then along U.S. Hwy 59 to the IA-MN State line; points in MO on, north or west of a line beginning at the MO-AR State line, and extending along U.S. Hwy 67 to the Mississippi River at or near Barnhart, MO; points in TN on or west of U.S. Hwy 45 and U.S. Hwy 45E.

(6) From all points in NC to points in AR, OK, TX, KS, NE; points in IA on or west of a line beginning at the IA-MN State line, and extending along U.S. Hwy 71 to junction U.S. Hwy 20, then along U.S. Hwy 20 to junction U.S. Hwy 169, then along U.S. Hwy 169 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MO State line; points in that part of MO on or west of a line beginning the MO-IA State line, and extending along MO Hwy 15 to junction U.S. Hwy 36, then along U.S. Hwy 36 to junction U.S. Hwy 61, then along U.S. Hwy 61 to junction MO Hwy 94, then along MO Hwy 94 to junction MO Hwy 47, then along MO Hwy 47 to junction U.S. Hwy 67, then along U.S. Hwy 67 to the AR-MO State line; and that part on or west of U.S. Hwy 45 and U.S. Hwy 45E.

(II) *Meats, meat products and meat by-products* as described in section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except commodities in bulk), in vehicles equipped with mechanical refrigeration, (1) from Goldsboro, NC to points in TX, AR, OK, MO, KS, NE, IA, MN, that part of WI on or west of a line beginning at the IA-WI State line, and extending along U.S. Hwy 61 to junction U.S. Hwy 53, then along U.S. Hwy 53 to Lake Superior at or near Superior, WI; points in IL on or west of a line beginning at the IL-IN State line, and extending along I Hwy 64 to junction IL Hwy 1, then along IL Hwy 1 to junction Il Hwy 130, then along IL Hwy 130 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IL Hwy 127, then along IL Hwy 127 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 29, then along IL Hwy 29 to junction Il Hwy 88, then along IL Hwy 88 to junction IL Hwy 78, then along IL Hwy 78 to the WI-IL State line; Evansville, IN; and points in that part if KY on or west of U.S. Hwy 231; points in TN on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 231 to junction U.S. Hwy 70, then along junction U.S. Hwy 70 to junction TN Hwy 68, then along TN Hwy 68 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 60, then along TN Hwy 60 to the GA-TN State line.

(2) From Siler City, NC to points in TX, AR, OK, MO, KN, NE; points in MN on, west or nothe of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63 to the Mississippi River at or near Lake City, MN; points in IA on west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junciton U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line.

(3) From Salisbury, NC, to points in TX, AR, OK, MO, KS, NE, IA, MN, that part of WI on or west of a line beginning at the IA-WI State line, and extending along U.S. Hwy 61 to junction U.S. Hwy 53, then along U.S. Hwy 53 to Lake Superior at or near Superior, WI; points in IL on or west of a line beginning at the IL-IN State line, and extending along IL Hwy 64 to junction IL Hwy 1, then along IL Hwy 1 to junction IL Hwy 130, then along IL Hwy 130 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction IL Hwy 127, then along IL Hwy 127 to junction U.S. Hwy 66, then along U.S. Hwy 66 to junction IL Hwy 29, then along IL Hwy 29 to junction IL Hwy 88, then along IL Hwy 88 to junction IL Hwy 78, then along IL Hwy 78 to the WI-IL State line; Evansville, IN; and points in that part of KY on or west of U.S. Hwy 231; points in TN on or west of a line beginning at the KY-TN State line, and extending along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 68, then along TN Hwy 68 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction TN Hwy 60, then along TN Hwy 60 to the GA-TN State line.

(III) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from Charlotte, NC, to points in TX, AR, OK, MO, KS, NE; points in MN on, west or north of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63 to the Mississippi River at or near

Lake City, MN; points in IA on or west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line, and points in AL, LA, MS, and points in FL on, south, or west of a line beginning at the FL-GA State line, and extending along FL Hwy 53 to junction FL Hwy 51, then along FL Hwy 51 to junction U.S. Hwy 19, then along U.S. Hwy 19 to junction FL Hwy 44, then along FL Hwy 44 to junction FL Hwy 48, then along FL Hwy 48 to junction FL Hwy 469, then along FL Hwy 469 to junction FL Hwy 50, then along FL Hwy 50 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction U.S. Hwy 441, then along U.S. Hwy 441 to junction I Hwy 95, then along I Hwy 95 to junction FL Hwy 706, then along FL Hwy 706 to the Atlantic Ocean at or near Jupiter, FL.

(IV) *Fresh and cured meats, and such commodities* as are classified as Dairy Products in the report in Modification of Permits—Packing House Products, 46 MCC 23, and fresh fruits and vegetables (except in bulk), in vehicles equipped with mechanical refrigeration, (1) from points in NC on and west of U.S. Hwy 25 to points in GA on or west of a line beginning at the GA-AL State line, and extending along GA Hwy 20 to junction I Hwy 75, then along I Hwy 75 to junction I Hwy 16, then along I Hwy 16 to junction U.S. Hwy 23, then along U.S. Hwy 23 to junction FL-GA State line;

(2) From points in NC on or east of U.S. Hwy 17 to points in GA on or west of U.S. Hwy 19; (3) from points in NC on or east of U.S. Hwy 301 to points in GA on or west of a line beginning at the GA-FL State line, and extending along U.S. Hwy 27 to junction GA Hwy 45, then along GA Hwy 45 to junction GA Hwy 41, then along GA Hwy 41 to junction GA Hwy 85, then along GA Hwy 85 to junction US. Hwy 41, then along U.S. Hwy 41 to the TN-GA State line; (4) from points in NC on or east of U.S. Hwy 29 to points in GA on and north of U.S. Hwy 29 and on and west of U.S. Hwy 41; (5) from points in NC on or west of U.S. Hwy 29 to points in GA on and south of U.S. Hwy 29 and on and west of I Hwy 75; (6) from all points in NC to points in DeKalb, Clayton, Fulton, Cobb, Paulding, Douglas Counties, and points in Gwinnett County south of GA Hwy 20.

(V) *Pizza, salads, and sandwich spreads* (except in bulk), in vehicles equipped with mechanical refrigeration, from Greensboro, NC, to points in TX, AR, OK, MO, KS, NE; points in MN on, west or north of a line beginning at the IA-MN State line, and extending along U.S. Hwy 63, then along U.S. Hwy 63 to the Mississippi River at or near Lake City, MN, points in IA on or west of a line beginning at the IL-IA State line, and extending along IA Hwy 38 to junction U.S. Hwy 30, then along U.S. Hwy 30 to junction IA Hwy 150, then along IA Hwy 150 to junction U.S. Hwy 52, then along U.S. Hwy 52 to junction IA Hwy 9, then along IA Hwy 9 to junction U.S. Hwy 63, then along U.S. Hwy 63 to the IA-MN State line; points in IL on or west of a line beginning at the IA-IL State line, and extending along IL Hwy 92 to junction IL Hwy 192, then along IL Hwy 192 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction IL Hwy 140, then along IL Hwy 140 to junction U.S. Hwy 40, then along U.S. Hwy 40 to junction U.S. Hwy 51, then along U.S. Hwy 51 to junction U.S. Hwy 50, then along U.S. Hwy 50 to junction U.S. Hwy 45, then along U.S. Hwy 45 to junction IL Hwy 1, then along IL Hwy 1 to the KY-IL State line; points in KY on or west of a line beginning at the KY-IL State line, and extending along KY Hwy 91 to junction U.S. Hwy 68, then along U.S. Hwy 68 to junction U.S. Hwy 431, then along U.S. Hwy 431 to the KY-TN State line; and points in TN on or west of a line beginning at the KY-TN State line, and extending along TN Hwy 109 to junction TN Hwy 25, then along TN Hwy 25 to junction U.S. Hwy 231, then along U.S. Hwy 231 to junction U.S. Hwy 70, then along U.S. Hwy 70 to junction TN Hwy 111, then along TN Hwy 111 to junction TN Hwy 30, then along TN Hwy 30 to junction TN Hwy 60, then along TN Hwy 60 to the TN-GA State line. Restriction: The authority granted herein shall be subject to the right of the Commission, which is hereby expressly reserved, to impose such terms, conditions, or limitations in the future as it may find necessary in order to insure that carrier's operations shall conform to the provisions of Section 210 of the Act. (Gateway eliminated: Doraville (Atlanta) GA.)

MC 112304 (Sub-E617) (correction), filed July 11, 1978, published in the FEDERAL REGISTER issue of September 20, 1978, and republished, as corrected, this issue. Applicant: ACE DORAN HAULING & RIGGING CO., 1601 Blue Rock Street, Cincinnati, OH 45223. Representative: A. Charles Tell, Suite 1800, 100 East Broad Street, Columbus, OH 43215. *Structural steel and iron and steel angles, bars, channels, conduit, lath, piling, pipe, posts, rails, rods, roofing, tubing and wire in coils*, between points in Venango County, PA, on the one hand, and, on the other, points in VA. Limitation: The Certificate in MC 112304 (Sub-65) shall be of no further force and effect after August 9, 1980. (Gateway eliminated: Clarksburg, WV and 50 miles within Clarksburg, WV.)

NOTE.—The purpose of this republication is to correct the commodity description.

MC 114868 (Sub-E35), filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 North Nelson Street, Arlington, VA 22201. Representative: H. E. Newlon, Jr. (same as above.) *Household goods*, (1) Between points in NY east of a line begining at the NY-PA State line extending along NY Hwy 17 to junction NY Hwy 30, then along NY Hwy 30 to junction NY Hwy 85, then along NY Hwy 85 to junction NY Hwy 156, then along NY Hwy 156 to junction NY Hwy 146, then along NY Hwy 146 to junction U.S. Hwy 4, then along U.S. Hwy 4 to the NY-VT State line, on the one hand, and, on the other, points in IL south and west of a line beginning at the IL-IN State line extending along I Hwy 74 to junction IL Hwy 8, then along IL Hwy 8 to junction U.S. Hwy 34, then along U.S. Hwy 34 to the Mississippi River. (Gateway eliminated: Washington, DC, and points in KY within 125 miles of Nashville), (2) Between points in NY east of a line beginning at the NY-PA State line extending along I Hwy 81 to junction NY Hwy 7, then along NY Hwy 7 to junction NY Hwy 30, then along NY Hwy 30 to junction NY Hwy 8, then along NY Hwy 8 to junction U.S. Hwy 9, then along U.S. Hwy 9 to the United States-Canada international boundary line, on the one hand, and, on the other, points in OH south of I Hwy 70.

(Gateway eliminated: Washington, DC), (3) Between points in NY east of a line beginning at the NY-PA State line extending along NY Hwy 328 to junction NY Hwy 17, then along NY Hwy 17 to junction NY Hwy 13, then along NY Hwy 13 to junction I Hwy 81, then along I Hwy 81 to junction NY Hwy 173, then along NY Hwy 173 to junction NY Hwy 5, then along NY Hwy 5 to junction NY Hwy 46, then along NY Hwy 46 to junction NY Hwy 365, then along NY Hwy 365 to junction NY Hwy 26, then along NY Hwy 26 to the United States-Canada international bounday line, on the one hand, and, on the other, points in MO south of a line at the MO-IL State line extending along U.S. Hwy 60 to junction U.S. Hwy 65, then south along U.S. Hwy 65 to junction MO Hwy 14, then along MO Hwy 14 to junction U.S. Hwy 60, then along U.S. Hwy 60 to the MO-OK State line. (Gateways eliminated: Washington, DC and points in KY within 125 miles of Nashville.) (4) Between points in NY, on the one hand, and, on the other, points in NC. (Gateways eliminated: Washington, DC, points in TN and KY within 125 miles of Nashville.) (5) Between points in NY south of a line beginning at the NY-PA State line extending along NY Hwy 52 to junction U.S. Hwy 209 to junction I Hwy 87, then along I Hwy 87 to junction I Hwy 90, then along I Hwy 90 to the NY-MA State line, on the one hand, and, on the other, points in IN. (Gateways eliminated: Washington, DC, and points in KY within 125 miles of Nashville.) (6) Between points in NY, on the one hand, and, on the other, points in KY. (Gateways eliminated: Washington, DC and points in KY within 125 miles of Nashville.) (7) Between points in NY, on the one hand, and, on the other, points in MD east of a line beginning at the MD-WV State line extending along MD Hwy 34 to junction MD Hwy 66, then along MD Hwy 66 to the MD-PA State line. (Gateway eliminated: Washington, DC.)

MC 114868 (Sub-E43) filed August 1, 1975. Applicant: NEWLON'S TRANSFER & STORAGE, 1511 North Nelson Street, Arlington, VA 22201. Representative: H. E. Newlon, Jr. (same as above.) *Household goods,* (1) between points in TN, on the one hand, and, on the other, points in CT (Gateways: points in TN and KY within 125 miles of Nashville, and Washington, DC); (2) between points in TN, on the one hand, and, on the other, points in Washington, DC (Gateways: points in TN within 125 miles of Nashville); (3) between points in TN, on the one hand, and, on the other, points in DE (Gateway: points in TN within 125 miles of Nashville); (4) between points in TN, on the one hand, and, on the other, points in GA (Gateway: points in AL); (5) between points in TN, on the one hand, and, on the other, points in IL (Gateways: points in TN and KY within 125 miles of Nashville); (6) between points in TN, on the one hand, and, on the other, points in IN (Gateways: points in TN and KY within 125 miles of Nashville); (7) between points in TN, on the one hand, and, on the other, points in MD (Gateway: points in TN within 125 miles of Nashville); (8) between points in TN, on the one hand, and, on the other, points in MA (Gateways: points in TN and KY within 125 miles of Nashville); (9) between points in TN, on the one hand, and, on the other, points in MI (Gateway: points in KY within 125 miles of Nashville); (10) between points in TN, on the one hand, and, on the other, points in MN (Gateways: points in TN and KY within 125 miles of Nashville); (11) between points in TN, on the one hand, and, on the other, points in MS (Gateway: points in TN within 125 miles of Nashville); (12) between points in TN, on the one hand, and, on the other, points in NY (Gateways: points in TN and KY within 125 miles of Nashville); (13) between points in TN, on the one hand, and, on the other, points in NJ (Gateway: points in TN within 125 miles of Nashville); (14) between points in TN, on the one hand, and, on the other, points in OH (Gateway: points in TN within 125 miles of Nashville); (15) between points in TN, on the one hand, and, on the other, points in RI (Gateway: points in KY within 125 miles of Nashville and Washington, DC); (16) between points in TN, on the one hand, and, on the other, points in OK (Gateway: points in TN within 125 miles of Nashville); (17) between points in TN, on the one hand, and, on the other, points in SC (Gateway: points in TN within 125 miles of Nashville); (18) between points in TN, on the one hand, and, on the other, points in PA (Gateway: points in TN within 125 miles of Nashville); (19) between points in TN, on the one hand, and, on the other, points in TX (Gateway: points in TN within 125 miles of Nashville); (20) between points in TN, on the one hand, and, on the other, points in VA (Gateway: points in TN within 125 miles of Nashville); (21) between points in TN, on the one hand, and, on the other, points in WV (Gateway: points in TN within 125 miles of Nashville); (22) between points in TN, on the one hand, and, on the other, points in WI (Gateway: points in TN within 125 miles of Nashville).

MC 117574 (Sub-E119) (partial correction), filed July 16, 1975, published in the FEDERAL REGISTER issue of September 20, 1978, and partially republished, as corrected, this issue. Applicant: DAILY EXPRESS, INC., P.O. Box 39, Carlisle, PA 17013. Representative: E. S. Moore, Jr. (same as above). *Agricultural implements, agricultural machinery, tractors,* with or without attachments, *cranes, industrial and processing machinery,* and *attachments, accessories,* and *parts* of all of the above-described commodities, which are also heavy machinery or contractors equipment, and are also machinery, commodities which, because of size or weight, require the use of special equipment or special handling (except boats), or *self-propelled articles,* each weighing 15,000 pounds or more (when transported on trailers), * * * (14) between points in the NC counties of Durham, Granville, and Person, on the one hand, and, on the other, points in CA, ID, MT, NV, OR, ND, UT, WA, WY, and those points in AZ, on, north and west of a line beginning at the International Boundary line between United States and Mexico, at Nogales, AZ, and extending along U.S. Hwy 89, then north along U.S. Hwy 89 to junction AZ Hwy 77, then along AZ Hwy 77 to junction U.S. Hwy 666, then along U.S. Hwy 666 to the AZ-NM State line, points in CO on and northwest of a line beginning at the NM-CO State line along I Hwy 25, then north along I Hwy 25 to junction I Hwy 80, then east along I Hwy 80 to the CO-NE State line; points in NM on and northwest of a line beginning at the AZ-NM State line along I Hwy 40, then east along I Hwy 40 to junction U.S. Hwy 85, then northeast along U.S. Hwy 85 to junction U.S. Hwy 64, then northeast along U.S. Hwy 64 to junction I Hwy 25, then north along I Hwy 25 to the NM-CO State line; points in OH described in (10) above; points in AZ, MN, NE, and SD described in (13) above. (Gateways eliminated: Waynesboro and Stitz, PA.)

NOTE.—The purpose of this partial republication is to add the parts of the destination State of AZ, previously omitted. The remainder of this letter-notice remains as previously published.

MC 123407 (Sub-E625), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Compostion board, materials and accessories used in the installation of composition board, and ceiling tile* (except lumber, commodities in bulk, and commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail or air, from points in WA to points in ME, NH, VT, MA, RI, CT, NY, NJ, WV, MD, DE, DC, VA, NC, and SC. (Gateway eliminated: Dubuque, IA.)

MC 123407 (Sub-E626), filed July 25, 1978.

Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Plastic pipe and plastic products* (except commodities in bulk and commodities requiring special equipment), in containers or in trailers, having an immediately prior or subsequent movement by water, water-rail, or by air, from points in UT and points in NV north of I Hwy 80, to points in KS on and east of a line beginning at the KS-NE State line extending along U.S. Hwy 81 to Wichita, than along I Hwy 35 to the KS-OK State line, and points in OK on and east of I Hwy 35. Restriction: The authority granted herein is restricted against the transportation of oilfield commodities as *described in Mercer Extension—Oilfield Commodities*, 74 M.C.C. 459, and further restricted against the transportation of pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells. (Gateway eliminated: Hastings, NE.)

MC 123407 (Sub-E627), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Composition board, materials and accessories used in the installation of composition board and ceiling tile* (except lumber, commodities in bulk and commodities requiring special equipment), in containers or in trailers having an immediately prior or subsequent movement by water, or by water-rail or by air, from points in OR to points in ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, DC, WV, VA, NC and SC. (Gateway eliminated: Dubuque, IA.)

MC 123407 (Sub-E628), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Hwy 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Plastic pipe and plastic products* (except commodities in bulk and commodities requiring special equipment) in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by water, from points in CA south of I Hwy 80, to points in KS on and west of a line beginning at the KS-NE State line extending along U.S. Hwy 183 to Stockton, then along U.S. Hwy 24 to junction U.S. Hwy 81, then along U.S. Hwy 81 to Salina, then along I Hwy 70 to the KS-MO State line. Restriction: The authority granted herein is restricted against the transportation of oilfield commodities as described in *Mercer Extension—Oilfield Commodities*, 74 M.C.C. 459, and further restricted against the transportation of pipe incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells. (Gateway eliminated: Hastings, NE.)

MC 123407 (Sub-E629), filed July 25, 1978. Applicant: SAWYER TRANSPORT INC., South Haven Square, U.S. Highway 6, Valparaiso, IN 46383. Representative: Richard L. Loftus (same as above). *Windows, doors, building woodwork, and materials and accessories used in the installation thereof* (except commodities in bulk and commodities because of size or weight require the use of special equipment or special handling), in containers or in trailers, having an immediately prior or subsequent movement by water, or by water-rail, or by air, from points in Scotland, Adair, Linn, Livingston, Carroll, Ray, and Jackson Counties MO, to points in MI, NY, VT, NH, ME, MA, CT, RI and PA. (Gateway eliminated: Dubuque, IA.)

By the Commission.

H.G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-31969 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Notice No. 207]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connnection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 11722 (Sub-58TA), filed September 14, 1978. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98901. Representative: Charles C. Flower, 303 E. "D" Street, Suite 2, Yakima, WA 98901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty cans, can ends and can manufacturing materials and supplies*, from Richmond, CA to Bellevue, Seattle, Spokane, Tumwater and Vancouver, WA, and Portland, OR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Crown Cork & Seal Co., Inc., 9300 Ashton Road, Philadelphia, PA 19136. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

MC 13250 (Sub-141TA), filed September 18, 1978. Applicant: J. H. ROSE TRUCK LINE, INC., 2800 North Loop West, P.O. Box 16190, Houston, TX 77022. Representative: Robert J. Birnhaum, 500 West Sixteenth Street, P.O. Box 1945, Austin, TX 78767. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A)(1) *Water pollution control equipment*, (2) *irrigation equipment*, (3) *parts and accessories* for (1) and (2) above, and (4) *materials, equipment and supplies* used in the installation of the commodities named in (1), (2) and (3) above, from the facilities of Davco-Defiance, Division of Davis Water and Waste Industries, Inc., at or near Thomasville, GA to all points in the United States (except AK and HI); (B) Equipment, materials and supplies

(except in bulk) used in the manufacture and distribution of commodities named in (A) above from all points within the United States (except AK and HI) to the facilities of Davco-Defiance, Division of Davis Water and Waste Industries, Inc., at or near Thomasville, GA, for 180 days. Supporting shipper: Davco-Defiance Div. of Davis Water & Waste Industries, Inc., 1828 Metcalf Avenue, Thomasville, GA 31792. Send protests to: District Supervisor John F. Mensing, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 30618 (Sub-15TA), filed September 18, 1978. Applicant: HENRY V. RABOUIN, Richmond Road, Hancock, MA 01237. Representative: Sherwood Guernsey, II, 57 Wendell Avenue, Pittsfield, MA 01201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Talc Tailings* in bulk from West Windsor, Ludlow and Gassetts, VT to points in NJ, that portion of PA south of Interstate Route 76 and east of Route 15, that portion of NY south of Interstate Route 84 and that portion of CT west of Interstate Route 91, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Windsor Minerals, Inc., P.O. Box 680 Windsor, VT 05089. Send protests to: David M. Miller, District Supervisor, 436 Dwight Street, Room 338, Springfield, MA 01103.

MC 51146 (Sub-642TA), filed September 18, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese, cheese products, including synthetic cheeses, and materials, equipment and supplies* used in their manufacture from points in WI to points in Barry, Jasper, Lawrence and Newton Counties, MO and points in OK and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: L. D. Schreiber Cheese Co., Inc., P.O. Box 610, Green Bay, WI 54305 (Robert Buchberger). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 51146 (Sub-643TA), filed September 18, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic containers* from Kentwood and Grand Rapids, MI to Dothan, AL; Abilene, San Antonio, Houston, Corpus Christi and Longview, TX; New Orleans, LA; Norfolk, NE; and Sterling, CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Continental Plastics Industries, 633 Third Avenue, New York, NY 10017 (LaVerne W. Myers). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 E. Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 52704 (Sub-182TA), filed September 14, 1978. Applicant: GLENN MCCLENDON TRUCKING CO. INC., P.O. Drawer H, Lafayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid cleaning and bleaching compounds* (except in bulk), from the facilities of National Marketing Associates, Inc., at or near New Orleans, LA to Birmingham and Montgomery, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: National Marketing Associates, Inc., P.O. Box 1554 Gretna, LA 70053. Send protests to: Mabel E. Hoston, Transportation Assistant, Bureau of Operations, I.C.C., room 1616, 2121, Birmingham, AL 35203.

MC 59856 (Sub-83TA), filed September 18, 1978. Applicant: SALT CREEK FREIGHTWAYS, P.O. Box 39, 3333 W. Yellowstone Hwy, Casper, WY 82601. Representative: John R. Davidson, Room 805 Midland Bank Building, Billings, MT 59101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum products, materials and supplies* used in the installation thereof, from Heath, MT, including the plant site of U.S. Gypsum Co. at Heath, MT to all points in the State of CO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United States Gypsum Co., 525 South Virgil Avenue, Los Angeles, CA 90020. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission Room 105 Federal Building and Court House, 111 South Wolcott, Casper, WY 82601.

MC 61231 (Sub-131TA), filed September 19, 1978. Applicant: EASTER ENTERPRISES, INC., d.b.a. ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glazed tile* from East Canton, OH to points in IA, KS, MO, NE, ND and SD and points in IL located west of U.S. Hwy 51, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Sioux City Brick & Tile, 222 Commerce Building, Sioux City, IA 51102. Building Products Division, S-G Metals Industries, Inc., Kansas City, KS 66110. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 66807 (Sub-6TA), filed September 14, 1978. Applicant: MANUFACTURERS EXPRESS, INC., 294 Kimberly Avenue, New Haven, CT 06519. Representative: Gerald A. Joseloff, 80 State Street, Hartford, CT 06103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* (except in bulk), from Merrimack, NH to West Haven, CT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Dichello Distributors, 11 Frontage Road, West Haven, CT. Send protests to: J. D. Perry, Jr., Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06101.

MC 91306 (Sub-17TA), filed September 18, 1978. Applicant: JOHNSON BROTHERS TRUCKERS, INC., P.O. Box 530, Elrin, NC 28621. Representative: William E. Butner, 27 1st Avenue, NE, Hickory, NC 28601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furniture parts and returned furniture shipments* from the stated destinations to the stated origins from NC, to points in CT, MA, RI, VT, NH, and ME, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 7 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, 800 Briar Creek Road, Room CC516, Charlotte, NC 28205.

MC 112801 (Sub-210TA), filed September 14, 1978. Applicant: TRANS-

PORT SERVICE CO., 2 Salt Creek Lane, Hinsdale, IL 60521. Representative: Gene Smith, 2 Salt Creek Lane, Hinsdale, IL 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid propellant*, in bulk, in tank vehicles, from the facilities of Phillips Petroleum Co., at East Chicago, IN to Butler, PA and Franklin, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Phillips Petroleum Co., 222 East Ogden Avenue, Hinsdale, IL 60521, Paul H. Green-Regional Distribution Director. Send protest to: Lois M. Stahl, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, Room 1386, 219 South Dearborn Street, Chicago, IL 60604.

MC 115162 (Sub-428TA), filed September 14, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate, P.O. Drawer 500, Evergreen, AL 36401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Woodpulp*, in bulk, in tank vehicles, from Monroe County, AL to Mobile, AL in interstate or foreign commerce, for 180 days. Supporting shipper: Alabama River Pulp Co., P.O. Box 628, Monroeville, AL 36406. Send protest to: Mabel E. Holston, Transportation Assistant Bureau of Operations, I.C.C., Room 1616, 2121 Building, Birmingham, AL 35203.

MC 115311 (Sub-310TA), filed September 18, 1978. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Limestone*, from Anderson TN to Atlanta, GA and (2) *Fluorspar* from Rosiclare, IL to Atlanta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Armstron Glass Co., 1320 Elmsworth, Atlanta, GA. Send protest to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 W. Peachtree Street, N.W. Room 300, Atlanta, GA 30309.

MC 115730 (Sub-55TA), filed September 14, 1978. Applicant: THE MICKOW CORP., 531 SW 6th Street, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel articles*, from Union, MO to points in CO, IA, IL, IN, MI, MN, NE, ND and SD. (2) *Materials, equipment and supplies* used in the manufacture and processing of iron and steel articles from points in CO, IA, IL, IN, MI, MN, NE, ND and SD to Union, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Maverick Tube Corp., 311 North Lindbergh, St. Louis, MO 63141. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 116254 (Sub-213TA), filed September 14, 1978. Applicant: CHEMHAULER, INC., P.O. Box 339, Florence, AL 35630. Representative: Hampton M. Mills, 118 E. Mobile Plaza, Florence, AL 35630. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, glassware and glass cullet*, from Lancaster, OH, Jacksonville, FL, Connellsville, PA and Winchester, IN to points in and east of MN, IA, MO, AR, and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Anchor Hocking Corp., 109 North Broad Street, Lancaster, OH 43130. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, I.C.C., Room 1616, 2121 Building, Birmingham, AL 35203.

MC 118806 (Sub-66TA), filed September 18, 1978. Applicant: ARNOLD BROS. TRANSPORT, LTD., 200 Lagimodiere Boulevard, Winnipeg, Manitoba, Canada R2J 3K 4. Representative: Bernard J. Kompare, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pesticides* (consisting of agricultural insecticides, fungicides and/or herbicides) from WY and Rockford, IL, to the ports of entry on the International Boundary Line between the U.S. and Canada at or near Pembina, ND and Noyes, MN, restricted to traffic moving in foreign commerce destined to points in the Canadian provinces of Manitoba, Saskatchewan and Alberta, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mobay Chemical Corp., Chemagros Agricultural Chemical Div., P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 118959 (Sub-178TA), filed September 18, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Representative: Robert M. Pearce, P.O. Box 1899, Bowling Green, KY 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic and plastic articles, tin and tin articles, iron and steel articles, rubber and rubber articles, resins* (except commodities in bulk), Between the facilities of Standard Container Co. at or near Homerville, GA, Longwood, FL, Jacksonville, FL, Valdosta, GA and Picayune, MS, on the one hand, and on the other, points in NC, GA, FL, NJ, KY, IA, TN, OH, IN, PA, SC, TX, AL, IL, CT, RI, MO, MS, NB, OK, KS, WV, VA, MA, AR, AZ, MI and MN, for 180 days. Supporting shipper: Standard Container Co., Hwy 84, West, Homerville, GA 31634. Send protests to: Acting District Supervisor P. E. Binder, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

MC 119789 (Sub-518TA), filed September 18, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: Lewis Coffey, P.O. Box 226188, Dallas, TX 75266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs and medicines*, from New Brunswick, Somerset and South Plainfield and North Brunswick, NJ to Chicago, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: E. R. Squibb & Sons, Inc., Georges Road, New Brunswick, NJ 08903. Send protests to: Opal M. Jones, Transporting Assistant, Interstate Commerce Commission, 1100 Commerce St., Rm. 13C12, Dallas, TX 75242.

MC 119988 (Sub-160TA), filed September 18, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., P.O. Box 1384, Lufkin, TX 75901. Representative: Clayte Binion, 1108 Continental Life Building, Ft. Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gas and electrical appliances and parts, materials supplies and equipment* used in the manufacture distribution or repair thereof, from the facilities of Whirlpool Corporation at Evansville, IN to points in OK, AR, TX, LA, MS, AL, GA, FL, SC and NC, for 180 days. Supporting shipper: Whirlpool Corp., U.S. 33, North, Benton Harbor, MI 49022. Send protests to: District Supervisor, John F.

Mensing, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

MC 120618 (Sub-No. 14TA), filed September 14, 1978. Applicant: SCHALLER TRUCKING CORP., 5700 West Minnesota Street, Indianapolis, IN 46241. Representative: John R. Bagileo, 700 World Center Building, 918 16th Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commercial paper, documents, records, and written instruments* (except currency and negotiable instruments) as are usual in the business of banks, banking institutions, data processors, financial institutions, and insurance companies, between points located in Allen, Clark, Crawford, Daviess, Dubois, Elkhart, Floyd, Gibson, Greene, Harrison, Howard, Jackson, Jefferson, Knox, Lawrence, Madison, Martin, Morgan, Orange, Perry, Pike, Posey, Scott, Spencer, St. Joseph, Sullivan, Switzlerland, Vanderburg, Vigo, Warrick, and Washington Counties, IN, and the commercial zone of Louisville, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Federal Reserve Bank of St. Louis, P.O. Box 442, St. Louis, MO 63166. Farmers State Bank, Sullivan, IN. The American National Bank, Vincennes, IN. Peoples Trust Co., Linton, IN, Dubois County Bank, Jasper, IN. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 121569 (Sub-1TA), filed August 11, 1978, and published in the FEDERAL REGISTER issue of October 12, 1978, and republished as corrected this issue. Applicant: GATOR FREIGHTWAYS, INC., 114 W. Madison St., Starke, FL 32901. Representative: James E. Wharton, Suite 811, Metcalf Bldg., 100 S. Orange Ave., Orlando, FL 32801. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment over regular routes as follows: Between Jacksonville and FL-GA State line via State Road 15 (U.S. 1) and State Road 5 (U.S. 170 serving all intermediate points) Between Jacksonville and Miami via State Road (U.S. 1) serving all intermediate points and the off-route points in Allenhurst, Artesia, Canaveral, Canaveral Beach, Canaveral Harbor, Cocoa Beach, Courtney Fellsmere, Georgiana, Indiatlantic, Jesen Beach, Lotus, Melbourne Beach, Patrick Air Force Base, Port Canaveral, Shiloh, Titusville Beach, Tropic, and Wilson. Between Bunnell and Flagler Beach via State Road 100 serving intermediate points and the off-route points of the Lehigh Portland Cement Co., Inc., Bunnell to junction of State Road 11 and U.S. 92 and Deland via State Roads 11 and 15. Between West Palm Beach and the junction of State Roads 7 and 84 west of Ft. Lauderdale via State Roads 80 and 7. Between Ft. Lauderdale and Miami via State Roads 84 and 7. Between Miami and Deerfield Beach via State Roads 7 and 810. Between Deerfield Beach and West Palm Beach on State Roads 808 and 809 (200) as an alternate to State Road 5. Between Daytona Beach and St. Petersburg via State Road 600 or U.S. 92 by way of Deland, Sanford, Orlando, Kissimmee, Haines City, Lakeland, Tampa, and Gandy Bridge. Between Tampa and St. Petersburg by way of Safety Harbor on State Roads 580 and 593 and U.S. 19. Between Orlando and Indian River City over State Road 50. Between Orlando and Kissimmee via State Road 527 as an alternate route, Between Orlando, Mount Dora, Tavares, Eustis, Leesburg, Groveland, C Clermont, Winter Garden and Orlando over U.S. 441 and State Roads 19, 44, 33 and 50. Between Orlando and Geneva via State Roads 418 and 426. Between Kissimmee and Melbourne via State Road 500. Between Haines City and Auburndale via State Road 544 to Winter Haven and 559 to Auburndale serving Eagle Lake and Eloise as off-route points to Winter Haven. Between Tampa and Plant City via State Road 574 as an alternate route. Between Lakeland and Haines City by way of Bartow via U.S. 98, State Road 60 and U.S. 27, serving intermediate points, including route between Tampa and Clearwater via State Road 60 by way of Davis Causeway. Between Tampa, St. Petersburg and Pass-A-Grille via States Roads 580, 584, 590, 55, 689, 694, 699 and County Roads to Dunedin, Largo, Pasedna, Gulport, Pass-A-Grille and Pinellas Park. Between Tampa and Mantee via State Road 43 (U.S.41) serving intermediate points and the off-routes points of Wimouma. Between Tampa and Sarasota via State Road 45 (U.S. 41) serving the intermediate and off-route points of Ruskin, Sun City Gillett, Palmetto, Gibsonton, Piney Point, Terra Ceia, Rubonia, Palma Sola, Bradenton, Cortez, Bradenton Beach, Oneco, Gates City, Fruitville, Willow Station, and Ellenton. Over East Sand Lake Road Running Westerly from a junction with U.S. 17 approximately 4 miles south of Orlando to Doctor Phillips, serving intermediate points between the junction of U.S 17 and East Sand Lake Road through and including Doctor Phillips, Florida. Between Haines City and Lake Placid via State Road 17, serving Lake Hamilton, Dundee, Lake Wales, Frostproof, Avon Park, and Sebring. Between Tampa and Arcadia via State Roads 60 and 33 (U.S. 17) serving Brandon, Hopewell, Mulberry, Pierce, Bradley Junction, Bartow, and Pembroke. Between Winter Haven and Dundee via State Road 542 with service to the off-route of Alturas and Connersville. Between Haines City and Lake Placid via State Road 25. Between Lake Wales and Junction of State Road 60 and the Kissimmee River via State Road 60, serving all intermediate points and off-route points within 4 miles of said junction; also from Frostproof to the intersection of State Roads 630 and 60 via State Road 630, serving all intermediate points including Indian Lake Estates. Serving the General Portland Cement Co. located nineteen (19) miles west of Miami, on Krome Avenue, 3½ miles south of Tamiami Trail, and the Lehigh Portland Cement Co., located approximately seven (7) miles west of Miami International Airport and 2 miles north of Tamiami Trail as off-route points in connection with the carrier's authority to serve Miami, FL. Serving Pratt and Whitney Division of United Aircraft, located approximately 8 miles west of Jupiter as an off-routes point in connection with the carrier's present authority. Alternate route between Okeechobee and Jupiter via State Roads Nos. 7 to and 706 by way of Indiantown; also, between Indiantown and U.S. 1 via extention of State Road 710. Between Sarasota and Naples, using U.S. Hwy 41, serving no intermediate points and using Interstate 95 and FL State Road 84 as an alternate route for operating convenience only, with right of joinder (or tacking) to all points in Connecticut with presently authorized routes. Between Miami on the one hand and Florida City on the via U.S.Hwy 1, State Road 826, and FL Turnpike, serving all intermediate points and also serving all points on and east of State Road 27 as off-route points. The following described authority shall be for closed door and operating convenience only, as follows: Between Lebannon Station and Dunedin via State Road 55 (U.S. 19), with closed doors. Between junction of State Road 55 (U.S. 19), State Road 700 and Brooksville via State Road 700 with closed doors. From junction of U.S. 1 and State 1 and State Road A1A near Jupiter, over State Road A1A to Lake Park; then from Lake Park and also from intersection of county roads with State Road A1A over county roads to intersection with State S-809 and then over State Road S-809 to intersection with State Road 80 (at a point about 4 miles west of West Palm

Beach) and return over same routes as an alternate route for operating convenience serving no intermediate points. From the intersection of State Road 60 and the Kissimmee River via State Road 60 to Vero Beach and return over the same route, serving no intermediate points, as an alternate route for operating convenience.

(a) Between Jacksonville and Deland via U.S. 17. (b) Between Bunnell and Lake City via State Road 100. (c) Between Holopaw and Miami via U.S. 441 and U.S. 27 by way of South Bay. (d) Between West Palm Beach and Belle Glade via State Road 80. (e) Between Tampa and Waldo via U.S. 301. (f) Between Lakeland and Dade City via U.S. 98. (g) Between Leesburg and Inverness via State Road 44. (h) Between Okahumpka and Floral City via State Road 48. (i) Between Leesburg and Williston via U.S. 27. (j) Between Williston and Lebanon Station via State Road 121, with closed doors at all intermedate points and Belle Glade, Dade City, Floral City, Inverness, and Waldo. Between Cocoa and junction of State Roads 50 and 520 (near Bithlo) via State Road 520 as an alternate route for operating convenience only. Between junction of State Roads 24 and 121 (near Gainesville, FL) via State Road 121 to Williston, FL, and return over the same route, serving no intermediate points. Between Canal Point and junction of U.S. 98 and U.S. 441 via U.S. 98, serving no intermediate points and for operating convenience only. Between Okeechobee, FL, and Sebring, FL, via U.S. 98 to junction with U.S. 27; then via U.S. 27A to Sebring, serving no intermediate points and return over the same route. Between Avon Park, FL, via State Road 64 to junction with U.S. 301, serving no intermediate points, and return over the same route. Between Starke, FL, and Tampa, FL, via State Road 24, from Starke to Archer and State Road 45 (U.S. 41) from Archer to Tampa, serving no intermediate points, and return over the same route, as an alternate route for operating convenience only, and with right of joinder at all points in connection with presently authorized routes. Between Miami, FL and Parrish, FL, via U.S. 41 to junction with State Road 29, then via State Road 29 to junction with State Road Alternate 29 to junction with State Road 29 (north of Immokalee); then via State Road 29 to junction with State Road 82; then via State Road 82 to junction with unnumbered road (near Ft. Myers), then via unnumbered road to Tice, FL, then from Tice via State Road 80 to junction with State Road 31; then via State Road 31 to Arcadia, FL; then via State Road 70 to junction with State Road 675; then via State Road 675 to junction with U.S. 301 at Parrish, FL, and return over same route, as an alternate route for operating convenience only. Between South Bay and Lake Placid, FL, via U.S. 27 and between west Frostproof, FL, and Fort Meade, via U.S. 98 as alternate routes for operating convenience only. Between Harrisburg, FL, and Punta Gorda, and return over same route, as an alternate route for operating convenience only. Between junction U.S. 27 and State Road 70 (near Childs) to junction State Road 72 and U.S. 41 (near Sarasota) via State Road 70 to Arcadia and State Road 72 to junction with U.S. 41 by way of Arcadia, serving Harrisburg, State Road 72 to junction with U.S. 41 by way of Arcadia serving Harrisburg, Bermont, Arcadia, junction U.S. 27 and State Road 70; junction State Road 70 and State Road 31, junction State Road 72 and U.S. 41, in connection with the above described routes for purpose of joinder only. No duplicating authority sought. Alternate route between Brooksville and Groveland over State Road 50. Service not authorized at intermediate points and serving Brooksville, FL, for purpose of joinder only, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 33 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: District Supervisor, G. H. Fauss, Jr., ICC, Bureau of Operations, P.O. Box 35008, 400 West Bay Street, Jacksonville, FL 32202. The purpose of this republication is to complete the territorial description as previously omitted.

MC 123254 (Sub-4TA), filed September 20, 1978. Applicant: PITZER BROTHERS, Box 633, Jeanette, PA 15644. Representative: Jeremy Kahn, Attorney-at-Law, Kahn and Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *malt and brewed beverages*, in containers, from Latrobe, PA to points in WV. Applicant has also filed *eta seeking up to 90 days of operating authority.* Supporting shippers: Latrobe Brewing Co., P.O. Box 350, Latrobe, PA 15650; J.C. Mensore Distributor, Inc., 134 North Bridge Street, New Martinsville, WV 26155; B & R Distributing Co., Commercial Street, Hinton, WV 25951; Block Diamond Distributing Co., Inc., 209 Dry Hill Road, Beckley, WV 25801; Golley Distributing Co., 420 4th Avenue, Parkersburg, WV 26101; Waldorf Distributing Co. Inc., 514 Main Street, Follansbee, WV; and Elkhorn Valley Grocery Co., North Fork, WV. Send protests to District Supervisor, John J. England, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 124078 (Sub-870TA), filed September 18, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes transporting: *Fertilizer & Fertilizer Materials* in bulk from the facilities of Land O'Lakes Agricultural Services Division, at or near Mason City, IA to points in MN, NE, ND, SD, and WI for 180 days. Supporting shipper: Land O'Lakes Agricultural Services Division, 2827 8th Avenue, South, Fort Dodge, IA 50501, Sue Johnson. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202. Applicant has also filed an underlying ETA seeking up to 90 days operating authority.

MC 124078 (Sub-873TA), filed September 18, 1978. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Slag*, (1) From the facilities of Calumite Co. at or near Warner, (Bucks Co.) PA to North Bergen, NJ; Mansfield, MA; Brockport and South Volney, NY, Fairmont, WV, Clarion PA, Hapeville, GA; (2) From Middletown, OH to Alton and Streator, IL and Charlotte, MI, Midway, NC, Hapeville, GA, Lakeland, FL, New Orleans, LA for 180 days. Supporting shipper: Owens-Illinois, Inc., 405 Madison Avenue, Toledo, OH 43666, Donald R. Krause. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 124211 (Sub-341TA), filed September 18, 1978. Applicant: HILT TRUCK LINE, INC., P.O. Box 988 DTS, Omaha, NE 68101. Representative: Thomas L. Hilt, P.O. Box 988 DTS, Omaha, NE 68101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic and rubber articles; lawn and garden accessories; and display racks*, from the facilities of Rubbermaid, Inc., at Wooster, OH to all points in the States of

AZ, CA, CO, ID, MT, NM, NV, OR, TX, UT, WA, and WY, for 180 days. Supporting shipper: Joseph J. Catalano, Traffic Manager (Home Products Div.), Rubbermaid Inc., 1147 Akron Road, Wooster, OH 44691. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 127651 (Sub-39TA), filed September 14, 1978. Applicant: EVERETT G. ROEHL, East 29th Street, P.O. Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard*, from Marinette, WI to Adrian, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Merillat Industries, Inc., 2075 West Beecher Road, Adrian, MI 49221. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 129991 (Sub-2TA), filed September 18, 1978. Applicant: JENSEN TRUCKING CO., INC., P.O. Box 402, American Fork, UT 84003. Representative: Jack L. Jensen, P.O. Box 402, American Fork, UT 84003. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Barite and refractories*, from Salt Lake City, UT, and Battle Mountain, NV, to points in UT, ID, MT, WA, OR, CA, NV, AZ, NM, TX, OK, CO and WY, under a continuing contract or contracts with Rocky Mountain Refractories, for 180 days. Supporting shipper: Rocky Mountain Refractories, 2436 West Andrew Avenue, Salt Lake City, UT 84104 (Craig A. Ostler, Secretary). Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 133221 (Sub-37TA), filed September 18, 1978. Applicant: OVERLAND CO., INC., 1991 Buford Highway, Lawrenceville, GA 30245. Representative: Alvin Button, 1644 Tullie Circle, NE., Suite 102, Atlanta, GA 30329. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum Stampings, plate or sheet*, from Palestine, TX to points in the United States (except AK & HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Fibreboard Corp., 55 Francisco Street, San Francisco, CA 94133. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW., Room 300, Atlanta, GA 30309.

MC 134142 (Sub-15TA), filed September 18, 1978. Applicant: BROWN REFRIGERATED EXPRESS, INC., P.O. Box 603, 21st and Sidney Street, Fort Scott, KS 66701. Representative: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Jasper County, MO to points in AR, CO, IA, IL, IN, KS, KY, LA, MI, MN, NE, OK, TN, TX and UT, for 180 days. Restriction: The operations herein are limited to a transportation service to be performed under a continuing contract or contracts with The Pillsbury Co. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Totino's Frozen Foods Division, The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 134599 (Sub-166TA), filed September 18, 1978. Applicant: INTERSTATE CONTRACT CARRIER CORP., 2156 West 2200 South, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crated office furniture, parts of office furniture, and related advertising, sales and promotional materials*, from the facilities of Steelcase, Inc., at or near Tustin, CA, to points in the United States (except AK, CA, HI, OR, and WA), under a continuing contract or contracts with Steelcase, Inc., for 180 days. Appliant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper (s): Steelcase, Inc., 11500 36th Street SE, Grand Rapids, MI 49508 (Phillip T. Catalano, Manager, Traffic Department.). Send protests to: District Supervisor, L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 134755 (Sub-155TA), filed September 18, 1978. Applicant: CHARTER EXPRESS, INC., 1959 East Turner Street, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tires, tubes, flaps, rubber products and materials* (except commodities in bulk), from Conshohocken, Frazer, Montgomeryville, Norristown and Royersford, PA, to points in AZ, AR, CO, ID, IA, MS, MO, NE, NM, OK, OR, TX and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Lee Tire & Rubber Co., Conshohocken, PA 19428. Send protests to: District Supervisor, John V. Barry, Room 600, 911 Walnut Street, Kansas City, MO 64106.

MC 135213 (Sub-15TA), filed September 18, 1978. Applicant: JOE GOOD d.b.a. GOOD TRANSPORTATION, P.O. Box 335, Lovell, WY 82431. Representative: John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Buildings, including prefabricated buildings, and building materials, equipment and supplies, including component parts and attachments*, between points in CO, ID, MT, SD, UT, and WY, for 180 days. Restrictions: (1) Restricted against the transportation of commodities in bulk, and (2) restricted to a transportation service to be performed under a continuing contract or contracts with Albert D. Wardell Supply Co. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Albert D. Wardell Supply Co., Box 349, Basin, WY 82410. Send protests to: Paul A. Naughton, Transportation Specialist, Interstate Commerce Commission, 105 Federal Building and Post Office, 111 South Wolcott, Casper, WY 82601.

MC 136343 (Sub-152TA), filed September 18, 1978. Applicant: MILTON TRANSPORTATION, INC., R.D. 1, Milton, PA 17847. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Printing paper*, from the facilities of Howard Paper Mills, Inc., at Dayton and Urbana, OH, to points in ME, VT, and VA, for 180 days. Restricted to the transportation of shipments originating at the named origins and destined to the named destinations. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Howard Paper Mills, Inc., West Church Street, Urbana, OH 43078. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

MC 136782 (Sub-3TA), filed September 18, 1978. Applicant: R. A. N. Trucking CO., P.O. Box 367, Wheatland, PA 16161. Representative: Daniel C. Sullivan, 10 South LaSalle Street, Chicago, IL 60603. Authority sought

to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products* as described in appendix I to the report in "Descriptions in Motor Carrier Certificates," 61 MCC 209 and 766 (except commodities in bulk), from the facilities of Dinner Bell Meats, Inc. at Cleveland, OH, to points in PA, NY, CT, RI, MA, VT, NJ, DE, MD, WV, VA, NC, SC, GA, and DC, for 180 days. Supporting shipper: Dinner Bell Meats, Inc., Transportation Manager, 2699 East 51st Street, Cleveland, OH. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 12th and Constitution Avenue, NW, Washington, DC 20423.

MC 136818 (Sub-41TA), filed September 18, 1978. Applicant: SWIFT TRANSPORTATION CO., INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 East McDowell Road, Phoenix, AZ 85008. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except Class A and B explosives, in containers, from Los Angeles, harbor zone, to Phoenix, AZ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Baskets International, P.O. Box 38663, Phoenix, AZ 85069. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, North First Avenue, Phoenix, AZ 85025.

MC 138157 (Sub-91TA), filed September 18, 1978. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpet strip, molding, staples, tools, nails, adhesives, sealants, solvents, stains, wood preservatives and materials, equipment and supplies* used in the manufacture, sales, and distribution of the above, from the facilities of Roberts Consolidated Industries, at Los Angeles County, CA, to points in and east of ND, SD, NE, KS, OK, and TX. Restriction: Restricted to traffic originating at the facilities of Roberts Consolidated Industries, Inc. at Los Angeles County, CA, for 180 days. Supporting shipper: Roberts Consolidated Industries, 600 North Baldwin Park Boulevard, City of Industry, CA 91749. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, A-422 Federal Building, 801 Broadway, Nashville, TN 37203. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 140033 (Sub-69TA), filed September 18, 1978. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, Winkle and Wells, Suite 1125, Exchange Park, Dallas, TX 75235. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery items* from the facilities of Liaf Confectionery, Inc., located at or near Chicago, IL, to Boston, MA, Baltimore, MD, New York, NY, Washington, DC, Buffalo, NY, Philadelphia, PA, Pittsburgh, PA, Cleveland, OH, Columbus, OH, Cincinnati, OH, and Hershey, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Leaf Confectionery, Inc., 1155 North Cicero Avenue, Chicago, IL 60651. Send Protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 140665 (Sub-38TA), filed September 18, 1978. Applicant: PRIME, INC., Rt. 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, plastic or plastic materials, and materials and supplies* used in the production or marketing of the above commodities (except commodities in bulk), from Harris County, TX, to points in AZ, CA, CO, MN, NM, OR, WA, UT, WY, NV, and ID, for 180 days. Supporting shipper: Diamond Shamrock Corp., 1100 Superior Avenue, Cleveland, OH 44114. Send protests to: District Supervisor, John V. Barry, Room 600, 911 Walnut, Kansas City, MO 64106.

MC 141124 (Sub-28TA), filed September 18, 1978. Applicant: EVANGELIST COMMERCIAL CORP., P.O. Box 1790, Wilmington, DE 19899. Representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, and commodities* used or useful in the manufacture and converting of paper and paper products (except in bulk), between Morris and St. Charles, IL, on the one hand, and, on the other, points in OH, KY, TN, GA, FL, SC, NC, VA, WV, MD, DC, DE, PA, NJ, RI, CT, MA, NH, VT, and ME, for 180 days. Supporting shipper: Diamond International, 733 Third Avenue, New York, NY 10017. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 141443 (Sub-6TA), filed September 18, 1978. Applicant: JOHN LONG TRUCKING, INC., 1030 Denton Street, Sapulpa, OK 74066. Representative: Dean Williamson, 280 National Foundation Life Building, 3535 NW. 58th Street, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, from points in CA to Oklahoma City, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hirst Imports, Inc., 1140 NW. 4th Street, Oklahoma City, OK 73106. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 211 NW. 3rd, Oklahoma City, OK 73102.

MC 141575 (Sub-13TA), filed September 18, 1978. Applicant: TFS, INC., Box 126, Rural Route 2, Grand Island, NE 68801. Representative: Gailyn L. Larsen, Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pepperoni*, from San Francisco, CA, to Salina, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: Oxford Cheese Corp., Roy Mitchell, President, North Hwy 46, Box 68, Oxford, NE. Send protests to: Max Johnston, District Supervisor, Interstate Commerce Commission, 285 Federal Building and U.S. Courthouse, 100 Centennial Mall North, Lincoln, NE 68508. Under a continuing contract or contracts with Oxford Cheese Corp.

MC 142559 (Sub-55TA), filed September 18, 1978. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Temporary authority for 180 days sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper products and equipment, materials and supplies used in the manufacture and distribution of paper and paper products* (except commodities in bulk) between Rittman and Mentor, OH, on the one hand, and, on the other, Kansas City, KS, and points in and east of MN, IA, MO, AR, and LA. Supporting shipper: Packaging Corp., Industrial St., Rittman, OH 44270. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, cleveland, OH 44199.

MC 144041 (Sub-22TA), filed September 18, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle NE., Atlanta, GA 30345. Representative: Kim G. Meyer, Watkins & Daniell P.C., Suite 1200, Peachtree Center Gas Light Tower, 235 Peachtree Street NE., Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lighting fixtures* from the facilities of Lithonia Lighting Division of National Service Industries, Inc., at Conyers and Cochran, GA, to points in and east of ND, SD, NE, KS, OK, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lithonia Lighting Division of National Service Industries, Inc., P.O. Box H, 1400 Lester Road, Conyers, GA 30207. Send protests to: Sara K. Davis, Transportation Assistant, 1252 West Peachtree Street NW., Room 300, Interstate Commerce Commission, Atlanta, GA 30309.

MC 144682 (Sub-6TA), filed September 18, 1978. Applicant: R. R. STANLEY, P.O. Box 95, Mesquite, TX 75149. Representative: Richard T. Churchill, Suite 106, 5001 South Hulen Street, Fort Worth, TX 76132. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods*, NOI; prepared dough, not frozen; cakes, cookies, rolls, frozen; icing paste, from plantsite of the Pillsbury Co., Denison, TX, to points in the States of NV, OR, and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Pillsbury Co., 3400 Texoma Drive, Denison, TX. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 145041 (Sub-37TA), filed September 18, 1978. Applicant: INTERMOUNTAIN TRANSPORT, INC., 1940 West Pacific Coast Highway, Long Beach, CA 90810. Representative: Milton W. Flack, 4311 Wilshire Boulevard, Los Angeles, CA 90010. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Common lime*, except in bulk from the facilities of the U.S. Lime Division, the Flintkote Co., located in Henderson, NV, to points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): U.S. Lime Division, the Flintkote Co., 4700 Ramona Boulevard, Monterey Park, CA 90030. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 145059 (Sub-4TA), filed September 19, 1978. Applicant: SPINELLI BROS. TRUCKING, INC., 55 South Wade Boulevard, Millville, NJ 08332. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs* (except commodities in bulk) from the facilities of the Green Giant Co. at Vineland, NJ, to points in CT, MA, ME, NH, NY, PA, RI, and VT for 180 days. Supporting shipper(s): Green Giant Co., Le Sueur, MN 56058. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, Room 204, 428 East State Street, Trenton, NJ 08608.

MC 145145 (Sub-1TA), filed September 18, 1978. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, Suite 110L, Kansas Credit Union Building, 1010 Tyler, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk from facilities of the Mapco Pipeline Terminal near Mocane, OK, to points in KS and TX, for 180 days. Supporting shipper: Olin Corp., P.O. Box 991, Little Rock, AR 72203. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 145368 (Sub-1TA), filed September 18, 1978. Applicant: TRANSWORLD TRANSPORT, 6065 Roswell Road NE., Suite 712 (P.O. Box 76876), Atlanta, GA 30328. Representative: Phillip C. Herrin, 6065 Roswell Road NE., Suite 712 (P.O. Box 76876), Atlanta, GA 30328. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hollow core prestressed concrete slabs* between points in AL, GA, NC, SC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: HDW Houdaille, 1655 Noah's Ark Road, Jonesboro, GA 30236. Send protests to: Sara K. Davis, Transportation Assistant, 1252 West Peachtree Street NW., Room 300, Interstate Commerce Commission, Atlanta, GA 30309.

MC 145381 (Sub-1TA), filed September 18, 1978. Applicant: S & P TRUCKING CO., INC. P.O. Box 1058, Fletcher, NC 28732. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dialysis supplies and equipment*, except in bulk, from (1) Cinnaminson and Delran, NJ, to Denver CO; Houston and Dallas, TX; New Orleans, LA; and points in CA and (2) from McAllen, TX, to Cinnaminson and Delran, NJ, and points in CA under a continuing contract or contracts with Erika, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Erika, Inc., 1 Erika Place, Rockleigh, NJ 07647. Send protests to: District Supervisor Terrell Price, Interstate Commerce Commission, 800 Briar Creek Road, Room CC516, Charlotte, NC 28205.

MC 145390TA, filed September 18, 1978. Applicant: WILLIAM SMITH, d.b.a. ALCOTT TRUCKING CO., 59 Alcott Road, Mahwah, NJ 07430. Representative: Joseph R. Siegelbaum, Esq., 17 Academy Street, Newark, NJ 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and containers* used in the manufacture and distribution thereof from Newark, NJ, and Cranston, RI, to Malone, NY, and Plattsburgh, NY, under a continuing contract or contracts with Malone Beverage, Inc., Lapans & Sons, for 180 days. Supporting shipper: Malone Beverage, Inc., 2 Boyer Avenue, Malone, NY 12953, Lapans & Sons, Beekmantown Road, Plattsburgh, NY. Send protest to: Joel Morrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 145396TA, filed September 18, 1978. Applicant: BOYCE HOWARD, d.b.a. BOYCE HOWARD TRUCKING, P.O. Box 165, Newport, AR 72112. Representative: Thomas J. Presson, Lot 27, River Bend Estates, Redfield, AR 72132. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel borings or turnings in bulk in dump trailers*, from Batesville and Pocohontas, AR, to all points and places in KY, TN, AL, MS, LA, TX, OK, KS, MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Donnie Bryant Machine & Tool Co., P.O. Box 2011, Batesville, AR 72501. Send protests to: District Supervisor William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 145412 (Sub-1TA), filed September 20, 1978. Applicant: LEE RAY FARNSWORTH, d.b.a. FARNSWORTH TRUCKING, 765 East 1600 North, Orem, UT 84097. Representative: Harry D. Pugsley, Watkess & Campbell, 310 South Main Street, No. 1200, Salt Lake City, UT 84101. Authority sought to operate as a *contract*

carrier, by motor vehicle, over irregular routes, transporting: *Dairy products* (moving in shipper's own refrigerated trailers) from Orem and Salt Lake City, UT, to Reno, NV; paper cartons from Reno, NV, to Oren and Salt Lake City, UT, under a continuing contract or contracts with Meadow Gold Dairies, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Meadow Gold Dairies, Division of Beatrice Foods Co., 1030 South Main, P.O. Box 2490, Salt Lake City, UT 84110 (Bill R. Terrill, General Manager). Send protests to: District Supervisor L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31974 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Notice No. 206]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 25, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 2900 (Sub-341TA), filed September 18, 1978. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr., 2050 Kings Road, Jacksonville, FL 32216. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, classes A and B Explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment. Between New Orleans, LA and Albertville, AL; from New Orleans over U.S. Hwy 90 to Mobile, AL, thence over U.S. Hwy 31 to Birmininghan, thence over AL Hwy 75 to Albertville, and return. Between Meridian, MS and Columbus, GA over U.S. Hwy 80. Between Laurel, MS and Bainbridge, GA over U.S. Hwy 84. Between Meridian, MS and Pensacola, FL; from Meridian over U.S. Hwy 45 to Mobile, AL, thence over U.S. Hwy 90 to Pensacola and return. Between Eutaw, AL and Pensacola, FL; from Eutaw over U.S. Hwy 43 to Mobile, AL; thence over U.S. Hwy 98 to Pensacola and return. Between Huntsville, AL and Marianna, FL; from Huntsville over U.S. Hwy 231, thence over U.S. Hwy 90 to Marianna and return. Between Huntsville and Dothan, AL over U.S. Hwy 431. Between Safford and Clanton, AL over AL Hwy 22. Between Harpersville and Thomasville, AL; from Harpersville over AL Hwy 25 to junction of AL Hwy 5, thence over AL Hwy 5 to Thomasville and return. Between Tallahassee and Uniontown, AL; from Tallahassee over AL Hwy 14 to Greensboro, thence over AL Hwy 61 to Uniontown and return. Between Cuthbert, GA and Tuscaloosa, AL over U.S. Hwy 82. Between Seale and Troy, AL; from Seale over AL Hwy 26 to junction of U.S. Hwy 82, thence U.S. Hwy 82 to junction of U.S. Hwy 29, thence U.S. Hwy 29 to Troy and return. Between Midway and Brundidge, AL; from Midway over AL Hwy 51 to Clio, thence over AL Hwy 10 to Brundidge and return. Between Gadsden and Birmingham over U.S. Hwy 411. Between Anniston and Sylacauga, AL; from Anniston over AL Hwy 21 to the junction to Alternate U.S. Hwy 231, thence over Alternate U.S. 231 to Sylacauga and return. Between Selma and Atmore, AL; from Selma over AL Hwy 41 to junction AL Hwy 21, thence over AL 21 to Atmore and return. Between Arab and Guntersville, AL over AL Hwy 69. Serving all intermediate points and serving all commercial zone points, and all points within 1 mile of the routes named, for 180 days. Supporting shipper(s): There are approximately 224 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the filed office named below. Send protests to: District Supervisor, G. H. Fauss, Jr., ICC Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 2960 (Sub-22TA), filed September 18, 1973. Applicant: ENGLAND TRANSPORTATION CO. OF TEXAS, 2301 McKinney Street, Houston, TX 77023. Representative: E. Larry Wells, Winkle and Wells, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment to Houston, TX, from Shreveport, LA and from points in TX on and east of U.S. Hwy 277 and U.S. Hwy 87 in Bowie Cass, Red River, Navarro, Kaufman, Rockwall, Grayson, Collin, Dallas, Ellis, Johnson, Tarrant, Wise, Cooke, Hood, Parker, Palo Pinto, Jack, Archer, Baylor, Haskell, Throckmorton, Young, Denton, Stevens, Shackleford, Jones, Taylor, Callahan, Eastland, Coleman, Runnels, Concho, Cole, Tom Green, McCulloch, San Saba, Llano, Mason, Gillespie, Kendall and Morris Counties, TX, for 180 days. Restricted to traffic having a prior or subsequent movement by water. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately 18 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the filed office named below. Send protests to: District Supervisor, John F. Mensing 8610 Federal Building, 515 Rusk Ave, Houston, TX 77002.

MC 20992 (Sub-49TA), filed September 14, 1978. Applicant: DOTSETH TRUCK LINE, INC., Knapp, WI 54749. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dust collectors, cyclone or drum, 19 gauge or thicker, and screen, chest or bag type and parts accessories and attachments* thereof, from Baldwin, WI to points in the United States (AK, HI and WI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

Supporting shipper: Donaldson Co., Inc., P.O. Box 1299, Minneapolis, MN 55440. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 47583 (Sub-75TA), filed September 20, 1978. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. HULTS, P.O. Box 225, Lawrence, KS 66044. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Borate*, from Trona, Boron, and Dunn, CA, to points in OK and TX, for 180 days. Restricted against the transportation of commodities in bulk. Also restricted to traffic originating at the named origins and destined to the named destination states. Supporting shipper: Metro Chemical Co., 159 E. Freeport, Broken Arrow, OK 74102. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 59531 (Sub-111TA), filed September 20, 1978. Applicant: WALDO E. STEWART d.b.a. AUTO CONVOY CO., 3020 South Haskell Avenue, Dallas, TX 75223. Representative: Eugene C. Ewald, Attorney, 100 West Long Lake Road, Suite 102, Bloomfield Hills, MI 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New imported agricultural tractors, with or without attachment*, weighing less than 5,000 pounds, from Houston, TX, and from points in Grayson County, TX, to points in TX, OK, AR, LA, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hinsmoto Tractor Sales U.S.A., Inc., P.O. Box 42564, Houston, TX 77042. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 60186 (Sub-55TA), filed September 20, 1978. Applicant: NELSON FREIGHTWAYS, INC., 47 East Street, Rockville, CT 06066. Representative: Clifford J. O. Nelson, 47 East Street, Rockville, CT 06066. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities of the type dealt in by retain home improvement and home furnishings and lumber store* (except in bulk), between points in CT, DE, DC, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT, VA, WV, for 180 days. Restricted to shipments destined to the facilities of the Wickes Corp. Supporting shipper: Wickes Lumber, Division of the Wickes Corp., 515 North Washington Avenue, Saginaw, MI 48607. Send protests to: J. D. Perry, Jr., District Supervisor, Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06103.

MC 66101 (Sub-5TA), filed September 20, 1978. Applicant: AFT SERVICES, INC., 303 South Street, Newark, NJ 07114. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Authority granted to operate as a *common carrier*, over irregular routes, transporting *General commodities*, except those of unusual value, and except dangerous explosives, livestock, household goods (when transported as a separate and distinct service in connection with so-called "household movings"), commodities requiring dump or tank trucks, and those injurious or contaminating to other lading, between the facilities of Emery Air Freight Corp, at Stewart Field, Newburg, NY and Monticello Airport, Monticello, NY, on the one hand, and, on the other Newark, NJ. Restricted to shipments having prior or subsequent movement by air for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Emery Air Freight, 100 Port Newark International Airport, Newark, NJ. Send protests to: District Supervisor, Joel Morrows, Interstate Commerce Commission, 9 Clinton Street, Newark, NJ 07102. (Hearing site: Newark, NJ or New York NY.)

MC 82492 (Sub-203TA), filed September 20, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: William C. Harris, Executive Vice-President, 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* from the facilities of Fox De Luxe Pizza Co. at Joplin, MO and the facilities of the Pillsbury Co. at or near Joplin and Carthage, MO to points in SD, NE, KS, IA, MN, IL, IN, MI, KY, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Totino's Frozen Foods Division, the Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Room 225 Federal Building, Lansing, MI 48933.

MC 115496 (Sub-104TA), filed September 14, 1978. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Hwy 23, Cochran, GA 31014. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* from Georgetown County, SC to points in PA, OH, IN, IL, MI, MO, KY, TN, FL, GA, AL, NC, VA, WV and MD, for 180 days. Supporting shipper: Andrews Wire Division of Georgetown Steel, P.O. Box 3, Andrews, SC 29510. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 115826 (Sub-349TA), filed September 20, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Representative: Howard Gore, W. J. Digby, Inc., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, plastic products, and products manufactured and distributed by manufacturers and converters of paper and paper products, and materials, equipment, and supplies* used in the manufacture and distribution of the abovenamed commodities (except in bulk), from the facilities of The Continental Group, Inc., Bondware Division at or near Shelbyville, Hodgkins, and Chicago, IL, to points in IA, KS, MO, CO, OK, and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Continental Group, Inc., Bondware Division, 800 East Northwest Hwy, Palatine, IL 60067. Send protests to: District Supervisor, Herbert C. Ruoff, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-350TA), filed September 20, 1978. Applicant: W. J. DIGBY, INC., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Representative: Howard Gore, W. J. Digby, Inc., 1960 31st Street, P.O. Box 5088, Denver, CO 80217. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products, plastic products, and products manufactured and distributed by manufacturers and converters of paper and paper products, and materials, equipment, and supplies* used in the manufacture and distribution of the abovenamed commodities (except in bulk), from the facilities of The Continental Group, Inc., Bondware Division at or near San Pedro and La Mirada, CA, to points in OR, WA, ID, MT, NV, UT and AZ, for 180 days. Supporting shipper: The Continental Group, Inc., Bondware Division, 800 East North-

west Highway, Palatine, IL 60067. Send protests to: Herbert C. Ruoff, District Supervisor, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115841, (Sub-646TA), filed September 14, 1978. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler, 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuff* from Fresno, Los Angeles, Monterey, Santa Barbara, Santa Cruz, Stanislaus and Ventura Counties, CA, to points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, NE, NJ, NY, OH, OK, PA, SC, TN, TX, VA, WI, AND WV. There are 12 supporting shippers. Send protest to: Glenda Kuss, Transportation Assistant, ICC, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203. For 180 days.

MC 117815 (Sub-295TA), filed September 14, 1978. Applicant: PULLEY FREIGHT LINES, INC., 405 S.E. 10th Street, Des Moines, IA 50317. Representative: Dewey Marselle, 405 S.E. 10th Street, Des Moines, IA 50317. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, (except commodities in bulk) from the facilities of Fox De Luxe Co. at Joplin, MO and from the facilities of the Pillsbury Co. at or near Joplin and Carthage, MO, to points in IL, IN, IA, KS, KY, MI, MN, NE and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Totino's Frozen Foods Division, The Pillsbury Co., 7350 Commerce Lane, Fridley, MN 55432. Send protest to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 118838 (Sub-31TA), filed September 14, 1978. Applicant: GABOR TRUCKING, INC., Rural Route No. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Activated clay* (except in bulk, in tank vehicles) from the ports of entry between the United States and Canada located at or near Pembina, ND, and Noyes, MN to Culbertson, MT, Dixon, CA, Seattle and Spokane, WA, and Portland, OR, for 180 days. Restriction: Restricted to the transportation of traffic originating at the facilities of Pembina Mountain Clay at or near Winnipeg, Manitoba, Canada. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Pembina Mountain Clay, 945 Logan, Winnipeg, Manitoba, Canada R3E 1P3. Send protest to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268 Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 118838 (Sub-32TA), filed September 20, 1978. Applicant: GABOR TRUCKING, INC., Rural Route No. 4, Box 124B, Detroit Lakes, MN 56501. Representative: Richard P. Anderson, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum, gypsum products and materials and supplies*, (except in bulk, in tank vehicles), used in the manufacture, installation and distribution of gypsum and gypsum products between the facilities of Georgia-Pacific Corp., Gypsum Division, located at Cuba, MO, on the one hand, and, on the other, all points in the United States (except AK and HI), for 180 days. Supporting shipper: Georgia-Pacific Corp., 1062 Lancaster Avenue, Rosemont, PA 19010.

MC 119700 (Sub-46tA), filed September 19, 1978. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, Missouri 64125. Representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* from the facilities of Maverick Tube Corp. at or near Union, MO to points in AL, AR, CO. IL, IN, KS, LA, MI, MN, MS, OH, OK, TX and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Maverick Tube Corp., P.O. Box 696, Union, MO 63084. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 121060 (Sub-77TA), filed September 14, 1978. Applicant: ARROW TRUCK LINES, INC., Post Office Box 1416, Birmingham, AL 35201. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and fittings*, from the facilities of Charlotte Pipe & Foundry Co., at Charlotte and Bakers, NC, to points in the United States in and east of ND, SD, NE, KS, OK, and TX, for 180 days. Supporting shipper: Charlotte Pipe & Foundry Co., Post Office Box 4430, Charlotte, NC, 28204. Send protests to: Clifford W. White, District Supervisor, Interstate Commerce Commission, Room 1616, 2121 Building, 2121 8th Avenue, North, Birmingham, AL, 35203. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 121223 (Sub-2TA), filed September 20, 1978. Applicant: GEORGE HALLDEN SONS CO., 313 Woods Street, Youngstown, PA 44503. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing and roofing materials*, from the facilities of Koppers Co., Inc. in Youngstown, Wickliffe and Heath, OH to IN, KY, MI, NY, PA and WV, for 180 days. Supporting shipper: Koppers Co., Inc., 850 Koppers Building, Pittsburg, PA 15219. Send protests to: Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

MC 123061 (Sub-103TA), filed September 19, 1978. Applicant: LEATHAM BROTHERS, INC., P.O. Box 16026 46 Orange Street, Salt Lake City, UT 84104. Representative: Harry D. Pugsley, 310 South Main, Salt Lake City, UT 84101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt and salt products and animal and poultry feed mixtures*, from Newark, CA, to Story, Washoe, Ormsby Counties, NV, and points in UT, for 180 days. Supporting shipper: Leslie Foods, Inc., P.O. Box 364, Newark, CA 94560 (Jim Steele, Customer Service and Traffic Mgr.). Send protests to: District Supervisor L.D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 124078 (Sub-871TA), filed September 20, 1978. Applicant: SCHERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foundry sand additives*, in bulk, from Waterloo, IA to Aberdeen, SD for 180 days. Supporting shipper: American Colloid C., P.O. Box 228, Skokie, IL 60077, Robert N. Garity. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202. Applicant has

also filed an underlying ETA seeking up to 90 days of operating authority.

MC 124160 (Sub-23TA), filed September 20, 1978. Applicant: SAVAGE BROS., INC., 585 South 500 East, American Fork, UT 84003. Representative: Lon Rodney Kump, 333 East Fourth South, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, from points in Sweetwater County, WY, to, at, or near El Reno, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: FMC CORP., P.O. Box 87, Green River, WY 82935. Send protests to: District Supervisor L. D. Helfer, Interstate Commerce Commission, 5301 Federal Building, Salt Lake City, UT 84138.

MC 124839 (Sub-35TA), filed September 20, 1978. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 7057, Savannah, GA 31408. Representative: R. M. Shirley, P.O. Box 7057, Savannah, GA 31408. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products and materials, equipment, and supplies* used in the sale and distribution of paper and paper products (except in bulk) from Tifton, GA, to points in TN, under a continuing contract or contracts with Union Camp Corp., for 180 days. Supporting shipper: Union Camp Corp., 1600 Valley Road, Wayne, NJ 07470. Send protests to: District Supervisor G. H. Fauss, Jr., Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124896 (Sub-70TA), filed September 19, 1978. Applicant: WILLIAMSON TRUCK LINES, INC., Corner Thorne and Ralston Streets, P.O. Box 3485, Wilson, NC 27893. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 60309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry spaghetti and macaroni products* from the facilities of C. F. Mueller Co., at or near Jersey City, NJ, to points in FL, GA, NC, and SC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: C. F. Mueller Co., 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, P.O. Box 26896, 310 New Bern Avenue, 624 Federal Building, Raleigh, NC 27611.

MC 125254 (Sub-47TA), filed September 20, 1978. Applicant: MORGAN TRUCKING CO., P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic bottles and containers*, from Vandalia, IL to Minneapolis-St. Paul, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: Mr. Herbert Allen, District Supervisor, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309. Supporting shipper: Imco Container Co., 75th and Cleveland, Kansas City, MO 64312.

MC 125368 (Sub-38TA), filed September 20, 1978. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher, P.O. Box 26, Holly Ridge, NC 28445. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* from the facilities of Campbell Soup Co. at or near Milford and Clayton, DE; and Salisbury, Pocomoke City, and Baltimore, MD to points in FL, GA, NE and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Campbell Soup Co., West Road and Isabella Street, Salisbury, MD. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

MC 126844 (Sub-55TA), filed September 14, 1978. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Wineland, NJ 08360. Representative: Terrence D. Jones, 2033 K Street, NW, Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and ariticles* distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912. Send protests to: John P. Lynn, Transportation Specialist, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 128007 (Sub-128TA), filed September 20, 1978. Applicant: HOFER, INC., P.O. Box 583, Pittsburgh, KS 66762. Representative: Larry E. Gregg, 641 Harrison, Topeka, KS 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Equipment materials and supplies* used in the fabrication of metal buildings and metal products, from Chicago, IL, Toledo, Cleveland and Youngstown, OH, Columbia, SC, Birmingham, AL, Houston and Dallas, TX, and St. Louis, MO to points in Labette County, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Ajax Atlas Mfg. Corp. P.O. Box 99, Oswego, KS 67356. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission 101 Litwin Building, Wichita, KS 67202.

MC 129387 (Sub-80TA), filed September 20, 1978. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, SD 57350. Representative: Scott E. Daniel, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, except in bulk, from the facilities of Sanna Division, Beatrice Foods Co., located at or near Menomonie, Vesper, Cameron, Eau Claire and Wisconsin Rapids, WI to points in AZ, CA, CO, ID, MT, NV, NM, ND, OR, SD, UT, WA, and WY. Restriction: Restricted to the transportation of traffic originating at the named origins and destined to the named destinations, for 180 days. Supporting shipper: Sanna Division, Beatrice Foods Co., 2801 West Beltline Highway, P.O. Box 1587, Madison, WI 53701. Send protests to: James L. Hammond, District Supervisor, Interstate Commerce Commission, Room 455 Federal Building, Pierre, SD 57501. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority.

MC 129526 (Sub-6TA), filed September 20, 1978. Applicant: FACTOR TRUCK SERVICE, INC., A corporation, 2607 Old Rodgers Road, Bristol, PA 19007. Representative: Robert B. Einhorn, Esq., 3220 P.S.F.S. Building, 12 South 12th Street, Philadelphia, PA 19107. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: A. *Toys, bicycles, sporting goods, and infant furniture* to the facilities of Marand Distributors, Inc. in Philadelphia, PA from points in the states of ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, DC, VA, WV, NC, SC, AL, GA, FL, TN, KY, AR, MS, LA, TX, OK, OH, IN, IL, MI, IA, WI, MN, and KS. B. *Corrugated containers for agricultural products*, from the facilities of Multipack, Inc. in Bristol Township, Bucks County, PA, to points in the states of ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, VA, WV, NC, SC, GA, TN, FL, OH, IN, IL, MI, WI, KY, MO, AL, MS, LA, AR, IA, MN, and TX. *Materials* used in the construction

of corrugated containers for agricultural products, from Meriden, CT, Newark, DE, Baltimore, MD, and Hanover, MD, to facilities of Multipack, Inc. in Bristol Township, Bucks County, PA. C. *Fluorescent lighting fixtures and parts and accessories thereof,* from the facilities of Crescent Lighting Corp. and its division, Creslite Products, at Pennsauken, NJ, to points in the United States (except Alaska and Hawii). *Plastic sheets and extrusions,* from Xenia, OH, St. Louis, MO, Washington, IN, Santa Anna, CA, Carson, CA, Fallsington, PA, Columbus, OH, Sheffield, MA, Dallas, TX, Chicago, IL, Brooklyn, NY, and Long Island City, NY, to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, *fluorescent lamps,* from Lynn, MA, Bucyrus, OH, Fairmont, WV, and Salina, KS, to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, *glass,* from Rochester, NY to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, *electrical transformers,* from Chicago, IL, Monroe, WI, Madisonville, KY, Danville, IL, and Mendenhall, MS to the facilities of Crescent Lighting Corp., in Pennsauken, NJ, under a continuing contract or contracts with Crescent Lighting Corp., Marand Distributors, Inc., Multipack, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Crescent Lighting Corp., and its division, Creslite Products, 16657 John Tipton Boulevard, P.O. Box 240, Pennsauken, NJ 08110. Marand Distributors, Inc., State Road and Rhawn Street, Philadelphia, PA 19136, Multipack, Inc., 6400 Bristol Pike, Levittown, PA 19057. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 133735 (Sub-6TA), filed September 20, 1978. Applicant: AUDUBON TRANSPORT, INC., Wever, IA 52658. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Corn products,* in bulk, from the facilities of Hubinger Co. at or near Keokuk, IA, to points in IL, MO, KS, NE, SD, MN, WI, IN, and PA; and (2) *corn products and soybean meal,* in bulk, from points in Macon County, IL, to the facilities of Hubinger Co. at or near Keokuk, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hubinger Co., 601 Main Street, Keokuk, IA 52632. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 134064 (Sub-11TA), filed September 18, 1978. Applicant: INTERSTATE TRANSPORT, INC., 1820 Atlanta Highway, Gainesville, GA 30501. Representative: Charles M. Williams, Kimball, William & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs,* from Pittsburgh, PA, to points in FL, GA, SC, and TN, restricted to traffic originating at the facilities utilized by Heinz U.S.A., Division of the H. J. Heinz Co., at or near Pittsburgh, PA and destined to the named States, for 180 days. Supporting shipper(s): Heinz U.S.A, Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW, Room 300, Atlanta, GA 30309.

MC 134286 (Sub-78TA), filed September 14, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IO 51102. Representative: Charles M. Williams, Kimball, Williams, & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic film and plastic articles* (except in bulk), *and materials, equipment, and supplies* used in the manufacture and distribution of the above commodities (except commodities in bulk), in vehicles equipped with mechanical refrigeration devices, from the plantsites and storage facilities of Resinite Department, Borden Chemical, Division of Borden, Inc., at or near Carson, CA, to points in NV, OR, WA, ID, UT, AZ, and CO, and points in MT, WY, and NM on and west of the Continental Divide, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: W.T. "Tom" Willcox, Manager, Distribution and Materials, Resinite Department, Borden Chemical Division of Borden, Inc., 1 Clark Street, North Andover, MA 08145. Protests to: Carroll Russell, District Supervisor, Interstate Comerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 134286 (Sub-79TA), filed September 14, 1978. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, Iowa 51102. Representative: Charles M. Williams, KIMBALL, WILLIAMS, & WOLFE, P.C., 350 Capitol LIfe Center, 1600 Sherman Street, Denver, CO 80203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Plastic film and plastic articles* (except in bulk), *and materials, equipment, and supplies,* used in the manufacture and distribution of the above commodities (except commodities in bulk), in vehicles equipped with mechanical refrigeration devices, from the plantsites and storage facilities of Resinite Department, Borden Chemical, Division of Borden, Inc., at or near Illiopolis, IL, to points in MN, WI, IN, and IA, and to Cockeysville, MD; Dallas, TX; and Cleveland, OH; and points in their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days operating authority. Supporting shipper: W. T. "Tom" Willcox, Manager, Distribution and Materials, Resinite Department, Borden Chemical Division of Borden, Inc., 1 Clark Street, North Andover, MA 08145. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 134405 (Sub-51TA), filed September 14, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: O. G. Bacon III, P.O. Box 1134, Ardmore, OK 73401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia,* in bulk, in tank vehicles, from the facilities of the Mapco Pipeline Terminal at or near Mocane, OK to points in KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Olin Corp., P.O. Box 991, Little Rock, AR 72203. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 134405 (Sub-52TA), filed September 14, 1978. Applicant: BACON TRANSPORT CO., P.O. Box 1134, Ardmore, OK 73401. Representative: O. G. Bacon III, P.O. Box 1134, Ardmore, OK 73401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Asphalt,* in bulk, in tank vehicles, from Wynnewood, OK to Johnson, Avoca, Jenny Lind, and Alma, AR, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tosco Corp., Lion Oil Division, Lion Oil Building, El Dorado, AR 71730. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

MC 134638 (Sub-1TA), filed September 14, 1978. Applicant: MID-WEST TRUCK LINES, LTD., 1216 Fife Street, Winnipeg, MB, Canada. Representative: James E. Ballenthin, 630

Osborn Building, St. Paul, MN 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pet foods and animal feed*, from the plantsite and facilities of Tuffy's, Division of Star-Kist Foods, Inc., at or near Perham, MN, to the United States-Canada border at or near Pembina, ND, and Noyes, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Tuffy's Division of Star-Kist Foods, Inc., P.O. Box 190, Perham, MN 56573. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

MC 136899 (Sub-30TA), filed September 20, 1978. Applicant: HIGGINS TRANSPORTATION, LTD., P.O. Box 192, Highway 14 East, Richland Center, WI 53581. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise*, as is dealt in by discount and variety stores (except commodities bulk), from the facilities of K Mart Corp., at Lawrence, KS, to the facilities of K Mart Corp., in IA, ND, and SD. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Authority sought for 180 days. Supporting shipper: K Mart Corp., 3100 West Big Beaver, Troy, MI 48084. Send protests to: District Supervisor, Mr. Ronald A. Morken, Interstate Commerce Commission, 212 East Washington Avenue, Room 317, Madison, WI 53703.

MC 138018 (Sub-44TA), filed September 14, 1978. Applicant: REFRIGERATED FOODS, INC., 3200 Blake Street, Denver, CO 80205. Representative: Joseph W. Harvey, 3200 Blake Street, Denver, CO 80205. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats and packinghouse products* (except in bulk), from the facilities of Sigman Meat Co. at Brush, CO, to ports of entry located on the boundary between the United States and Canada located at or near Noyes, MN, for 180 days. Restriction: To traffic destined to Winnipeg, MB, Canada. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. No tack or intertying. Supporting shipper: Sigman Meat Co., Inc., 800 South Railroad Avenue, Brush, CO 80723. Send protests to: District Supervisor, Roger L. Buchanan, Interstate Commerce Commission, 721 19th Street, 492 U.S. Customs House, Denver, CO 80202.

MC 138181 (Sub-6TA), filed September 14, 1978. Applicant: TRANSPORT EXPRESS, INC., P.O. Box 663, Dodge City, KS 67801. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, Suite 110L, Topeka, KS, 6612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in bulk, from the facilities of the Mapco Pipeline Terminal near Mocane, OK, to points in KS and TX, for 180 days. Supporting shipper: Olin Corp., P.O. BOx 991, Little Rock, AR 72203. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

MC 14118 (Sub-6TA), filled September 20, 1978. Applicant: S.T.L. TRANSPORT, INC., 1000 Jefferson Road, Rochester, NY 14623. Representative: S. Michael Richards/Raymond A. Richards, P.O. Box 255, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Lansdale, North Wales, Philadelphia, and Port Providence, PA to all points in NY, under a continuing contract or contracts with Container Corp. of America, 5000 Flat Rock Road, Philadelphia, PA 19128, for 180. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260.

MC 141205 (Sub-10TA), filed September 20, 1978. Applicant: HUSKY OIL TRANSPORTATION CO., a Delaware corporation, 600 South Cherry Street, Denver, CO 80222. Representative: F. Robert Reeder, Parsons, Behle & Latimer, 79 South Street, P.O. Box 11898, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crude oil, scrubber oil, and condensate*, from Mesa, Garfield, and Delta Counties, CO, to Rangely Pipeline Injection Station, in or around Rangely, CO, under a continuing a contract or contracts with Husky Oil Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Husky Oil Co., 600 South Cherry Street, Denver, CO 80222. Send protests to: Herbert C. Ruoff, District Supervisor, ICC, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 141216 (Sub-4TA), filed September 19, 1978. Applicant: Darrel K. Oakley, d.b.a. OAKLEY ENTERPRISES, 3502 Elm Avenue, Rapid City, SD 57101. Representative: J. Maurice Andren, 1734 Sheridan Lake Road, Rapid City, SD 57701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete pipe, manholes, culverts, cattle guards, and prestressed beams*, from Rapid City, SD to points in WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: South Dakota Concrete Products, Box 1158, Rapid City, SD 57709, Arthur L. Erickson, Superintendent. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

MC 141871 (Sub-11TA), filed September 14, 1978. Applicant: WNI, INC., 8700 Southwest Elligsen Road, Wilsonville, OR 97070. Representative: Warren L. Troupe, 2480 East Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Buena Park, CA to Spokane, Seattle, and Tacoma, WA; Portland, Eugene, and Medford, OR; Boise and Pocatello, ID; Las Vegas, NV; and Salt Lake City, Provo, Ogden, American Fork, and Orem, UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Nabisco, Inc., East Hanover, NJ 07936 (Richard Von Thun). Send protests to: A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 Southwest Yamhill Street, Portland, OR 97204.

MC 141914 (Sub-45TA), filed September 20, 1978. Applicant: FRANK & SONS, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks, Route 1, Box 108A, Big Cabin, OK 74332. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rubber and plastic products and raw material*, used in the manufacture thereof, between Irving, TX, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to traffic originating at or destined to the plantsite of Entek Corp. of America at or near Irving, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Entek Corp. of America, P.O. Box 61048, Dallas, TX 75261. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House, 215 Northwest Third Street, Oklahoma City, OK 73102.

MC 143002 (Sub-4TA), filed September 20, 1978. Applicant: C. D. B., Inc., 5170 36th Street, Southeast, Grand Rapids, MI 49508. Representative: Karl L. Gotting, Loomis, Ewert, Ederer, Parsley, Davis & Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic resin pellets*, from the facilities of Koenig & Sons, Inc., at (i) Trenton, NJ, to various points in the lower peninsula of MI and (ii) Houston, TX, to San Francisco and Los Angeles, CA, for 180 days, under a continuing contract or contracts with Koenig & Sons, Inc. Hearing site: Lansing, MI; Grand Rapid, MI. Supporting shipper: Koenig & Sons, Inc., P.O. Box 1810, Trenton, NJ 08607. Send protest to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

MC 143328 (Sub-9TA), filed September 14, 1978. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59801. Representative: David A. Sutherlund, Fulbright & Jaworski, 1150 Connecticut Avenue, NW, Suite 400, Washington, DC 20036. Authjority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Seattle, WA, to points in Utah and (2) *Empty containers*, from points in Utah to Seattle, WA, for 180 days. Supporting shipper: Rainier Brewing Co., 3100 Airport Way South, Seattle, WA 98134. Send protest to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

MC 143616 (Sub-12TA), filed September 14, 1978. Applicant: M & S TRANSPORT LINES, INC., P.O. Box 417, Sultana, CA 93666. Representative: Dwight L. Koerber, Jr., 666 11th Street, Northwest, Suite 805, Washington, DC. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives, in containers*, from New Philadelphia, OH, to points in the United States in and west of MN, IA, MO, AR, and LA (except Portland, OR; Oklahoma City and Tulsa, OK; San Jose, Santa Clara, and San Leandro, CA; and El Paso and Lubbock, TX), under a continuing contract or contracts with Miracle Adhesives Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Miracle Adhesives Corp., P.O. Box 466, New Philadelphia, OH 44663. Send protest to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

MC 143758 (Sub-4TA), filed September 18, 1978. Applicant: KNOWLES TRANSPORT, INC., 4215 Thurman Road, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Pittsburgh, PA, to points in AL, GA, and SC, restricted to traffic originating at the named facilities and destined to the named States, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

MC 145071 (Sub-3TA), filed September 14, 1978. Applicant: EATON BROS., INC., 1020 West Brady, Clovis, NM 88101. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk, in tank vehicles), from the facilities of Hatch Packing Co., Portales, NM, to points in AZ, CA, CO, FL, IA, NE, KS, NY, OR, TX, and WI, under a continuing contract or contracts with Hatch Packing Co., Portales, NM for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hatch Packing Co., Highway 70, Portales, NM 88130. Send protests to: District Supervisor, Interstate Commerce Commission, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

MC 145172TA, filed September 8, 1978. Applicant: ROBERT L. WELBORN AND WANDA S. WELBORN, d.b.a. ORIENT EXPRESS, 4322 West Greenway Road, Glendale, AZ 85306. Representative: A. Michael Bernstein, 1441 East Thomas Road, Phoenix, AZ 85014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs*, in vehicles equipped with mechanical refrigeration, and (2) *merchandise, supplies, and equipment*, when moving in the same vehicle with foodstuffs, between points in Los Angeles and Orange Counties, CA, and the Phoenix, AZ, commercial zone, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately (10) statements of support attached to the application which may be examined at the Interstate Commerce Commission, in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

MC 145347 (Sub-1TA), filed September 20, 1978. Applicant: R. CHARBONNEAU & SONS, INC., 124 West Third Street, Logan, IA 51546. Representative: Ralph L. Charbonneau, 124 West Third Street, Logan, IA 51546. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crushed limestone, rip rap stone, and limestone aggregates*, originating from any point within a 5-mile radius of the Fort Calhoun Stone Quarries at Fort Calhoun, NE, to construction sights within the boundaries of the State of Iowa, under a continuing contract or contracts with Fort Calhoun Stone Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Jess H. Wright, President, Fort Calhoun Stone Co., 1255 South Street, Blair, NE 68005. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

MC 145379TA, filed September 19, 1978. Applicant: WALTER A. JUNGE, INC., 3818 Southwest 84th Street, Tacoma, WA 98491. Representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Wauna, OR to points in CA and NV and from Gilroy, CA, to points in OR and WA, under a continuing contract or contracts with Crown Zellerbach Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Crown Zellerbach Corp., 1500 Southwest First Avenue, Portland, OR 97201. Send protests to: Hugh H. Chaffee, District Supervisor, Bureau of Operations, ICC, 858 Federal Building, Seattle, WA 98174.

MC 145384TA, filed September 20, 1978. Applicant: ROSE-WAY, INC., 1914 East Euclid, Des Moines, IA 50313. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to

operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe and pipe fittings*, from the facilities of R & G Sloane Manufacturing Co., Inc., at or near Bakersfield, Santa Ana, and Sun Valley, CA, to points in IA, IL, IN, MI, MN, MO, NE, OH, and WI; and (2) *plastic granules*, in bags, from Louisville, KY, Avon Lake, OH, and Neal, WV, to the facilities of R & G Sloane Manufacturing Co., Inc., at or near Bakersfield, Santa Ana, and Sun Valley, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: R & G Sloane Manufacturing Co., Inc., 7606 North Clybourn, Sun Valley, CA 91352. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

MC 145386TA, filed September 20, 1978. Applicant: Robert L. McMahon, d.b.a. ROBERT McMAHON CONSTRUCTION, 1105 South Maple Street, Staunton, IL 62088. Representative: Robert L. McMahon, 1105 South Maple Street, Staunton, IL 62088. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Steel tubing and pipe, and flat steel*, between the plantsite of Livingston Pipe and Tube, Inc., at Staunton, IL, on the one hand, and, on the other, points in AR, AL, GA, IA, IN, KS, KY, LA, MO, MN, MS, NE, NC, OH, OK, PA, TN, TX, VA, WI, and WV, under a continuing contract or contracts with Livingston Pipe and Tube, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Michael L. Favre, President, Livingston Pipe and Tube, Inc., P.O. Box 289, Mt. Olive, IL 62069. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-31975 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Notice No. 127]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before December 14, 1978. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77740, filed June 27, 1978. Transferee: CANYON DISTRIBUTORS LTD., 5919 Fifth Street Southeast, Calgary, AB, Canada. Transferor: Herrett Trucking Co., Inc., P.O. Box 1436, Yakima, WA 98907. Representative: George H. Hart, attorney at law, 1100 IBM Building, Seattle, WA 98101. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in MC 30092 Sub-19 and Sub-21 issued December 27, 1971, and October 30, 1973, respectively. (1) Bananas, and (2) agricultural commodities exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, when transported in mixed loads with bananas, from Long Beach, CA, and Seattle, WA, to ports of entry on the United States-Canada boundary line, located in WA, ID and MT, with no transportation for compensation on return except as otherwise authorized; (3) meats, meat products, and meat byproducts, and articles distributed by meat packinghouses, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209, 766 (except hides and commodities in bulk), between ports of entry on the United States-Canada boundary line in WA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MO, MN, MT, NE, NV, ND, OR, SD, TX, UT, WA, and WI; between ports of entry on the United States-Canada boundary line in ID and MT, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, IN, IA, KS, MO, MN, MT, NE, NV, ND, OR, SD, TX, UT, WA, and WI: between ports of entry on the United States-Canada boundary line in ND and MN, on the one hand, and, on the other, points in CO, ID, IL, IN, IA, KS, MN, MO, MT, NE, ND, OR, SD, TX, UT, WA, and WI; from points in AZ, CA, and NV to ports of enty on the United States-Canada boundary line in ND and MN, with no transportation for compensation on return except as otherwise authorized. Restriction: The authority herein is restricted (a) to the transportation of shipments originating at or destined to points in Canada, and (b) against the transportation of shipments between the Province of Manitoba, Canada, on the one hand, and, on the other, points in SD, NE, KS, MN, IA, MO, WI, and IL. Application has been filed for temporary authority under section 210a(b)

MC-FC-77747, filed July 6, 1978. Transferee: READY TRUCKING, INC., 4722 Lake Mirror Place, Forest Park, GA 30050. Transferor: Bass Transportation Co., Inc., P.O. Box 391, Flemington, NJ 08822. Representative: Lavern R. Holdeman, of Peterson, Bowman, Larsen, & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought for transfer of the operating rights as set forth in MC 135684 (Sub-16), paragraphs 6 (portion) and 7, issued March 9, 1978, as follows: (6) *Household cleaning products*, water purifying compounds, and dry acids (except in bulk), from Atlanta, GA, to Savannah, GA, and points in AL, FL, and that part of TN, on and east of a line beginning at the TN-KY State line and extending along U.S. Hwy 31-E to Nashville, TN, and thence along U.S. Hwy 31 to the TN-AL State line, with no transportation for compensation on return except as otherwise authorized. (7) *Materials and supplies*, used in the manufacture, sale, or distribution of household cleaning products, water purifying compounds, and dry acids (except in bulk), from Savannah, GA, and points in AL, FL, and that part of TN on and east of a line beginning at the TN-KY State line and extending along U.S. Hwy 31 to Nashville, TN, and thence along U.S. Hwy 31 to the TN-AL State line, to Atlanta, GA, with no transportation for compensation on return except as otherwise authorized. Transferee presently holds authority from this Commission in MC 144688. Application for temporary authority under section 210a(b) has

been filed and is pending before the Commission.

MC-FC-77756 filed July 12, 1978. Transferee: C & H BUS LINES, INC., Route No. 1, Harrison, GA 31035. Transferor: National Bus Service, Inc., 746 Wheaton Street, Savannah, GA 31401. Representative: George L. Cullens, Route No. 1, Harrison, GA 31035. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in MC 114957, issued June 27, 1961, as follows: Passengers and their baggage, and express and mail, in the same vehicle with passengers, between Savannah, GA and Savannah Beach, GA. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under section 210a(b).

MC-FC-77772, filed July 19, 1978. Transferee: AMEX RIGGING CORP., 120 Newton Street, Brooklyn, NY 11222. Transferor: Experienced Machinery Movers, Inc., 120 Newton Street, Brooklyn, NY 11222. Representative: Domenic La Rosa, Esq., 150 Broadway, New York, NY 10038. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in MC 105673, issued March 12, 1968, as follows: Household goods, between New York, NY on the one hand, and, on the other points in NY, NJ, and CT. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC—FC-77783, filed July 26, 1978. Transferee: CABANO TRANSPORT, LTD., 365 Temiscouata Street, Riviere-du-Loup, Temiscouata County, PQ, Canada G5R 3Y8. Transferor: Transport Amedee Cayer, Inc., P.O. Box 470 La Pocatiere, Kamouraska County, PQ, Canada GOR 1Z0. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in MC 134337 Sub-5, issued December 27, 1974, as follows: (1) *Lumber*, from ports of entry on the United States-Canada boundary line located at ME, NH, VT; and NY to points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, DE, MD, VA, OH, MI, IL, IN, and DC subject to restriction of traffic originating at specified counties in PQ, Canada and (2) *lumber, wood laths and wood shingles*, from ports of entry on the United States-Canada boundary line at or near Jackman and Coburn Gore, ME, Derby Line, Norton Mills and St. Albans, VT and Rouses Point, NY, to points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, and DE subject to restriction of traffic originating at specified counties in PQ, Canada.

MC-FC-77849, filed September 15, 1978. Transferee: INTERCOASTAL LINES, LDT., 200 Foxhunt Crescent, Syosset, NY 11791. Transferor: J & M Carriers Corp., 43-06 54th Road, Maspeth, NY 11378. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought for purchase by transferee of operating rights of transferor as set forth in MC 116858 Sub-16, issued July 1, 1977, as follows: *Pharmaceutical* and *medical products* (except in bulk) from Kenilworth and Union, NJ, to San Leandro and Lyoth, CA. Transferee presently holds no authority from this Commission. Application for temporary authority under section 210a(b) has been filed.

MC-FC-77875, filed September 28, 1978. Transferee: HARKEMA EXPRESS LINES, INC., 265 Rutherford Road South, Brampton, ON, Canada L6W 1V9. Transferor: Hare Cartage, Inc., 7400 East McNichols Road, Detroit, MI 48234. Representative: S. Harrison Kahn, Suite 733, Investment Building, 1511 K Street NW., Washington, DC 20005. Authority sought for purchase of the operating rights set forth in MC 96134, issued July 6, 1962, as follows: General commodities, between Detroit, MI and points within 8 miles of Detroit. Transferee holds no authority from this Commission. Application has not been filed for section 210a(b) authority.

MC 77876, filed September 29, 1978. Transferee: P. J. Moeller, Schleswig, IA 51461. Transferor: Schleswig Transfer, Inc., Schleswig, IA 51461. Authority sought for purchase by transferee of operating rights of transferor as set forth in MC 96375 issued September 12, 1972, as follows: Feed, seeds, straw, agricultural implements and parts, coal, petroleum products, in containers, fence, fencing materials, lumber, and building materials from Omaha, NE to Schleswig, IA and points within 10 miles of Schleswig, and livestock between Schleswig, IA and points within 10 miles of Schleswig on the one hand, and, on the other, Omaha, NE. Transferee presently holds no authority from this Commission. Application for temporary authority under section 210a(b) has not been filed.

MC-FC-77877, filed September 29, 1978. Transferee: JONES MOTOR CO., INC., Bridge Street and Schuylkill Road, Spring City, PA 19475. Transferor: ALLEGHANY CORP., d.b.a. JONES MOTOR, (same address as transferee). Representatives: M. Lauck Walton, Esquire, Donovan, Leisure, Newton & Irvine, 30 Rockefeller Plaza, New York, NY 10020. Roland Rice, Esquire, Rice, Carpenter & Carraway, 501 Perpetual Building, 1111 East Street NW., Washington, DC 20004. On November 6, 1978, the Motor Carrier Board approved the transfer of operating authority set forth in Certificates Nos. 4963 and subs thereunder, issued March 10, 1971, and on subsequent dates as follows: General commodities with the usual exceptions over irregular and specified regular routes serving points in MA, ME, NH, RI, CT, VT, NY, PA, NJ, DE, MD, VA, NC, OH, WV, MI, IL, IN, IA, MO, SC, TN, and DC. Petitions for reconsideration may be filed within 20 days from the date this notice is published. Send petitions to: The Secretary, Interstate Commerce Commission, Washington, DC 20423.

MC-FC-77889, filed October 16, 1978. Transferee: JO-DI TRUCKING, INC., U.S. 421 North, Harrells, NC 28444. Transferor: HARRY MARSHBURN BURGESS AND RICHARD NORWOOD PATE, a partnership, d.b.a. PATE TRANSFER, 900 Raleigh Road, Clinton, NC 28328. Authority sought for purchase by transferee of operating rights of transferor as set forth in Certificate No. MC 63540, issued April 3, 1956, in the name of the transferor, as follows: Lumber from Clinton and Roseboro, NC, to points in VA; feed, seed, and flour from specified points in VA, Baltimore, MD, and Wilmington, NC, to Clinton, NC, and points in NC within 75 miles of Clinton; seed and flour from Lynchburg, VA, to points in Sampson County, NC; seeds from points in Sampson County, NC, to Lynchburg, VA; canned goods from Wilmington, NC, to points in NC within 75 miles of Clinton; general commodities, with exceptions, from Richmond and Norfolk, VA, and Wilmington, NC, to points in Sampson County, NC; store fixtures, ice cream, salt, etc., from Baltimore and Sparrows Point, MD, to points in Sampson County, NC; and apple products and vinegar from Inwood, WV, and Winchester, VA, to points in Sampson County, NC. Transferee presently holds authority in MC 129952. Application for temporary authority under section 210a(b) has not been filed.

MC-FC-77892, filed October 11, 1978. Transferee: MELVIN SALES CO., 901 North Vermilion, Streator, IL 61364. Transferor: INTERSTATE EXPRESS, INC., P.O. Box 349, Gothenburg, NE 69138. Representative: Paul J. Maton, 10 South La Salle Street, Suite 1620, Chicago, IL 60603. Authority sought for a portion of the operating rights set forth in Certificate MC 140280, issued May 25, 1978 as follows: *Glass bottles*, between points in La Salle County, IL on the one hand, and, on the other, Clinton, Davenport, Muscatine, Burlington, Fort Madison, and Keokuk, IA, and points in that part of IN on and north of U.S. Hwy 24, and on and west of U.S. Hwy 31. Transferee holds no authority from

this Commission. Application has not been filed for section 210a(b) authority.

MC-FC-77901, filed October 18, 1978. Transferee: CHIPMAN CORP., 1717 Fairway Drive, San Leandro, CA 94577. Transferor: Frank's Trucking, 2575 Williams Street, San Leandro, CA 94577. Representative: Daniel W. Baker, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate of Registration MC 99871 (Sub-2), issued September 29, 1977, as follows: *General commodities* between points in a described area identified as the San Francisco territory and between points within 10 miles of specified routes. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

MC-FC-77906, filed October 23, 1978. Transferee: TRANSAMERICAN CARRIER CO., Route 1, Box 28, Winthrop, MN 55396. Transferor: Donald W. Cole, Route 1, Box 28, Winthrop, MN 55396. Representative: Bradford E. Kistler, Attorney at Law, P.O. Box 82028, Lincoln, NE 68501. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 140660 (Sub.-2), issued August 18, 1976, as follows: *Liquid fertilizer solutions and liquid feeds*, in bulk, in tank vehicles, from the facilities of Na-Churs Plant Foods Co., located at or near Red Oak, IA to points in WI, IL, MO, MN, KS, NE, SD, ND, CO, WY, MT (excepted against service to St. Louis and points in its commercial zone) and return of *ingredients* with the general exception of service from Louisiana, St. Louis and points in its commercial zone, Omaha, NE, Pake and Jefferson Counties, MO and dry ingredients from MN and SD. Transferee presently holds authority in MC 134552 (Sub.-3). Application has not been filed for temporary authority under section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31970 Filed 11-13-78; 8:45 am]

[7035-01-M]

[Notice No. 126]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 13, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

MC-FC 77913. By application filed October 26, 1978, L & E FREIGHT LINE, INC., d.b.a. LIGHTNING EXPRESS FREIGHT LINES, INC., 2950 Blake Street, Denver, CO 80205, seeks temporary authority to transfer the operating rights of DONALD R. WILLIS, an individual, d.b.a. TWEEDY TRANSFER, P.O. Box 7, Elbert, CO 80106, under section 210a(b). The transfer to L & E FREIGHT LINE, INC., d.b.a. LIGHTNING EXPRESS FREIGHT LINES, INC., of the operating rights of DONALD R. WILLIS, an individual, d.b.a. TWEEDY TRANSFER, is presently pending.

MC-FC-77914. By application filed November 1, 1978, AMERICAN TANK TRANSPORT, INC., 6350 Ordnance Point Road, Baltimore, MD 21225, seeks temporary authority to transfer a portion of the operating rights of SECON SERVICE SYSTEM, INC., 460 12th Avenue, New York, NY 10014, under section 210a(b). The transfer to AMERICAN TANK TRANSPORT, INC., of a portion of the operating rights of SECON SERVICE SYSTEM, INC., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc 78-31971 Filed 11-13-78; 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

[6320-01-M]

1

[M-176, Amdt. 1]

CIVIL AERONAUTICS BOARD.

Notice of cancelation of the November 9, 1978, board meeting.

TIME AND DATE: 10 a.m., November 9, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW.,Washington, D.C. 20428.

SUBJECT: See M-176, dated November 2, 1978.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Member Schaffer is on personal leave and will not be able to attend the November 9, 1978, meeting. Member O'Melia is attending negotiations and will not be able to attend the meeting. Having two of the Members not present at the Board meeting leaves the Board without a quorum so the November 9, 1978, meeting has been canceled. Accordingly, the following Members have voted that agency business requires the cancellation of the November 9, 1978, meeting and that no earliers announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

NOTE.—Some of the items for the November 9, 1978, meeting will be scheduled for the next Board meeting.

[S-2290-78 Filed 11-9-78; 11:08 am]

[6712-01-M]

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, November 9, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Correction for November 9th Special Open Meeting.

MATTER TO BE CONSIDERED: The Federal Communications Commission announced on November 2, a schedule for a special open meeting on Nobember 9, 1978. Item 2 renewal erroneously indicates that WPHL-TV is one of three stations in Philadelphia having a petition to deny filed against it. Renewal No. 2 should include WPVI-TV in lieu of WPHL-TV.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone 202-632-7260.

Issued: November 8, 1978.

[S-2291-78 Filed 11-9-78; 11:08 am]

[6714-01-M]

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of change in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10 a.m. on November 8, 1978, the Corporation's Board of Directors voted, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac (Appointive), to withdraw the following item from consideration:

Memorandum proposing the approval of an "Additional Space Agreement" in connection with the Corporation's lease of space for the San Francisco, Calif., Regional Office.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: November 8, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-2292-78 Filed 11-9-78; 11:08 am]

[6714-01-M]

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of change in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on November 8, 1978, the Corporation's Board of Directors voted, on motion of Acting Chairman John G. Heimann, seconded by Director William M. Isaac (Appointive), to withdraw from consideration a memorandum regarding the liquidation of assets acquired by the Corporation from Franklin National Bank, New York, N.Y.

The Board of Directors further determined, on motion of Acting Chairman Heimann, seconded by Director Isaac, that Corporation business required the addition to the agenda for this meeting, on less than 7 days' notice to the public, of memorandums regarding the liquidation of assets acquired by the Corporation from United States National Bank, San Diego, Calif., and Northern Ohio Bank, Cleveland, Ohio; that the public interest did not require consideration of the memorandums in a meeting open to public observation; and that the memorandums could be considered in a meeting closed to public observation by authority of subsections (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

The Board also determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: November 8, 1978.

FEDERAL DEPOSIT INSURANCE COPORATION,

ALAN R. MILLER,
Executive Secretary.

[S-2293-78 Filed 11-9-78; 11:08 am]

[6740-02-M]

5

NOVEMBER 8, 1978.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., November 15, 1978.

PLACE: 825 North Capitol Street NE., Washington, D.C., Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further 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.

GAS AGENDA—207TH MEETING, NOVEMBER 15, 1978, REGULAR MEETING (10 A.M.)

CAG-1. Docket No. RP73-114, Tennessee Gas Pipeline Co.
CAG-2. Docket Nos. AR64-2 et al., AR67-1, et al., G-18841, RP65-59, RP69-13, RP70-29, RP72-98, and RP74-41, Texas Eastern Transmission Corp.
CAG-3. Docket No. RP73-63, Natural Gas Pipeline Co. of America, and Napeco, Inc.
CAG-4. Docket No. RI62-542, Joseph P. Mueller.
CAG-5. Docket No. RI77-25, Woods Exploration and Producing Co., et al.
CAG-6. Docket No. RI77-108, John P. Booth & Associates; Docket No. RI78-48, Sun Oil Co.; Docket No. RI78-62, Atlantic Richfield Co.
CAG-7. Docket No. RI78-39, Texasgulf, Inc.
CAG-8. Docket No. RI78-40, Gas Rock Corp.
CAG-9. Docket No. RI78-44, PDC Co.
CAG-10. Docket No. RI78-47, Sun Oil Co.
CAG-11. Docket No. RI78-83, Sidwell Oil & Gas, Inc.
CAG-12. Docket Nos. CS71-844, et al., Donald A. Beadle and Macero Minerals, Inc., et al.
CAG-13. Docket No. CS77-614, Imperial-American Energy, Inc.
CAG-14. Docket No. CI76-578, et al., Southern Union Supply Co.
CAG-15. Docket No. CI78-539, et al., Sun Oil Co.
CAG-16. Docket No. CI76-349, Energy Reserves Group, Inc.
CAG-17. Docket No. CP76-305, Arkansas Louisiana Gas Co.
CAG-18. Docket No. CP78-479, Trunkline Gas Co., Consolidated Gas Supply Corp.
CAG-19. Docket Nos. CP74-260 and CP75-269, Natural Gas Pipeline Co. of America.
CAG-20. Docket No. CP75-125, Michigan Wisconsin Pipe Line Co.
CAG-21. Docket No. CP78-352, Alabama-Tennessee Natural Gas Co.; Docket No. CP78-491, Tennessee Gas Pipeline Co.
CAG-22. Docket No. CP77-508, Northern Natural Gas Co.
CAG-23. Docket No. CP77-295, Texas Eastern Transmission Corp.
CAG-24. Docket No. CP78-198, Colorado Interstate Gas Co.; Docket No. CP78-210, Montana-Dakota Utilities Co.
CAG-25. Docket No. CP78-422, Tennessee Gas Pipeline Co., a division of Tenneco, Inc., Transcontinental Gas Pipeline Corp.
CAG-26. Docket No. CP78-186, Natural Gas Pipeline Co. of America, Southwestern Gas Pipeline, Inc.
CAG-27. Docket No. CP78-515, United Gas Pipe Line Co., Michigan-Wisconsin Pipe Line Co.
CAG-28. Docket No. CP78-504, Natural Gas Pipe Line Co. of America.
CAG-29. Docket No. CP78-199, Colorado Interstate Gas Co., Northern Natural Gas Co.
CAG-30. Docket No. CP78-474, Arkansas Louisiana Gas Co.
CAG-31. Docket No. CP78-450, Northwest Pipeline Corp.
CAG-32. Docket No. CP78-292, Colorado Interstate Gas Co.
CAG-33. Docket No. CP78-438, Sea Robin Pipeline Co.
CAG-34. Docket No. CP78-409, Florida Gas Transmission Co.
CAG-35. Docket No. CP78-513, Cities Service Gas Co.
CAG-36. Docket No. CP78-391, et al., Great Plains Gasification Associates.
CAG-37. Docket No. RP74-41, Texas Eastern Transmission Corp.
CAG-38. Docket No. RP75-73 (AP79-1), Texas Eastern Transmission Corp.
CAG-39. Docket No. CP78-134, Michigan Wisconsin Pipe Line Co.
CAG-40. Docket Nos. RP65-47 and RP71-101, Mid Louisiana Gas Co.
CAG-41. Docket Nos. RP74-86 and RP76-97, Gulf Energy & Development Corp.
CAG-42. Docket No. RP77-139, Texas Gas Transmission Corp.
CAG-43. Docket No. CP78-429, Texas Gas Transmission Corp.
CAG-44. Docket No. CP70-185, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG-45. Docket No. CP78-453, Transcontinental Gas Pipe Line Corp.
CAG-46. Docket No. CP76-267, Texas Gas Transmission Corp.
Docket No. CP78-509, Texas Eastern Transmission Corp.
CAG-47. Docket No. CP78-494, United Gas Pipe Line Co.
CAG-48. Docket No. CP78-284, Southern Natural Gas Co.
Docket No. CP78-295, United Gas Pipe Line Co.
CAG-49. Docket No. CP78-463, Transcontinental Gas Pipe Line Corp.
Docket No. CP78-482, Northern Natural Gas Co.

I. PIPELINE RATE MATTERS

RP-1 Docket Nos. RP73-102, RP73-14, Michigan Wisconsin Pipe Line Co.
RP-2. Docket No. RP71-11 (PGA76-1), Tennessee Natural Gas Lines Inc.
Docket No. RP76-71, *Tennessee Public Service Commission*, Complainant v. *Tennessee Natural Gas Lines, Inc.*, Respondent.
Docket Nos. RP71-15 and RP75-28 (PGA76-1) (DCA76-1), East Tennessee Natural Gas Co.
Docket No. RP76-70, *Tennessee Public Service Commission*, Complainant v. *East Tennessee Natural Gas Company*, Respondent.
RP-3. Docket Nos. CP74-289, et al., El Paso Natural Gas Co.

II. PRODUCER MATTERS

CI-1. FERC Gas Rate Schedule Nos. 111 and 150, Ashland Exploration, Inc. (Successor to Ashland Oil, Inc.).
CI-2. Docket No. RI77-104 Kennedy & Mitchell, Inc
CI-3. Docket No. RI61-308, et al., Cabot Corp.
CI-4. Docket No. AR64-2, et al., Area Rate Proceeding, et al. (Texas Gulf Coast Area).
CI-5. Docket No. CI75-45, Tenneco Oil Co.
Docket No, CI75-107 and CI75-684, Shell Oil Co.
CI-6. Docket No. CP73-184, Colorado Interstate Gas Co.
Docket No. CI73-485, CIG Exploration, Inc.
CI-7. Docket Nos. CI75-586 and CI77-41, Mobil Oil Corp.
CI-8. Docket No. CI78-677, R. Lacy, Inc.
CI-9. Docket No. RI78-80, ADA Resources, Inc., et al.

III. PIPELINE CERTIFICATE MATTERS

A. Pipeline certificates

CP-1. Docket Nos. CP76-462, CP77-77, CP77-220, Southern Union Gas Co. et al.
Docket No. CP77-565, Western Gas Interstate Co.
Docket No. G-18545, Cities Service Gas Co.
CP-2. Docket No. CP78-136, Transcontinental Gas Pipe Line Co.
CP-3. Docket No. CP73-340, Colorado Interstate Gas Co.
Docket No. CP74-243, Northern Natural Gas Co.
Docket No.CI74-430, Colorado Oil & Gas Corp. and Gas Producing Enterprises, Inc.
CP-4. Transcontinental Gas Pipe Line Corp.
CP-5. Docket No. CP76-87, El Paso Natural Gas Co.
CP-6. Reserved.
CP-7. Reserved.
CP-8. Reserved.

B. Curtailment

CP-9. Docket No. RP75-79,*Lehigh Portland Cement Company* v. *Florida Gas Transmission Company.*
CP-10. Docket No. RP78-16, Southern Natural Gas Co.
CP-11. Docket No. RP77-137-1, South Georgia Natural Gas Co. (Great Southern Paper Co.)
CP-12. Docket Nos. RP77-141, RP77-132, RP77-133-1, and RP77-134, Tennessee Gas Pipleline Co., a division of Tenneco Inc.
CP-13. Reserved.
CP-14. Reserved.

C. Liquefied natural gas

CP-15. Docket Nos. CP75-140, Pacific Alaska LNG Co. et al.
Docket Nos. CP74-160, et al., Pacific Indonesia LNG Co., et al.
Docket Nos. CI78-453, Pacific Lighting Gas Development Co.
Docket No. CI78-452, Pacific Simpco Partnership.

MISCELLANEOUS AGENDA—207TH MEETING, NOVEMBER 15, 1978, REGULAR MEETING

CAM-1. Department of Energy's Proposed Rulemaking on International Petroleum Products Allocation.
CAM-2. Union Electric Co.
CAM-3. Tampa Electric Co.
CAM-4. Public Service Co. of New Hampshire.
CAM-5. The Empire District Electric Co..
CAM-6. Equitable Gas Co.
CAM-7. Baltimore Gas & Electric Co.
CAM-8. Illinois Power Co.
CAM-9. The Virginia Electric & Power Co.
M-1. Docket No. RM78-17, Procedures for Review by the Federal Energy Regulatory Commission of Adjustment Request Denials by the Secretary of Energy.
M-2. Docket No. RA79-2, Commonwealth Oil Refining Co.
M-3. Docket No. RM78- , Procedure for Amendment of Certificates to Conform to Actual Construction.
M-4. Docket No. RM74-16, Natural Gas Companies' Annual Report of Proved Domestic Gas Reserves: FPC Form No. 40; Further Extension of Filing Deadlines.

POWER AGENDA—207TH MEETING, NOVEMBER 15, 1978, REGULAR MEETING

CAP-1. Docket Nos. ER78-35, ER78-82, ER78-94, ER78-131, ER78-133, ER78-138, and ER78-153, Connecticut Light & Power Co. and Hartford Electric Light Co.
CAP-2. Project No. 632, Monroe City, Utah.
CAP-3. Project No. 2580, Consumers Power Co.
CAP-4. Project No. 2168, Lower Valley Power & Light, Inc.
CAP-5. Project No. 1097, Leonard Lundgren.
CAP-6. Docket No. ER78-565, South Carolina Electric & Gas Co.
CAP-7. Docket No. ER79-26, Niagara Mohawk Power Corp.
CAP-8. Docket No. ER78-44, New England Power Co.
CAP-9. Docket Nos. ER76-205,, Southern California Edison Co. Docket No. E-7777 (Phase II), Pacific Gas & Electric Co. Docket No. E-7796, Pacific Gas & Electric Co.

I. ELECTRIC RATE MATTERS

ER-1. Docket Nos. ER78-566, ER78-567, and ER78-19, et al., Florida Power & Light Co.
ER-2. Docket Nos. E-9469 and ER76-377, Lockhart Power Co.
ER-3. Docket Nos. ER78-337 and ER78-338, Public Service Co. of New Mexico.
ER-4. Docket No. E-9454, Public Service Co. of New Mexico.
ER-5. Docket No. ER78-517, the Connecticut Light & Power Co.
ER-6. Docket No. E-7777, Pacific Gas & Electric Co. Docket No. E-7796, Pacific Power & Light Co.
ER-7. Docket No. E9520, Illinois Power Co.
ER-8. Docket No. E8851, Alabama Power Co.
ER-9. Docket No. E-6454, City of Centralia.
ER-10. Docket No. ER77-278, Arkansas Power & Light Co.
ER-11. Docket Nos. ER76-39, ER76-340 and ER76-363, Kansas Power & Light Co.
ER-12. Docket No. E8570, Southern California Edison Co.
ER-13. Docket No. E8624, Arizona Public Service Co.
ER-14. Docket No. ID-1823, Robert P. Reuss.
ER-15. Docket No. ID-1709, Willis C. Fitkin. Docket No. ID-1710, William Cyrus Macinnes.
ER-16. Docket No. ID-1758, Charles T. Fisher, III. Docket No. ID-1759, Richard C. Gerstenberg.
ER-17. Docket No. E-7398, Alcoa Generating Corp., Long Sault, Inc., Tapoco, Inc., Yadkin, Inc. Docket No. ER78-18, *Town of Highlands, N.C. v. Aluminum Company of America, et al.* Docket No. ER76-828, Nantahala Power & Light Co.

II. LICENSED PROJECT MATTERS

P-1. Project No. 5, the Montana Power Co.
P-2. Project No. 2599, Consumers Power Co.

KENNETH F. PLUMB,
Secretary.

[S-2294-78 Filed 11-9-78; 11:08 am]

[8120-01-M]

6

[Meeting No. 1200]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, November 16, 1978.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS FOR DISCUSSION:

1. Removal of TVA surface mine reclamation provisions from coal contracts.
2. Study of nuclear spent fuel storage alternatives.
3. Preliminary rate review.

MATTERS FOR ACTION:

NEW BUSINESS

Consulting and personal service contracts

1. Renewal of consulting contract with Dr. Ulrich C. Luft, Albuquerque, N. Mex., for pulmonary function studies, requested by the Division of Medical Services.
2. Renewal of consulting contract with Lawrence K. Cecil, Champaign, Ill., for evaluation of research projects, requested by the Office of Power.

Purchase awards

1. Req. No. 823810—Metal siding panels and accessories, including installation, for Hartsville and Phipps Bend Nuclear Plants.
2. Amendment to Contract 77K72-821399 with Atlas Machine & Iron Works, Inc., for structural steel for fuel building for Hartsville and Phipps Bend Nuclear Plants.
3. Req. No. 824528—Insulation, including installation, for Kingston Steam Plant.
4. Req. No. 823919—Structural steel for office and service buildings for the Hartsville and Phipps Bend Nuclear Plants.
5. Req. No. 150882—Spare high and intermediate-pressure rotors for Colbert Steam Plant.
6. Rejection of bids received in response to Invitation No. 823481 for fire alarm systems for Hartsville and Phipps Bend Nuclear Plants.
7. Req. No. 823695—Requirements contracts for protective coatings (paints) for concrete and related materials and services for Hartsville and Phipps Bend Nuclear Plants.

Project authorizations

1. No. 3386—Distribution automation and load management demonstration in cooperation with the Department of Energy and Tennessee Valley Public Power Association.

Power items

1. New power contract with 4-County Electric Power Association.
2. New power contract with the city of Scottsboro, Ala.
3. Interchange agreement with Georgia Power Co.
4. Supplement to Contract No. TV-369144 with Battelle-Columbus Laboratories, Columbus, Ohio, for technical assistance to the Office of Power.

Real property transactions

1. Grant of permanent easement to Georgia Mountain Fair, Inc., for public recreation and fairground, affecting 44.2 acres of Chatuge Reservoir land in Towns County, Ga.—Tract XTCHR-25RE.
2. Sale at public auction of 13.93 acres of land on White Bridge Road in Davidson County, Tenn., acquired by TVA for a power service center site—Tract XNVSC-8.
3. Sale at public auction of 16.8 acres of Melton Hill Reservoir land in the Eagle Bend Industrial Park in Anderson County, Tenn.—Tract XMHR-42.
4. Filing of condemnation suits.

Unclassified

1. Semiannual notice of agenda of significant regulations under development or review.

Dated: November 9, 1978.

CONTACT PERSON FOR MORE INFORMATION:

John Van Mol, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

[S-2295-78 Filed 11-9-79; 4:00 pm]

federal register

TUESDAY, NOVEMBER 14, 1978
PART II

ENVIRONMENTAL PROTECTION AGENCY

■

AIR POLLUTION CONTROL: MOTOR VEHICLE CERTIFICATION AND FUEL ECONOMY STANDARDS

Technical Amendments; Corrections

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL-951-5]

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES CERTIFICATION AND TEST PROCEDURES

PART 600—FUEL ECONOMY OF MOTOR VEHICLES

Technical Amendments; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This action is a publication of several technical and clerical amendments to part 86 of the motor vehicle certification regulations and to part 600 of the fuel economy regulations. The amendments correct errors and clarify ambiguities introduced into the regulations by a variety of prior regulatory actions. This action also publishes as final a number of minor amendments to the fuel economy regulations (Part 600) that were proposed on September 12, 1977, for the 1979 model year. The amendments are described in the table below.

DATE: These amendments are effective November 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Paul A. J. Wilson, Regulatory Management Staff, Office of Mobile Source Air Pollution Control (AW-455), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0596.

SUPPLEMENTARY INFORMATION: This rulemaking contains several kinds of amendments to parts 86 (emissions testing regulations) and 600 (fuel economy regulations): (1) Clerical amendments—such as corrections to incorrect citations or restoration of material that had been previously published in the regulations but which had been inadvertently omitted in the republication of sections of the regulations; (2) technical amendments—these amendments do not require public comment and provide additional explanation or detail, without substantially changing the meaning or requirements of the regulation, in order to clarify a current requirement or practice. These amendments also reflect changes needed to make the regulations internally consistent; (3) minor amendments—these were proposed by EPA for comment on September 12, 1977 (42 FR 45641) and are being published as final in this rulemaking.

The minor provisions that were proposed by the Agency on September 12, 1977, were published on an interim-final basis for 1978 and proposed for the 1979 model year because some appeared to be more significant than mere technical amendments. No comments were received in response to the NPRM, and thus these provisions are being adopted as proposed except as affected by other technical or clerical amendments. These provisions are described below:

1. In the certification vehicle definition, the section reference was changed to reflect applicability to light-duty vehicles and light-duty trucks only (§ 600.002);

2. The requirement was added that all vehicles used to generate fuel economy data must be certified before the data are used in any calculations (§ 600.007);

3. The round-off procedures for calculating fuel economy values for a vehicle configuration and for a model type are clarified (§ 600.206 and 600.207);

4. The schedule concerning a manufacturer's request for a general label have been clarified and the requirement that a manufacturer must notify the Administrator of the date on which he plans to introduce a vehicle for sale has been added (§ 600.313);

5. The schedule concerning submittal of the manufacturer's average fuel economy value is clarified. The term "public introduction date" has been changed to "date of the availability of the initial range of fuel economy values of comparable automobiles." The data to be included in the preliminary calculations are clarified and the precision of the sales fraction to be used in the calculation has been defined (§ 600.506);

6. The fuel economy data from vehicles tested for determining part 86 compliance of running changes are included in the determination of average fuel economy. The word "annual" is used in place of "model year" for passenger automobile production data. The conversion factor for converting gallons of diesel fuel to equivalent gallons of gasoline is revised to 1.0 from 0.96. The precision in the manufacturer's average calculation has been clarified and revised (§ 600.510).

By issuing the following technical and clerical amendments directly as a final rule, EPA is foregoing the prior issuance of a notice of proposed rulemaking (NPRM) and the opportunity for public comment on the proposal provided by the NPRM. Such a curtailed procedure is permitted by 5 U.S.C. 553(b) when the issuance of a proposal and public comment on it would be unnecessary and contrary to the public interest. EPA finds good cause to dispense with notice and public comment proceedings in this case because the technical and clerical amendments merely correct errors and ambiguities in the regulations and otherwise amend EPA procedures in a manner that does not adversely affect any interested party. Because some of the regulations herein promulgated are to take effect in the 1979 model year, which has already begun, EPA has determined that these regulations should become effective upon publication.

The individual changes made to the regulations and the reasons for each change are given in the table that follows.

NOTE.—The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

Dated: October 4, 1978.

DOUGLAS M. COSTLE,
Administrator.

SUMMARY AND EXPLANATION TABLE

Section	Change	Reason
1. § 86.080-2	Change vehicle "configuration" to vehicle "construction" in the definition of body style.	Correction.
2. § 86.080-24		
(a)(2)(v)	Add tolerance on (valve) port area size for the purposes of engine family classification.	Inadvertently omitted in the Sept. 12, 1977, publication.
(a)(2)(viii), and (ix).	Delete the phrase "gasoline-fueled vehicles and engines only" when referring to thermal reactor and catalytic converter characteristics for the purpose of engine family classification.	The wording was correct in the Sept. 8, 1977, publication but was inadvertently changed by the Sept. 12, 1977, publication.
(a)(2)(x)	Add "type of air inlet cooler" for heavy-duty diesel engines for the purpose of engine family classification.	Inadvertently omitted in the Sept. 12, 1977 publication.
(6)(ii), and (iii).	Add evaporative emission design and type of fuel system for the purpose of engine family classification.	Do.

SUMMARY AND EXPLANATION TABLE—Continued

Section	Change	Reason
(b)(1)(vi)	86.078-23 corrected to read 86.079-23	Correction of erroneous citation.
(b)(3)(ii)	86.079-26 corrected to read 86.080-26	Do.
(c)(2)(i)	Delete second sentence referring to durability engine selection based upon the largest projected sales.	This criterion was deleted for the 1979 model year but was inadvertently reinserted in an earlier publication applicable to the 1980 model year.
(c)(3)(i)	86.079-26 corrected to read 86.080-26	Correction of erroneous citation.
(d)	....do	Do.
(e)(5) and (6).	Correct the sales figure for gasoline-fueled and diesel heavy-duty engines used to determine eligibility for a reduction in the number of test vehicles (or engines) required for certification.	Correction.
3. § 86.079-26(b)(1)(ii).	Correct the subpart reference	Incorrectly depicts the optional subpart in an earlier publication.
4. § 86.080-26	Revise paragraph (b) pertaining to heavy-duty vehicles and delete par. (c). Correct numerous references.	These changes were made in the Sept. 8, 1977, publication but were incorrectly published in the Sept. 12 publication. This change restores the section to its intended construction.
5. § 86.079-35(f)	40 CFR 568 corrected to read 49 CFR 568	Correction of erroneous citation.
6. § 86.078-36	Paragraph (a) revised by relieving manufacturers of light-duty vehicles and light-duty trucks of requirement to submit vehicle identification numbers within 60 days of date of manufacture of a vehicle covered by a certificate of conformity. Vehicle identification numbers now required to be submitted only upon request of Administrator. Par. (b) amended to identify the information set forth in § 86.078-37, necessary for the Administrator to identify those vehicles covered by a certificate of conformity.	Routine reporting of vehicle identification numbers no longer necessary, therefore reporting obligation is removed from manufacturer. *Note:* This amendment in no way affects the reporting requirements set forth in § 86.078-37.
7. § 86.079-36	(Same as item 6 above)	(Same as item 6 above), this amendment in no way affects the reporting requirements of § 86.079-37.
8. § 86.113-79(a)(3).	86.077-21 corrected to read 86.079-21	Correction of erroneous citation.
9. § 86.114-79(a)(7).	Add a paragraph permitting the use of proportional blending devices to make analytical gases.	This provision is permitted in § 86.114-78. Its omission from § 86.114-79 was due to clerical error.
10. § 86.115-78(b)(1).	Divide par. (b)(1) into subparagraphs and change 86.128 to read 86.132.	Clarification and correction of erroneous citation.
11. § 86.128-79	Adds new section	Brings requirement of regulation regarding vehicle operation during acceleration into conformity with § 86.115-78. Clarifies requirement of regulation that manual transmission equipped vehicles are to be tested with representative shift patterns. Change will also permit manufacturers to recommend shift patterns other than those with which the vehicle was tested to consumers, e.g., for better fuel economy.
12. § 86.129-79		
(b)(3)	Specify that road load power for air conditioning will be determined on an engine family basis instead of a car line basis as stated.	It was proposed for 1979 that the increased hp for air conditioning would be determined on a car line basis. This requirement was intended to be delayed until 1980.
(c)(4)	86.078-24 corrected to read 86.079-24	Correction of erroneous citation.
13. § 86.129-80		
(b)(3)	86.078-24 corrected to read 86.080-24	Do.
(c)(4)	....do	Do.
14. § 86.130-78	State that the measurement temperature must be representative of the temperature experienced by the test vehicle.	Clarification.
15. § 86.136-78		
(c)(1)	86.077-25 corrected to read 86.078-25	Correction of erroneous citation.
(c)(2)	....do	Do.
16. § 86.140-78	Span and zero analyzer for each range	Clarification to insure measurement accuracy.
(b) and (e)	State that span gases must have concentrations of at least 70 pct of the analyzer range and that analyzer response during sampling must be within 20 to 100 pct of scale.	Do.
17. § 86.144-78(c)(1), (c)(4).	Correct density of HC and CO^2 in the regulations pertaining to calculation of emissions.	Correction.
18. § 86.312-79		
(c)(1)(i)	Add requirements for a muffler in the exhaust system of heavy-duty engines.	The requirements for a muffler were inadvertently omitted. These requirements are not new as they existed as previous test procedures and serve only to clarify the intent of 86.312(c).
(iii) and (iv)	Add details to the exhaust sample probe location for catalyst and noncatalyst equipped heavy-duty engines.	Clarification.
19. § 86.437-78		
(a)(2)(ii)	Insert the word "production" to describe the period referred to in the certification language.	Inadvertently omitted in the Jan. 5, 1977, regulation.
(b)(3)	Add commas, delete the word "when" and add the word "also." Does not affect meaning, only clarity.	Corrections to the Oct. 28, 1977, publication.
20. § 86.544-78(c)	Correct density of HC and CO^2 in the regulations pertaining to calculation of emissions.	Correction.
21. Appendix	Change the speeds for small portions of the first portion of the driving cycle.	The speed versus time trace for the urban driving cycle was misprinted.
22. Citation of Authority.	Change the U.S.C. section references	42 U.S.C. sections were recently renumbered.
23. § 600.002-79		
(15)	Section reference changed to 86.079-24(b)(1) to restrict to light-duty vehicles and light-duty trucks.	This change published interim-final for 1978 is being adopted here with no adverse comment.
(33)	Change vehicle "configuration" to vehicle "construction" in the definition of body style.	Clerical correction.
(41)	42 CFR 523.5 is corrected to read 49 CFR 523.5	Correction of erroneous citation.
(42)	42 CFR 533.5 is corrected to read 49 CFR 533.5	Do.
24. § 600.002-80		
(15)	Reference changed to 86.080-24(b)(1). See explanation under § 600.002-79(15).	See explanation given under item No. 23, § 600.002-79(15).
(22)	"Transmission Class" definition	The definition of "transmission class" for the 1980 model year was inadvertently published as the 1978 definition.
(23)	Change "inertia weight" to "inertia weight class" in the definition of base level.	The term "inertia weight" has been dropped from the regulations for 1980 and later model years.
(33)	Change vehicle "configuration" to vehicle "construction" in the definition of body style.	Correction.

SUMMARY AND EXPLANATION TABLE—Continued

Section	Change	Reason
(41)	42 CFR 523.5 is corrected to read 49 CFR 523.5	Correction of erroneous citation.
(42)	42 CFR 533.5 is corrected to read 49 CFR 533.5	Do.
25. § 600.007-77		
(b)(1)	Delete requirement for advanced approval of component changes and to change "Engine components" to vehicle/engine components.	Remove the unnecessary restriction of prior approval by the Administrator.
(6)	Require that each fuel economy data vehicle represent a certified vehicle.	To insure that all fuel economy data are from certified vehicles. This has been EPA policy but is expressly being included in the regulations for clarification.
26. § 600.007-80		
(a)	86.079-24 is corrected to read 86.080-24	Correction of erroneous citation.
(b)(1)	Delete requirement for advanced approval of component changes and to change "Engine components" to vehicle/engine components.	Remove an unnecessary restriction and for clarification.
(b)(3)	86.077-26 is corrected to read 86.079-26	Correction of erroneous citation.
(4)	86.077-28 is corrected to read 86.079-28	Do.
(e)(1)	86.077-37 is corrected to read 86.079-37	Do.
27. § 600.010-77	Include in the vehicle test requirements addition of models after certification and running change vehicles.	This change is being made to correct an oversight in the original regulations. The use of running change data is specified in subpt. F of this part for use in the calculation of a manufacturer's average fuel economy value. However, these data must be accepted under subpt. A, and to do so requires that the manufacturer generate city and highway data for each vehicle. This change to the regulations reflects current practice.
28. § 600.111-78(h)(6).	Change "13 seconds" to "17 seconds" to specify the time between the end of the preconditioning cycle and the beginning of the Highway Fuel Economy Test.	Clerical correction.
29. § 600.111-80		
(g)(2)	86.077-25 is changed to read 86.079-25	Correction of erroneous citation.
(h)(6)	Change "13 seconds" to "17 seconds" to specify the time between the end of the preconditioning cycle and the beginning of the Highway Fuel Economy Test.	Clerical correction.
30. § 600.113-78(c)	Specify that the precision of the emission levels used in the carbon balance equation be consistent with the official certification test values.	Clarification.
31. § 600.207-78		
(a)(2)(iii)	86.007-21 is changed to read 86.078-21	Correction of erroneous citation.
(a)(3)(iii)	86.078-23 is changed to read 86.078-32, 86.078-33, or 86.078-34	Do.
32. § 600.309-80	Delete § 600.309-80	To permit the use of the optional labeling format requirements published on July 25, 1977.
33. § 600.313-78(c)(6).	Specify that the provisions of this paragraph (25 day leadtime for fuel economy data approval) apply only to model types offered for sale at the beginning of the model year.	Clarification.
34. § 600.313-79(d).	Add § 600.313-79, including new paragraph (d)	Require that a manufacturer notify EPA of the introduction dates of each model type. Change necessary to implement provisions of regulation regarding manufacturer submission of sufficient information to enable the Administrator to determine general or specific fuel economy values.
35. § 600.315-78(g)(2)(h).	Add paragraph (g)(2) through (h)(2)(i) pertaining to the calculation of hatchback cargo volume and submission of required data.	Section inadvertently omitted in Sept. 12, 1977, publication. This is a clerical change only.
36. § 600.506-78(b)(2)(ii).	86.077-23 is changed to read 86.078-32, 86.078-33 or 86.078-34	Correction of erroneous citation.
37. § 600.506-79		
(a)(1)	The term "public introduction date" has been changed to "date of the availability of the initial range of fuel economy values of comparable automobiles" and the precision of the sales fraction to be used in the calculation has been defined.	This publishes as final some minor amendments proposed on Sept. 12, 1977, for which no comments were received.
(b)(2)(ii)	86.077-23 is changed to read 86.079-32, 86.079-33 or 86.079-34	Correction of erroneous citation.
38. § 600.507-78(a).	86.077-23 is changed to read 86.078-32, 86.078-33, 86.078-34	Do.
39. § 600.507-79		
(a)	86.077-23 is changed to read 86.079-32, 86.079-33, or 86.079-34	Do.
(b)(1)	....do	Do.
40. § 600.507-80		
(a)	....do	Do.
(b)(1)	....do	Do.
41. § 600.508-78(b).	Add parenthesis	Clerical correction.
42. § 600.510-79		
(b)(2)(iii)	Change the diesel fuel/gasoline equivalence factor from 0.96 to 1.0	This change was proposed on Sept. 12, 1977, and is being published as final.
(a)(3), (vi), (d)(2).	Substitute the phrase "4-wheel drive general utility vehicles" for the term "jeep-type vehicle.".	To maintain consistency between EPA and DOT regulations.
(e)	Add prefix "non"	Clerical correction.
43. § 600.510-80		
(b)(2)(iii)	Change the diesel/fuel gasoline equivalence factor from 0.96 to 1.0	This change was proposed on Sept. 12, 1977, and is being published as final.
(a)(3), (b)(2)(vi), (d)(2).	Substitute the phrase "4-wheel drive general utility vehicles" for the term "jeep-type vehicle.".	To maintain consistency between EPA and DOT regulations.
(e)	Add prefix "non"	Clerical correction.
(2)	Add word "not"	Do.
44. § 600.512-78(c)(7).	Revise this section to empower any officer of the corporation to sign the production data report.	Reduces unnecessary regulatory requirement.
45. § 600.512-79		
(c)(7)	Revise this section to empower any officer of the corporation to sign the production data report.	Do.
(c)(8)	Substitute the phrase "4-wheel drive general utility vehicles" for the term "jeep-type vehicle," and change reference to CFR 533.4..	To maintain consistency between EPA and DOT regulations and clerical correction.

Part 86 of chapter I, title 40 of the Code of Federal Regulations is hereby amended as follows:

1. By amending § 86.080-2 to read as follows:

§ 86.080-2 Definitions.

* * * * *

"Body style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback).

* * * * *

2. By amending § 86.080-24 to read as follows:

§ 86.080-24 Test vehicles and engines.

(a) * * *

(2) * * *

(v) The location of intake and exhaust valves (or ports) and the valve (or port) sizes (within a ⅛-inch range on the valve head diameter or within 10 percent on the port area).

* * * * *

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and after-coolers) for diesel heavy-duty engines.

* * * * *

(6) * * *

(ii) Basic canister design.

(iii) Fuel system.

* * * * *

(b) * * *

(1) * * *

(vi) The Administrator may combine testing requirements for any vehicle selected under paragraph (b)(1)(v) or (b)(1)(vii)(D) of this section with the testing requirements for any similar vehicle in the same engine-system combination selected under paragraph (b)(1) (ii), (iii), or (iv) of this section or any similar vehicle in the same engine-system, evaporative emission family evaporative emission control system combination selected under paragraph (b)(1)(vii) (A) or (B) of this section. The testing requirements may be combined by the Administrator by requiring a vehicle selected for testing under paragraphs (b)(1) (ii), (iii), (iv), (vii)(A), or (vii)(B) of this section to be modified (if necessary) after mileage accumulation and emission testing for the purpose of demonstrating compliance with § 86.079-23(c)(1)(ii).

* * * * *

(3) * * *

(ii) Engines of each engine family will be divided into groups based upon exhaust emission control system. One engine of each engine-system combination shall be run for smoke emission data and gaseous emission data as prescribed in § 86.080-26(c)(3). Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine-system combination, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

* * * * *

(c) * * *

(2) * * *

(i) A durability-data engine will be selected by the Administrator to represent each engine-system combination.

* * * * *

(3) * * *

(i) One engine from each engine-system combination shall be tested as prescribed in § 86.080-26(c)(3)(ii). At each test point, either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine which features the highest fuel feed per stroke, primarily at rated speed and secondarily at the speed of maximum rated torque, will usually be selected for durability testing. In the case where more than one engine in an engine-system combination has the highest fuel feed per stroke, the engine with the highest maximum rated horsepower will usually be selected for durability testing. If an engine system combination includes both military and nonmilitary engines, then the nonmilitary engine with the highest maximum rated horsepower will usually be selected for durability testing.

* * * * *

(d) For purposes of testing under § 886.080-26 (a)(9), (b)(9) or (c)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (or durability-data engines) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section: *Provided*, That the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e) * * *

(5) 2,000 gasoline-fueled heavy-duty engines, or

(6) 2,000 diesel heavy-duty engines,

may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

* * * * *

3. By amending § 86.079-26 to read as follows:

§ 86.079-26 Mileage and service accumulation; emission measurements.

* * * * *

(b) * * *

(11) * * *

(ii) The test procedure (subparts D or H of this part for gasoline-fueled engines, and subparts I and D or I and J of this part for diesel engines) will be followed by the Administrator. The Administrator will test the engines at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

* * * * *

4. By revising § 86.080-26 to read as follows:

§ 86.080-26 Mileage and service accumulation; emission measurements.

(a) (1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The procedure for mileage accumulation will be the durability driving schedule as specified in appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at the test weight corresponding to the higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.079-23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) Each gasoline-fueled emission-data vehicle shall be driven 4,000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero and 4,000 miles on those vehicles selected under § 86.080-24 (b)(1)(ii) through (b)(1)(v). Complete exhaust and evaporative emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.080-24(b)(1)(vii). The manufacturer may at his option test the vehicles selected under § 86.080-24(b)(1)(vii) up to three times at the 4,000-mile test point as long as the ±250-mile test tolerance is adhered to. The administrator may determine under § 86.080-24(f) that no testing is required.

(B) The emission-data vehicle(s) selected for testing under § 86.080-24 (b)(1)(v) or (b)(1)(vii)(D) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.080-24 (b)(1)(v) or (b)(1)(vii)(D) and permitted to be tested for purposes of § 86.079-23(c)(1)(ii) under the provisions of § 86.080-24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purposes of this subparagraph, "low altitude" means any elevation less than 549 meters (1,800 feet).

(ii) *Diesel.* (A) Each diesel emission-data vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(B) The emission-data vehicle(s) selected for testing under § 86.080-24(b)(1)(v) shall be driven 6,436 kilometers (4,000 miles) at any altitude. Emission tests shall be conducted at zero kilometers (zero miles) at any altitude and 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) The emission-data vehicle(s) selected for testing under § 86.080-24(b)(1)(v) and permitted to be tested for purposes of § 86.079-23(c)(1)(ii) under the provisions of § 86.080-24(b)(1)(vi) shall be driven 6,436 kilometers (4,000 miles) at low altitude. Emission tests shall be conducted at zero kilometers (zero miles) at low altitude and 6,436 kilometers (4,000 miles) under both low- and high-altitude conditions. For the purpose of this subparagraph "low altitude" means any elevation less than 549 meters (1,800 feet).

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.079-23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.080-24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.080-24(c) at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000. The Administrator may determine under § 86.080-24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at the following mileage points: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000.

(5) All tests required by this subpart to be conducted after every 5,000 miles of driving for durability-data vehicles and 4,000 miles for emission-data vehicles must be conducted at any accumulated mileage within 250 miles of each of those test points.

(6)(i) The results of each emission test shall be supplied to the Administrator immediately after the test. The manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed three valid tests. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) shall be air posted to the Administrator within 24 hours (or delivered within 3 working days). In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079-23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be rounded, using the "rounding off method" specified in ASTM E29-67, to the number of places to the right of the decimal point indicated by expressing the applicable emission standards of this subpart to three significant figures.

(7) Whenever the manufacturer proposes to operate and test a vehicle which may be used for emission or durability data, he shall provide the zero-mile test data to the Administrator (except for those vehicles for which the zero-mile test requirement has been waived under § 86.079-23(a)(2)) and make the vehicle available for such testing under § 86.079-29 as the

Administrator may require before beginning to accumulate mileage on the vehicle. Failure to comply with this requirement will invalidate all test data submitted for this vehicle.

(8) Once a manufacturer begins to operate an emission-data or durability-data vehicle, as indicated by compliance with paragraph (a)(7) of this section, he shall continue to run the vehicle to 4,000 miles or 50,000 miles, respectively, and the data from the vehicle will be used in the calculations under § 86.079-28. Discontinuation of a vehicle shall be allowed only with the written consent of the Administrator.

(9) (i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.079-23(b)(2).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2)(i) For gasoline-fueled engines, the dynamometer service accumulation schedule will consist of several operating conditions which give the percent loads and the modes as specified in the following chart. The percentage of time in each mode must be held within the limits specified. The maximum observed torque for each mode in the service accumulation cycle must be determined at the rpm at which the mode is being conducted. The percent load for that mode will be determined from the maximum torque at the rpm at which the mode is being conducted.

Mode	Observed torque (percentage of maximum observed)	Percentage of time
Idle	Idle	23 (22 to 24).
CT	CT	14 (13 to 15).
PTD	10	6 (5 to 7).
Cruise	25	31 (30 to 32).
PTA	55	15 (14 to 16).
FL	90	11 (10 to 12).

(ii) The equivalent control parameter for engine loading will be manifold vacuum, manifold pressure, or torque. Usage of one of the three parameters will require approval in advance by the Administrator. The control parameter values that correspond to the appropriate percent loads as specified in the emission test cycle will be initially determined at the zero-hour point or after an appropriate break-in procedure. The control parameter values determined initially will be used for the entire service accumulation schedule. If at any time during the service accumulation, the 90 percent torque value cannot be attained, the engine shall be operated at wide-open throttle.

(iii) The average speed shall be between 1,650 and 1,700 rpm. Subject to the requirements as to average speed, there must be operation at speeds in excess of 3,200 rpm (but not in excess of governed speed for governed engines or rated speed for nongoverned engines) for a cumulative maximum of 0.5 percent of the actual cycle time, excluding time in transient conditions. Maximum cycle time shall be 15 minutes. A cycle approved in advance by the Administrator shall be used.

(3)(i) For diesel engines, the following criteria must be met before service accumulation can begin. Failure to comply with these requirements shall invalidate all test data submitted for an engine.

(A) Each engine shall produce at least 95 percent of the maximum horsepower, corrected to rating conditions, at 95 to 100 percent of the rated speed.

(B) The fuel rate at maximum horsepower shall be within manufacturer's specifications.

(ii) During service accumulation, hours can be credited toward the required service accumulation hours when the following criteria are met. If these criteria cannot be met, engine operation shall be discontinued and the Administrator shall be notified immediately. (Adjustments to the fuel rate can be approved under the provisions of § 86.079-25.)

(A) Each engine shall produce at least 95 percent of the maximum horsepower, at 95 to 100 percent of the rated speed, observed at the zero-hour point. Horsepower values shall be corrected to the rating conditions.

(B) The engine shall be operated at 75 percent of the inlet and exhaust restrictions specified in § 86.879-3 except that the tolerance will be ±3 inches of water and ±0.5 inch of Hg respectively.

(C) During each emission test the inlet and exhaust restrictions shall be as specified in § 86.879-8.

(4) If a break-in procedure is used, the procedure must be the same as recommended to the ultimate purchaser. Prior approval by the Administrator is required for use of any break-in procedure. The hours accumulated during the break-in procedure will not be counted as part of the service accumulation.

(5) Emission-data engines: Each emission-data engine shall be operated for 125 hours with all emission control systems installed and operating. An emission test shall be conducted at 125 hours. A zero-hour emission may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(6) Durability-data engines: Each gasoline-fueled durability-data engine shall be operated, with all emission control systems installed and operating, for 1,500 hours. Each diesel durability-data engine shall be operated for 1,000 hours. Emission measurement, as prescribed, shall be made at 125-hour intervals beginning at 125 hours of operation. A zero-hour emission test may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(7) All tests required by this subpart to be conducted after 125 hours of operation or at any multiple of 125 hours may be conducted at any accumulated number of hours within 8 hours of 125 hours or the appropriate multiple of 125 hours respectively.

(8) (i) Data from all emission tests (including voided tests) shall be air posted to the Administrator within 72 hours (or delivered within 5 working days). The manufacturer shall furnish to the Administrator an explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests

must be the same at each point and may not exceed 3 valid tests. Tests between test points may be conducted as required by the Administrator. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079-23. Where the Administrator conducts a test on a durability-data engine at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29-67.

(9) Whenever the manufacturer proposes to operate and test an engine which may be used for emission or durability data, he shall provide such information concerning components used on the engine as the Administrator may require and make the engine available for such testing under § 86.079-29 as the Administrator may require, before beginning to accumulate hours on the engine. Failure to comply with this requirement will invalidate all test data later submitted for this engine.

(10) Once a manufacturer begins to operate an emission-data or durability-data engine, as indicated by compliance with paragraph (b)(9) of this section, he shall continue to run any emission-data engine to 125 hours, any gasoline-fueled durability-data engine to 1,500 hours, and any diesel durability-data engine to 1,000 hours. The data from the engine will be used in the calculations under § 86.345. Discontinuation of an engine shall be allowed only with the prior written consent of the Administrator.

(11)(i) The Administrator may elect to operate and test any test engine during all or any part of the service accumulation and testing procedure. In such cases the manufacturer shall provide the engine(s) to the Administrator with all information necessary to conduct the testing.

(ii) The test procedures (Subpart D of this part for gasoline-fueled engines, and Subparts D and I of this part for diesel engines) will be followed by the Administrator. The Administrator will test the engines at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(12) Emission testing of any type with respect to any certification engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

* * * * *

5. By amending Section 86.079-35 to read as follows:

§ 86.079-35 Labeling.

* * * * *

(f) The manufacturer of any incomplete vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emissions certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR part 568.

* * * * *

6. By amending § 86.078-36 to read as follows:

§ 86.078-36 Submission of vehicle identification numbers.

(a) Upon request of the Administrator, the manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall, within 30 days, identify by vehicle identification number, the vehicle(s) covered by the certificate of conformity.

(b) The manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any vehicle identification coding system in sufficient detail to enable the Administrator to identify those vehicles which are covered by a certificate of conformity.

* * * * *

7. By amending § 86.079-36 to read as follows:

§ 86.079-36 Submission of vehicle identification numbers.

(a) Upon request of the Administrator, the manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall, within 30 days, identify by vehicle identification number, the vehicle(s) covered by the certificate of conformity.

(b) The manufacturer of any light-duty vehicle or light-duty truck covered by a certificate of conformity shall provide to the Administrator, within 60 days of the issuance of a certificate of conformity, an explanation of the elements in any vehicle identification number coding system in sufficient detail to enable the Administrator to identify those vehicles which are covered by a certificate of conformity.

* * * * *

8. By amending § 86.113-79 to read as follows:

§ 86.113-79 Fuel specifications.

(a) * * *

(3) The specification range of the gasoline to be used under paragraph (a)(2) of this section shall be reported in accordance with § 86.079-21(b)(3).

* * * * *

9. By amending § 86.114-79 to read as follows:

§ 86.114-79 Analytical gases.

(a) * * *

(7) The use of proportioning and precision blending devices to obtain the required analyzer gas concentration is allowable provided their use has been approved in advance by the Administrator.

* * * * *

10. By amending § 86.115-78 to read as follows:

§ 86.115-78 EPA urban dynamometer driving schedule.

* * * * *

(b)(1) The dynamometer driving schedule is prescribed in appendix I. The speed tolerance at any given time for this schedule, or for a driver's aid chart approved by the Administrator, when conducted to meet the provisions of § 86.137 are:

(i) The upper limit is 2 mph (3.2 km/h) higher than the highest point on the trace within 1 second of the given time.

(ii) The lower limit is 2 mph (3.2 km/h) lower than the lowest point on the trace within 1 second of the given time.

(iii) Speed variations greater than the tolerances (such as may occur during gear changes) are acceptable provided they occur for less than 2 seconds on any occasion.

(iv) Speeds lower than those prescribed are acceptable provided the vehicle is operated at maximum available power during such occurrences.

(v) When conducted to meet the requirements of § 86.132, the speed tolerance shall be as specified above, except the upper and lower limits shall be 4 mph (6.4 km/h).

* * * * *

11. By adding a new § 86.128-79 to read as follows:

§ 86.128-79 Transmissions.

(a) All test conditions, except as noted, shall be run according to the manufacturer's recommendations to the ultimate purchaser, Provided that: Such recommendations are representative of what may reasonably be expected to be followed by the ultimate purchaser under in-use conditions.

(b) Vehicles equipped with free wheeling or overdrive, except as noted, shall be tested with these features operated according to the manufacturer's recommendations to the ultimate purchaser.

(c) Idle modes shall be run with automatic transmission in "Drive" and the wheels braked; manual transmissions shall be in gear with the clutch disengaged, except first idle (see §§ 86.136 and 137).

(d) The vehicle shall be driven with minimum accelerator pedal movement to maintain the desired speed.

(e) Accelerations shall be driven smoothly following representative shift speeds and procedures. For manual transmissions, the operator shall release the accelerator pedal during each shift and accomplish the shift with minimum time. If the vehicle cannot accelerate at the specified rate, the vehicle shall be operated at maximum available power until the vehicle speed reaches the value prescribed for that time in the driving schedule.

(f) The deceleration modes shall be run in gear using brakes or accelerator pedal as necessary to maintain the desired speed. Manual transmission vehicles shall have the clutch engaged and shall not change gears from the previous mode. For those modes which decelerate to zero, manual transmission clutches shall be depressed when the speed drops below 15 mph (24.1 km/h), when engine roughness is evident, or when engine stalling is imminent.

(g)(1) In the case of test vehicles equipped with manual transmissions, the transmission shall be shifted in accordance with procedures which are representative of shift patterns that may reasonably be expected to be followed by vehicles in use, in terms of such variables as vehicle speed or percent rated engine speed. At the Administrator's discretion, a test vehicle may also be shifted according to the shift procedures recommended by the manufacturer to the ultimate purchaser, if such procedures differ from those which are reasonably expected to be followed by vehicles in use.

(2) A manufacturer may recommend to the ultimate purchaser shift procedures other than those used in testing by the EPA, Provided that: All shift procedures (including multiple shift speeds) which the manufacturer proposes to supply to the ultimate purchaser are provided to the Administrator as part of the manufacturer's application for certification, or as an amendment to such application, under §§ 86.079-32, -33, or -34.

(h) Downshifting is allowed at the beginning of or during a power mode in accordance with the shift procedure determined in paragraph (g)(1) above.

12. By amending § 86.129-79 to read as follows:

§ 86.129-79 Road load power, test weight and inertia weight determination.

* * * * *

(b) * * *

(3) Where it is expected that more than 33 percent of an engine family will be equipped with air conditioning per § 86.079-24(g)(2), the road load power listed above or as determined in paragraph (b)(2) of this section shall be increased by 10 percent, up to a maximum increase of 1.4 horsepower, for testing all test vehicles representing that car line within that engine-system combination if those vehicles are intended to be offered with air conditioning in production. The above increase for air conditioning shall be added prior to rounding off as instructed by notes 2 and 3 of the table.

* * * * *

(c) * * *

(4) Where it is expected that more than 33 percent of an engine family will be equipped with air conditioning, per § 86.079-24(g)(2), the road load power as determined in paragraph (c)(2) or (3) of this section shall be increased by 10 percent, up to a maximum increment of 1.4 horsepower, for testing all test vehicles of that engine family if those vehicles are intended to be offered with air conditioning in production. This power increment shall be added to the indicated dynamometer power absorption setting prior to rounding off of this value.

13. By amending § 86.129-8 to read as follows:

* * * * *

§ 86.129-80 Road load power, test weight and inertia weight class determination.

* * * * *

(b) * * *

(3) Where it is expected that more than 33 percent of a car line within an engine-system combination will be equipped with air conditioning per § 86.080-24(g)(2), the road load power listed above or as determined in paragraph (b)(2) of this section shall be increased by 10 percent, up to a maximum increase of 1.4 horsepower, for testing all test vehicles representing that car line within that engine-system combination if those vehicles are intended to be offered with air conditioning in production. The above increase for air conditioning shall be added prior to rounding off as instructed by notes 2 and 3 of the table.

* * * * *

(c) * * *

(4) Where it is expected that more than 33 percent of a car line within an engine-system combination will be equipped with air conditioning, per § 86.080-24(g)(2), the road load power as determined in paragraph (c)(2) or (3) of this section shall be increased by 10 percent up to a maximum increment of 1.4 horsepower, for testing all test vehicles of that car line within that engine-system combination if those vehicles are intended to be offered with air conditioning in production. This power increment shall be added to the indicated dynamometer power absorption setting prior to rounding off this value.

14. By amending § 86.130-78 to read as follows:

§ 86.130-78 Test sequence; general requirements.

The test sequence shown in figure B78-10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. Ambient temperature levels encountered by the test vehicle shall not be less than 68° F (20° C) nor more than 86° F (30° C). The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

15. By amending § 86.136-78 to read as follows:

§ 86.136-78 Engine starting and restarting.

* * * * *

(c) * * *

(1) If a failure to start occurs during the cold portion of the test and is caused by a vehicle malfunction corrective action of less than 30 minutes duration may be taken (according to § 86.078-25), and the test continued. The sampling system shall be reactivated at the same time cranking

begins. When the engine starts, the driving schedule timing sequence shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided. The vehicle removed from the dynamometer, and corrective action may be taken according to § 86.078-25. The reasons for the malfunction (if determined) and the corrective action taken shall be reported.

(2) If a failure to start occurs during the hot start portion of the test and is caused by vehicle malfunction, the vehicle must be started within 1 minute of key on. The sampling system shall be reactivateted at the same time cranking begins. When the engine starts, the driving schedule timing sequence shall begin. If the vehicle cannot be started within 1 minute of key on, the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, (according to § 86.078-25), and the vehicle rescheduled for testing. The reason for the malfunction (if determined) and the corrective action taken shall be reported.

* * * * *

16. By amending § 86.140-78 to read as follows:

§ 86.140-78 Exhaust sample analysis.

The following sequence of operations shall be performed in conjunction with each series of measurements. The analyzer shall be "zeroed" and "spanned" for each range which is to be used for sample analysis.

* * * * *

(b) Introduce the span gases and set instrument gains. In order to avoid corrections, span and calibrate at the same flow rates used to analyze the test sample. Span gases shall have concentrations of at least 70 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on the chart.

* * * * *

(e) Measure HC, CO, CO_2, and NO_x concentrations of samples. Select an analyzer range such that the analyzer response is within 20 percent to 100 percent of full scale except when using the most sensitive analyzer range.

* * * * *

17. By amending § 86.144-78(c) (1) and (4) to read as follows:

§ 86.144-78 Calculation; exhaust emissions.

* * * * *

(c) Meaning of symbols:

(1) HC_{mass} = Hydrocarbon emissions, in grams per test phase.

$Density_{HC}$ = Density of hydrocarbons is 16.33 g/ft³ (0.5768 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85, at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

HC_{conc} = Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane × 3. $HC_{conc} = HC_e - HC_d(1-1/DF)$

Where:

HC_e = Hydrocarbon concentration of the dilute exhaust sample or, for Diesel, average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated HC traces, in ppm carbon equivalent.

HC_d = Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

* * * * *

(4) CO_{2mass} = Carbon dioxide emissions, in grams per test phase.

$Density CO_2$ = Density of carbon dioxide is 51.81 g/ft³ (1.830 kg/m³), at 68° F (20° C) and 760 mm Hg (101.3 kPa) pressure.

CO_{2conc} = Carbon dioxide concentrations of the dilute exhaust sample corrected for background, in percent.

$CO_{2conc} = CO_{2e} - CO_{2d}(1-1/DF)$

Where:

CO_{2d} = Carbon dioxide concentration of the dilution air as measured, in percent.

* * * * *

18. By amending § 86.312-79(c)(i), (iii) and (iv) to read as follows:

§ 86.312-79 Dynamometer and engine equipment specifications.

* * * * *

(c) * * *

(1) * * *

(i) A chassis-type exhaust system including muffler(s) shall be used. The exhaust system must have a single tail pipe. For engines designed for a dual exhaust system, a standard or specially fabricated "Y" pipe may be used. The "Y" pipe may be located upstream of a single muffler or downstream of a single muffler or downstream of dual mufflers. The potential increase in backpressure due to the use of a single tail pipe instead of dual pipes may be compensated for by using larger than standard exhaust system components downstream of the "Y" pipe. For systems with the "Y" pipe upstream of the muffler, the backpressure at the exhaust manifold exit with the single exhaust system must be comparable to the standard dual exhaust system under the test conditions specified in § 86.335.

* * * * *

(iii) For catalyst systems, the probe shall be located in the single exhaust pipe and from 2 to 10 feet downstream of the catalyst(s) and at least 2 feet downstream of the "Y" intersection of any "Y" pipe (if used).

(iv) For noncatalyst systems, the probe shall be located in the single exhaust pipe downstream of the muffler(s) and from 3 to 20 feet downstream from the exhaust manifold flange or turbocharger exit flange. The probe shall also be at least 2 feet downstream of the "Y" intersection of any "Y" pipe (if used).

* * * * *

19. By amending § 86.437-78(a)(2)(ii) and (b)(3) to read as follows:

§ 86.437-78 Certification.

(a) * * *

(2) * * *

(ii) Such certificate will be issued for such period not to exceed 1 model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motorcycle covered by the certificate will meet the requirements of the act and of this subpart. Each such certificate shall contain the following:

This certificate covers only those new motorcycles which conform, in all material respects, to the design specifications that applied to those vehicles described in the application for certification and which are produced during the —— model year production period of the said manufacturer, as defined in 40 CFR § 86.402.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.441 which concern either the vehicle certified, or any production vehicle covered by this certificate, or any production vehicle which when completed will be claimed to be covered by this certificate. Failure to comply with all the requirements of § 86.441 with respect to any such vehicle may lead to revocation or suspension of this certificate as specified in 40 CFR 86.442. It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.442.

* * * * *

(b) * * *

(3) Such certificate will be issued for such a period not to exceed 1 model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motorcycle covered by the certificate will meet the requirement of the Act and of this subpart. Each such certificate shall contain the following language:

This certificate covers new motorcycles, as described in the application for certification and the records required in 40 CFR 86.416, manufactured by —— whose total U.S. sales are less than 10,000 units for the —— model

year production period as defined in 40 CFR 86.402.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR 86.441 which concern either the vehicle certified, or any production vehicle covered by this certificate, or any production vehicle which when completed will be claimed to be covered by this certificate. Failure to comply with all the requirements of § 86.441 with respect to any such vehicle may lead to revocation or suspension of this certificate as specified in 40 CFR 86.442. It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.442. It is also a term of this certificate that no changes which may reasonably be expected to affect emissions shall be made to the vehicles covered by this certificate unless the manufacturer conducts appropriate emission testing to demonstrate that such changes will not cause the test vehicle's emissions to exceed the applicable emission standards as set forth in 40 CFR Part 86.

* * * * *

20. By amending § 86.544-78(c) to read as follows:

§ 86.544-78 Calculations; exhaust emissions.

* * * * *

(c) Meaning of symbols:

HCmass=Hydrocarbon emissions, in grams per test phase.

DensityHC=Density of hydrocarbon in the exhaust gas, 0.5768 kg/m³/carbon atom (16.33 g/ft³/carbon atom), assuming an average carbon to hydrogen ratio of 1:1.85, at 20° C (68° F) and 101.325 kPa (760 mm Hg) pressure.

HCconc=Hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane X3.

HCconc=HCe-HCd (1-1/DF).

Where:

HCe=Hydrocarbon concentrations of the dilute exhaust sample as measured, in ppm carbon equivalent. (propane ppm x 3.)

HCd=Hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent. (Propane ppm x 3.)

NOxmass=Oxides of nitrogen emissions, in grams per test phase.

Density NO2=Density of oxides of nitrogen in the exhaust gas, assuming they are in the form of nitrogen dioxide, 1,913 kg/m³ (54.16 g/ft³), at 20° C (68° F) and 101.325 kPa (760 mm Hg) pressure.

NOxconc=Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm.

NOxconc=NOxe-NOxd (1-1/DF).

Where:

NOxe=Oxides of nitrogen concentration of the dilute exhaust sample as measured, in ppm.

NOxd=Oxides of nitrogen concentration of the dilution air as measured, in ppm.

COmass=Carbon monoxide emissions, in grams per test phase.

Density CO=Density of carbon monoxide, 1.164 kg/m³ (32.97 g/ft³), at 20° C (68° F) and 101.325 kPa (760 mm Hg) pressure.

COconc=Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO2 extraction, ppm.

COconc=COe-COd (1-1/DF).

Where:

COe=Carbon monoxide concentration of the dilute exhaust sample volume corrected for water vapor and carbon dioxide extraction, in ppm. The calculation assumes the carbon to hydrogen ratio of the fuel is 1:1.85.

COe=(1-0.01925CO2e—0.000323R) COem.

Where:

COem=Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

CO2e=Carbon dioxide concentration of the dilute exhaust sample, in mole percent.

R=Relative humidity of the dilution air, in percent (see § 86.542.78(n)).

COd=Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

COd=(1-0.000323R) COdm.

Where:

COdm=Carbon monoxide concentration of the dilution air sample as measured, in ppm.

NOTE.—If a CO instrument, which meets the criteria specified in § 86.511 is used and the conditioning column has been deleted, COem can be substituted directly for COd.

CO2mass=Carbon dioxide emissions, in grams per test phase.

Density CO2=Density of carbon dioxide, 1.830 kg/m³ (51.81 g/ft³), at 20° C (68° F) and 101.325 kPa (760 mmHg) pressure.

CO2conc=carbon dioxide concentration of the dilute exhaust sample corected for background, in percent.

CO2conc=CO2e-CO2d (1-1/DF) 10^{-4}.

Where:

CO2d=Carbon dioxide concentration of the dilution air as measured, in ppm.

DF=$13.4/[CO_{2e}+(HC_e+CO_e)10^{-4}]$.

Vmix=Total dilute exhaust volume in cubic metres per test phase corrected to standard conditions (293.15° K (528° R) and 101.325 kPa (760 mm Hg)).

Vmix=VoXN [(Pb-Pi) (293.15° K)]/[(101.325 kPa) (Tp)].

Where:

Vo=Volume of gas pumped by the positive displacement pump, in cubic metres per revolution. This volume is dependent on the pressure differential across the positive displacement pump. (See calibration techniques in 86.519-78.)

N=Number of revolutions of the positive displacement pump during the test phase while samples are being collected.

Pb=Barometric pressure in kPa.

Pi=Pressure depression below atmospheric measured at the inlet to the positive displacement pump.

Tp=Average temperature of dulute exhaust entering positive displacement pump during test while samples are being collected, in degrees Kelvin.

Kh=Humidity correction factor.

Kh=1/[1-1-0.0329 (H-10.71)].

Where:

H=Absolute humidity in grams of water per kilogram of dry air.

H=[(6.211) Ra X Pd]/[Pb-(Pd X Ra/100)].

Ra=Relative humidity of the ambient air, in percent.

Pd=Saturated vapor pressure, in kPa at the ambient dry bulb temperature.

* * * * *

21. By amending appendix I to read as follows:

[6560-01-C] APPENDIX I

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
0	0.0						
1	0.0	51	21.3	101	30.7	151	0.0
2	0.0	52	19.0	102	30.9	152	0.0
3	0.0	53	17.1	103	31.0	153	0.0
4	0.0	54	15.8	104	30.9	154	0.0
5	0.0	55	15.8	105	30.4	155	0.0
6	0.0	56	17.7	106	29.8	156	0.0
7	0.0	57	19.8	107	29.9	157	0.0
8	0.0	58	21.6	108	30.2	158	0.0
9	0.0	59	23.2	109	30.7	159	0.0
10	0.0	60	24.2	110	31.2	160	0.0
11	0.0	61	24.6	111	31.8	161	0.0
12	0.0	62	24.9	112	32.2	162	0.0
13	0.0	63	25.0	113	32.4	163	0.0
14	0.0	64	24.6	114	32.2	164	3.3
15	0.0	65	24.5	115	31.7	165	6.6
16	0.0	66	24.7	116	28.6	166	9.9
17	0.0	67	24.8	117	25.3	167	13.2
18	0.0	68	24.7	118	22.0	168	16.5
19	0.0	69	24.6	119	18.7	169	19.8
20	0.0	70	24.6	120	15.4	170	22.2
21	3.0	71	25.1	121	12.1	171	24.3
22	5.9	72	25.6	122	8.8	172	25.8
23	8.6	73	25.7	123	5.5	173	26.4
24	11.5	74	25.4	124	2.2	174	25.7
25	14.3	75	24.9	125	0.0	175	25.1
26	16.9	76	25.0	126	0.0	176	24.7
27	17.3	77	25.4	127	0.0	177	25.0
28	18.1	78	26.0	128	0.0	178	25.2
29	20.7	79	26.0	129	0.0	179	25.4
30	21.7	80	25.7	130	0.0	180	25.8
31	22.4	81	26.1	131	0.0	181	27.2
32	22.5	82	26.7	132	0.0	182	26.5
33	22.1	83	27.5	133	0.0	183	24.0
34	21.5	84	28.6	134	0.0	184	22.7
35	20.9	85	29.3	135	0.0	185	19.4
36	20.4	86	29.8	136	0.0	186	17.7
37	19.8	87	30.1	137	0.0	187	17.2
38	17.0	88	30.4	138	0.0	188	18.1
39	14.9	89	30.7	139	0.0	189	18.6
40	14.9	90	30.7	140	0.0	190	20.0
41	15.2	91	30.5	141	0.0	191	22.2
42	15.5	92	30.4	142	0.0	192	24.5
43	14.0	93	30.3	143	0.0	193	27.3
44	17.1	94	30.4	144	0.0	194	30.5
45	19.1	95	30.8	145	0.0	195	33.5
46	21.1	96	30.4	146	0.0	196	36.2
47	22.7	97	29.9	147	0.0	197	37.1
48	22.9	98	29.5	148	0.0	198	39.3
49	22.7	99	29.8	149	0.0	199	40.5
50	22.6	100	30.3	150	0.0	200	42.1

APPENDIX I—Continued

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
201	43.5	251	55.1	301	48.6	351	14.2
202	45.1	252	54.6	302	48.1	352	17.1
203	46.0	253	54.2	303	47.2	353	20.0
204	46.8	254	54.0	304	46.1	354	22.5
205	47.5	255	53.7	305	45.0	355	23.7
206	47.5	256	53.6	306	43.8	356	25.2
207	47.3	257	53.9	307	42.6	357	26.6
208	47.2	258	54.0	308	41.5	358	28.1
209	47.0	259	54.1	309	40.3	359	30.0
210	47.0	260	54.1	310	38.5	360	30.8
211	47.0	261	53.8	311	37.0	361	31.6
212	47.0	262	53.4	312	35.2	362	32.1
213	47.0	263	53.0	313	33.8	363	32.9
214	47.2	264	52.6	314	32.5	364	33.6
215	47.4	265	52.1	315	31.5	365	34.5
216	47.9	266	52.4	316	30.6	366	34.6
217	48.5	267	52.0	317	30.5	367	34.9
218	49.1	268	51.9	318	30.0	368	34.8
219	49.5	269	51.7	319	29.0	369	34.5
220	50.0	270	51.5	320	27.5	370	34.7
221	50.6	271	51.6	321	24.8	371	35.5
222	51.0	272	51.8	322	21.5	372	36.0
223	51.5	273	52.1	323	20.1	373	36.0
224	52.2	274	52.5	324	19.1	374	36.0
225	53.2	275	53.0	325	18.5	375	36.0
226	54.1	276	53.5	326	17.0	376	36.0
227	54.6	277	54.0	327	15.5	377	36.0
228	54.9	278	54.9	328	12.5	378	36.1
229	55.0	279	55.4	329	10.8	379	36.4
230	54.9	280	55.6	330	8.0	380	36.5
231	54.6	281	56.0	331	4.7	381	36.4
232	54.6	282	56.0	332	1.4	382	36.0
233	54.8	283	55.8	333	0.0	383	35.1
234	55.1	284	55.2	334	0.0	384	34.1
235	55.5	285	54.5	335	0.0	385	33.5
236	55.7	286	53.6	336	0.0	386	31.4
237	56.1	287	52.5	337	0.0	387	29.0
238	56.3	288	51.5	338	0.0	388	25.7
239	56.6	289	51.5	339	0.0	389	23.0
240	56.7	290	51.5	340	0.0	390	20.3
241	56.7	291	51.1	341	0.0	391	17.5
242	56.5	292	50.1	342	0.0	392	14.5
243	56.5	293	50.0	343	0.0	393	12.0
244	56.5	294	50.1	344	0.0	394	8.7
245	56.5	295	50.0	345	0.0	395	5.4
246	56.5	296	49.6	346	0.0	396	2.1
247	56.5	297	49.5	347	1.0	397	0.0
248	56.4	298	49.5	348	4.1	398	0.0
249	56.1	299	49.5	349	7.6	399	0.0
250	55.8	300	49.1	150	10.3	400	0.0

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
401	0.0	451	13.2	501	10.3	551	3.3
402	0.0	452	16.5	502	7.2	552	0.0
403	2.6	453	19.8	503	4.0	553	0.0
404	5.9	454	23.1	504	1.0	554	0.0
405	9.2	455	26.4	505	0.0	555	0.0
406	12.5	456	27.8	506	0.0	556	0.0
407	15.8	457	29.1	507	0.0	557	0.0
408	19.1	458	31.5	508	0.0	558	0.0
409	22.4	459	33.0	509	0.0	559	0.0
410	25.0	460	33.6	510	0.0	560	0.0
411	25.6	461	34.8	511	1.2	561	0.0
412	27.5	462	35.1	512	3.5	562	0.0
413	29.0	463	35.6	513	5.5	563	0.0
414	30.0	464	36.1	514	6.5	564	0.0
415	30.1	465	36.0	515	8.5	565	0.0
416	30.0	466	36.1	516	9.6	566	0.0
417	29.7	467	36.2	517	10.5	567	0.0
418	29.3	468	36.0	518	11.9	568	0.0
419	28.8	469	35.7	519	14.0	569	3.3
420	28.0	470	36.0	520	16.0	570	6.6
421	25.0	471	36.0	521	17.7	571	9.9
422	21.7	472	35.6	522	19.0	572	13.0
423	18.4	473	35.5	523	20.1	573	14.6
424	15.1	474	35.4	524	21.0	574	16.0
425	11.8	475	35.2	525	22.0	575	17.0
426	8.5	476	35.2	526	23.0	576	17.0
427	5.2	477	35.2	527	23.8	577	17.0
428	1.9	478	35.2	528	24.5	578	17.5
429	0.0	479	35.2	529	24.9	579	17.7
430	0.0	480	35.2	530	25.0	580	17.7
431	0.0	481	35.0	531	25.0	581	17.5
432	0.0	482	35.1	532	25.0	582	17.0
433	0.0	483	35.2	533	25.0	583	16.9
434	0.0	484	35.5	534	25.0	584	16.6
435	0.0	485	35.2	535	25.0	585	17.0
436	0.0	486	35.0	536	25.6	586	17.1
437	0.0	487	35.0	537	25.8	587	17.0
438	0.0	488	35.0	538	26.0	588	16.6
439	0.0	489	34.8	539	25.6	589	16.5
440	0.0	490	34.6	540	25.2	590	16.5
441	0.0	491	34.5	541	25.0	591	16.6
442	0.0	492	33.5	542	25.0	592	17.0
443	0.0	493	32.0	543	25.0	593	17.6
444	0.0	494	30.1	544	24.4	594	18.5
445	0.0	495	28.0	545	23.1	595	19.2
446	0.0	496	25.5	546	19.8	596	20.2
447	0.0	497	22.5	547	16.5	597	21.0
448	3.3	498	19.8	548	13.2	598	21.1
449	6.6	499	16.5	549	9.9	599	21.2
450	9.9	500	13.2	550	6.6	600	21.6

APPENDIX I—Continued

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
601	22.0	651	14.0	701	14.6	751	27.5
602	22.4	652	15.3	702	16.4	752	26.8
603	22.5	653	17.5	703	16.7	753	25.5
604	22.5	654	19.6	704	16.5	754	23.5
605	22.5	655	21.0	705	16.5	755	21.5
606	22.7	656	22.2	706	18.2	756	19.0
607	23.7	657	23.3	707	19.2	757	16.5
608	25.1	658	24.5	708	20.1	758	14.9
609	26.0	659	25.3	709	21.5	759	12.5
610	26.5	660	25.6	710	22.5	760	9.4
611	27.0	661	26.0	711	22.5	761	6.2
612	26.1	662	26.1	712	22.1	762	3.0
613	22.8	663	24.2	713	22.7	763	1.5
614	19.5	664	26.2	714	23.3	764	1.5
615	16.2	665	26.4	715	23.5	765	0.5
616	12.9	666	26.5	716	22.5	766	0.0
617	9.6	667	26.5	717	21.6	767	3.0
618	6.3	668	26.0	718	20.5	768	6.3
619	3.0	669	25.5	719	18.0	769	9.6
620	0.0	670	23.6	720	15.0	770	12.9
621	0.0	671	21.4	721	12.0	771	15.8
622	0.0	672	18.5	722	9.0	772	17.5
623	0.0	673	16.4	723	6.2	773	18.4
624	0.0	674	14.5	724	4.5	774	19.5
625	0.0	675	11.6	725	3.0	775	20.7
626	0.0	676	8.7	726	2.1	776	22.0
627	0.0	677	5.8	727	0.5	777	23.2
628	0.0	678	3.5	728	0.5	778	25.0
629	0.0	679	2.0	729	3.2	779	26.5
630	0.0	680	0.0	730	6.5	780	27.5
631	0.0	681	0.0	731	9.6	781	28.0
632	0.0	682	0.0	732	12.5	782	28.3
633	0.0	683	0.0	733	14.0	783	28.9
634	0.0	684	0.0	734	16.0	784	28.9
635	0.0	685	0.0	735	18.0	785	28.9
636	0.0	686	0.0	736	19.6	786	28.8
637	0.0	687	0.0	737	21.5	787	28.5
638	0.0	688	0.0	738	23.1	788	28.3
639	0.0	689	0.0	739	24.5	789	28.3
640	0.0	690	0.0	740	25.5	790	28.3
641	0.0	691	0.0	741	26.5	791	28.2
642	0.0	692	0.0	742	27.1	792	27.6
643	0.0	693	0.0	743	27.6	793	27.5
644	0.0	694	1.4	744	27.9	794	27.5
645	0.0	695	3.3	745	28.3	795	27.5
646	2.0	696	4.4	746	28.6	796	27.5
647	4.5	697	6.5	747	28.6	797	27.5
648	7.8	698	9.2	748	28.3	798	27.5
649	10.2	699	11.3	749	28.2	799	27.6
650	12.5	700	13.5	750	28.0	800	28.0

APPENDIX I—Continued

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
801	28.5	851	26.6	901	26.6	951	16.9
802	30.0	852	26.6	902	26.5	952	13.6
803	31.0	853	26.8	903	26.5	953	10.1
804	32.0	854	27.0	904	26.5	954	7.0
805	33.0	855	27.2	905	26.3	955	3.7
806	33.0	856	27.8	906	26.2	956	0.4
807	33.6	857	28.1	907	26.2	957	0.0
808	34.0	858	28.8	908	25.9	958	0.0
809	34.3	859	28.9	909	25.6	959	0.0
810	34.2	860	29.0	910	25.6	960	2.0
811	34.0	861	29.1	911	25.9	961	5.0
812	34.0	862	29.0	912	25.8	962	8.6
813	33.9	863	28.1	913	25.5	963	11.9
814	33.6	864	27.5	914	24.6	964	15.2
815	33.1	865	27.0	915	23.5	965	17.5
816	33.0	866	26.8	916	22.2	966	18.6
817	32.5	867	26.0	917	21.6	967	20.0
818	32.0	868	24.5	918	21.6	968	21.1
819	31.9	869	24.8	919	21.7	969	22.0
820	31.6	870	25.1	920	22.6	970	23.0
821	31.5	871	25.5	921	23.4	971	24.5
822	30.6	872	25.7	922	24.0	972	26.3
823	30.0	873	26.2	923	24.2	973	27.5
824	29.9	874	26.9	924	24.4	974	28.1
825	29.9	875	27.5	925	24.9	975	28.4
826	29.9	876	27.8	926	25.1	976	28.5
827	29.9	877	28.4	927	25.2	977	28.5
828	29.6	878	29.0	928	25.3	978	28.5
829	29.5	879	29.2	929	25.5	979	27.7
830	29.5	880	29.1	930	25.2	980	27.5
831	29.3	881	29.0	931	25.0	981	27.2
832	28.9	882	28.9	932	25.0	982	26.8
833	28.2	883	28.5	933	25.0	983	26.5
834	27.7	884	28.1	934	24.7	984	26.0
835	27.0	885	28.0	935	24.5	985	25.7
836	25.5	886	28.0	936	24.3	986	25.2
837	23.7	887	27.6	937	24.3	987	24.0
838	22.0	888	27.2	938	24.5	988	22.0
839	20.5	889	26.6	939	25.0	989	21.5
840	19.2	890	27.0	940	25.0	990	21.5
841	19.2	891	27.5	941	24.6	991	21.8
842	20.1	892	27.8	942	24.6	992	22.5
843	20.9	893	28.0	943	24.1	993	23.0
844	21.4	894	27.8	944	24.5	994	22.8
845	22.0	895	28.0	945	25.1	995	22.8
846	22.6	896	28.0	946	25.6	996	23.0
847	23.2	897	28.0	947	25.1	997	22.7
848	24.0	898	27.7	948	24.0	998	22.7
849	25.0	899	27.4	949	22.0	999	22.7
850	26.0	900	26.9	950	20.1	1000	23.5

APPENDIX I—Continued

EPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
1001	24.0	1051	0.0	1101	0.1	1151	4.1
1002	24.6	1052	0.0	1102	0.6	1152	0.8
1003	24.8	1053	1.2	1103	1.6	1153	0.0
1004	25.1	1054	4.0	1104	3.6	1154	0.0
1005	25.5	1055	7.3	1105	6.9	1155	0.0
1006	25.6	1056	10.6	1106	10.0	1156	0.0
1007	25.5	1057	13.9	1107	12.8	1157	0.0
1008	25.0	1058	17.0	1108	14.0	1158	0.0
1009	24.1	1059	18.5	1109	14.5	1159	0.0
1010	23.7	1060	20.0	1110	16.0	1160	0.0
1011	23.2	1061	21.8	1111	18.1	1161	0.0
1012	22.9	1062	23.0	1112	20.0	1162	0.0
1013	22.5	1063	24.0	1113	21.0	1163	0.0
1014	22.0	1064	24.8	1114	21.2	1164	0.0
1015	21.6	1065	25.6	1115	21.3	1165	0.0
1016	20.5	1066	26.5	1116	21.4	1166	0.0
1017	17.5	1067	26.8	1117	21.7	1167	0.0
1018	14.2	1068	27.4	1118	22.5	1168	0.0
1019	10.9	1069	27.9	1119	23.0	1169	2.1
1020	7.6	1070	28.3	1120	23.8	1170	5.4
1021	4.3	1071	28.0	1121	24.5	1171	8.7
1022	1.0	1072	27.5	1122	25.0	1172	12.0
1023	0.0	1073	27.0	1123	24.9	1173	15.3
1024	0.0	1074	27.0	1124	24.8	1174	18.6
1025	0.0	1075	26.3	1125	25.0	1175	21.1
1026	0.0	1076	24.5	1126	25.4	1176	23.0
1027	0.0	1077	22.5	1127	25.8	1177	23.5
1028	0.0	1078	21.5	1128	26.0	1178	23.0
1029	0.0	1079	20.6	1129	26.4	1179	22.5
1030	0.0	1080	18.0	1130	26.6	1180	20.0
1031	0.0	1081	15.0	1131	26.9	1181	16.7
1032	0.0	1082	12.3	1132	27.0	1182	13.4
1033	0.0	1083	11.1	1133	27.0	1183	10.1
1034	0.0	1084	10.6	1134	27.0	1184	6.8
1035	0.0	1085	10.0	1135	26.9	1185	3.5
1036	0.0	1086	9.5	1136	26.8	1186	0.2
1037	0.0	1087	9.1	1137	26.8	1187	0.0
1038	0.0	1088	8.7	1138	26.5	1188	0.0
1039	0.0	1089	8.6	1139	26.4	1189	0.0
1040	0.0	1090	8.8	1140	26.0	1190	0.0
1041	0.0	1091	9.0	1141	25.5	1191	0.0
1042	0.0	1092	8.7	1142	24.6	1192	0.0
1043	0.0	1093	8.6	1143	23.5	1193	0.0
1044	0.0	1094	8.0	1144	21.5	1194	0.0
1045	0.0	1095	7.0	1145	20.0	1195	0.0
1046	0.0	1096	5.0	1146	17.5	1196	0.0
1047	0.0	1097	4.2	1147	16.0	1197	0.2
1048	0.0	1098	2.6	1148	14.0	1198	1.5
1049	0.0	1099	1.0	1149	10.7	1199	3.5
1050	0.0	1100	0.0	1150	7.4	1200	6.5

APPENDIX I—Continued

FPA URBAN DYNAMOMETER DRIVING SCHEDULE
(Speed versus Time Sequence)

Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h)	Time (sec.)	Speed (m.p.h.)	Time (sec.)	Speed (m.p.h.)
1201	9.8	1251	0.0	1301	29.0	1351	22.4
1202	12.0	1252	1.0	1302	29.1	1352	22.0
1203	12.9	1253	1.0	1303	29.0	1353	21.6
1204	13.0	1254	1.0	1304	28.0	1354	21.1
1205	12.6	1255	1.0	1305	24.7	1355	20.5
1206	12.8	1256	1.0	1306	21.4	1356	20.0
1207	13.1	1257	1.6	1307	18.1	1357	19.6
1208	13.1	1258	3.0	1308	14.8	1358	18.5
1209	14.0	1259	4.0	1309	11.5	1359	17.5
1210	15.5	1260	5.0	1310	8.2	1360	16.5
1211	17.0	1261	6.3	1311	4.9	1361	15.5
1212	18.6	1262	8.0	1312	1.6	1362	14.0
1213	19.7	1263	10.0	1313	0.0	1363	11.0
1214	21.0	1264	10.5	1314	0.0	1364	8.0
1215	21.5	1265	9.5	1315	0.0	1365	5.2
1216	21.8	1266	8.5	1316	0.0	1366	2.5
1217	21.8	1267	7.6	1317	0.0	1367	0.0
1218	21.5	1268	8.8	1318	0.0	1368	0.0
1219	21.2	1269	11.0	1319	0.0	1369	0.0
1220	21.5	1270	14.0	1320	0.0	1370	0.0
1221	21.8	1271	17.0	1321	0.0	1371	0.0
1222	22.0	1272	19.5	1322	0.0	1372	0.0
1223	21.9	1273	21.0	1323	0.0		
1224	21.7	1274	21.8	1324	0.0		
1225	21.5	1275	22.2	1325	0.0		
1226	21.5	1276	23.0	1326	0.0		
1227	21.4	1277	23.6	1327	0.0		
1228	20.1	1278	24.1	1328	0.0		
1229	19.5	1279	24.5	1329	0.0		
1230	19.2	1280	24.5	1330	0.0		
1231	19.6	1281	24.0	1331	0.0		
1232	19.8	1282	23.5	1332	0.0		
1233	20.0	1283	23.5	1333	0.0		
1234	19.5	1284	23.5	1334	0.0		
1235	17.5	1285	23.5	1335	0.0		
1236	15.5	1286	23.5	1336	0.0		
1237	13.0	1287	23.5	1337	0.0		
1238	10.0	1288	24.0	1338	1.5		
1239	8.0	1289	24.1	1339	4.8		
1240	6.0	1290	24.5	1340	8.1		
1241	4.0	1291	24.7	1341	11.4		
1242	2.5	1292	25.0	1342	13.2		
1243	0.7	1293	25.4	1343	15.1		
1244	0.0	1294	25.6	1344	16.8		
1245	0.0	1295	25.7	1345	18.3		
1246	0.0	1296	26.0	1346	19.5		
1247	0.0	1297	26.2	1347	20.3		
1248	0.0	1298	27.0	1348	21.3		
1249	0.0	1299	27.8	1349	21.9		
1250	0.0	1300	28.3	1350	22.1		

22. By revising the citation of authority for issuance of 40 CFR part 86 to read as follows:

AUTHORITY: Secs. 202, 206, 207, 208, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7525, 7541, 7542, 7601(a)).

* * * * *

Part 600 of chapter I, title 40 of the Code of Federal Regulations is hereby amended as follows:

23. By amending § 600.002-79 to read as follows:

§ 600.002-79 Definitions.

* * * * *

(15) "Certification vehicle" means a vehicle which is selected under § 86.079-24(b)(1) and used to determine compliance under § 86.079-30 for issuance of an original certificate of conformity.

* * * * *

(33) "Body style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e. front seat, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

* * * * *

(41) "Nonpassenger automobile" means an automobile that is not a passenger automobile as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) "Four-wheel drive general utility vehicle" means a four-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 533.4.

* * * * *

24. By amending § 600.002-80 to read as follows:

§ 600.002-80 Definitions.

(a) * * *

(15) "Certification vehicle" means a vehicle which is selected under § 86.080-24(b)(1) and used to determine compliance under § 86.079-30 for issuance of an original certificate of conformity.

* * * * *

(22) "Transmission class" means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic), number of forward speeds (e.g., manual four-speed, three-speed automatic, two-speed semiautomatic), and other characteristics determined to be significant by the Administrator (e.g., "creeper" first gear, overdrive final gear ratio, or overdrive unit) considering factors such as the manufacturer's recommendation for use and/or the numerical gear ratios.

(23) "Base level" means a unique combination of basic engine inertia weight class and transmission class.

* * * * *

(33) "Body style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e. frontseat, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

* * * * *

(41) "Nonpassenger automobile" means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) "Four-wheel drive general utility vehicle" means a four-wheel drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 553.4.

* * * * *

25. By amending § 600.007-77 to read as follows:

§ 600.007-77 Vehicle acceptability.

* * * * *

(b) * * *

(1) A fuel economy data vehicle may have accumulated not more than 10,000 miles. A vehicle will be considered to have met this requirement if the engine and drivetrain have accumulated 10,000 or fewer miles. The components installed for a fuel economy test are not required to be the ones with which the mileage was accumulated, e.g., axles, transmission types and tire sizes may be changed. The Administrator will determine if vehicle/engine component changes are acceptable.

* * * * *

(6) Any vehicle tested for fuel economy purposes must be representative of a vehicle which the manufacturer intends to produce under the provisions of a certificate of conformity.

* * * * *

26. By amending § 600.007-80 to read as follows:

§ 600.007-80 Vehicle acceptability.

(a) All certification vehicles and other vehicles tested to meet the requirements of part 86 (other than those chosen per § 86.080-24(c) are considered to have met the requirements of this section.

(b) * * *

(1) A fuel economy data vehicle may have accumulated not more than 10,000 miles. A vehicle will be considered to have met this requirement if the engine and drivetrain have accumulated 10,000 or fewer miles. The components installed for a fuel economy test are not required to be the ones with which the mileage was accumulated, e.g., axles, transmission types, and tire sizes may be changed. The Administrator will determine if vehicle/engine component changes are acceptable.

* * * * *

(3) The mileage on a fuel economy data vehicle must be, to the extent possible, accumulated according to § 86.079-26(a)(2).

(4) Each fuel economy data vehicle must meet the same exhaust emission standards as certification vehicles of the respective engine-system combination during the test in which the city fuel economy test results are generated. The deterioration factors established for the respective engine-system combination per 86.079-28 will be used.

* * * * *

(e) * * *

(1) The Administrator may, under the provisions of § 86.079-37(a) request the manufacturer to submit production vehicles of the configuration(s) specified by the Administrator for testing to determine to what extent emission noncompliance of a production vehicle configuration or of a group of production vehicle configurations may actually exist.

* * * * *

27. By amending § 600.010-77 to read as follows:

§ 600.010-77 Vehicle test requirements.

(a) For each certification vehicle defined in this part, and for each vehicle required by the Administrator to be tested pursuant to the emission test

procedures in part 86 for approval of an addition of a model after certification (86.077-32) or, approval of a running change (86.077-33):

* * * * *

28. By amending § 600.111-78 to read as follows:

§ 600.111-78 Test procedures.

* * * * *

(h) * * *

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

* * * * *

29. By amending § 600.111-80 to read as follows:

§ 600.111-80 Test procedures.

* * * * *

(g) * * *

(2) False starts and stalls during the preconditioning cycle must be treated as in paragraphs (d) and (e) of § 86.136 of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.079-25 of this chapter, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(h) * * *

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

30. By amending § 600.113-78 to read as follows:

§ 600.113-78 Fuel economy calculations.

* * * * *

(c) Calculate the city fuel economy and highway fuel economy from grams/mile values for HC, CO, and CO_2. The emission values (obtained per paragraph (a) or (b) as applicable) used in each calculation of this section shall be rounded in accordance with § 86.079-26(a)(6)(ii). The CO_2 values (obtained per paragraph (a) or (b) of this section as applicable) used in each calculation in this section are rounded to the nearest gram/mile.

* * * * *

31. By amending § 600.207-78 to read as follows:

§ 600.207-78 Calculation and use of fuel economy values for a model type.

(a) * * *

(2) * * *

(iii) The requirements of this section may be satisfied by providing an amended application for certification, as described in § 86.078-21 of this chapter

(3) * * *

(iii) If the Administrator has not accepted fuel economy data derived from the testing of a certification vehicle (or a vehicle tested for running changes approved under §§ 86.078-32, 86.078-33, or 86.078-34 for at least one vehicle configuration within each base level, the manufacturer shall submit on or before the date that the manufacturer requests the Administrator to calculate the respective general label values) data as specified in § 600.006. The fuel economy data submitted shall be for the vehicle configuration with the largest projected sales within the respective base level.

* * * * *

§ 600.309-80 [Deleted]

32. By deleting § 600.309-80.

33. By amending § 600.313-78 to read as follows:

§ 600.313-78 Timetable for data and information submittal and review.

* * * * *

(c) * * *

(6) The manufacturer should submit any request for approval of data in response to paragraph (c)(1)(i) at least 25 working days before he desires the Administrator's response. This should allow the Administrator sufficient time to conduct any additional testing required.

* * * * *

34. By adding a new § 600.313-79 which is identical to 600.313-78 except for the new paragraph (d). As amended, the section reads as follows:

§ 600.313-79 Timetable for data and information submittal and review.

(a) The Administrator will notify the manufacturer of the classification of each of the manufacturer's car lines after the manufacturer makes a request for such determination.

(b) Each fuel economy label format which the manufacturer intends to use must be approved by the Administrator before the manufacturer requests the Administrator to determine fuel economy values for use on that type of label. For example, a California general label format must be approved by the Administrator before the manufacturer requests California general label fuel economy values.

(c) If a manufacturer requests and submits sufficient information, the Administrator will determine, according to subpart C, general label or specific label fuel economy values based upon information submitted by the manufacturer.

(1) A manufacturer must submit sufficient information to determine general label fuel economy values within the following time constraints:

(i) For model types initially offered for sale on or before the date of the availability of the initial range of fuel economy values of comparable automobiles, the submission must be made prior to the date established by the Administrator.

(ii) For model types initially offered for sale after the date of the availability of the initial range of fuel economy values of comparable automobiles, the submission must be made no later than thirty calendar days before the date that the model is initially offered for sale.

(2) As of the date of the request, the manufacturer may not submit additional information pertaining to this request except as required by the Administrator.

(3) After receipt of a manufacturer's request for computation of label values, the Administrator will review, according to § 600.008, the fuel economy submission received from the manufacturer and notify the manufacturer of approval or request further data, information, or vehicles in accordance with the approval procedure specified in subpart A.

(4) After receipt of a manufacturer's data, information, or vehicles in response to paragraph (c)(3), the Administrator will conduct any testing and complete data review required under subparagraph (3), and notify the manufacturer of the results of this testing and review.

(5) After completion of any testing or review of the data which satisfy the requirements of paragraph (c)(3), the Administrator will provide the manufacturer with general label and/or specific label (as requested under this paragraph) fuel economy values, annual fuel cost estimates, and a range of fuel economy of comparable automobiles (when a range is available) as calculated from approved data. After receipt of approved fuel economy label values, the manufacturer may use these data in the labeling of his automobiles.

(6) The manufacturer should submit any request for approval of data in response to paragraph (c)(1)(i) at least 25 working days before he desires the Administrator's response. This should allow the Administrator sufficient time to conduct any additional testing required.

(d) The manufacturer shall notify the Administrator of the date that each model type will initially be offered for sale.

35. By revising § 600.315-78 to read as follows:

§ 600.315-78 Classes of comparable automobiles.

(a)(1) The Administrator will classify passenger automobiles by car line into one of the following comparable classes, based on interior volume index or seating capacity:

(i) *Two Seaters.* A car line shall be classed as "Two Seaters" if the majority of the vehicles in that car line have no more than two designated seating positions as such term is defined in the regulations of the National Highway Traffic Safety Administration, Department of Transportation, 49 CFR 571.3.

(ii) *Minicompact cars.* Interior volume index less than 85 cubic feet.

(iii) *Subcompact cars.* Interior volume index greater than or equal to 85 cubic feet but less than 100 cubic feet.

(iv) *Compact cars.* Interior volume index greater than or equal to 100 cubic feet but less than 120 cubic feet.

(v) *Mid-size cars.* Interior volume index greater than or equal to 110 cubic feet but less than 120 cubic feet.

(vi) *Large cars.* Interior volume index greater than or equal to 120 cubic feet.

(vii) *Small station wagons.* Station wagons with interior volume index less than 130 cubic feet.

(viii) *Mid-size station wagons.* Station wagons with interior volume index greater than or equal to 130 cubic feet but less than 160 cubic feet.

(ix) *Large station wagons.* Station wagons with interior volume index greater than or equal to 160 cubic feet.

(2) The Administrator will classify nonpassenger automobiles into the following categories: Small pickup trucks, standard pickup trucks, vans, and special purpose trucks. Pickup trucks will be separated by car line on the basis of gross vehicle weight rating (GVWR). For pickup truck car lines with more than one GVWR, the GVWR of the pickup truck car line is the arithmetic average of all distinct GVWR's less than or equal to 6,000 pounds available for that car line.

(i) *Small pickup trucks.* Pickup trucks with a GVWR less than 4,500 pounds.

(ii) *Standard pickup trucks.* Pickup trucks with a GVWR of 4,500 pounds up to and including 6,000 pounds.

(iii) *Vans.*

(iv) *Special purpose trucks.* All nonpassenger automobiles with GVWR less than or equal to 6,000 pounds which do not meet the requirements of subparagraph (2) (i), (ii), or (iii) of this paragraph.

(3) Once a certain car line is classified by the Administrator, the classification will remain in effect for the model year.

(b) Interior volume index—passenger automobiles.

(1) The interior volume index shall be calculated for each car line, which is not a "Two Seater" car line, in cubic feet rounded to the nearest 0.1 cubic feet. For car lines with more than one body style, the interior volume index for the car line is the arithmetic average of the interior volume indices of each body style in the car line.

(2) For all body styles except station wagons and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume, if applicable, and the luggage capacity.

(3) For all station wagons and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest 0.1 cubic feet, of the front seat volume, the rear seat volume and the cargo volume index.

(c) All interior and cargo dimensions are measured in inches to the nearest 0.1 inches. All dimensions and volumes shall be determined from the base vehicles of each body style in each carline and do not include optional equipment. The dimensions H61, W3, W5, L34, H63, W4, W6, L51, H201, L205, L210, L211, H198, and volume V1 are to be determined in accordance with the procedures outlined in Motor Vehicle Dimensions SAE J1100a (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised September 1975) except as noted herein:

(1) SAE J1100a(2.3) Cargo Dimensions—all dimensions measured with the front seat positioned the same as for the interior dimensions and the second seat for station wagons and hatchbacks, in the upright position. All head restraints shall be in the stowed position and considered part of the seat.

(2) SAE J1100a(8). Luggage Capacity—Total of volumes of individual pieces of standard luggage set plus H-boxes stowed in the luggage compartment in accordance with the procedure described in 8.2. For passenger automobiles with no rear seat or with a rear seat with no rear seat belts, the luggage compartment shall include the area to the rear of the front seat, with the rear seat (if applicable) folded, to the height of a horizontal plane tangent to the top of the front seatback.

(3) SAE J1100a(7) Cargo Dimensions.

(i) *L210—Cargo length at second seatback height—hatchback.* The minimun horizontal dimension from the "X" plane tangent to the rearmost surface of the second seatback to the inside limiting interference of the hatchback door on the zero "Y" plane.

(ii) *L211—Cargo length at floor—second—hatchback.* The minimun horizontal dimensions at floor level from the rear of the second seatback to the normal limiting interference of the hatchback door on the vehicle zero "Y" plane.

(iii) *H198—Second seatback to load floor height.* The dimension measured vertically from the horizontal tangent to the top of the second seatback to the undepressed floor covering.

(d) The front seat volume is calculated in cubic feet by dividing 1728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) H61—Effective head room—front. (In inches, obtained according to paragraph (c)),

(2) (i) (W3+W5+5)/2—Average of shoulder and hip room—front, if hip room is more than 5 inches less than shoulder room. (In inches, W3 and W5 are obtained according to paragraph (c) of this section), or

(ii) W3—Shoulder room—front, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) L34—Maximum effective leg room—accelerator. (In inches obtained according to paragraph (c) of this section). Round the quotient to the nearest 0.001 cubic feet.

(e) The rear seat volume is calculated in cubic feet, for vehicles with a rear seat equipped with rear seat belts (as required by DOT) by dividing 1,728 into the product of three terms listed below and rounding the quotient to the nearest 0.001 cubic feet:

(1) H63—Effective head room—second. (Inches obtained according to paragraph (c) of this section),

(2) (i) (W4+W6+5)/2=Average of shoulder and hip room—second, if hip room is more than 5 inches less than shoulder room. (In inches, W4 and W6 are obtained according to paragraph (c) of this section), or

(ii) W4—Shoulder room—second, if hip room is not more than 5 inches less than shoulder room. (In inches, W3 is obtained according to paragraph (c) of this section), and

(3) L51—Minimum effective leg room—second. (In inches obtained according to paragraph (c) of this section.)

(f) The luggage capacity of V1, the usable luggage capacity obtained according to paragraph (c) of this section. For passenger automobiles with no rear seat, or with a rear seat but no rear seat belts, the area to the rear of the front seat shall be included in the determination of V1, usable luggage capacity, as outlined in paragraph (c) of this section.

(g) Cargo volume index:

(1) For station wagons the cargo volume index V2 is calculated in cubic feet, by dividing 1,728 into the product of three terms and rounding the quotient to the nearest 0.001 cubic feet:

(i) W4—Shoulder room—second. (In inches obtained according to paragraph (c) of this section.)

(ii) H201—Cargo height. (In inches obtained according to paragraph (c) of this section), and

(iii) L205—Cargo length at belt—second. (In inches obtained according to paragraph (c) of this section.)

(2) For hatchbacks, the cargo volume index V3 is calculated in cubic feet, by dividing 1728 into the product of three terms:

(i) Average cargo length, which is the arithmetic average of:

(*A*) L208—Cargo length at second seatback height—hatchback. (In inches obtained according to paragraph (c)) and,

(*B*) L209—Cargo length at floor—second—hatchback. In inches obtained according to paragraph (c));

(ii) W4—Shoulder room—second. (In inches obtained according to paragraph (c)) and;

(iii) H197—Second seat back to load floor height. (In inches obtained according to paragraph (c).) Round the quotient to the nearest 0.001 cubic foot.

(h) The following data must be submitted to the Administrator no later than the time of a general label request. Data shall be included for each body style in the carline covered by that general label.

(1) For all passenger automobiles:

(i) Dimensions H61, W3, L34 determined in accordance with paragraph (c).

(ii) Front seat volume determined in accordance with paragraph (d).

(iii) Dimensions H63, W4, L51 (if applicable) determined in accordance with paragraph (c).

(iv) Rear seat volume (if applicable) determined in accordance with paragraph (e).

(v) The interior volume index determined in accordance with paragraph (b) for:

(*A*) Each body style and,

(*B*) The car line.

(vi) The class of the car line as determined in paragraph (a).

(2) For all passenger automobiles except station wagons and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The quantity and letter designation of the pieces of the standard luggage set installed in the vehicle in the determination of usable luggage capacity V1 and,

(ii) The usable luggage capacity V1, determined in accordance with paragraph (f).

(3) For station wagons with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions H201 and L205 determined in accordance with paragraph (c) and,

(ii) The cargo volume index V2 determined in accordance with paragraph (g)(1).

(4) For hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seat belts as required by DOT safety regulations:

(i) The dimensions L208, L209, and H107 determined in accordance with paragraph (c) and,

(ii) The cargo volume index V3 determined in accordance with paragraph (g)(2).

(5) For Pickup trucks:

(i) All GVWR's of less than or equal to 6,000 pounds available in the car line.

(ii) The arithmetic average GVWR for the car line.

36. By amending § 600.506-78 to read as follows:

§ 600.506-78 Preliminary determination of manufacturer's average.

* * * * *

(b) * * *

(2) * * *

(ii) Fuel economy data from all vehicles tested for running changes approved under §§ 86.078-32, 86.078-33 or 86.078-34,

* * * * *

37. By amending § 600.506-79 to read as follows:

* * * * *

§ 600.506-79 Preliminary determination of manufacturer's average.

(a) The manufacturer shall submit, for approval by the Administrator, a determination of his preliminary average fuel economy value.

(1) The average must be submitted within 10 days after the date of the availability of the initial range of fuel economy values of comparable automobiles (ref § 600.314(d)(1) or within 30 days after the date the manufacturer's first model type is initially offered for sale, whichever is later.

(2) The deadline for submission of the preliminary average may be waived upon petition by the manufacturer to the Administrator if the Administrator finds good cause. The Administrator will set a new reporting date if a waiver is granted.

(b) The preliminary average fuel economy value will be calculated according to the procedures in § 600.510 except that:

(1) Sales projections will be used for the calculations in place of the production values, and must be updated at the time of the preliminary calculation.

(2) The fuel economy data used in the calculation shall be that approved by the Administrator as of the date of the preliminary average calculations including:

(i) All fuel economy data from original certification vehicles and fuel economy data vehicles as required by § 600.207,

(ii) Fuel economy data from all vehicles tested for running changes approved under §§ 86.079-32, 86.079-33 or 86.079-34,

(iii) Fuel economy data required by paragraph (d), and

(iv) Other fuel economy data accepted by the Administrator under Subpart A of this part.

(c) Minimum data requirements will be established under paragraph (d) of this section for each base level with a sales fraction of 0.0100 or greater (known as a significant base level).

(1) The sales to be used in this determination are those in paragraph (b)(1) of this section.

(2) For the purposes of this section, the sales fraction for a base level shall be the quotient (rounded to the nearest 0.0001), of the projected sales of passenger automobiles (where projected sales are calculated according to § 600.511), nonpassenger automobiles, or category of nonpassenger automobiles, as appropriate, except that projected sales are used in place of production values.

(d) For each significant base level identified in paragraph (c) of this section the manufacturer shall submit prior to the submission of the preliminary calculation, fuel economy data for those vehicle configurations, taken in order of decreasing sales (according to the projection submitted in paragraph (b)(1) of this section, whose sales total a minimum of 90 percent of the sales of that base level. For all other base levels, the minimum data requirements of § 600.207(a)(3)(iii) must be met.

(e) All fuel economy data submitted under this subpart must:

(1) Be determined by the test procedures specified in Subpart B or an approved analytical method as permitted under § 600.006(e), and

(2) Be accepted by the Administrator under the requirements of Subpart A.

(f) *For nonpassenger automobiles,* the Administrator may require additional testing to be conducted in a nonpassenger automobile base level if he determines that the vehicle configurations comprising that base level can reasonably be expected to exhibit an unacceptably large range in combined fuel economy. The Administrator will make that determination based upon the data submitted at the time of the preliminary calculation.

38. By amending § 600.507-78 to read as follows:

§ 600.507-78 Running change data requirements.

(a) The manufacturer will be required to submit additional running change fuel economy data for any running change approved under §§ 86.078-32, 86.078-33 or 86.078-34 which creates a new vehicle configuration in a significant base level originally identified for minimum data under § 600.506(c), or subsequently identified in § 600.508(b), unless exempted by the Administrator.

* * * * *

39. By amending § 600.507-79 to read as follows:

* * * * *

§ 600.507-79 Running change data requirements.

(a) The manufacturer will be required to submit additional running change fuel economy data for any running change approved under §§ 86.079-32, 86.079-33 or 86.079-34 which creates a new vehicle configuration in a significant base level originally identified for minimum data under § 600.506(c), or subsequently identified in § 600.508(b), unless exempted by the Administrator.

* * * * *

(b) * * *

(1) Within each base level identified in paragraph (a) of this section, fuel economy data shall be submitted for the new vehicle configuration created by the running change, with the greatest projected sales. Unless that configuration was specified and tested under §§ 86.079-32, 86.079-33 or 86.079-34, the Administrator will specify the road load horsepower for the test vehicle.

* * * * *

40. By amending section 600.507-80 to read as follows:

§ 600.507-80 Running change data requirements.

(a) The manufacturer will be required to submit additional running change fuel economy data for any running change approved under §§ 86.079-32, 86.079-33 or 86.079-34 which creates a new vehicle configuration in a significant base level originally identified for minimum data under § 600.506(c), or subsequently identified in § 600.508(b), unless exempted by the Administrator.

* * * * *

(b) * * *

(1) Within each base level identified in paragraph (a) of this section, fuel economy data shall be submitted for the new vehicle configuration, created by the running change, with the greatest projected sales. Unless that configuration was specified and tested under §§ 86.079-32, 86.079-33 or 86.079-34, the Administrator will specify the road load horsepower and test weight for the test vehicle.

* * * * *

41. By amending § 600.508-78 to read as follows:

§ 600.508-78 Addition of a base level—data requirements.

* * * * *

(b) If a new base level being added has a sales fraction of 0.0100 or greater (as defined in § 600.506(c)(2)) using sales updated as of the date of receipt of approval to add the base level, the manufacturer shall, within 30 days of receipt of the approval:

* * * * *

42. By amending § 600.510-79 to read as follows:

§ 600.510-79 Calculation of average fuel economy.

(a) * * *

(3) An average fuel economy calculation will be made either for all nonpassenger automobiles or for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles) in accordance with the preference indicated by the manufacturer in § 600.512.

* * * * *

(b) * * *

(2) * * *

(iii) The fuel economy value of diesel powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

* * * * *

(vi) If a model type is comprised of vehicles that are four-wheel drive general utility vehicles and vehicles that are not, as defined at 42 CFR 553.4 by the Secretary of Transportation, and if the manufacturer has indicated in § 600.512(c)(8) that average fuel economy will be calculated separately for four-wheel drive general utility vehicles, then separate model type calculations will be made for those vehicles that are jeep-type vehicles and those that are not.

* * * * *

(d) * * *

(2) In the case where a manufacturer elects to calculate a separate average fuel economy for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles), for each category divider.

* * * * *

(e) An average fuel economy value will be calculated for the nondomestically produced and imported component of each category of automobile identified in § 600.510(e) as specified below.

* * * * *

43. By amending § 600.510-80 to read as follows:

§ 600.510-80 Calculation of average fuel economy.

* * * * *

(a) * * *

(3) An average fuel economy calculation will be made either for all nonpassenger automobiles or for each category of nonpassenger automobile (four-wheel drive general utility vehicles and all other nonpassenger automobiles) in accordance with the preference indicated by the manufacturer in § 600.512.

(b) * * *

(2) * * *

(iii) The fuel economy value of diesel powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

* * * * *

(vi) If a model type is comprised of some vehicles that are four-wheel drive general utility vehicles and some that are not as defined at 42 CFR § 553.4 by the Secretary of Transportation, and if the manufacturer has indicated in § 600.512(c)(8) that average

fuel economy will be calculated separately for four-wheel drive general utility vehicles, then separate model type calculations will be made for those vehicles that are jeep-type vehicles and those that are not.

* * * * *

(d) * * *

(2) In the case where a manufacturer elects to calculate a separate average fuel economy for each category of nonpassenger automobile (four-wheel. drive general utility vehicles and all other nonpassenger automobiles), for each category divide:

(e) An average fuel economy value will be calculated for the non-domestically-produced-and-imported component of each category of automobile identified in § 600.510(e) as specified below.

* * * * *

(2) A sum of terms, each of which corresponds to a model type that is not domestically produced and is imported and is a fraction determined by dividing:

* * * * *

44. By amending § 600.512-78 to read as follows:

§ 600.512-78 Model year report.

* * * * *

(c) * * *

(7) Production data, the authenticity and accuracy of which must be attested to by the corporation, and which shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the officer that the corporation has made the required attestation.

* * * * *

45. By amending § 600.512-79 to read as follows:

§ 600.512-79 Model year report.

* * * * *

(c) * * *

(7) Production data, the authenticity and accuracy of which must be attested to by the corporation, and which shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the officer that the corporation has made the required attestation.

(8) A statement that indicates the manner in which four-wheel drive general utility vehicles will be included in the average fuel economy calculation for nonpassenger automobiles in accordance with the options established by the Secretary of Transportation at 49 CFR 553.5.

* * * * *

(Sec. 301, Pub. L. 94-163, 89 Stat. 901 et seq. (15 U.S.C. 2001, 2003, 2005, 2006).)

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TUESDAY, NOVEMBER 14, 1978
PART III

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

■

FEDERAL OLD-AGE, DISABILITY, DEPENDENTS' AND SURVIVORS' INSURANCE BENEFITS

[4110-07-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

[Regulations No. 4]

FEDERAL OLD-AGE, DISABILITY, DEPENDENTS' AND SURVIVORS' INSURANCE BENEFITS

Proposed Rulemaking

AGENCY: Social Security Administration, HEW.

ACTION: Proposed rulemaking.

SUMMARY: We are proposing another rules revision under the Department of Health, Education, and Welfare's "Operation Common Sense." This proposal revises the rules on what is required to be entitled to social security benefits. The rules are being revised to make them easier to understand. The proposal also updates the regulations to include changes made by the 1977 Amendments to the Social Security Act and changes made by two court decisions interpreting the Act.

DATE: Your comments will be considered if we receive them no later than December 14, 1978.

ADDRESS: Send your written comments to: Social Security Administration, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments we receive can be seen at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue SW., Washington, D.C. 20201

FOR FURTHER INFORMATION CONTACT:

Ray Worley, 4-G-9, West High Rise Building, 6401 Security Boulevard, Baltimore, Md. 21235, 301-594-5744.

SUPPLEMENTARY INFORMATION: The proposed Subpart D explains what is required to become entitled to social security benefits, when benefits begin and end, and how the benefit amounts are determined. It also contains basic definitions and rules on how we decide what family relationship a person has to the worker, which were previously set out in Subpart L of Part 404. The recodified subpart does not include the requirements for becoming entitled to supplemental security income payments or to black lung benefits. Those requirements are set out in Part 416 and Part 410 respectively.

The revised rules restate existing regulations in clearer and simpler language. Further simplifications will be made in the final rules. In addition, the current regulations have been updated to reflect two changes in the law which occurred as a result of the 1977 Amendments to the Social Security Act and two changes which have occurred as a result of court decisions interpreting the Act. Section 336 of the Amendments permits widows and widowers who remarry at age 60 or later to receive full widow's or widower's benefits after remarriage instead of only half the full benefits. This change is reflected in § 404.337 of the proposed regulations. Section 337 of the 1977 statutory amendments permits divorced spouses to qualify for spouses' or surviving spouse's benefits if they were married to the worker for at least 10 years rather than 20 years. This change is reflected in §§ 404.330 and 404.335. Both of these changes in the law are effective beginning January 1979.

Sections 404.330 through 404.343 also reflect the June 1976 court decision in *Oliver* v. *Califano* that requires husband's benefits to be provided to divorced husbands under the same rules as wife's benefits are provided for divorced wives under current law. Sections 404.723 and 404.780 in Subpart H regarding evidence for husband's benefits are amended to include conforming changes. Section 404.361 reflects the June 1977 court decision in *Mathews* v. *Lucas* that stated a worker's natural children who could inherit his or her property under State law should be assumed dependent upon the worker even though the children were born out of wedlock. The changes arising from the two court decisions apply as of the dates of the decisions.

(Catalog of Federal Domestic Assistance program Nos. 13.802 Social Security Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.804 Social Security-Special Benefits for Persons Aged 72 and Over; 13.805 Social Security Survivors' Insurance.)

Dated: September 6, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: November 1, 1978.

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

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart L [Deleted]

1. Subpart L is deleted and reserved.

2. Subpart D is revised to read as follows:

Subpart D—Old-Age, Disability, Dependent's and Survivor's Insurance Benefits

GENERAL

OLD-AGE AND DISABILITY BENEFITS

BENEFITS FOR SPOUSES AND DIVORCED SPOUSES

CHILD'S BENEFITS

AUTHORITY: Subpart D is issued under sections 202, 205, 216, 227, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 79 Stat. 379, 80 Stat. 67, 49 Stat. 647; Section 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 427, 428, and 1302; and 5 U.S.C. Appendix.

Subpart D—Old-Age, Disability, Dependent's and Survivors' Insurance Benefits

GENERAL

§ 404.301 Introduction.

This subpart sets out what requirements you must meet to qualify for social security benefits, how your benefit amounts are figured, when your right to benefits begins and ends, and how family relationships are determined. These benefits are provided by title II of the Social Security Act. They include—

(a) *For workers,* old-age and disability benefits and benefit protection during periods of disability;

(b) *For a worker's dependents,* benefits for a worker's wife, divorced wife, husband, divorced husband, and child;

(c) *For a worker's survivors,* benefits for a worker's widow, widower, divorced wife, child, and parent, and a lump-sum death payment; and

(d) *For uninsured persons age 72 or older,* special payments.

§ 404.302 Other regulations related to this subpart.

This subpart is related to several others. Subpart H sets out what evidence you need to prove you qualify for benefits. Subpart P describes what is needed to prove you are disabled. Subpart E describes when your benefits may be reduced or stopped for a time. 42 CFR Part 405 describes when you may qualify for hospital and medical insurance if you are aged, disabled, or have chronic kidney disease. Part 410 describes when you may qualify for black lung benefits. Part 416 describes when you may qualify for supplemental security income.

§ 404.303 Definitions.

As used in this subpart:

"Apply" means to sign a form or statement that the Social Security Administration accepts as an application for benefits under the rules set out in Subpart G.

"Eligible" means that a person would meet all the requirements for entitlement to benefits for a period of time but has not yet applied.

"Entitled" means that a person has applied and has proven his or her right to benefits for a period of time.

"Insured person" or "the insured" means someone who has enough earnings under social security to permit payment of benefits on his or her earnings record. He or she is "fully insured," "transitionally insured," "currently insured," or "insured for disability" as defined in Subpart B.

"Permanent home" means the true and fixed home (legal domicile) of a person. It is the place to which a person intends to return whenever he or she is absent.

"We" or "Us" means the Social Security Administration.

"You" means the person who has applied for benefits or the person for whom someone else has applied.

§ 404.304 General rules on benefit amounts.

This subpart describes the highest monthly benefit amount you ordinarily could qualify for under each type of benefit. All monthly benefit amounts are based upon the insured's "primary insurance amount" which is computed under the rules in Subpart C. If you are the insured person, the primary insurance amount is the highest old-age or disability benefit payable based upon your social security earnings. If you are the insured person's dependent, your monthly benefit amount is computed as a percentage of the primary insurance amount used to compute the insured's benefits. If the insured has died, your monthly benefit amount as his or her survivor is computed as a percentage of the primary insurance amount the insured could have had based upon his or her earnings up to the time he or she died. However, the highest monthly benefit amount you could qualify for may not be the amount that you actually are paid each month. In a particular month, your benefit amount may be reduced or not paid at all under the circumstances described in § 404.401. Under other circumstances, your benefit amount may be increased. The most common reasons for a change in the amount of your benefit payments are listed below:

(a) *Reductions based on age or earnings.* As explained in §§ 404.410–404.413, your old-age, wife's, husband's, widow's, or widower's benefits may be reduced if you choose to receive them before age 65. Also, as explained in §§ 404.415–404.417, deductions may be made from your benefits if your earnings or the insured person's earnings go over certain limits.

(b) *Cost-of-living increases.* As explained in § 404.221, your benefits are automatically increased to keep up with yearly rises of 3 percent or more in the cost-of-living.

(c) *Overpayments and underpayments.* Your benefits may be increased or decreased for a time to make up for any previous overpayment or underpayment that was made on the insured person's record. For more information about this, see Subpart F.

(d) *Sole survivors.* Your benefits may be increased up to the minimum primary insurance amount payable on any earnings record if you are the only survivor of the insured entitled to benefits on his or her record.

(e) *Family maximum.* As explained in § 404.403, there is a maximum amount set for each insured person's earnings record that limits the total benefits payable on that record. If you are entitled to benefits as the insured's dependent or survivor, your benefits may be reduced to keep total benefits payable to the insured's family within these limits.

(f) *Government pension offset.* If you are entitled to wife's, husband's, mother's, father's, widow's or widower's benefits and receive a Government pension for work that is not covered under social security, your benefits may be reduced by the amount of that pension. Special age 72 payments are also reduced by the amount of a Government pension. for more information about this, see § 404.408(a) which

covers benefits and § 404.384(c) which covers special age 72 payments.

§ 404.305 When you may not be entitled to benefits.

In addition to the situations described in § 404.304 when you may not receive a benefit payment, there are special circumstances when you may not be entitled to benefits. These circumstances are—

(a) *Waiver of benefits.* If you have waived benefits on religious grounds as described in § 404.1086, no one may become entitled to any benefits or payments on your earnings record and you may not be entitled to benefits on anyone else's earnings record; and

(b) *Insured's death by homicide.* You may not become entitled to any survivor's benefits or payments on the earnings record of a person if you were finally convicted of a felony for intentionally causing his or her death.

OLD-AGE AND DISABILITY BENEFITS

§ 404.310 Who is entitled to old-age benefits.

You may become entitled to old-age benefits if—

(a) You are at least 62 years old;

(b) You have enough social security earnings to be "fully insured" as defined in § 404.109; and

(c) You apply; or you are entitled to disability benefits up to the month you become 65 years old. At age 65, your disability benefits automatically become old-age benefits.

§ 404.311 When entitlement to old-age benefits begins and ends.

Your are entitled to old-age benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement. Your entitlement to benefits ends with the month before the month of your death.

§ 404.312 Old-age benefit amounts.

If your old-age benefits begin at age 65, your monthly benefit is equal to the primary insurance amount—the highest benefit payable based upon your average earnings. How this amount is figured is explained in Subpart C. If your old-age benefits begin after you become 65 years old, your monthly benefit is your primary insurance amount plus an increase for retiring after age 65. See § 404.282 for a description of these increases. If your old-age benefits begin before you become 65 years old, your monthly benefit amount is the primary insurance amount minus a reduction for each month you are entitled before you become 65 years old. These reductions are described in §§ 404.410–404.413.

§ 404.315 Who is entitled to disability benefits.

You may become entitled to disability benefits while disabled before age 65 if—

(a) You have enough social security earnings to be "insured for disability," as described in § 404.116;

(b) You apply;

(c) You have a disability, as defined in § 404.1501, or you are not disabled, but you had a disability that ended within the 12-month period before the month you applied; and

(d) You have been disabled for 5 consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a "period of disability" under § 404.320 anytime within 5 years of the month you again became disabled.

§ 404.316 When entitlement to disability benefits begins and ends.

You are entitled to disability benefits beginning with the first month covered by your application in which you meet all the requirements for entitlement. If a waiting period is required, your benefits cannot begin earlier than the first month following that period. Your disability benefits end with the earliest of these months: the month before you become 65 years old; the second month after the month your disability ends; or the month before the month of your death.

§ 404.317 Disability benefit amounts.

Your monthly benefit is equal to the primary insurance amount. This amount is computed under the rules in Subpart C as if it were an old-age benefit, and as if your were 62 years old at the beginning of the 5-month waiting period mentioned in § 404.315(d). If the 5-month waiting period is not required because of your previous entitlement, your primary insurance amount is figured as if you were 62 years old when you become entitled to benefits this time. your monthly benefit amount may be reduced if you receive workmen's compensation payments before you become 62 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you became 65 years old.

§ 404.320 Who is entitled to a period of disability.

(a) *General.* A period of disability is a continouous period of time during which you are disabled. if you become disabled, you may apply to have our records show how long your disability lasts. you may do this even if you do not qualify for disability benefits. If we establish a period of disability for you, the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(b) *Who is entitled.* You are entitled to a period of disability if you meet all of the following conditions:

(1) You have or had a disability as defined in § 404.1501(b).

(2) You are "insured for disability", as defined in § 404.116 in the calendar quarter in which you became disabled, or in a later calendar quarter in which you were disabled.

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month your disability ended.

(4) At least 5 consecutive months go by from the month in which your period of disability begins and before the month in which it would end.

§ 404.321 When a period of disability begins and ends.

Your period of disability begins at the start of the first calendar quarter in which you were both disabled and insured for disability. Your period of disability may not begin after you become 65 years old. Your period of disability ends on the last day of the month before the month in which you become 65 years old or, if earlier, the last day of the second month following the month which your disability ended.

§ 404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

If because of a physical or mental condition you did not apply within 12 months after your period of disability ended, you may apply not more than 36 months after the month in which your disability ended. Your failure to apply within the 12-month time period will be considered due to a physical or mental condition if during this time—

(a) Your physical condition limited your activities to such an extent that you could not complete and sign an application; or

(b) You were mentally incompetent.

BENEFITS FOR SPOUSES AND DIVORCED SPOUSES

§ 404.330 Who is entitled to wife's or husband's benefits.

(a) *General.* You may be entitled to benefits as the wife or husband of an insured person who is entitled to old-age or disability benefits if—

(1) You are the insured's wife or husband based upon a relationship described in §§ 404.345-404.346 and one of the following conditions is met:

(i) Your relationship to the insured as a wife or husband has lasted as least 1 year;

(ii) You and the insured are the natural parents of a child; or

(iii) In the month before you married the insured you were entitled to, or if you had applied and been old enough you could have been entitled to, any of these benefits or payments: Wife's, husband's, widow's, widower's, or parent's benefits; disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(2) You apply;

(3) You are 62 years old or older; or you are the insured's wife and have "in your care", as defined in §§ 404.348-404.349, his child who is entitled to benefits on his earnings record and the child is either under 18 years old or disabled; and

(4) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

(b) *Entitlement to benefits as a divorced wife or divorced husband.*

You may be entitled to wife's or husband's benefits as the divorced wife or divorced husband of an insured person who is entitled to old-age or disability benefits if—

(1) You are the insured's divorced wife or divorced husband and—

(i) You were validly married to the insured under State law as described in § 404.345; and

(ii) You were married to the insured for at least 20 years immediately before your divorce became final, or for benefits beginning January 1979 or later, for at least 10 years immediately before your divorce became final;

(2) You apply;

(3) You are not married;

(4) You are 62 years old or older; and

(5) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

§ 404.331 When wife's and husband's benefits begin and end.

You may be entitled to wife's or husband's benefits beginning with the first month covered by your application in which you meet all other requirements for the benefits. Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(a) You become entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

(b) You are the wife or husband and are divorced from the insured person unless you then meet the requirements for benefits as a divorced wife or divorced husband as described in § 404.330(b).

(c) You are the divorced wife or divorced husband and you remarry—unless you marry someone entitled to benefits as a widow, widower, father, mother, parent, or disabled child. If you do marry someone entitled to benefits as a disabled child and those benefits end because he or she recovers from the disability, your benefits will end with the same month his or her benefits end.

(d) If you are under 62 years old, the child who was in your care is no longer entitled to child's benefits.

(e) The insured person dies or is no longer entitled to old age or disability benefits.

(f) If your benefits are based upon a deemed valid marriage, you marry someone other than the insured or someone else becomes entitled to the same benefits as described in § 404.346.

(g) You die.

§ 404.332 Wife's and husband's benefit amounts.

Your wife's or husband's full monthly benefit is equal to one-half the insured person's primary insurance amount.

§ 404.335 Who is entitled to widow's or widower's benefits.

(a) *General.* You may be entitled to benefits as the widow or widower of a person who was fully insured when he or she died. You may be entitled to these benefits if—

(1) You are the insured's widow or widower based upon a relationship described in §§ 404.345-404.346, and one of the following conditions is met:

(i) Your relationship to the insured as a wife or husband lasted for at least 9 months immediately before the insured died.

(ii) Your relationship to the insured as a wife or husband ended in less than 9 months because of his or her death and—

(A) The insured's death was an accidental death. The term "accidental death" means that death was due to bodily injuries received solely through violent, external, and accidental means and occurred not later than 3 months after the day on which the bodily injuries were received. The term "accident" means an event the deceased had not planned for or expected. An intentional and voluntary suicide will not be considered to be a death by accident;

(B) The death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1013(f) (2) and (3); or

(C) At the time of the insured's death, you were remarried to the insured and had been previously married to him or her for at least 9 months.

(iii) You and the insured were the natural parents of a child; or you were married to the insured when either of you adopted the other's child or when both of you adopted a child and the child was then under 18 years old.

(iv) In the month before you married the insured you were entitled to, or if you had applied and been old enough could have been entitled to, any of these benefits or payments: widow's, widower's, father's, mother's, wife's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(2) You apply, except that you need not apply again if—

(i) In the month before the insured died you were at least 65 years old and entitled to mother's benefits; or

(ii) In the month before the insured died you were at least 65 years old, or you were 62 to 64 years old but not entitled to old-age or disability benefits, and were entitled to wife's or husband's benefits;

(3) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(a) and—

(i) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability (whichever occurred last); and

(ii) Your disability has lasted for 5 full consecutive months, not counting months earlier than: The 17th month before you applied: the 5th month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits, the 5th month before your previous entitlement to benefits ended; however, your disability does not have to last for this 5-month period if you were previously entitled to widow's or widower's benefits based upon a disability;

(4) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(5) You are unmarried unless you are a widow who has remarried after you became 60 years old; or if you are the widower, you have not remarried since the insured's death unless you remarried after you became 60 years old.

(b) *Entitlement to benefits as a surviving divorced wife.* You may be entitled to widow's benefits as the surviving divorced wife of a person who was fully insured when he died. You may be entitled to these benefits if—

(1) You are the insured's surviving divorced wife and—

(i) You are validly married to the insured under State law as described in § 404.345(a); and

(ii) You were married to the insured for a total of at least 20 years immediately before your divorce became final, or for benefits beginning January 1979 or later, for a total of 10 years immediately before your divorce became final;

(2) You apply, except that you need not apply again if—

(i) In the month before the insured died you were at least 65 years old and entitled to mother's benefits; or

(ii) You were at least 65 years old, or you were 62 to 64 years old but not entitled to old-age or disability benefits, and were entitled to wife's benefits;

(3) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(b) and—

(i) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's benefits or to widow's benefits based upon a disability, whichever occurred last; and

(ii) Your disability has lasted for 5 full consecutive months, not counting months earlier than: The 17th month before you applied; the 5th month before the insured died; or if you were previously entitled to mother's or widow's benefits, the 5th month before your previous entitlement to benefits ended; however your disability does not have to last for this 5-month period if you were previously entitled to widow's benefits based upon a disability;

(4) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(5) You are unmarried.

§ 404.336 When widow's and widower's benefits begin and end.

You may become entitled to widow's or widower's benefits beginning with the first month covered by your application in which you meet the requirements for entitlement. Your entitlement to benefits ends at the earliest of the following times:

(a) The month before the month in which you remarry except your benefits will not end if—

(1) You are the widow or widower and remarry when you are 60 years old or older; or

(2) You marry someone entitled to these benefits: Wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. However, if you are the widow or surviving divorced wife and marry a person entitled to disabled child's benefits and his disabled child's benefits and because he recovers from his disability, your benefits will end with the same month his benefits end.

(b) The month before the month in which you become entitled to an old-age benefit that is equal to or larger than the insured's primary insurance amount.

(c) If your widow's or widower's benefit is based upon a disability, the month before the third month after you recover from your disability (unless you are 65 years old then and would still be eligible by meeting the other requirements for these benefits).

(d) If you are entitled to benefits based upon a deemed valid marriage, the month before the month in which another person becomes entitled to the same benefits as described in § 404.346.

(e) The month before the month in which you die.

§ 404.337 Widow's and widower's benefits amounts.

Your monthly widow's or widower's benefit before any reduction is equal to the insured person's primary insurance amount. Besides the benefit reductions for getting benefits before you are 65 years old (see § 404.410 and 404.413), the following additional reductions may be made in your benefit amount:

(a) If the insured person had been entitled to old-age benefits that were reduced for age because he or she chose to receive them before he or she was 65 years old, the widow's or widower's benefit may also be reduced. In this instance, your benefit is reduced, if it would otherwise be higher, to either the amount the insured would have been entitled to if still alive or 82½ percent of his or her primary insurance amount, whichever is larger.

(b) If you are entitled to benefits as the widow or widower (and not the surviving divorced wife) and you remarry when you are 60 years old or older, your benefit amount is reduced for months before January 1979. Your reduced benefit equals one-half the insured's primary insurance amount or $84.50 reduced for months before age 62 that you were entitled to benefits, whichever is greater. However, there is no reduction if you marry a person entitled to wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. Beginning January 1979, if you are the widow or widower your remarriage at age 60 or later will not affect your benefit amount at all.

§ 404.340 Who is entitled to mother's or father's benefits.

(a) *General.* You may be entitled as the widow or widower to mother's or father's benefits on the record of someone who was fully or currently insured when he or she died. You may become entitled to these benefits if—

(1) You are the widow or widower of the insured and meet the conditions described in § 404.335(a)(1);

(2) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(3) You are unmarried;

(4) You are not entitled to widow's or widower's benefits, or to an old-age benefit that is equal to or larger than the full mother's or father's benefit; and

(5) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under 18 years old or is disabled. Sections 404.348 and 404.349 describe when a child is "in your care."

(b) *Entitlement to benefits as a surviving divorced wife.* You may be entitled to mother's benefits as the surviving divorced wife of someone who was fully or currently insured when he died. You may become entitled to these benefits if—

(1) You were validly married to the insured under State law as described in § 404.345(a) but the marriage ended in a final divorce and—

(i) You are the mother of the insured's child; or

(ii) You were married to the insured when either of you adopted the other's child or when both of you adopted a child and the child was then under 18 years old;

(2) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(3) You are unmarried;

(4) You are not entitled to widow's benefits, or to an old-age benefit that is equal to or larger than the full mother's benefit; and

(5) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under age 18 or disabled and this child is your natural or adopted child who is entitled to child's benefits on the insured person's record. Sections 404.358 and 404.359 describe when a child is "in your care."

§ 404.341 When mother's and father's benefits begin and end.

You are entitled to mother's or father's benefits beginning with the first

month covered by your application in which you meet all the other requirements for entitlement. Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(a) You become entitled to a widow's or widower's benefit or to an old-age benefit that is equal to or larger than the full mother's or father's benefit.

(b) The child in your care is no longer entitled to child's benefits.

(c) You remarry, unless you marry someone entitled to these benefits: Old-age, disability, wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. However, if you marry someone entitled to disability benefits or to disabled child's benefits and those benefits and because he or she recovers from the disability, your benefits will end with the same month your spouse's benefits end.

(d) If you are entitled to benefits based upon a deemed valid marriage, another person becomes entitled to benefits as the widow or widower as described in § 404.346(d).

(e) You die.

§ 404.342 Mother's and father's benefit amounts.

Your mother's or father's full benefit amount is equal to 75 percent of the insured's primary insurance amount.

§ 404.344 Your relationship by marriage to the insured.

You may be eligible for benefits if you are related to the insured person as a wife, husband, widow, or widower. To decide your relationship to the insured, we look first to State laws. The State laws that we use are discussed in § 404.345. If your relationship cannot be established under State law, you may still be eligible for benefits if your relationship as the insured's wife, husband, widow, or widower is based upon a "deemed valid marriage" as described in § 404.346.

§ 404.345 Your relationship as wife, husband, widow, or widower under State law.

To decide your relationship as the insured's wife, husband, widow, or widower, we look to the laws of the State where the insured had a permanent home when you applied for wife's or husband's benefits; or where the insured had a permanent home when he or she died if you apply for widow's, widower's, mother's, or father's benefits. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we look to the laws of Washington, D.C. For a definition of permanent home, see § 404.303. If you and the insured were validly married under State law at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits, the relationship requirement will be met. The relationship requirement will also be met if under State law you would be able to inherit a wife's, husband's, widow's, or widower's share of the insured's personal property if he or she were to die without leaving a will.

§ 404.346 Your relationship as wife, husband, widow or widower based upon a deemed valid marriage.

If your relationship as the insured's wife, husband, widow, or widower cannot be established under State law as explained in § 404.345, you may be eligible for benefits based upon a deemed valid marriage. You will be deemed to be the wife, husband, widow, or widower of the insured if, in good faith, you went through a marriage ceremony with the insured that would have resulted in a valid marriage except for a legal impediment. A legal impediment means only that there was a defect in the procedure followed in connection with the ceremony, or that a previous marriage of the insured had not ended at the time of the ceremony. For example, a defect in the procedure may be found where a marriage was performed through a religious ceremony in a country that requires a civil ceremony for a valid marriage. Good faith means that at the time of the ceremony you did not know that a legal impediment existed, or if you did know, you thought that it would not prevent a valid marriage. To be entitled to benefits as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died, or if the insured is living, at the time you apply for benefits. If at the time you apply another person is or has been entitled to benefits as the wife, husband, widow, or widower of the insured, and such person's relationship to the insured was determined under State law as explained in § 404.345, you will not be entitled to benefits. Also, if after your entitlement, we find that another person is the wife, husband, widow, or widower of the insured under State law as explained in § 404.345, your entitlement will end with the month before the month in which this determination is made.

§ 404.347 "Living in the same household" defined.

You may be eligible for benefits as a wife, husband, widow, or widower because your relationship to the insured is based upon a deemed valid marriage, as described in § 404.346, only if you and the insured were living in the same household at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits. Living in the same household means that you and the insured customarily lived together as husband and wife in the same residence. You may still be considered to be living in the same household although one of you is temporarily absent from the residence. Someone's absence will be considered temporary if it was due to his or her service in the U.S. Armed Forces; or it is less than 6 months and neither you nor the insured were outside of the United States during this time and the absence was due to business or employment; or to confinement in a hospital, nursing home, other medical institution, or a penal institution. An absence due to other reasons will not be considered temporary unless you and the insured could have reasonably expected to live together in the near future.

§ 404.348 When is a child living with you "in your care".

To become entitled to wife's benefits before you become 62 years old or to mother's or father's benefits, you must have the insured's child "in your care." A child who has been living with you for at least 30 days is in your care unless—

(a) The child is in active military service;

(b) The child is 18 years old or older and not disabled;

(c) The child is 18 years old or older with a mental disability, but you do not actively supervise his or her activities and you do not make important decisions about his or her needs, either alone or with help from your spouse; or

(d) The child is 18 years old or older with a physical disability, but it is not necessary for you to perform personal services for him or her. Personal services are services such as dressing, feeding, and managing money that the child cannot do alone because of a disability.

§ 404.349 When is a child living apart from you "in your care".

(a) *Not in your care.* A child living apart from you is not in your care if—

(1) The child is in active military service;

(2) The child is living with his or her natural parent;

(3) The child is removed from your custody and control by a court order;

(4) The child is 18 years old or older, is mentally competent, and either has been living apart from you for 6 months or more, or begins living apart

from you and is expected to be away for more than 6 months;

(5) You gave your right to have custody and control of the child to someone else; or

(6) You are mentally disabled.

(b) *In your care.* A child living apart from you is in your care if—

(1) The child lived apart from you for not more than 6 months, or the child's current absence from you is not expected to last over 6 months;

(2) The child is under 18 years old, you supervise his or her activities and make important decisions about his or her needs, and one of the following circumstances exist:

(i) The child is living apart because of school but spends at least 30 days vacation with you each year unless some event makes having the vacation unreasonable; and if you and the child's natural parent are separated, the school looks to you for decisions about the child's welfare;

(ii) The child is living apart because of your employment but you make regular and substantial contributions to his or her support; see § 404.366(a) for a definition of "contributions for support";

(iii) The child is living apart because of a physical disability that the child has or that you have; or

(3) The child is 18 years old or older, and is mentally disabled but you supervise his or her activities, make important decisions about his or her needs, and help in his or her upbringing and development.

CHILD'S BENEFITS

§ 404.350 Who is entitled to child's benefits.

You may be entitled to child's benefits on the earnings record of an insured person who is entitled to old-age or disability benefits or who has died if—

(a) You are the insured person's child, based upon a relationship described in §§ 404.355-404.359;

(b) You are dependent on the insured, as defined in §§ 404.360-404.365;

(c) You apply;

(d) You are unmarried;

(e) You are under age 18; or you are 18 years old or older and have a disability that began before you became 22 years old; or you are under age 22 and a full-time student, as defined in § 404.367; or you became 22 years old in a month when you had not received a degree from a 4-year college or university and were completing a semester or a quarter as a full-time student.

§ 404.351 Who may be reentitled to child's benefits.

If your entitlement to child's benefits ended before you became 18 years old, or later, you may be reentitled on the same earnings record if you have not married and if you apply for reentitlement. Your reentitlement may begin with—

(a) The first month in which you are a full-time student and either you have not become 22 years old, or you became 22 years old in a month when you had not received a degree from a 4-year college or university and were completing a semester or a quarter as a full-time student;

(b) The first month in which you are disabled, if your disability began before you became 22 years old; or

(c) The first month you are under a disability which began before the end of the 84th month following the month in which your benefits had ended because an earlier disability had ended.

§ 404.352 When child's benefits begin and end.

You may be entitled to child's benefits beginning with the first month covered by your application in which you meet all the other requirements for the benefits. Your entitlement ends with the month before the month in which any one of the following events first occurs:

(a) You become 18 years old, unless you are disabled or a full-time student. If you become 18 years old and you are disabled, your entitlement ends with the second month following the month in which your disability ends. If you become 18 years old and you are a full-time student, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 22. If you become age 22 in a month in which you are a full-time student and you have not completed the requirements for, or received a degree from a 4-year college or university, your entitlement will end with the month in which the quarter or semester in which you are enrolled ends; or if the school you are attending does not have a quarter or semester system, the month you complete the course, or if earlier, the first day of the third month following the month in which you become 22 years old.

(b) You marry unless you are 18 years old or older, disabled, and you marry a person entitled to child's benefits based on disability or a person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits. If you are a woman entitled to child's benefits based on disability and you marry a man entitled to either child's benefits based on disability or disability benefits, your entitlement will end with the same month your husband's entitlement ends, if his entitlement ends for a reason other than death or entitlement to old-age benefits.

(c) The insured's entitlement to old-age or disability benefits ends for a reason other than death or the attainment of age 65.

(d) You die.

§ 404.353 Child's benefit amounts.

(a) *General.* Your full benefit is equal to one-half of the insured's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died.

(b) *Entitlement to more than one benefit.* If you are entitled to a child's benefit on more than one person's earnings record, you may receive only the benefit payable on the record with the highest primary insurance amount unless your benefit before any reduction would be larger on the earnings record with the lower primary insurance amount and no other person entitled to benefits on that record would receive a smaller benefit as a result of your entitlement. If you are entitled to a child's benefit and to other dependent's or survivor's benefits, you can receive only the highest of the benefits.

§ 404.354 Your relationship to the insured.

You may be related to the insured person in one of several ways and be entitled to benefits as his or her child—as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. To decide your relationship to the insured, we look to the laws of the State where the insured had a permanent home when you applied, or where the insured had a permanent home when he or she died if you apply after his or her death. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we will look to the laws of Washington, D.C. For a definition of permanent home see § 404.303. The State laws we use are the ones the courts would use to decide whether you could inherit a child's share of the insured's personal property if he or she were to die without leaving a will. If these laws would not permit you to inherit the insured's personal property as his or her child, you may still be eligible for child's benefits if you are related to the insured in one of the other ways described in §§ 404.355-404.359.

§ 404.355 Who is the insured's natural child.

You may be eligible for benefits as the insured's natural child if one of the following conditions is met:

(a) You could inherit the insured's personal property as his or her natural

child under State inheritance laws as described in § 404.354.

(b) Before your birth, your mother or father entered into a deemed valid marriage with the insured as described in § 404.346.

(c) Your mother has not married the insured but the insured is your father and he has either acknowledged in writing that you are his child, been decreed by a court to be your father, or been ordered by a court to contribute to your support because you are his child.

(d) Your mother has not married the insured, but you have evidence other than the evidence described in paragraph (c) of this section to show that the insured is your natural father. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. See § 404.366 for an explanation of the terms "living with" and "contributing to your support". If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he died.

§ 404.356 Who is the insured's legally adopted child.

You may be eligible for benefits as the insured's child if you were legally adopted by the insured. If you were legally adopted after the insured's death by his or her surviving spouse you may also be considered the insured's legally adopted child.

§ 404.357 Who is the insured's stepchild.

You may be eligible for benefits as the insured's stepchild if, after your birth, your natural or adopting parent married the insured. The marriage between the insured and your parent must be a valid marriage under State law or a deemed valid marriage as described in §§ 404.345–404.346. If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if one of these conditions is met:

(a) The insured's death was an accidential death. The term "accidental death" means that the death was due to bodily injuries received solely through violent, external, and accidental means and occurred not later than 3 months after the day on which the bodily injuries were received. The term "accident" means an event which the deceased had not planned for or expected. An intentional and voluntary suicide will not be considered to be a death by accident.

(b) The insured's death occurred while he or she was serving on active duty as a member of the uniformed services, as defined in § 404.1013(f) (2) and (3).

(c) At the time of the insured's death, your parent was remarried to the insured and the previous marriage between your parent and the insured had lasted for at least 9 months.

§ 404.358 Who is the insured's grandchild or stepgrandchild.

You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355–404.357, or § 404.359. Additionally, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or step-grandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent or stepgrandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began. See § 404.356 if you are the insured's grandchild or stepgrandchild and you have been legally adopted after the insured's death by his or her surviving spouse.

§ 404.359 Who is the insured's equitably adopted child.

You may be eligible for benefits as an equitably adopted child if the insured had agreed to adopt you as his or her child but the adoption did not occur. The agreement to adopt you must be one that would be recognized under State law so that you would be able to inherit a child's share of the insured's personal property if he or she were to die without leaving a will. The agreement must be in whatever form, and you must meet whatever requirements for performance under the agreement, that State law directs. If you apply for child's benefits after the insured's death, the law of the State where the insured had his or her permanent home at the time of his or her death will be followed. If you apply for child's benefits during the insured's life, the law of the State where the insured has his or her permanent home at the time of your application will be followed.

§ 404.360 When a child is dependent upon the insured person.

One of the requirements for entitlement to child's benefits is that you be dependent upon the insured. The evidence you need to prove your dependency is determined by how you are related to the insured. To prove your dependency you may be asked to show that at a specific time you lived with the insured, that you received contributions for your support from the insured, or that the insured provided at least one-half of your support. These dpenedency requirements, and the time at which they must be met, are explained in §§ 404.361–404.365. The terms "living with", "contributions for support," and "one-half support" are defined in § 404.366.

§ 404.361 When is a natural child dependent.

If you are the insured's natural child, as defined in § 404.355, you are considered dependent upon him or her unless you were legally adopted by someone else during the insured's lifetime. After an adoption, you are considered dependent upon your natural parent only if he or she lived with you or contributed to your support at one of these times—

(a) When you applied;

(b) When your natural parent died; or

(c) If your natural parent had a period of disability that lasted until he or she died or became entitled to disability or old-age benefits, at the beginning of the period of disability or at the time he or she became entitled to benefits.

§ 404.362 When is a legally adopted child dependent.

(a) *General.* If you are legally adopted by the insured before he or she became entitled to old-age or disability benefits, you are considered dependent upon him or her. If you were legally adopted by the insured after he or she became entitled to old-age or to disability benefits and you apply for child's benefits during the life of the insured, you must meet the dependency requirements stated in paragraph (b) of this section. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits after the death of the insured, you are considered dependent upon him or her. If you were adopted after the insured's death by his or her surviving spouse, you may be considered dependent upon the insured only under the conditions described in paragraph (c) of this section.

(b) *Adoption by the insured after he or she became entitled to benefits.*

(1) *General.* If you are legally adopted by the insured after he or she became entitled to benefits and you are not the insured's natural child, stepchild, grandchild, or stepgrandchild, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for the year before he or she became entitled to benefits or became entitled to a period of disability that continued until entitlement to benefits began. If you were born within this 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The "substantially all" requirement will be met if, at the time of the insured's entitlement, he or she was living with you and providing at least one-half of your support, and any period during which he or she was not living with you or providing one-half of your support did not exceed the lesser of 3 months or one-half of the period beginning with the month of your birth.

(2) *Grandchild of the insured or the insured's spouse.* If you are legally adopted by the insured after he or she became entitled to benefits and you are the insured's grandchild or the grandchild of the insured's spouse, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for either the 1-year period before the month you applied or for one of the periods described in paragraph (b)(1)(iii) of this section. If you were born within this 1-year period, the insured must have lived with you and provided one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in paragraph (b)(1)(iii) of this section.

(3) *Natural child and stepchild.* If you were legally adopted by the insured after he or she became entitled to benefits and you are the insured's natural child or stepchild, you are considered dependent upon the insured.

(c) *Adoption by the insured's surviving spouse.*

(1) *General.* If you are legally adopted by the insured's surviving spouse after the insured's death, you are considered dependent upon the insured as of the date of his or her death if—

(i) You were living in the insured's household at the time of his or her death;

(ii) You were not receiving regular contributions for your support from someone other than the insured or his or her spouse, or from any public or private welfare organization at the time of the insured's death; and

(iii) The insured had started adoption proceedings before he or she died; or if the insured had not started the adoption proceedings before he or she died, his or her surviving spouse began and completed the adoption within 2 years of the insured's death.

(2) *Grandchild or stepgrandchild adopted by the insured's surviving spouse.* If you are the grandchild or stepgrandchild of the insured and any time after the death of the insured you are legally adopted by the insured's surviving spouse, you are considered the dependent child of the insured as of the date of his or her death if—

(i) Your adoption took place in the United States;

(ii) At the time of the insured's death, your natural, adopting or stepparent was not living in the insured's household and making regular contributions toward your support; and

(iii) You meet the dependency requirements stated in § 404.364.

§ 404.363 When is a stepchild dependent.

If you are the insured's stepchild, as defined in § 404.357, you are considered dependent upon him or her if you lived with or received at least one-half of your support from him or her at one of these times—

(a) When you applied;

(b) When the insured died; or

(c) If the insured had a period of disability that lasted until his or her death or entitlement to disability or old-age benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.364 When is a grandchild or stepgrandchild dependent.

If you are the insured's grandchild or stepgrandchild, as defined in § 404.358, you are considered dependent upon the insured if—

(a) You began living with the insured before you became 18 years old; and

(b) You were living with the insured in the United States and receiving at least one-half of your support from him for the year before he or she became entitled to old-age or disability benefits or died; or if the insured had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. If you were born during the 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in § 404.362(b)(1)(iii).

§ 404.365 When is an equitably adopted child dependent.

If you are the insured's equitably adopted child, as defined in § 404.359, you are considered dependent upon him or her if you lived with or received contributions for your support from the insured at the time of his or her death. If your equitable adoption is found to have occurred after the insured became entitled to old-age or disability benefits, your dependency cannot be established during the insured's life. If your equitable adoption is found to have occurred before the insured became entitled to old-age or disability benefits, you are considered dependent upon him or her if you lived with or received contributions for your support from the insured at one of these times—

(a) When you applied; or

(b) If the insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.366 "Contributions for support," "one-half support," and "living with" the insured defined.

To be eligible for child's or parent's benefits, you must be dependent upon the insured at a particular time or be assumed dependent upon him or her. What it means to be a dependent child is explained in §§ 404.360–404.365 and what it means to be a dependent parent is explained in § 404.370(f). Your dependency upon the insured may be based upon whether at a specified time you were receiving "contributions for your support" or "one-half of your support" from the insured, or whether you were "living with" him or her. These terms are defined in paragraphs (a)–(c) of this section.

(a) *"Contributions for support".* The insured makes a contribution for your support if he or she gives some of his or her own cash or goods to help support you. The value of any goods the insured contributes is the same as the cost of the goods when he or she gave them for your support. If the insured provides services for you that you would otherwise have to pay for, the cash value of his or her services may be considered a contribution for your support. An example of this would be work the insured does to repair your home. However, routine household services that the insured does when he or she lives in the same household with you would not be considered a contribution for your support. The insured person is considered to be making a contribution for your support if you receive an allotment, allow-

ance, or benefit based upon his or her military pay, veterans' pension or compensation, or social security earings. Contributions must be made regularly and must be large enough to pay an important part of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. If the insured person only provides gifts or donations once in a while for special purposes, they will not be considered contributions for your support. Although the insured's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the insured person's control, such as illness or unemployment, will be disregarded unless during this interruption someone else takes over responsibility for supporting you on a permanent basis.

(b) *"One-Half Support".* The insured person provides one-half of your support if he or she makes regular contributions for your support and the amount of these contributions exceeds one-half of your ordinary living costs as defined in paragraph (a) of this section. A contribution may be in cash, goods, or services. The insured is not providing at least one-half of your support unless he or she has done so for a reasonable period of time. Ordinarily, we consider a reasonable period to be the 12-month period immediately preceding the time when the one-half support requirement must be met under the rules in §§ 404.362–404.364 (for child's benefits) or in § 404.370(f) (for parent's benefits). A shorter period will be considered reasonable under the following circumstances:

(1) At some point within the 12-month period, the insured person started providing at least one-half of your support on a permanent basis and this was a change in the way you had been supported up to then. In these circumstances, the time from the change, when the insured started providing one-half or more of your support, up to the end of the 12-month period may be considered a reasonable period. The chane in your source of support must be permanent and not temporary. Changes caused by seasonal employment or customary visits to the insured's home are considered temporary.

(2) The insured provided one-half or more of your support for at least 3 months of the 12-month period, but was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over the responsibility for providing at least one-half of your support on a permanent basis. Any support you received from a public assistance program is not considered as a taking over of responsibility for your support by someone else. Under these circumstances, a reasonable period is that part of the 12-month period before the insured was forced to reduce or stop providing at least one-half of your support.

(c) *"Living with" the insured.* You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However, you are not considered to be living with the insured if you are in active military service or in prison.

§ 404.367 When are you a "full-time student".

You may be eligible for child's benefits if you are a full-time student and you have not become 22 years old. A full-time student means a person who is in full-time attendance at an educational institution. You will be considered a full-time student if each of the following conditions are met:

(a) You attend an educational institution that is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following conditions:

(1) It is operated or directly supported by the United States, or by any State, local government or by a political subdivision of any State or local government.

(2) It is approved by a State agency or subdivision of the State or accredited by a State or nationally-recognized accrediting body. A national recognized accrediting body is one determined to be such by the U.S. Commissioner of Education. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. Approval by a State agency or subdivision includes approval of a school, college, or university as an educational institution, or approval of one or more of the courses offered by a school, college or university.

(3) It is a nonaccredited school, college, or university, but its credits are accepted by at least three educational institutions that have been accredited by a State or nationally recognized accrediting body.

(b) You are enrolled in a noncorrespondence course and carrying a subject load that is considered full-time for day students under the practices and standards of the educational institution. If you are enrolled in a junior college, college, or university, your course of study must last at least 13 weeks. If you ar enrolled in any other educational institution, your course of study must last at least 13 weeks and your scheduled attendance must be at least 20 hours a week. If your full-time attendance either begins or ends in a month, you will be considered a full-time student for that month. You will not be considered a full-time student in the month you graduate if you completed your course of study and stopped carrying a full-time subject load in a month before the month preceding the month you graduate.

(c) You are not being paid while attending the educational institution by an employer who has requested or required that you attend the educational institution.

§ 404.368 When may you be considered a full-time student during a period of nonattendance.

If you are a full-time student at an educational institution, your eligibility may continue during a period of nonattendance (including part-time attendance) if the following conditions are met:

(a) The period of nonattendance is 4 consecutive months or less.

(b) You show us that you intend to resume your studies as a full-time student at the end of the period; or at the end of the period you are a full-time student.

(c) The period of nonattendance is not due to your expulsion or suspension from the educational institution.

PARENT'S BENEFITS

§ 404.370 Who is entitled to parent's benefits.

You may be entitled to parent's benefits on the earnings record of someone who has died and was fully insured. You may become entitled to these benefits if all the following conditions are met:

(a) You are related to the insured person as his or her parent in one of the ways described in § 404.374.

(b) You are at least 62 years old.

(c) You have not married since the insured person died.

(d) You apply.

(e) You are not entitled to an old-age benefit equal to or larger than the parent's benefit amount.

(f) You were receiving at least one-half of your support from the insured at the time he or she died, or at the beginning of any period of disability he or she had that continued up to death. See § 404.366(b) for a definition of "one-half support." If you were receiving one-half of your support from the insured at the time of the insured's death, you must give us proof

of this support within 2 years of the insured's death. If you were receiving one-half of your support from the insured at the time his or her period of disability began, you must give us proof of this support within 2 years of the month in which the insured filed his or her application for the period of disability. You must file the evidence of support even though you may not be eligible for parent's benefits until a later time. There are two exceptions to the 2-year filing requirement:

(1) If there is a good cause for failure to provide proof of support within the 2-year period, we will consider the proof you give us as though it were provided within the 2-year period. Good cause does not exist if you were informed of the need to provide the proof within the 2-year period and you neglected to do so or did not intend to do so. Good cause will be found to exist if you did not provide the proof within the time limit due to—

(i) Circumstances beyond your control, such as extended illness, mental or physical incapacity, or a language barrier;

(ii) Incorrect or incomplete information we furnished you;

(iii) Your efforts to get proof of the support without realizing that you could submit the proof after you gave us some other evidence of that support; or

(iv) Unusual or unavoidable circumstances that show you could not reasonably be expected to know of the 2-year time limit.

(2) The Soldiers' and Sailors' Civil Relief Act of 1940 provides for extending the filing.

§ 404.371 When parent's benefits begin and end.

You may become entitled to parent's benefits beginning with the first month covered by your application in which you meet the requirements for entitlement. Your entitlement of benefits ends with the month in which one of the following events first occurs:

(a) You become entitled to an old-age benefit equal to or larger than the parent's benefit.

(b) You marry, unless your marriage is to someone entitled to wife's widow's, widower's, mother's, father's, parent's, or disabled child's benefits. If you marry a person entitled to these benefits, the marriage is disregarded unless you are a woman and marry someone entitled to disabled child's benefits, in which instance your benefits will end with the same month your spouse's benefits end should he recover from his disability.

(c) You die.

§ 404.373 Parent's benefit amounts.

Your parent's monthly benefit amount before any reduction or increase that may be required under the rules in § 404.304 is figured in one of the following ways:

(a) *One parent entitled.* Your full parent's benefit is 82½ percent of the insured's primary insurance amount if you are the only parent entitled to benefits on his or her earnings record.

(b) *More than one parent entitled.* Your full parent's benefit is 75 percent of the insured's primary insurance amount if there is another parent entitled to benefits on his or her earnings record. However, if one parent becomes entitled to the 82½ percent benefit amount for any month and later another parent becomes entitled to benefits for that same month based upon an application filed after that month, the second parent's benefit amount for that month will be the difference between the 82½ percent benefit and 150 percent of the insured's primary insurance amount.

§ 404.374 Parent's relationship to the insured.

You may be eligible for benefits as the insured person's parent if—

(a) You are the mother or father of the insured and would be considered his or her parent under the laws of the State where the insured has a permanent home when he or she died;

(b) You are the adoptive parent of the insured and legally adopted him or her before the insured person became 16 years old; or

(c) You are the stepparent of the insured and you married the insured's parent or adoptive parent before the insured became 16 years old. The marriage must be considered valid under the laws of the State where the insured had his or her permanent home when he or she died. See § 404.303 for a definition of "permanent home".

SPECIAL PAYMENT AT AGE 72

§ 404.380 General.

Some older persons had little or no chance to become fully insured for regular social security benefits during their working years. For those who became 72 years old several years ago but are not fully insured, a "special payment" may be payable as described in the following sections.

§ 404.381 Who is entitled to special age 72 payments.

You are entitled to a special age 72 payment if—

(a) You became 72 years old before 1968 or you have credit for at least 3 quarters of social security work for each calendar year between 1966 and the year you became 72 years old (see Subpart B for a description of these work credits);

(b) You reside in the 50 states, District of Columbia, or the Northern Mariana Islands;

(c) You apply; and

(d) You are a U.S. citizen or a citizen of the Northern Mariana Islands; or you are an alien who was legally admitted for permanent residence in the United States and who has resided here continuously for 5 years. Residence in the United States includes residence in the North Mariana Islands, Guam, American Samoa, Puerto Rico, and the Virgin Islands.

§ 404.382 When special age 72 payments begin and end.

Your entitlement to the special age 72 payment begins with the first month covered by your application in which you meet all the other requirements for entitlement and ends with the month before the month of your death.

§ 404.383 Special age 72 payment amounts.

If both you and your spouse are entitled to the payment, the husband's payment amount is $83.70 and the wife's payment amount is $41.90. If you are entitled to the special payment but your spouse is not, your payment amount is $83.70. The special payment amounts of $83.70 and $41.90 are payable for months after May 1978; these amounts will increase because of cost-of-living increases that occur after 1978. The special payment may be reduced, suspended, or not paid at all as explained in § 404.384.

§ 404.384 Reductions, suspensions, and nonpayments of special age 72 payments.

(a) *General.* Special age 72 payments may not be paid for any month you receive public assistance payments. The payment may be reduced if you or your spouse are eligible for a government pension. In some instances, the special payment may not be paid while you are outside the United States. The rules on when special payments may be suspended, reduced, or not paid are provided in paragraphs (b)-(d) of this section.

(b) *Suspension of special age 72 payments when you receive public assistance payments.* You cannot receive the special payment if supplemental security income or aid to families with dependent children (AFDC) payments are payable to you, or if your needs are considered in setting the amounts of these assistance payments made to someone else. However, if public assistance payments are stopped, you may receive the special payment beginning with the last month the assistance payments were paid.

(c) *Reduction of special age 72 payments when you or your spouse are eligible for a government pension.* Spe-

cial payments are reduced for any regular government pension (or lump-sum payment given instead of a pension) that you or your spouse are entitled to, or would be eligible for, at retirement. A government pension is any annuity, pension, or retirement pay from the Federal Government, a State government or political subdivision, or any organization wholly owned by the Federal or State government. Also included as a government pension is any social security benefit. However, the term government pension does not include workmen's compensation payments or Veterans Administration payments for a service-connected disability or death. If your spouse is eligible for a government pension but is not entitled to the special payment, your special payment is reduced by the difference between the pension amount and the special payment amount due a wife. This is in addition to any reduction to be made in your payment if you are also entitled to, or eligible for, a government pension. If both you and your spouse are entitled to the special payment, each one's payment is first reduced by the amount of his or her own government pension (if any). Then, the wife's special payment is reduced by the amount that the husband's government pension exceeds the husband's special payment. The husband's special payment is also reduced by the amount that the wife's government pension exceeds the wife's special payment.

(d) *Nonpayment of special age 72 payments when you are not residing in the United States.* No special payment is due you for any month you are not a resident of the 50 States, District of Columbia, or the Northern Mariana Islands. Also, payment to you may not be permitted under the rules in § 404.463 if you are an alien living outside the United States.

LUMP-SUM DEATH PAYMENT

§ 404.390 General.

If a person is fully or currently insured when he or she dies, a lump-sum death payment of $255 may be paid to the widow or widower of the deceased if he or she was living in the same household with the deceased at the time of his or her death. If the insured is not survived by a widow or widower who meets this requirement, all or part of the $255 payment may be made to someone else as described in § 404.392.

§ 404.391 Who is entitled to the lump-sum death payment as a widow or widower.

You may be eligible for the lump-sum death payment if you are the widow or widower of the deceased insured individual based upon a relationship described in §§ 404.345 and 404.346. You must apply for this payment within two years after the date of the insured's death unless, in the month prior to the death of the insured, you were entitled to wife's or husband's benefits on his or her earnings record. You must also have been living in the same household with the insured at the time of his or her death. The term "living in the same household" is defined in § 404.347.

§ 404.392 Who is entitled to the lump-sum death payment when there is no eligible widow or widower.

If the deceased individual is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(a) If all or part of the burial expenses of the deceased incurred by a funeral home remain unpaid, the funeral home may receive the lump-sum death payment to the extent of the unpaid expenses if—

(1) A person who has assumed the responsibility for paying these expenses applies for the lump-sum death payment within 2 years of the insured's death, asking that the payment be made to the funeral home; or

(2) At least 90 days have gone by since the death of the insured, no person has assumed responsibility for paying the burial expenses, and the funeral home director or other official of the funeral home applies for the payment.

(b) If all the burial expenses of the insured that were incurred by a funeral home have been paid, and any part of the lump-sum death payment remains, it may be paid to a person who paid these burial expenses and who applies for the payment within 2 years of the insured's death.

(c) If the body of the deceased is not available for burial, but expenses were incurred in connection with a memorial service or any other item for which expenses are customarily incurred in connection with disposing of a deceased's remains, the lump-sum death payment may be paid to a person who paid the expenses and applies for the payment within 2 years of the insured's death.

(d) If any part of the lump-sum death payment remains after payments have been made under paragraphs (a), (b), and (c) of this section, that part of the payment may be made to a person who applies within 2 years of the insured's death and who has paid other expenses of a burial in the following order of priority—

(1) Expenses of opening and closing the grave;

(2) Expenses of providing the burial plot; and

(3) Any remaining expenses in connection with the burial.

§ 404.393. Who is entitled to the lump-sum death payment when burial expenses are paid from the deceased's funds.

If funds of a deceased person were used to pay any of the burial expenses for which payment of the lump-sum can be made under the rules in § 404.392, the deceased person's estate may be entitled to the lump-sum death payment. If you apply for the payment on behalf of a person's estate, you must show you are the legal representative (administrator or executor) of the estate. If there is no legal representative and none will be appointed, you must agree to divide the payment among those who have a right to it under State law, or under foreign law, that applies where the deceased had his or her permanent home at death. We may also require that you get written approval to receive the payment from any of the deceased's closest relatives who are available. A person's closest relatives follow this order: widower or widow; children and the children of any deceased children; parents; brothers and sisters and the children of any deceased brothers and sisters; and other relatives by blood or adoption.

§ 404.394 Who is not entitled to the lump-sum death payment.

The following persons and organizations are not entitled to the lump-sum payment even if they take care of the burial or pay burial expenses—

(a) The U.S. Government, a foreign government, or any government organization;

(b) Any person who has received or will receive repayment from any other source for the burial expenses he or she paid;

(c) Persons and organizations who are required by a contract to pay the burial expenses except for a tax-exempt, nonprofit home for the sick or aged that paid for burial of a deceased resident or guest or a tax-exempt, nonprofit fraternal organization that paid a member's burial expenses not covered by an express contract;

(d) An employer or organization that paid burial expenses of an employee or member under a plan, system, or general practice other than a home for the sick or aged or a fraternal organization mentioned in paragraph (c) of this section; and

(e) A person or organization providing burial goods or services directly except for a funeral director who provided burial goods or services for either a close relative or for some other relative who was living in the funeral director's household when he or she died; a tax-exempt nonprofit charitable, religious, educational, or similar organization; or a State or political subdivision of a State.

Subpart H [Amended]

3. Subpart H is amended by adding the phrase "or divorced husband" to the first sentences of §§ 404.723 and 404.728(a) so as to read as follows:

§ 404.723 When evidence of marriage is required.

If you apply for benefits as the insured person's husband or wife, widow or widower, divorced wife or divorced husband, we will ask for evidence of the marriage and where and when it took place.* * *

§ 404.728 Evidence a marriage has ended.

(a) *When evidence is needed that a marriage has ended.* If you apply for benefits as the insured person's divorced wife or divorced husband, you will be asked for evidence of your divorce.* * *

4. Subpart H is further amended by revising the first sentence of section 404.780(a) so as to read as follows:

§ 404.780 Evidence of "good cause" for exceeding time limits on accepting proof of support or application for a lump-sum death payment.

(a) *When evidence of "good cause" is needed.* We may ask for evidence that you had "good cause" (as defined in § 404.370(f)) for not giving us sooner proof of the support you received from the insured as his or her parent. We may also ask for evidence that you had "good cause" (as defined in § 404.621(b)) for not applying sooner for the lump-sum death payment. You may be asked for evidence of "good cause" for these delays if—* * *

SOCIAL SECURITY ADMINISTRATION
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
BALTIMORE, MARYLAND 21203

WHAT DO YOU THINK ABOUT THESE RULES?

We need your help. We are trying to make all social security rules as clear and easy for the public to understand as possible. The rules published here are part of our first efforts to reach this goal. You can help by filling out the questionnaire below or by writing to us. Tell us whether these rules are easy or difficult to understand and how they can be improved. Your ideas will help us decide how to improve these rules and other rules we will be publishing in the future.

1. Do you think the rules are clear and easy to understand?

☐ YES ☐ NO ☐ DON'T KNOW

2. Are any of the rules confusing or difficult to follow?

☐ YES ☐ NO ☐ DON'T KNOW

If so, which one(s)? _____

_____

3. How could these rules be improved? _____

_____

_____

_____

4. Do you have any other comments about these rules? _____

_____

_____

_____

(If you need more space for your answer, you can use the back of this page.)

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DEPARTMENT OF HEALTH, EDUCATION,

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[FR Doc. 78-31909 Filed 11-13-78; 8:45

Federal Register

TUESDAY, NOVEMBER 14, 1978
PART IV

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

OCCUPATIONAL EXPOSURE TO LEAD

Final Standard

[4510-26-M]

Title 29—Labor

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

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Standard for Occupational Exposure to Lead.

SUMMARY: This final standard limits occupational exposure to lead to 50 $\mu g/m^3$ (micrograms per cubic meter) based on an 8 hour time-weighted average. The basis for this action is evidence that exposure to lead must be maintained below this level to prevent material impairment of health or functional capacity to exposed employees.

Provisions for environmental monitoring, recordkeeping, employee education and training, medical surveillance, medical removal protection, hygiene facilities, and other requirements are also included in the standard.

DATES: Effective date: February 1, 1979. Startup dates for individual provisions which are different than the effective date are in paragraph (r) of the regulation.

FOR FURTHER INFORMATION CONTACT:

Gail Brinkerhoff, OSHA Office of Compliance Programs, U.S. Department of Labor, Room N-3112, Washington, D.C. 20210, telephone 202-523-8034. For additional copies of this regulation, contact: OSHA Office of Publications, U.S. Department of Labor, Room N-3423, Washington, D.C. 20210, telephone 202-523-8677.

SUPPLEMENTARY INFORMATION:

I. Introduction

The statement of reasons accompanying this regulation (the preamble) is divided into six parts, numbered I through VI. The following table sets forth the contents of the preamble:

Part VI of the preamble is divided into four attachments (A-D) (to be published separately in the Federal Register on or about November 21, 1978) which provide a detailed, complex, and technical discussion of the evidence and OSHA's conclusions on most of the major issues raised in the rulemaking. Part III is a brief, nontechnical summary of these attachments and is intended for the reader who wishes to understand the basis for OSHA's conclusions in this standard without having to examine the more technical attachments.

Part IV is a provision-by-provision discussion of the regulation in lettered paragraphs corresponding to the lettered paragraphs of the regulation. It provides a brief summary of each provision and the evidence and rational supporting it. This is followed by part V, which in turn is followed by the regulation and its appendices.

References to the rulemaking record in the text of the preamble are in parentheses, and the following abbreviations have been used:

1. Ex.: Exhibit number.
2. Tr.: Transcript page number.
3. Ref.: Reference number.
4. Att.: Attachment number or letter.
5. App.: Appendix number or letter.

This permanent occupational safety and health standard is issued pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), the Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911. It amends Part 1910 of 29 CFR by adding a new § 1910.1025, entitled "Lead," and by deleting the reference to "lead and its inorganic compounds" in Table Z-2 of 29 CFR 1910.1000. The standard applies to employment in all industries covered by the Act except construction and agriculture.

Pursuant to section 4(b)(2) of the Act, OSHA has determined that this standard is more effective than the corresponding standards now applicable to the maritime industries currently contained in Subpart B of Part 1910, and Parts 1915, 1916, 1917, and 1918 of Title 29, CFR. Therefore, those corresponding standards are superceded by the new lead standard in § 1910.1025. A new paragraph (g) is added to § 1910.19 to clarify the applicability of this new lead standard to the maritime industries.

A. BACKGROUND

Lead (Pb) occurs naturally in the Earth's crust and is also found in the atmosphere and hydrosphere. It has been used for thousands of years because of its availability and desirable properties. Even in early times, there was recognition of health hazards associated with its use, both as a metal or in a compound form. Thus it was found that lead could be absorbed by inhalation and ingestion and that lead absorption was responsible for loss of movement in printers' fingers exposed to heated lead type and for "dry grippes" in pottery and glass workers.

By the early 20th century, studies revealed that the absorption of excessive quantities of lead (lead intoxication or plumbism) caused diseases of the kidney and peripheral and central nervous systems. For example, an analysis of death rates in the United Kingdom in 1921 (Ex. 5(1)) and 1931 (Ex. 5(2)) showed a considerable excess of deaths due to nephritis and cerebrovascular disease in plumbers and painters.

In excess of 1 million tons of lead are consumed yearly by industries in the United States. Potential occupational exposure to lead and its compounds occur in at least 120 occupations, including lead smelting, the manufacture of lead storage batteries, the manufacture of lead pigments and products containing pigments, solder manufacture, shipbuilding and ship repairing, auto manufacturing, and printing.

B. HISTORY OF THE REGULATION

Although the prevalence of lead intoxication in ancient times has been the subject of some speculation, it seems likely that there was a lack of appreciation of the hazards of lead and preventive methods of limiting exposure until recent times. Modern tests for estimating lead exposures, such as measurements of urinary and blood lead levels, urinary coproporphyrin and delta-aminolevulinic acid (ALA), have been generally used to establish acceptable air lead levels and thereby to control occupational lead intoxication. At one time, an airborne exposure limit value of 500 $\mu g/m^3$ was generally accepted. Based on a recommendation of the U.S. Public Health Service in 1933, however, a value of 150 $\mu g/m^3$ was a common goal in industry in the 1940's.

150 $\mu g/m^3$ continued to be the most often accepted until 1957, when the American Conference of Governmental Industrial Hygenists (ACGIH) increased the value to 200 $\mu g/m^3$. In 1971, however, ACGIH recommended lowering this exposure limit back to 150 $\mu g/m^3$. (Ex. 5(3).)

The present occupational safety and health standard for "lead and its inorganic compounds" is found in Table Z-2 of 29 CFR 1910.1000 and was adopted in 1971 pursuant to section 6(a) of the act. The permissible exposure limit, which is 200 $\mu g/m^3$ as determined on the basis of an 8-hour time-

weighted average, was based on a national consensus standard of the American National Standards Institute (Z37.11-1969). When the consensus standard was originally adopted, no rationale was provided for the level selected.

In January 1973, pursuant to section 22(d) of the Act, the Director of the National Institute for Occupational Safety and Health (NIOSH) submitted to the Secretary of Labor a criteria document for inorganic lead, which recommended, among other things, lowering the existing permissible exposure limit for lead from 200 $\mu g/m^3$ to 150 $\mu g/m^3$. (Ex. 1.)

On August 4, 1975, the Director of NIOSH forwarded a letter to the Deputy Assistant Secretary of Labor for Occupational Safety and Health which revised the recommendations in the criteria document. In it, he recommended that the permissible exposure limit for airborne concentrations lead be reduced from 150 $\mu g/m^3$ to lower ranges. This letter followed a joint effort by the staffs of both OSHA and NIOSH to analyze and review scientific data not available or relied upon in the original criteria document and which resulted in a reevaluation of earlier recommendations.

On October 3, 1975, OSHA proposed a new occupational safety and health standard for occupational exposure to lead (40 FR 45934) (Ex. 2). The proposal included a permissible exposure limit of 100 $\mu g/m^3$ combined with provisions for environmental monitoring, medical surveillance, employee training and other protective measures. The notice requested submission of written comments, data, and opinions.

In a notice published on January 4, 1977 (42 FR 808) (Ex. 21), OSHA announced the availability of the preliminary technological feasibility and economic impact statements prepared by John Short Associates. It also gave notice that an informal hearing would begin in Washington, D.C. on March 15, 1977. On February 15, 1977 (42 FR 9190). (Ex. 25) notice was given that the final economic impact statement was available to the public and that the economic impact had been certified pursuant to Executive Order 11821.

In publishing the proposal, OSHA noted its intention to prepare an Environmental Impact Statement to assess the effect of the proposed standard on the human environment. Interested parties were invited to submit comments that would be useful in preparing a draft of the Environmental Impact Statement. On February 25, 1977, the availability of OSHA's draft for the Environmental Impact Statement on the Proposed Lead standard was announced by the Council on Environmental Quality (42 FR 11036) (Ex. 30).

In a FEDERAL REGISTER notice on March 8, 1977, OSHA announced that in addition to the March 15, 1977 hearing in Washington, D.C., two regional hearings would be held (42 FR 13025). The first regional hearing began on April 26, 1977, in St. Louis, Mo., and the second regional hearing began on May 3, 1977, in San Francisco, Calif. During the hearing in Washington, D.C., which lasted 7 weeks, OSHA presented 15 expert witnesses from around the world to discuss various aspects of the proposal. In addition to witnesses invited by OSHA, NIOSH, and approximately 50 public participants testified. In St. Louis, 9 public parties testified; in San Francisco, 13.

The hearing record was reopened by OSHA on September 16, 1977, for the purpose of taking additional evidence on the issue of medical removal protection. A FEDERAL REGISTER notice was published giving notice that a hearing would be held on November 1, 1977 (42 FR 46547) (Ex. 353). A hearing was held (November 1 through 11, and December 22, 1977) and additional exhibits were added to the record including an OSHA-sponsored study on labor costs for implementation of medical removal protection (Ex. 439).

Final certification of the hearing record was completed on August 8, 1978, by Administrative Law Judges Julius J. Johnson and Garvin Lee Oliver.

II. PERTINENT LEGAL AUTHORITY

The primary purpose of the Act is to assure, so far as possible, safe and healthful working conditions for every working man and woman. One means prescribed by Congress to achieve this goal is the authority vested in the Secretary of Labor to set mandatory safety and health standards. The standards setting process under section 6 of the Act is an integral part of an occupational safety and health program in that the process permits the participation of interested parties in consideration of medical data, industrial processes and other factors relevant to the identification of hazards. Occupational safety and health standards mandate the requisite conduct or exposure level and provide a basis for insuring the existence of safe and healthful workplaces.

The Act provides that:

> The Secretary in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.
>
> Development of standards under this subsection shall be based on research, demonstrations, experiments, and other such information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws (Sec. 6(b)(5)).

Sections 2(b) (5) and (6), 20, 21, 22, and 24 of the Act show that Congress recognizes that conclusive medical or scientific evidence including causative factors, epidemiological studies or dose-response data, may not exist for many toxic materials or harmful physical agents. Nevertheless, final standards cannot be postponed because definitive medical or scientific evidence is not currently available. Indeed, while standards are to be based on by the best available evidence, the legislative history clearly shows that "it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinion." House Committee on Education and Labor (Rept. No. 91-1291, 91st Cong., 2d sess., p. 18 (1970)). This Congressional judgment is supported by the courts which have reviewed standards promulgated under the Act. In sustaining the standard for occupational exposure to vinyl chloride (29 CFR 1910.1017), the U.S. Court of Appeals for the Second Circuit stated that "it remains the duty of the Secretary to act to protect the working man, and to act even in circumstances where existing methodology or research is deficient. *Society of the Plastics Industry Inc.* v. *Occupational Safety and Health Administration*, 509 F. 2d 1301, 1308 (2nd Cir. 1975), cert. den. sub nom., *Firestone Plastics Co.* v. *United States Department of Labor*," 95 S. Ct. 1998, 4 L. Ed. 2d 482 (1975).

A similar rationale was applied by the U.S. Court of Appeals for the District of Columbia Circuit in reviewing the standard for occupational exposure to asbestos (29 CFR 1910.1001). The Court stated that:

> Some of the questions involved in the promulgation of these standards are on the frontiers of scientific knowledge, and consequently, as to them insufficient data is presently available to make a fully informed factual determination. Decisionmaking must in that circumstance depend to a greater extent upon policy judgments and less upon purely factual judgments. *Industrial Union Department, AFL-CIO* v. *Hodgson*, 499 F. 2d 467, 474 (D.C. Cir. 1974).

In setting standards, the Secretary is expressly required to consider the feasibility of the proposed standards. Senate Committee on Labor and Public Welfare (S. Rept. No. 91-1282, 91st Cong., 2d sess., p. 58 (1970.) Nevertheless, considerations of technological feasibility are not limited to de-

vices already developed and in use. As discussed more fully in the section on feasibility, standards may require improvements in existing technologies or require the development of new technology. *Society of the Plastics Industry, Inc.* v. *Occupational Safety and Health Administration*, supra at 1309; *American Iron & Steel Institute* v. *OSHA*, 577 F. 2d 825 (3rd Cir. 1978).

Where appropriate, the standards are to include provisions for labels or other forms of warning to apprise employees of hazards, suitable protective equipment, control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, and appropriate medical examinations. Standards may also prescribe recordkeeping requirements where necessary or appropriate for enforcement of the Act or for developing information regarding occupational accidents and illnesses (section 8(c)). The permanent standard for lead was developed on the basis of the above legal considerations.

III. Executive Summary

The following is a summary of the health effects, permissible exposure limit, medical removal protection, and feasibility sections of the final standard. A brief description of OSHA's decisions in the final standard and their rationale is set forth in this summary. A more detailed discussion of each of these sections appears as Attachments A-D.

A. Health Effects

The record demonstrates that lead has profoundly adverse effects on the health of workers in the lead industry. Inhalation, the most important source of lead intake, and ingestion result in damage to the nervous, urinary, and reproductive systems and inhibit synthesis of the molecule heme, which is responsible for oxygen transport in living systems. The adverse health effects associated with exposure to lead range from acute, relatively mild, perhaps reversible stages such as inhibition of enzyme activity, reduction in motor nerve conduction velocity, behavioral changes, and mild central nervous system (CNS) symptoms, to permanent damage to the body, chronic disease, and death.

The signs and symptoms of severe lead intoxication which occur at blood lead levels of 80 μg/100g and above are well documented. The symptoms of severe lead intoxication are known from studies carried out many years ago and include loss of appetite, metallic taste in the mouth, constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pains, fine tremors, numbness, dizziness, hyperactivity, and colic. In lead colic, there may be severe abdominal pain, such that abdominal surgery mistakenly has occasionally been performed.

Damage to the central nervous system in general and the brain (encephalopathy) in particular is the most severe clinical form of lead intoxication. The most severe, often fatal, form of encephalopathy may be preceded by vomiting, apathy progressing to drowsiness and stupor, poor memory, restlessness, irritability, tremor, and convulsions. It may arise precipitously with the onset of intractable seizures, followed by coma, cardiorespiratory arrest and death. There is a tendency toward the occurrence of weakness of extensor muscle groups, that is motor impairment. This weakness may progress to palsy, often observed as a characteristic "wrist drop" or "foot drop" and is a manifestation of a disease to the peripheral nervous system (peripheral neuropathy). Lead intoxication also results in kidney damage with few, if any, symptoms appearing until extensive and most likely permanent kidney damage has occurred. NIOSH testified that:

> Of considerable concern are the effects resulting from long-term lead exposure. There is evidence that prolonged exposure can increase the risk of nephritis, mental deficiency, premature aging, and high blood pressure (Ex. 84, p. 6).

Exposure to lead results in decreased libido, impotence and sterility in men and decreased fertility, abnormal menstrual and ovarian cycles in women. The course of pregnancy is adversely affected by exposure to lead. There is conclusive evidence of miscarriage and stillbirth in women who were exposed to lead or whose husbands were exposed. Children born of parents either of whom were exposed to lead are more likely to have birth defects, mental retardation, behavioral disorders or die during the first year of childhood.

During the past 10 years there have been many new observations and research on the health effects of lead at levels heretofore thought to be inconsequential. This research has been stimulated by the availability of many new methods for detecting and measuring the degree of impairment caused by lead exposure. These techniques measure a variety of biochemical, physiological and psychological disturbances. The methods are highly sensitive and reveal earlier changes indicative of adverse effects in workers exposed to lead.

The main research topics which have been addressed are early biochemical changes in the synthesis of the respiratory pigment heme; and early effects on the nervous system including behavioral and peripheral nerve effects. Included are studies on the involvement of lead in kidney disease, on effects on reproductive capacity of male and female workers, and on the relation between exposure to lead in air and resulting blood lead concentration.

Although the toxicity of lead has been known for 2,000 years the complex relationship between lead exposure and human response is still imperfectly understood. OSHA believes that while incapacitating illness and death represent one extreme of a spectrum of responses, other biological effects such as metabolic or physiological changes are precursors or sentinels of disease which should be prevented. This disease process can be subdivided according to Bridbord (Tr. 1976-02) into five stages: normal, physiological change of uncertain significance, pathophysiological change, overt symptoms (morbidity), and mortality. Within this process there is no sharp distinction, but rather there is a continuum of effects. Boundaries between categories overlap due to the variation of individual susceptibilities and exposures in the working population. OSHA believes that the standard adopted must prevent pathophysiologic changes from exposure to lead. Pathophysiologic changes indicate the occurrence of important health effects. Rather than revealing the beginnings of illness the standard must be selected to prevent an earlier point of measurable change in the state of health which is the first significant indicator of possibly more severe ill health in the future. The basis for this decision is twofold—first, pathophysiologic changes are early stages in the disease process which would grow worse with continued exposure and which may include early effects which even at early stages are irreversible, and therefore represent material impairment themselves. Secondly, prevention of pathophysiologic changes will prevent the onset of the more serious, irreversible and debilitating manifestations of disease.

The evidence in this record demonstrates that prevention of adverse health effects from exposure to lead throughout a working lifetime requires that blood (PbB) lead levels be maintained at or below 40 μg/100 g. OSHA concludes that workers exposed to lead leading to blood lead levels in excess of 40 μg/100 g will develop physiological and pathophysiological changes which will grow progressively worse and increase the risk of more severe disease. OSHA believes the standard must prevent these changes from occurring since this would provide greater assurances of health protection. Feasibility constraints prevent OSHA from establishing a standard which would eliminate all physiological changes, reproductive effects or

mild signs and symptoms but the agency believes the vast majority of workers will be protected by this standard. These considerations formed the basis upon which OSHA evaluated the health effects evidence in the record. The remainder of this summary will address the health effects evidence in each system: heme synthesis inhibition, and damage to the nervous, urinary, and reproductive systems. In addition, the air lead to blood lead relationship will be addressed.

1. *Heme Synthesis Inhibition.* Heme is a complex molecule which has two functions in the body. First, heme is a constituent of hemoglobin, a protein present in red blood cells whose primary function is to transport oxygen to the tissues. Interference with the formation of heme, if sufficient, results in decreased hemoglobin and ultimately anemia. Anemia is characterized by weakness, pallor and fatigability as a result of decreased oxygen carrying capacity in the blood.

Heme is also a constituent of another group of extremely important proteins, the cytochromes, which are present in every cell of the body. The function of heme in the cytochromes is to allow the cell to utilize oxygen. Heme may therefore be described as the "respiratory pigment" for the entire body. Interference with heme formation leads to interference in the respiration of every cell in the body. This is the most important effect of heme synthesis impairment. Piomelli has suggested that heme impairment in the cells would lead to a condition in each cell similar to that which would occur if the lungs of an individual did not function well. The central nervous system is particularly sensitive to the lack of oxygen and neurological damage could conceivably occur prior to anemia as a result of heme synthesis impairment in the brain. For example, Piomelli testified that "It is very well known that the human being cannot stop breathing for more than 2 or 3 minutes without developing irreversible brain damage." (Tr. 460) This effect would be expected to occur from impaired respiration resulting from impaired heme synthesis. In other words, heme synthesis impairment could potentially affect every cell through reduced respiration.

The effects of lead exposure on heme synthesis have been studied extensively by the scientific community. Nevertheless, there is considerable debate over certain issues concerning the health effects of lead on this system. The Agency found three major issues particularly important in evaluating the health effects of lead in reference to heme synthesis.

(1) What is the meaning of the enzyme inhibition and physiological changes known to occur in this system at low lead levels, and should these effects be considered as per se impairment of health in the establishment of a permissible level of worker exposure to lead. (2) At what blood lead (PbB) level does a lowering of hemoglobin leading to anemia begin to occur? (3) To what extent are lead effects on heme synthesis in the blood forming system indicative of changes in heme synthesis in other tissues?

The earliest demonstrated effect of lead involves its ability to inhibit the formation of heme. Scientific evidence has established that lead inhibits at least two enzymes of the heme synthesis pathway at very low PbB levels. Inhibition of delta aminolevulinic acid dehydrogenase (ALAD), an enzyme responsible for the synthesis of a precursor to heme, is observed at PbB levels below 20 μg/100 g. At a PbB level of 40 μg/100 g more than 20 percent of the population would have 70 percent inhibition of ALA-D. In the human body when an enzyme system is inhibited two effects are often seen: First, the molecule upon which the enzyme would act accumulates because it cannot undergo chemical reaction to produce the desired product and second, the desired product therefore decreases. Significant urinary excretion of the products of ALAD inhibition, such as delta aminolevulinic acid (ALA), occurs at this PbB level; 11 percent of adult males are excreting more than 10 μg/l.

The build-up of another product of impairment indicating inhibition of another enzyme, ferrochelatase, also occurs at low PbB levels. At a PbB level of 50 μg/100 g a larger proportion of the population would suffer these effects and the effects would be more extreme. At a PbB level of 50 μg/100 g, 70 percent of the population would have 70 percent inhibition of ALA-D, 37 percent would have urinary ALA (ALA-U) values larger than 10 μg/l and 80 percent of men and 100 percent of women would have increased free erythrocyte protoporphyrin (FEP), which is the product of inhibition of ferrochelatase. (Ex. 294 E.) Industry representatives argued that these effects are the manifestation of the body attempting to maintain a stable internal environment to lead. OSHA believes that it is inappropriate and simplistic to describe these changes as biochemical adjustments. The depression of heme synthesis in all cells of the body is an effect of potentially far reaching proportion and prevention of enzyme effects is the key to the prevention of more serious clinical effects of lead toxicity, which become more obvious as the exposure continues. These measurable effects are a direct result of lead exposure and are considered by the agency to indicate the occurrence of disruptions of a fundamental and vital subcellular process, heme synthesis. These processes are not only essential to the process of hemoglobin synthesis, they are also vital to the function of all cells since heme is ubiquitous in the human.

OSHA believes the evidence indicates a progression of health effects of lead exposure starting with inhibition of enzymes, continuing through effects indicating measurable disruption of subcellular processes, such as the buildup of the products of impaired heme synthesis and eventually developing into the overt symptoms of lead poisoning as manifested by disorders in the nervous, renal, and blood forming system. Biological variability among individuals will alter the PbB level at which a particular person will move through each stage in this disease continuum. Therefore, at each higher PbB level a greater proportion of the population will manifest each given effect. Given this understanding of the progressive stages of lead effects, OSHA has concluded that enzyme effects indicative of the disruption of heme synthesis are early stages of a disease process which eventually results in the clinical symptoms of lead poisoning. OSHA agrees with Piomelli who concluded, "It is the responsibility of preventive medicine to detect those alterations (in heme synthesis) which may precede frank symptomatology and to prevent the occurrence of these symptoms" (Tr. 456).

OSHA believes that good health is not limited to the narrow definition of "absence of clinical symptoms." The early steps of the progression to disease cannot be considered as an attempt by the body to merely adjust and stabilize the internal environment to exposure to lead: They are early indications of signifcant physiological disruption. Whether or not the effects have proceeded to the later stages of clinical disease, disruption of these processes over a working lifetime must be considered as material impairment of health. As was previously discussed, at a PbB level of 40 μg/100 g and above, a significant proportion of the population would manifest extensive inhibition of ALA-D, elevations of ALA-U and of protoporphyrin levels. The agency believes that PbB levels should ideally be kept below 40 μg/100 g to minimize these effects.

Anemia is one of the established symptoms of lead poisoning. The symptoms of anemia are weakness, tiredness, pallor, waxy, sallow complexion, headache, irritability, and other symptoms characteristic of the increased load on the cardiac system. The clinical symptoms of anemia due to lead are often indistinguishable from those of chronic anemias with a

variety of other causes. Anemia due to lead is often seen in association with acute abdominal colic. The occurrence of anemia, as a result of lead exposure, is known to occur above PbB levels of 80 μg/100 g. The occurrence of this symptom at PbB levels below 80 was debated during the hearings.

OSHA believes that the debate concerning the occurrence of this symptom can better be comprehended within the context of an understanding of the full disease process which eventually results in anemia. The evidence concerning the mechanisms of this disease process indicates that the effect of lead on the hematopoietic system is subtle and complex. In evaluating the disease mechanisms of anemia, it was found that lead is an insidious poison which attacks, not one, but many of the physiolgical processes within the cell.

Because anemia is the result of a complex of different lead effects, there is considerable room for individual variability in the PbB level at which anemia will occur. Hemoglobin level is a continuous variable which may cause individuals to have a problem to a greater or lesser degree at any particular blood lead level. Anemia should be viewed as a late step in a complicated progression of lead effects.

Since anemia is a consequence of lowered hemoglobin (the protein in red cells responsible for respiration) OSHA has carefully analyzed those studies which reported reduced hemoglobin. Studies have associated PbB levels as low as 50 μg/100 g with lowered hemoglobin (Hb) levels (Ex.6(37); 146-A; 5(9)). In particular, Tola's study, which showed a lowering of Hb over time during lead exposure of 50 μg/100 g, is considered by OSHA as an example of lead affecting Hb levels at this low PbB range. In addition studies by the Mt. Sinai group (Ex. 24(14)), and Wolfe (Ex. 146(A)) also demonstrated lowered anemia in lead exposed workers.

Based on evidence that indicates decreases in Hb levels with blood leads above 50 μg/100 g, OSHA has concluded that a lowering of Hb level to a measurable degree will occur at PbB levels as low as 50 μg/100 g. The degree to which Hb is lowered at this PbB range may be undetected since symptoms may be mild and are not likely to be so large as to require treatment for anemia. However, these changes must not be evaluated only as short-term effects alone but rather as changes that would occur over prolonged times. This implies that with reduced hemoglobin in an asymptomatic or mildly symtomatic individual there is a lifetime alteration in the oxygen carrying capacity of the blood, in the blood viscosity and in particular, in the cardiac work load. These alterations are distinct from the frank symptoms of anemia but are far more insidious and may be deleterious to the worker over the long term. Lastly, the data does support the view that lead induced anemia is clinically apparent at PbB's as low as 50 μg/100 ml.

> In evaluating the effects of lead on heme synthesis, Piomelli suggested that hematopoietic effects such as anemia are not the most significant clinical effect of heme synthesis disruption * * *." A much more important fact is that the alteration of the mechanism of heme synthesis reflects the general toxicity of lead in the entire body. (Tr. 458)

Evidence indicates that there is disruption of heme synthesis in other tissues of the body besides blood, and that this disruption results in alteration of the oxygen transport into the cells of the body. Enzyme (ALA-D) inhibition due to lead exposure has been found in the liver at PbB levels below 40 μg/100 g (Ex. 5(22)). Electron microscope studies have revealed mitochondrial changes associated with lead exposure such as lead granules in rat liver mitochondria (TR. 459, ref. Walton in Nature 243, 1973) and broken distorted mitochondria in the renal cells of a lead-exposed worker. The mitochondria is that portion of the cell responsible for extracting nutrients and oxygen and in turn providing the energy needed elsewhere in the cell for performing cellular functions. (Cramer et al. Brit. J. Ind. Med. 1974.) Some of these studies related changes in heme synthesis in the blood forming tissues to changes in other tissues. Secchi (Ex. 5(22)) found a direct correlation of levels of ALA-D inhibition in the blood and in the liver. Millar found parallel decreases in ALA-D activity in the blood and in the brain at PbB levels above 30. (Ex. 23(68)), ref. Millar. This evidence supports Piomelli's suggestions that changes in heme synthesis in the blood forming (hematopoietic) system reflect changes that occur in other tissues. The work of Fishbein et al. related levels of products of enzyme inhibition, a measure of heme synthesis disruption in the hematopoietic system, to various signs and symptoms of lead exposure including central nervous system symptoms, muscle and joint pain, weight loss, and lead colic at blood lead levels well below 80 μg/100 ml (mean PbB was approximately 60 μg/100 ml). (Ex. 105D). Fishbein also noted anemia in 37 percent of these same workers, 17 percent of whom had blood lead levels below 60 μg/100 ml.

While the evidence relating lead effects of heme synthesis to symtoms throughout the body is not complete, the evidence is extensive enough and the issue is important enough to warrant very serious consideration with reference to the establishment of the standard. OSHA believes this evidence demonstrates that one early stage of lead disease in various tissues is the disruption of heme synthesis and that these effects in other lead-sensitive tissues parallel the measurable effects of heme synthesis disruption in the hematopoietic system and occur at comparably low PbB levels (below 40 μg/100 g). The heme effect is clearly not the only mechanism by which lead exerts it toxicological effect but it is one mechanism which we have substantial understanding of, can measure, and therefore must utilize in an effort to prevent the more severe symptoms in the individual.

In reference to the hematopoietic system, OSHA believes that the effects of lead are a complex progression from various biochemical changes through to the onset of clinical symptoms. At increasingly higher PbB levels an increasing proportion of the population will suffer more extreme effects. At a PbB level of 40 μg/100 g or above, a sizable proportion of the population would show measurable effects of the disruption of heme synthesis. A comparable degree of disruption of heme synthesis would most likely occur in other cells in the body.

Piomelli gave an excellent summary of the importance of lead's effects on heme synthesis stating:

> It is my understanding that regulations have the purpose of preventing "material impairment of health." Alterations in heme synthesis do not produce subjective evidence of impairment of health, unless they reach the extreme depression in severe lead intoxication, when marked anemia occurs and the individual feels weak. However, it is not any longer possible to restrict the concept of health to the individuals subjective lack of feeling adverse effects. This is because we know that individuals may get adjusted to suboptimal health, if changes occur slowly enough and also because we now have the ability to detect functional impairments by appropriate tests, much before the individual can perceive any adverse effect. In fact, it is the responsibility of preventive medicine to detect those alterations which may precede frank symptomatology, and to prevent its occurrence. The alterations in heme synthesis caused by lead fulfill, in my opinion, the criteria for material adverse effects on health and can be used to forecast further damage. The depression of heme synthesis in all cells of the body is an effect of far reaching proportion and it is the key to the multiple clinical effects of lead toxicity, which become obvious as the exposure continues. (Ex. 57, p. 21).

This does not in any way suggest that the lead effect on heme is the only mechanism of lead disease, but it does suggest that this effect is at least one of the important mechanisms in lead disease. An understanding of this spectrum of effects from subcellular to clinical symptoms is relevant not only to the occurrence of anemia but will

also be the expected pattern in lead induced neurological and renal disease.

OSHA believes that there is evidence demonstrating the impairment of heme synthesis and mitochondrial disruption in tissues throughout the body, and that these effects are the early stages of lead disease in these various tissues. The disruption of heme synthesis measured at low PbB levels is not only a measure of an early hematopoietic effect, it is also a measure which indicates early disease in other tissues. The Agency believes that such a pervasive physiological disruption must be considered as a material impairment of health and must be prevented. PbB levels greater than 40 μg/100 g should, therefore, be prevented to the extent feasible.

2. *Neurological effects.* There is extensive evidence accumulated in both adults and children which indicates that toxic effects of lead have both central and peripheral nervous system manifestations. The effects of lead on the nervous system range from acute intoxication, coma, cardiorespiratory arrest and fatal brain damage to mild symptoms, subtle behavioral and electrophysiologic changes associated with lower level exposures. Although the severe effects of lead have been known for some time, only in the last several years has evidence accumulated which demonstrates neurologic damage at low blood lead levels. All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption occurs early in a worker's tenure, at low blood lead levels and is only partially reversible if at all. It is now understood that the location and degree of neurological damage depends on dose and duration of exposure.

The record in this rulemaking demonstrated that damage occurs in both the central and peripheral nervous systems at blood lead levels lower than previously recognized. In particular, Lilis et al. (Ex. 24, (10)) has demonstrated central nervous system symptoms (tiredness, fatigue, nervousness, sleepnessness or somnolency, or anxiety) in 56 percent of workers with blood lead levels below 80 μg/100 ml. The mean blood level was approximately 60 μg/100 ml. This same study reported symptoms of muscle and joint pain and/or soreness in 39 percent of the workers. It is extremely important to note that many of these subjects had been exposed less than a year. They also were able to demonstrate behavioral changes which were correlated with enzyme inhibition products from heme synthesis. Given this data, the authors cautioned that blood lead levels should not be allowed to exceed 60 μg/100 ml. and should be maintained around 40 μg/100 ml. Lilis testified that about 60μg/100 ml. "one may expect florid lead poisoning, full blown lead poisoning" (Tr. 2700). She proceeded to state:

"Since ZPP starts to go up at around levels of 40 or 45, that means that at those levels you already find something going wrong in the body" (Tr. 2702). Repko has carried out behavioral tests and demonstrated adverse effects in visual reaction time, as well as deficits in hearing among workers having a mean blood lead level of 46 μg/100 ml. Valciukas et al. and Haenninen et al. have also demonstrated impaired psychological performance among workers with low exposure to lead. Haenninen's work is particularly significant insofar as no single blood lead concentration had *ever* exceeded 70 μg/100 ml.

Based on the rulemaking record, OSHA has concluded that the earliest stages of lead-induced central nervous system disease first manifest themselves in the form of behavioral disorders and CNS symptoms. These disorders have been documented in numerous sound scientific studies and these behavioral disorders have been confirmed in workers whose blood lead levels are below 80 μg/100 g. Given the severity and potential non-reversibility of central nervous system disease, OSHA must pursue a conservative course of action. OSHA concludes that a blood lead level of 40 μg/100 g must be considered to be a threshold level for behavioral changes and mild CNS symptoms in adults, and to protect against long-term neurological effects, blood levels should never exceed 60 μg/100g.

Some of the most extensive evidence in the rulemaking record is the data presented which confirms the existence of the early stages of lead induced damage to the peripheral nervous system in workers exposed to lead levels below 70 μg/100 g. Damage to the peripheral nervous system is named peripheral neuropathy and the distinguishing feature of it is the predominance of motor involvement as opposed to sensory damage. Three forms are noted. In the first, patients with acute abdominal colic may also complain of very severe pain and tenderness in the trunk muscles, as well as pain in the muscles of the extremity. As the pain and tenderness subside, weakness may emerge, with very slow recovery over the ensuing several months. In the second, more common form of peripheral neuropathy due to lead poisoning, the neuropathy is described as painless, peripheral weakness occurring either after termination of excessive exposure or after long, moderately increased exposure. This suggests that neuropathy of sufficient severity may cause irreversible impairment of peripheral nerve function.

The third form is seen in subjects with no obvious clinical signs of lead poisoning and is manifested by a slowing of motor nerve conduction velocity. The latter effect represents the earliest sign of neurological disease of the peripheral nerves. OSHA believes prevention of this stage is necessary to prevent further development of the disease and its associated forms which are likely to be irreversible.

The work of Catton, Oh, Landigran, Feldman, Behse Mostafa et al., Gerald et al., Guadriglic et al., Araki, W. R. Lee, Repko, Lilis, Fischbein et al., and Seppalainen all demonstrate statistically significant loss of motor nerve conduction velocity in lead-exposed workers. Seppalainen was able to determine a dose-response relationship for the slowing of NCV compared with blood lead levels. It is apparent that slowing occurs in workers whose PbB levels are 50 μg/100 g and above but, whether there are effects as low as 40 μg/100 g is, as yet, undetermined. The 38 lead experts who participated in the Second International Workshop on Permissible Exposure Levels for Occupational Exposure to Inorganic Lead also reached this conclusion in their final report:

> It is not known whether the maximum blood lead concentration or the integrated average concentration is the determining factor in the development of changes in nerve conduction velocity. However, the Group concluded from the data presented by Seppalainen et al. and the data reported in the literature that changes in nerve conduction velocity occur in some lead workers at blood levels exceeding 50 μg/100ml. It was thought that no conclusion could be drawn from the one case in the blood lead range 40–49 μg/100ml.
>
> It is not possible to decide what any given measured small deficit means in terms of specific nervous damage. However, it is generally recognized that a clear deficit in the nerve conduction velocity of more than one nerve is an early stage in the development of clinically manifest neuropathy. There is no evidence that these changes progress. Reversibility should be studied. Although slight changes may be measured in persons experiencing no symptoms, it was the consensus of the group that such changes should be regarded as a critical effect. (Ex. 262, p.64.) (Critical effect is a defined point in the relationship between dose and effect in the individual, namely the point at which an adverse effect occurs in cellular function of the critical organ.)

These conclusions by recognized experts in the field were based largely on the work of Seppalainen and her coworkers. This work has been described by an industry spokesman, Dr. Malcolm, as being "immaculate." (Tr. 2073) Based on the extensive evidence in the record from Seppalainen and others, OSHA has concluded that exposure to lead at low levels causes peripheral neuropathy at exposure levels previously thought to be of relatively

little consequence. Seppalainen has stated:

Of course, in terms of health, the importance of slight subclinical neuropathy can be questioned, too, and we did not find any evidence that the well-being of these workers was influenced by the neuropathy, apart from a few complaints of numbness of the arms. Thus, the term "poisoning," in its orthodox sense, cannot be applied to these disorders. But neuropathy, no matter how slight, must be regarded as a more serious effect than the quite reversible alterations in heme synthesis, because the nervous system has a poor regenerative capacity, and the acceptability of such a response must be judged from that point of view. Since the entire question belongs to the diffuse "gray area" between health and disease, it is more than probable that opinions will diverge. We think, however, that no damage to the nervous system should be accepted, and that, therefore, present concepts of safe and unsafe PbB levels must be reconsidered (Ex. 5(12), p. 183).

Recovery from the effects of chronic lead poisoning may be feasible in some cases, if the worker is removed from the source of exposure and therapy is initiated immediately. There are instances, however, when complete recovery is impossible and the pathology is fixed. Even if the worker is removed from the source and therapy initiated, the worker may still experience impairment. In a recent paper describing his results Dr. R. Baloh, a neurologist at UCLA, questioned the reversibility of nervous system damage:

Although there are isolated reports of significant improvement in lead-induced motor neuron disease and peripheral neuropathy after treatment with chelation therapy, most studies have not been encouraging, and in the case of motor neuron disease, death has occurred despite adequate chelation therapy.

All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption is only partially reversible, if at all, with chelation therapy and/or removal from further exposure. This is not particularly surprising, however, since experience with other heavy metal intoxication has been similar. Nervous system damage from arsenic and mercury responds minimally to chelation therapy. Apparently, irreversible changes occur once the heavy metal is bound by nervous tissue. Although further study is clearly needed, the major point I would like to make this morning is that there is strong evidence to suggest the only reliable way to treat nervous system damage from increased lead absorption is to prevent its occurrence in the first place (Ex. 27(7), p. 55).

OSHA agrees with these concerns regarding irreversibility of neurological disease expressed by Dr. Baloh and therefore must establish a standard which will prevent the development of nervous system pathology at its earliest stages.

In order to prevent peripheral neuropathy as evidenced by slowing in NCV's Seppalainen testified that "to be safe, I would say 50 μg/100 g blood" is the necessary level (Tr. 147). Dr. Seppalainen further recommended that studies be performed to determine "the safety at the level of 50 μg/100 ml" (Tr. 153). OSHA agrees that the current evidence demonstrates that nerve conduction velocity reduction occurs at PbB levels of 50 μg/100 g and above. Therefore, a necessary goal of a standard for occupational lead exposure must be to assure that blood lead levels are maintained below 50μg/100 g in order to provide an adequate margin of safety.

3. *Renal system.* One of the most important contributions to the understanding of adverse health effects associated with exposure to inorganic lead was the elucidation of evidence on kidney disease during the hearings. It is apparent that kidney disease from exposure to lead is far more prevalent than previously believed. In the past, the number of lead workers with kidney disease in the United States was thought to be negligible, but the record indicates that a substantial number of workers may be afflicted with this disease. Wedeen, a nephrologist (kidney specialist), who testified at the hearings for OSHA stated that a minimal estimate of the incidence of this disease (nephropathy) would be 10 percent of lead workers. "According to this estimate, there may be 100,000 cases of preventable renal disease in this country. * * * If only 10 percent of these hundred thousand workers with occupational nephropathy came to chronic hemodialysis (kidney machines) the cost to medicare alone would be about 200 million dollars per year." (Tr. 1741-42.)

The hazard here is compounded by the fact that, unlike the hematopoietic system, routine screening is ineffective in early diagnosis. Renal disease may be detected through routine screening only after about two-thirds of kidney function is lost or when manifestation of symptoms of renal failure are present. By the time lead nephropathy can be detected by usual clinical procedures, irreparable damage has most likely been sustained. When symptoms of renal failure are present, it is simply too late to correct or prevent the disease and "progression to death or dialysis is likely." (Tr. 1732.) The research of Wedeen and his co-workers, the health hazard evaluation by NIOSH at Eagle Picher Industries, Inc., and the research in secondary smelters by Lilis, Fishbein, et al. demonstrated that lead exposure is a key etiologic agent in the development of kidney disease among occupationally exposed workers. Clearly, too little attention has been given to lead-induced renal disease in recent years, and while OSHA recognizes that further research is required to understand fully the disease mechanism, it is also necessary to protect the thousands of workers who are potentially in danger of developing renal disease. The record indicates that blood lead is an inadequate indicator or renal disease development. Dr. Bridbord questioned Dr. Wedeen on the issue of chronicity of exposure and blood lead levels:

Dr. Bridbord: Well, looking at a group of workers, currently employed, having a blood lead level on that worker and having some information, that to the best of our knowledge thare were no major changes in that particular plant during the past number of years. Would that not be a somewhat better index of what the blood lead levels might have been in the past. Considering too, that these workers are currently employed.

Dr. Wedeen: Sure I think that the blood level measured close to the time of exposure is probably more reflective. I worry very much, that this may occur after a few months of exposure and the blood lead level may remain the same for the next 20 years, despite the fact that the individual is continually accumulating lead in the body.

Dr. Bridbord: Would you think that the chronicity of lead exposure, apart from precisely whether the blood lead was above or below 80 or above or below 60 for example, might be an important factor in determining the eventual development of renal disease in lead workers?

Dr. Wedeen: Yes; that is just what I meant, that the accumulative effects and the cumulative body burden may be very different from the blood lead level at any moment in time.

In other words, one could certainly imagine that a blood lead level of 80, for two years, may be very similar to a blood lead level of 40, for four years. I don't have that data, but something like that may well exist in terms of the danger of the different levels of exposure.

Dr. Bridbord: Alright.

Particularly, in view of that, and given the requirements of the Occupational Safety and Health Act, that sets standards which protect during the working lifetime. Would you have some reservations about a blood lead maximum standard, even at 60?

Dr. Wedeen: I certainly would. And I think I just expressed the basis for it. You will note that in my recording of these patients, very very few of them had blood lead levels over 60. I just feel that while the blood lead level is maybe better than nothing, it may be very practical. It probably doesn't do the job we are trying to do and certainly not from the physician's point of view, who has seen the individual patient, who may or may not be a current exposure at the level that got his disease (Tr. 1765-1766).

The lead standard must therefore be directed towards limiting exposure so that occupational lead nephropathy is prevented. The Agency agrees with the views of Wedeen:

I have reported today 19 lead workers who have lost 30 to 50 percent of their kidney function. Since they showed no symptoms and had no routine laboratory evidence of kidney disease, it may be asked why this kidney function loss should be viewed as material damage. Lead nephropathy is im-

portant because the worker has lost the functional reserve, the safety, provided by two normal kidneys. If one kidney becomes damaged, the normal person has another to rely upon. The lead worker with 50 percent loss of kidney function has no such security. Future loss of kidney function will normally occur with increasing age, and may be accelerated by hypertension or infection. The usual life processes will bring the lead worker to the point of uremia, while the normal individual still has considerable renal functional reserve. Loss of a kidney is therefore more serious than loss of an arm, for example. Loss of an arm leads to obvious limitations in activity. Loss or a kidney or an equivalent loss of kidney function means the lead worker's ability to survive the biologic events of life is severely reduced. By the time lead nephropathy can be detected by usual clinical procedures, enormous and irreparable damage has been sustained. The lead standard must be directed towards limiting exposure so that occupational lead nephropathy does not occur (Tr. 1747-1750).

And OSHA agrees with Dr. Richard Wedeen, that "40 μg/100 ml is the upper acceptable limit" (TR. 1771). That is, while PbB levels are an inadequate measure of occupational exposure (though most agree the best available single measurement) they nonetheless provide a basis for determining body burden when measured over an extended period of time. OSHA believes that maintenance of PbB levels at or below 40 μg/100 ml will reduce the overall dose to the worker, decrease the body burden of lead and prevent sufficient buildup of lead in the kidney to effect renal damage.

4. *Repoductive effects.* Exposure to lead has profoundly adverse effects on the course of reproduction in both males and females. In male workers exposed to lead there is evidence of decreased sexual drive, impotence, decreased ability to produce healthy sperm, and sterility. During the hearings there was considerable discussion of the evidence submitted by Lancranjan et al. which demonstrated that the reproductive ability of men occupationally exposed to lead is interfered with by altered sperm formation. Lancranjan et al. reported a significant increase in malformed sperm (teratospermia) among lead-poisoned workmen (blood lead mean 74.5 μg/100 ml) and workmen with moderately increased absorption (blood lead mean 52.8 μg/100 ml). Decreased number of sperm (hypospermia) and decreased motility (athenospermia) were observed not only in the preceding roups but also in those with only slightly increased absorption (blood lead mean 41 μg/100 ml). The authors concluded that these alterations were produced by a direct toxic effect on the male gonads, and that a dose response relationship exists with respect to teratospermia. The other parameters measured, hypospermia and athenospermia, do not show as strong a relationship but are significantly altered over controls. This work is consistent with other earlier literature quoted by Lancranjan.

"Epidemiologic studies have pointed out previously both the reduction of number of offsprings in families of workers occupationally exposed to lead and increase of the miscarriage rate in women whose husbands were exposed to lead. Experimental investigations have also shown both a reduction in the number of offspring of laboratory animals and reduced birthweight and survival of progenies of animals fed with diets containing lead." (Ex. 23 (Lancranjan et al.), p. 400.)

In their paper entitled "Review paper: Susceptibility of adult females to lead; effects on reproductive function in females and males" Zielhuis and Wibowo criticized the study by Lancranjan et al., and there was considerable critical discussion of it during the hearings. OSHA has concluded that methodological problems in the study do not negate the overall validity of the study especially when viewed in the context of other research in the literature. The Lancranjan study is strongly indicative of adverse effects on male reproductive ability at low lead levels, and there is evidence indicating a dose-response relationship with respect to teratospermia in these lead exposed workers. In OSHA's view altered spermatogenesis represents impaired reproductive capacity of the male given that sterility is the likely outcome. OSHA believes that this evidence and other studies support the conclusion that lead exerts markedly adverse effects on the reproductive ability of males.

Germ cells can be affected by lead which may cause genetic damage in the egg or sperm cells before conception and which can be passed on to the developing fetus. The record indicates that genetic damage from lead occurs prior to conception in either father or mother. The result of genetic damage could be failure to implant, miscarriage, stillbirth, or birth defects.

The record indicates that exposure of women to lead is associated with abnormal ovarian cycles, premature birth, menstrual disorders, sterility, spontaneous miscarriage, and stillbirths. Infants of mothers with lead poisoning have suffered from lowered birth weights, slower growth, and nervous system disorders, and death was more likely in the first year of life.

There is conclusive evidence in the record that lead passes through the placental barrier. Multiple studies have established that the fetus is exposed to lead because of the passage of lead through the placental membrane. This evidence was uncontroverted during the hearings. The lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord blood at birth. Transplacental passage becomes detectable at 12-14 weeks of gestation and increases from that point until birth.

Numerous parties at the hearings raised the issue of whether the fetus is the most sensitive organism requiring protection from exposure to lead. Bridbord, for example, argued that the immaturity of the blood brain barrier in the newborn raises additional concern about the presence of lead in fetal tissues.

There is little direct data on damage to the fetus from exposure to lead but there are extensive studies which demonstrate neurobehavioral effects at blood leads of about 30 μg/100 ml and above in children. OSHA believes that the fetus and newborn would be at least as susceptible to neurological damage as would older children and therefore data on children is relevant to the fetus, although acknowledging the duration of exposure may be more limited in the fetus. OSHA asserts that damage to the fetus represents impairment of the reproductive capacity of the parent and must be considered material impairment of functional capacity under the OSH Act.

The proposed lead standard raised the possibility that "the risk of the fetus from intrauterine exposure to high levels of lead in the mother's blood is maximal in the first trimester of pregnancy when the condition of pregnancy may not be known with certainty" (Ex. 2, p. 45936; Ex. 95). OSHA agrees with Dr. Vilma Hunt who testified that "the first trimester has not been shown to be the period of highest vulnerability for the fetus." (Ex. 59). OSHA has concluded that the fetus is at risk from exposure to lead throughout the gestation period, and therefore protection must be afforded throughout pregnancy.

Exposure to lead would be expected to adversely affect heme biosynthesis and the nervous system earliest and most profoundly in the fetus. Early enzyme inhibition in the heme forming system has been well documented, and the central nervous system has its most significant growth during gestation and the first 2 years following birth.

Lead is capable of damaging both the central and peripheral nervous systems of children. At high exposures to lead (80 μg/100 ml and above) the central nervous system may be severely damaged resulting in coma, cardiorespiratory arrest and death. Symptoms of acute encephalopathy similar to those in adults have been reported in young children with a markedly higher incidence of severe symptoms and deaths occurring in them than in adults. In children once acute encephalopathy occurs there is a high probability of permanent, irreversible

damage to the CNS. There is data that demonstrates permanent damage to CNS has occurred in children exposed at low lead levels and in whom no overt symptoms were in evidence. Children whose blood lead levels were 50 μg/100 ml and above have demonstrated mild CNS symptoms including behavioral difficulties. Behavioral disturbances in children such as hyperactivity have been associated with blood lead levels between 25 and 55 μg/100 ml. Animal studies have confirmed these findings. Beattie demonstrated an increased probability of mental retardation in children exposed to lead via maternal ingestion of lead in water. Elevated blood lead levels were found in the retarded children compared to the control group. There appeared to be a significant relationship between blood lead concentration and mental retardation. Mean blood lead for the retarded children was 25.5 μg/100 ml. Water lead concentrations in the maternal home during pregnancy also correlated with the blood leads from the mentally retarded children.

Motor nerve conduction velocity (NCV) decrements indicating early peripheral neuropathy have been reported in children. Early studies showed NCV decrements in children whose blood lead levels were 40 μg/100 g and above.

While a critical review of the literature leads to the conclusion that blood lead levels of 50 to 60 μg/100 ml are likely sufficient to cause significant neurobehavioral impairments, there is evidence of effects such as hyperactivity as low as 25 μg/100 g. Given the available data OSHA concludes that in order to protect the fetus and newborn from the effects of lead on the nervous system, blood lead levels must be kept below 30 μg/100 g. In general, 30 μg/100 g appears to be reasonably protective insofar as it will minimize enzyme inhibition (ALAD and FEP) in the heme biosynthetic pathway and should minimize neurological damage. OSHA agrees with the Center for Disease Control (Ex. 2(31)), the National Academy of Sciences (Ex. 86M), and the EPA (FEIS (92)) that the blood lead level in children should be maintained below 30 μg/100 g with a population mean of 15 μg/100 g. Levels above 30 μg/100 g should be considered elevated.

In general OSHA believes that the evidence overwhelmingly indicates the blood lead level of workers who wish to plan pregnancies should be maintained below 30 μg/100 in order to prevent adverse effects from lead on the worker's reproductive abilities. To minimize the risk of genetic damage, menstrual disorders, interference with sexual function, lowered fertility, difficulties in conception, damage to the fetus during pregnancy, spontaneous miscarriage, stillbirth, toxic effects on the newborn, and problems with the healthy development of the newborn or developing child blood lead levels should be kept below 30 μg/100 g in both males and females exposed to lead who wish to plan pregnancies.

During the hearings there was considerable testimony on reproductive effects in relation to the PEL and equal employment opportunity considerations. No topic was covered in greater depth or from more vantage points than the subject of women in the lead industry. More than a dozen witnesses testified on this issue; many others offered their views in response to questions; over 400 pages of the transcript of these proceedings were devoted to this issue. Ms. Hricko testified that women of childbearing age had been excluded from employment because "the response of industry has been to "protect women workers from lead's reproductive hazards by refusing to hire them or by forcing them to prove that they can no longer bear children." (Ex. 60 (a)(ii)). However, there was also testimony which demonstrates that women have and do work in production areas of battery manufacturing (Tr. 1245, 4057, 4506, 4855, 5529, 5898). In its proposal OSHA raised the issue of whether "certain groups of adult workers may have greater susceptibility to lead intoxication than the general worker population. One such group is female employees of childbearing age." (Ex. 2, p. 45936). The LIA argued in its post hearing brief that OSHA is not obligated to set a health standard which would insure equal employment for all persons. That is, a standard should not be promulgated which would be based on protection of the fetus and the pregnant female since that would require a lower PEL which would have correspondingly greater costs of compliance. Industry testimony further suggests that women of childbearing potential could be "protected" by excluding them from employment in many parts of the lead industry.

Other parties to the hearings argued that given the data on male reproductive abilities and potential genetic effects in males and females, fertile men were equally at risk as women of childbearing age; therefore, the standard should be designed to protect all exposed workers, male and female.

Dr. Stellman testified as follows:

> In summary, it can be stated that there is no scientific justification for placing all women of childbearing age into a category of a susceptible subgroup of the working population. There is sufficient data available to show that a significant proportion of the population is at risk from the effects of exposure to lead, and hence can also be deemed susceptible. Further, if the intent of the OSHA standard is to protect workers from reproductive effects, there is still no justification for treating women separately from men. (Tr. 1161-62)

This view was supported by other witnesses (Ex. 92; Ex. 343; Ex. 59; 60A). Dr. Hunt, for example, stated:

> There is no evidence to allow a conclusion that women of childbearing age themselves are more susceptible to the adverse effects of lead. The susceptible population is made up firstly of the fetus in utero, actually present in the work environment and secondly the offspring of male and female workers with blood lead levels high enough to alter their genetic integrity. (Ex. 59, p. 26.)

Based on the entire record, OSHA has reached the following conclusions regarding the reproductive effects of lead exposure.

A. Lead has profoundly adverse effects on the reproductive ability of male and female workers in the lead industry.

B. Lead exerts its effects prior to conception through genetic damage (germ cell alteration), effects on menstrual, and ovarian cycles and decreased fertility in women, decreased libido and decreased fertility in men through altered spermatogenesis.

C. During pregnancy, the result of lead exposure may include spontaneous abortion, stillbirth, and damage to the fetus.

D. Following birth the child of lead exposed parents may exhibit birth defects, neurological damage and the chances of death within the first year may be increased.

E. To protect against the adverse effects of lead exposure to persons planning pregnancies (or pregnant) the blood lead level should be maintained below 30 μg/100 g. Although there is no evidence for a "no effect" level, OSHA believes the risk of reproductive effects would be minimized at this level.

In conclusion, the record in this rulemaking demonstrates conclusively that workers exposed to lead suffer material impairment of health at blood lead levels far below those previously considered hazardous. Inhibition of the heme biosynthesis pathway, early stages of peripheral and central nervous system disease, reduced renal function and adverse reproductive effects are all evidence of adverse health effects from exposure to lead in workers at blood lead levels of 40 μg/100 g and above. Based on this record OSHA has concluded that blood lead levels should be maintained at or below 40 μg/100 g and even lower for workers who wish to plan pregnancies.

5. *Air to blood relationship.* The proposed lead standard reduced the permissible exposure limit from 200 μg/m³ to an 8-hour time-weighted average concentration, based on a 40-hour workweek of 100 micrograms of lead per cubic meter of air (100 μg/m³).

The Lead Industries Association (LIA) recommended that OSHA adopt a biological enforcement limit instead of using a specific airlead number for all industries and operations. One of the key questions raised by LIA in justifying a biological standard was the purported lack of a relationship between air lead levels and blood lead measurements. The purpose of this section is to address the air lead level to blood lead level relationship.

Based upon the evidence in the record OSHA has concluded that a relationship between air lead levels and population-average blood lead levels unquestionably exists and OSHA is confident that a permissible exposure limit based upon measurement of air lead levels will accomplish the intended goal of protecting worker health.

In order to accurately predict the effects on blood lead levels over time produced by changes in air lead levels, it was necessary to construct a model that takes into account the important factors which affect blood lead levels. The adaptation of the physiological model originally developed by S. R. Bernard by the Center for Policy Alternatives (CPA) combines experimentally observed properties of mammalian lead transport and metabolism, including considerations of the dynamics of blood lead response to long term exposure, with observed physical properties of airborne particulates encountered in the workplace, in order to produce a complete and accurate picture of the response of blood lead levels to particulate lead exposure. The Bernard model is an example of one of the most common types of models used to describe the transport and metabolism of drugs or foreign substances in the body, known as a multicompartment mammillary model. Such models postulate that the substance in question first appears in the blood, and then is transported or diffused into a number of different compartments from the blood, corresponding to the different organ systems in the body. Transfer is assumed to occur only between the blood and the organ compartments, not between organ compartments. The rate of transfer into and out of the blood stream from the various compartments depends upon a number of factors, such as whether or not that particular organ specifically takes up or metabolizes the substance in question. In general, especially in the case of substances which are not metabolized, the rate of transfer between compartments is linearly related to the concentration of the substances in the compartments. This is consistent with the basic physical principles of chemical kinetics that would govern the transfer of a substance across an inert membrane in the absence of any other driving force. The relatively few exceptions to the linear transfer principle tend to occur only in cases where an organ specifically sequesters or metabolizes the substance in question.

In designing a model and calculating the rate of transfer between compartments, the experimenter has many guidelines as to how to proceed. First, one can simply follow total body excretion to ascertain the number of compartments that are individually taking up and excreting lead after an initial dose. The more exponential terms required to fit the data, the more compartments. Second, the investigator can actually follow the rate of uptake and release of the substance from the various tissues by autopsy or biopsy, and measure the rate of release. This latter approach is impossible, of course, in the study of human subjects. After observing the rates of release of the substance in question from the whole body and/or tissues, the investigator is left with a series of exponential retention equations which relate amount of lead left in each compartment after a given time to the initial dose. Using rather complicated but well-developed mathematical techniques, this set of equations can be solved subject to the constraint that all of the ingested substance is accounted for, to yield the rate constants for transfer between compartments. The CPA study also included specific consideration of particle size and individual variability in response to air lead, which is necessary in predicting the response of large populations of workers to changes in air lead exposure. OSHA has determined that the Center for Policy Alternatives (CPA) application of the Bernard Model accurately predicts the effects on blood leads over time produced by changes in air lead levels.

OSHA considers that both the basic construction of the Bernard Model of physiological lead transport and the application of the Bernard Model for prediction of blood lead levels represents a unique accomplishment heretofore unseen in attempts to establish air level to blood level relationships. Insofar as this model takes into account particle size and job tenure it has avoided the serious weaknesses of earlier studies. The findings of those previous studies were incorporated into the development of the model. The final model represents a synthesis of the best available evidence in the record with CPA application of the Bernard Model of physiological lead transport.

Participants in the hearings argued that total reliance be placed upon air sampling or biological monitoring to the exclusion of the other. OSHA will require use of both measures to maximize protection of the lead worker population in general and the individual worker in particular. However, in the enforcement context OSHA will place primary reliance on air lead level measurements to determine compliance with the permissible exposure limit. Further discussion of the permissible exposure limits is found in that section.

In order to establish the correlation between air lead levels and the corresponding blood lead levels OSHA relied in its proposal on the work of Williams et al. (Ex. 5(32)) which was the most comprehensive reported study of its kind at that time. OSHA, in this final standard, has evaluated the findings of a series of subsequent studies which became available during the rulemaking process.

Almost all of the studies, whether based on observation of general or occupational populations, attempt to relate measurements of blood lead values to observed air lead values by means of linear regression techniques. Regression analysis is a technique used to study the change of the mean value of one variable (average blood lead) as the other variable (air lead) changes. There are a number of practical and theoretical difficulties in the design and execution of experiments of this type which should be considered before attempting to discuss and compare the results of the various studies in question. The limitations of the studies in the record include:

The contribution of lead from unmeasured long term air lead exposures to current blood lead level is not properly considered. When the simple regression equation:

$$\text{Current Blood-Lead} = a(\text{Current Air Lead}) + b + \text{Individual error}$$

(a = slope of the line; b = blood lead at zero air lead)

is used to model the data, the blood lead contributed by the exchange of lead in bone and tissue to blood is not taken into consideration. This has the consequence that the intercept at zero current air lead exposure ("b" in the regression equation above) is biased high and the blood lead-air lead slope ("a" in the regression equation) is biased low relative to the slope which would be found if the relationship were redefined in terms of long term average blood lead level and long term average air lead exposure. This has the practical effect of incorrectly predicting that the mean PbB level at 200 $\mu g/m^3$ will be close to that at 100 $\mu g/m^3$, which was a criticism made by LIA during the hearings. To the degree that the contribution of prior exposure to curent blood lead levels differs for different workers in the sample, the "individual error" term will also be increased.

The regression equation does not explicitly incorporate terms relating to particle size. If, as suggested by some data in the record, workers at high air lead exposure levels are exposed to a larger proportion of poorly-absorbed large particulates than workers at low air lead exposure levels, then this will cause an additional upward bias to the "b" zero occupational exposure intercept and a downward bias to the "a" blood lead-air lead slope coefficient. This creates an impression that the rate at which blood lead changes relative to the air lead would be less than it actually would be.

Measurement errors of different kinds affect the results in different ways. Any errors in measuring blood lead level will add to the "individual error" term. However, errors in measuring air lead levels (arising either from inevitable imprecision in sampling or analysis or from unrepresentativeness of the short sample period relative to true average exposure) will usually systematically bias the "a" blood lead-air lead slope downward. This is a particularly serious source of bias in one of the major studies, the Buncher analysis (Ex. 285) of the Delco-Remy data, where single air lead measurements were paired with blood level determinations made within a month of the air sampling. All other major studies of air lead-blood lead relationships used averages of several independent air lead measurements (generally ten or more measurements) for assessments of individual worker air lead exposures.

None of the studies made measurements of work-load or total worker respiration on the job. To the degree that workers differ from each other in gross ventilation, the individual error term is larger than it might have been. To the degree that populations of workers in different plants or in different industries differ in average respiration rate, potentially controllable or avoidable discrepancies in the results of different studies may have been produced.

Viewed in this context, the fact that there are differences in the blood lead-air lead regressions derived from short term observations on different populations is hardly surprising. It is also understandable that many of the studies find unreasonably high values of the intercept at zero exposure ("b"). From studies of general populations with no occupational lead exposure, it is clear that the true "b" intercept is certainly under 25 μg/100g, and is very probably under 20 μg/100g for most areas.

The following table summarizes the results of the regression analyses developed from the studies in the hearing record. This table also compares the studies to the model and demonstrates that even given the limitations of the studies the results are similar.

TABLE 1.—*Suggested air lead/blood lead relationships*

LINEAR RELATIONSHIPS

Blood Lead = a(Air Lead) + b

Source of Relationship	b	a	Non-Linear
King: Smelting (3)	52	0.053	
Battery (1)	46	.032	
Pigments (2a)	30	.07	
Pigments (Quadratic fit)			(1)
Globe-Union	39.7	.1229	
ASARCO (EL Paso)	32	.185	
Williams	30.1	.201	
Delco-Remy (Buncher)	37.45	.0628	
Azar/Hammond			(2)
CPA: Bernard model and assumption C			
Job tenure (years)			
0.95	25.80	.1521	
3.4	28.30	.2062	
9.0	29.80	.2404	
16.0	30.64	.2604	
28.5	31.46	.2778	

[1] Blood Lead = 26 + .12 (Air lead) + .000098 (Air Lead)[2]

[2] Log(Blood Lead) = 1.3771 + .153 log 40(Air) + 128 ÷ 168

The available studies also have some individual limitations which should be borne in mind when considering the results:

The King studies (Ex. 234(22)) included many workers exposed at very high (300–900 μg/m³) air lead exposure levels. There is reason for concern that (1) because of particle size and absorption effects, the blood lead-air slope at very high air lead levels may not accurately reflect the slope in the air lead exposure region of interest for standard-setting (25–200 μg/m³), and that (2) there is risk that selection effects may have biased the observed air lead slope low; some workers who show high blood lead levels in response to a given air lead level may be absent from the high air lead exposure groups because of medical transfer to lower or no exposure jobs.

The Globe Union study (Ex. 150A) is based on a relatively small sample, although many of the sample points are of better quality than the points of other studies because they are based on averages of many air lead and blood lead determinations over a relatively long time (6 months or more).

The ASARCO El Paso (Ex. 142 D) and Williams (Ex. 2(32)) studies each measured air lead and blood lead levels over a quite brief period (2 weeks). Additionally, the use of a control group of plastics workers at low air lead exposure levels in the Williams study has been criticized on the ground that the particulate air lead of the plastics workers' exposures may have been qualitatively (particle size, solubility) different from the exposures of the battery workers at higher air lead exposure levels.

The Azar/Hammond relationship (Ex. 54) is an extrapolation of data from non-occupational exposures far below the exposure range of occupational situations. Use of a logarithmic model for such extrapolation is without theoretical justification.

As summarizations of available data on different populations, the existing studies are reasonably valid. It is one thing to say, however, that a linear relationship was observed between the blood lead levels and air lead exposure at a given level of statistical significance, for a given sample or workers, and another thing entirely to use the observed relationship to predict the effect of lowering air lead exposure on even that same sample of workers, let alone to generalize to other samples. Generally, data obtained at a given point in time, should be used conservatively when attempting to predict effects over time. Rarely will all other factors be held constant.

Recognizing these limitations by no means should be taken to imply that the data are useless or that no reliable relationship exists between long term air lead exposures and blood lead levels. To the extent that the likely systematic errors in the short term studies are understood (e.g., overestimation of the blood lead-air lead slope coefficient and overprediction of the intercept at zero occupational exposure), the observed regressions can be used to bound estimates of the true long-term relationships of blood lead to occupational air lead exposure. To the extent that the sources of uncontrolled variation within and between studies are understood, estimates of the likely effects of such factors can be explicitly incorporated into a more comprehensive description of the general system.

Because of the deficiencies in observational studies of air lead-blood lead relationship, it is useful to supplement the empirical air lead-blood lead correlations with relationships derived from physiological models of lead transport in the body. As previously stated the weight of the evidence demonstrates that the model developed by the Center of Policy Alternatives (CPA) is an accurate tool for assessing the blood lead level response to alternative air lead exposures.

In order to predict the numbers of workers who will be above a given blood level at any one time, it is necessary to have an estimate of the spread of individual workers' blood lead levels about a population mean. Observed variability in a worker population will have three basic components:

(1) Individual differences in the long term (years) average blood level response to a given air lead level;

(2) Individual differences resulting from true short term (days or weeks) fluctuations in blood lead level; and

(3) Apparent short term variability from measurement error.

Based on an analysis of data from the Delco-Remy battery plant, it is estimated that true long term blood lead variability corresponds to a standard deviation of approximately 5.5 μg/100g. This is likely to be an underestimate of true long term differences in blood lead resulting from a constant air lead exposure because a single plant over a limited time is unlikely to include as large a diversity in the many factors producing long term variability as would prevail in a random sample of all lead-using industries. The value of 9.5 μg/100g, used in the previous CPA work as an upper bound on true long term variability, appears to be the best mid-range estimate of total (short and long term) true variability. A high range estimate for total variability (including measurement error) suggested in the record is approximately 15 μg/100g. OSHA has used a standard deviation 9.5 μg/100g in calculating the distribution of blood lead levels at particular air lead levels. This distribution has then been utilized to calculate the incremental benefits of the permissible exposure limit over the other alternatives of 40 μg/m³, 100 μg/m³ and 200μg/m³. The results are found in the benefits subsection of the PEL section.

B. PERMISSIBLE EXPOSURE LIMIT

1. *General considerations.* The final standard establishes a permissible exposure limit (PEL) of 50 μg/m³ averaged over an eight hour period. The decision to establish this PEL was based on consideration of the health effects associated with exposure to lead, feasibility issues, and the correlation of airborne concentrations of lead with blood lead levels that are in turn associated with adverse effects and symptoms of lead exposure.

At the time the proposal was issued, OSHA stated that "in order to provide the appropriate margin of safety, as well as to provide significant protection against the effects, clinical or subclinical, and the mild symptoms which may occur at blood lead levels below 80 μg/100 g it is necessary to set an airborne level which will limit blood lead (PbB) levels to 60 μg/100 g. A maximum blood lead level of 60 μg/100 g corresponds to a mean blood lead level of about 40 μg/100 g" (Ex. 2, p. 45938). Based upon the extensive evidence of adverse health effects associated with exposure to lead, OSHA has determined that in order to provide necessary protection against the effects of lead exposure, the blood lead level of lead workers must be kept below 40 μg/100 g.

In establishing 40 μg/100 g as the maximum blood lead level which the protection of employees and prudence permits, OSHA is mindful of the requirement of the Act that "no employee will suffer material impairment of health or functional capacity . . . for the period of his working life." OSHA has concluded that maintenance of blood lead levels below 40 μg/100 g by engineering and work practice controls of airborne lead will provide protection of workers throughout their working lifetimes. There is a substantial amount of evidence which indicates that the blood lead level of workers, both men and women, who wish to plan pregnancies should be maintained at less than 30 μg/100 g during this period, and this knowledge forms the basis for the action level of 30 μg/m³ established in this final standard which the agency believes will maintain the majority of blood lead levels below 30 μg/100 g.

OSHA recognizes that a PEL of 50 μg/m³ will not achieve the goal of maintaining the blood lead levels in all occupationally exposed workers below 40 μg/100 g. Based on the calculations using the CPA adaptation of the Bernard model, OSHA predicts 0.5 percent of worker blood leads will exceed 60 μg/100 g; 5.5 percent of the workers will have a PbB between 50–60 μg/100 g; 23.3 percent will be between 40–50 μg/100 g; and overall, 29.3 percent of exposed lead workers will have PbB above 40 μg/100 g at any one time when uniform compliance with 50 μg/m³ PEL is achieved. However, this represents a substantial improvement over current industry conditions. The current blood lead level distribution assuming compliance with 200 μg/m³ is approximately (1) greater than 60 μg/100 g, 22.4 percent; (2) 50–60 μg/100 g, 32.6 percent; (3) 40–50 μg/100 g, 28.7 percent; (4) The total above 40 μg/100 g, 83.8 percent.

In establishing 40 μg/100 g as a maximum desirable blood lead level, the Agency is conscious of the fact that the OSHA Act mandates that a standard be set which meets the test of feasibility. OSHA has determined that 50 μg/m³ represents the lowest level for which there is evidence of feasibility for primary and secondary smelting, SLI battery manufacturing, pigment manufacturing, and brass/bronze foundries. The 50 μg/m³ exposure limit is the level which properly balances the questions of feasibility and health effects of lead exposure and most adequately assures, to the extent feasible, the protection or workers exposed to lead. Compliance with this level will provide a dramatic reduction in the number of workers whose blood lead levels are currently greater than 40 μg/100 g, and will virtually eliminate all blood lead levels above 60 μg/100 g.

This level of 50 μg/m³ is achievable almost entirely through engineering and work practice controls, the preferable control strategy. The exposure limit is based upon what can be achieved by the affected industries taken as a whole, using presently available technology or, in some industries, technology looming on the horizon. The industries which will face the greatest difficulties in the implementation of engineering controls will be primary and secondary smelters, pigment manufacturing, brass/bronze foundries and SLI battery manufacturers. For this reason, the requirement for engineering and work practice controls will be phased-in with extended periods of time allotted for compliance in these industries. OSHA has determined that the standard is feasible, and that the PEL of 50 μg/m³ represents the best intersection between maximization of health benefits and feasibility.

2. *Health effects.* In the proposal, OSHA questioned whether both clinial and subclinical effects of exposure should be considered in establishing a standard for lead. OSHA believes the original terms, clinical and subclinical, represent vast over-simplifications of a disease process and, therefore, have avoided their use in this final standard. The subclinical effects described in the health effects section are, in reality, the early to middle stages in a continuum of disease development process. It is axiomatic that the chronic, irreversible stage is preceded initially by an early, relatively mild, and apparently reversible stage of disease. This earliest stage is characterized by varying subjective and/or objective symptoms which may not at first alarm the victim, or present a physician with a clear-cut diagnosis. Nevertheless, this early developmental stage of disease is a pathologial state, and OSHA finds persuasive the arguments for adopting a lead regulation which protects workers from this early consequence of lead exposure. OSHA believes these early stages of the disease process characteized by central nervous system symptoms, behavioral changes, psychological impairment, peripheral nerve damage, anemia, reduced kidney function and adverse reproductive effects represent material impairment of the worker and should be prevented in order to eliminate further development of disabling disease and death.

OSHA must promulgate a standard which prevents occupational disease resulting from both acute and prolonged or chronic exposure to lead; it must likewise guard against the onset, progression or severity of chronic degenerative diseases of aging workers.

The degree of protection to be provided must extend over the full span of a working life and must cover the more susceptible, as well as the more robust members of the exposed group. Since the objective is to limit the latent effects of exposure, as well a immediate illness, the mere absence of illness, or lack of severe clinical signs will not constitute adequate health protection. The PEL must be chosen such that is protects the worker not only from the most overt symptoms of illness, but also from the earliest indications of the onset of disease. The usual medical signs for disturbance, therefore, are wholly inadequate to provide employee protection. These considerations formed the basis of OSHA's interpretation of the health effects data in the record for purposes of establishing a PEL.

a. *Inhibition of heme synthesis.* In establishing the PEL, OSHA evaluated the health effects of lead on heme synthesis. Scientific evidence has established that very low levels of lead inhibits at least two enzymes (ALA-D and ferrochelatase) in the heme synthesis pathway. ALA-D inhibition is observed at PbB levels below 20 μg/100 g. At 40 μg/100 g significant excretion of the substrate of one enzyme, ALA-D, occurs at this PbB level. The build-up of protoporphyrin levels indicates that inhibition of the enzyme, ferrochelatase, also occurs at low PbB levels. Some have argued that these effects are the manifestation of the human body's adjustment to lead. OSHA believes that it is inappropriate and simplistic to describe these changes as internal adjustments. These measurable effects are considered by the agency to indicate the occurrence of disruptions of a fundamental and vital subcellular process, heme synthesis. such processes are not only essential to the production of hemoglobin, they are also vital to the mitochondrial function of all cells.

OSHA believes the evidence indicates a progression of lead's effects starting with the inhibition of specific enzymes, continuing to the measurable disruption of subcellular processes, such as the measurable build-up of heme synthesis products, and eventually developing into the overt symtoms of lead poisoning. Biological variability between individuals will necessarily cause differences in the PbB level at which a particular person will experience each stage in this disease continuum; therefore, at each higher PbB level a greater proportion of the population will manifest each given effect. Given this understanding of the progressive stages of lead's effect, OSHA has concluded that enzyme inhibition indicative of the disruption of heme synthesis is an early stage of a disease process.

Anemia is one of the established symptoms of lead poisoning. That lead-induced anemia occurs above PbB levels of 80 μg/100 g is well established; however, the occurrence of this symptom at PbB levels below 80 has been debated. In evaluating the disease mechanisms of anemia, it was found that lead is an insidious poison which attacks not one, but many, of the subcellular physiological processes. The effects of lead on heme synthesis are considered to play a part in the development of anemia. Studies have associated PbB levels as low as 50 μg/100 g with lowered Hb levels. In particular, Tola's study, which showed a lowering of hemoglobin (Hb) over the length of lead exposure to 50 μg/100 g, and the work of the Mt. Sinai group in secondary smelters which demonstrated reduced Hb in 39 percent of the workers studied whose PbB levels ranged from 40 to 80 μg/100 ml, is considered by OSHA as strong evidence that lead does effect reduced Hb levels at this low PbB range. This implies that there is a lifetime alteration in the oxygen carrying capacity of the blood, in the blood viscosity and potentially in the cardiac work load.

In evaluating the effects of lead on heme synthesis, Piomelli suggested that effects on the blood forming system, such as anemia, are not the most significant clinical effects of heme synthesis disruption nor the earliest. He stated that "a much more important fact is that the alteration of the mechanism of heme synthesis reflects the general toxicity of lead in the entire body." (TR 458)

Evidence indicates that there is disruption of heme synthesis in other tissues of the body following exposure to lead, and that this disruption results in alteration of the process of respiration. While this evidence relates lead's effects on heme synthesis to symptoms throughout the body is far from complete, it is, however, extensive enough to warrant very serious consideration with respect ot the establishment of the standard. OSHA believes this evidence demonstrates that one stage of early lead disease is the disruption of heme synthesis and that the measurable effect of this disruption on the hematopoietic system parallels that which is known to occur in all body tissues at comparably low PbB levels, (below 40 μg/100 g). The disruption of heme synthesis is clearly not the only mechanism by which lead exerts its toxicological effect, but is one mechanism of which we have substantial understanding and can measure.

In reference to the blood forming system, OSHA believes that the effects of lead are a complex progression which begins with discrete biochemical changes and proceeds to overt clinical symptoms. At increasingly higher PbB levels, a significant proportion of the population will suffer more extreme effects. At a PbB level of 40 μg/100 g, a sizable proportion of the population would show measurable effects of the disruption of heme synthesis in the hematopoietic system. A comparable degree of disruption of heme synthesis in the mitochondria would occur. OSHA believes the occurrence of such effects is an unacceptable health impairment.

Piomelli gave an excellent summary of the importance of lead's effects on heme synthesis stating:

> It is my understanding that regulations have the purpose of preventing "material impairment of health". Alterations in heme synthesis do not produce subjective evidence of impairment of health, unless they reach the extreme depression in severe lead intoxication, when marked anemia occurs and the individual feels weak. However, it is not any longer possible to restrict the concept of health to the individual's subjective lack of feeling adverse effects. This is because we know that individuals may get adjusted to suboptimal health, if changes occur slowly enough and also because we now have the ability to detect functional impairments by appropriate tests, much before the individual can perceive any adverse effect. In fact, it is the responsibility of preventive medicine to detect those alterations which may precede frank symptomatology, and to prevent its occurrence. The alterations in heme synthesis caused by lead fulfill, in my opinion, the criteria for material adverse effects on health and can be used to forecast further damage. The depression of heme synthesis in all cells of the body is an effect of far reaching proportion and it is the key to the multiple clincial effects of lead toxicity, which become obvious as the exposure continues (Ex. 57, p. 21).

This does not in any way suggest that the lead effect on heme is the only mechanism of lead disease, but it does suggest that this effect is at least one of the important mechanisms in lead disease. An understanding of the spectrum of effects from subcellular to clinical symptoms is relevant not only to the occurrence of anemia but will also be the expected pattern in lead-induced neurological and renal disease.

OSHA believes that there is evidence demonstrating the impairment of heme synthesis and mitochondrial disruption in tissues throughout the body, and that these effects are the early stages of lead disease in these various tissues. The disruption of heme synthesis measured at low PbB levels is not only a measure of an early hematopoietic effect, it is also a measure which indicates early disease in other tissue. The Agency believes that such a pervasive physiological disruption must be considered as a material impairment of health and must be prevented. PbB levels greater than 40 μg/100 g should, therefore, be prevented to the extent feasible.

b. *Neurological system.* There is extensive evidence accumulated in both adults and children which indicates that the toxicity of lead is manifested in both the central and peripheral nervous systems. The neurologic manifestations of lead intoxication are variable, ranging from acute, chronic, or low level to massive. The location and degree of neurological damage depends on the dose and duration of exposure.

The record in this rulemaking clearly demonstrates that damage occurs in both the central and peripheral nervous systems at blood lead levels lower than previously recognized. Based on this record, OSHA has concluded that the earliest stages of central nervous system disease are recognizable as subjective CNS symptoms and behavioral disorders. These disorders have been documented in numerous scientifically sound investigations. Current information does not provide an indication of a no-effect level. In adults, there is evidence of a dose-response relationship, but the no-effect level remains to be determined. Given the severity and potential nonreversibility of central nervous system disease, OSHA must pursue a conservative course of action. A blood lead of 40 μg/100 g must be considered to be a threshold level for behavioral changes in adults, and to protect against long-term behavioral effects, blood levels should never exceed 60 μg/100 g.

Some of the best and most extensive evidence in the rulemaking record are the data presented which confirm the existence of the early stages of peripheral neuropathy in workers exposed to lead levels below 70 μg/100 g. The evidence demonstrates that there is a statistically significant loss of motor nerve conduction velocity (MNCV) in lead-exposed workers. A dose-response relationship for the slowing of MNCV has been determined, and it is apparent that this slowing occurs in workers whose PbB levels are 50 μg/100 g and above. Whether there are effects as low as 40 μg/100 g is as yet undetermined, although Repko does indicate a slowing of MNCV in the forties. Recently published research indicates edema appears to develop at the same time of onset of degeneration of myelin sheaths of nerve fibers which show reduced MNCV. This pathophysiologic state will grow progressively worse with continued exposure even at PbB levels in the fifties. OSHA believes a clear deficit in the conduction velocity of more than one nerve is an early stage in the development of clinically manifest peripheral nerve damage and disease (neuropathy).

In order to prevent peripheral neuropathy as evidenced by a slowing in NCV's, it is necessary to maintain PbB's below 50 μg/100 g, although if there is to be any margin of safety, a value less than this should be established. This is consistent with OSHA's overall goal of maintaining blood leads below 40 μg/100 g.

Recovery from the effects of chronic lead poisoning may be feasible in some cases if the worker is removed from the source of exposure and therapy is initiated immediately. There are instances, however, when complete recovery is impossible and the pathology is fixed. Even if the worker is removed from the source and therapy initiated, the worker may still experience impairment (Ex. 95 Ref. Cantarow p. 135). In a recent paper describing his results, Dr. R. Baloh, a neurologist at UCLA, questioned the reversibility of nervous system damage:

> Although there are isolated reports of significant improvement in lead induced motor neuron diseases and peripheral neuropathy after treatment with chelation therapy, most studies have not been encouraging, and in the case of motor neuron disease, death has occurred despite adequate chelation therapy.
>
> All of this data reinforces a disturbing clinical impression that nervous system damage from increased lead absorption is only partially reversible, if at all, with chelation therapy and/or removal from further exposure. This is not particularly surprising, however, since experience with other heavy metal intoxication has been similar. Nervous system damage from arsenic and mercury responds minimally to chelation therapy. Apparently, irreversible changes occur once the heavy metal is bound by nervous tissue. Although further study is clearly needed, the major point I would like to make this morning is that there is strong evidence to suggest the only reliable way to treat nervous system damage from increased lead absorption is to prevent its occurrence in the first place. (Ex. 27(7) p. 55.)

OSHA agrees with these concerns regarding irreversibility of neurological disease expressed by Dr. Baloh and therefore must establish a standard which will prevent the development of nervous system pathology at its earliest stages.

c. *Renal system.* During the hearings, one of the most important contributions to the understanding of the adverse health effects associated with exposure to inorganic lead was the elucidation of evidence on kidney disease. In particular, the research of Wedeen and his coworkers, the health hazard evaluation by NIOSH at Eagle Picher Industries, Inc., and the work of the Mt. Sinai group demonstrated that lead exposure is a key etiologic agent in the development of kidney disease among workers occupationally exposed to lead. Unlike the hematopoietic system where changes in heme formation can be detected at early stages, renal disease may only be detected through routine screening after serious damage has occurred. Elevated BUN and S-creatinine are measurable only after two-thirds of kidney function is lost, or upon manifestation of symptoms of renal failure. OSHA agrees with the conclusions of Wedeen: "By the time lead nephropathy can be detected by usual clinical procedures, enormous and irreparable damage has been sustained. The lead standard must be directed towards limiting exposure so that occupational lead nephropathy does not occur," (Tr. 1750) since in this situation "progression to death or dialysis is likely." (Tr. 1732). The record indicates that blood lead is an inadequate indicator of kidney disease development, since rather than being a complete measure of body burden, it is merely a measure of absorption when sampled close to the time of exposure.

Given these conclusions, OSHA must approach the prevention of kidney disease by recognizing the limited usefulness of certain biological parameters. Therefore, OSHA believes any standard established for lead must provide some margin of safety and agrees with Dr. Wedeen that:

> It is therefore the subclinical renal effects, and by subclinical, I mean effects that are not readily detected by the patient or the physician, it is therefore the subclinical effects of lead which should be detected and prevented, since this represents a material loss of functional capacity which has serious adverse health implications. (Tr. 1732) 40 μg/100 ml is the upper acceptable limit to prevent development of a hazardous body burdens lead. (Tr. 1771)

d. *Reproductive system.* The record clearly demonstrates that lead has profoundly adverse effects on the course of reproduction. Prior to conception exposure to lead is responsible for menstrual and ovarian cycle abnormalities in women, decreased libido, impotence and altered sperm formation in men, and lowered fertility and genetic damage in both males and females. Genetic damage may result in spontaneous miscarriage, stillbirth, or in a disease or birth defects in a live born child. There is data which documents that miscarriage and stillbirth may be caused by maternal lead esposure during pregnancy. In fact, lead has been used as a abortifacient. In women exposed to lead, Fhim has reported that the mothers of premature babies had significantly higher mean blood leads than did mothers with normal pregnancies.

There is conclusive evidence that lead crosses the placenta of pregnant women and enters the fetal tissues; lead levels in the mother's blood are comparable to concentrations in the umbilical cord blood at birth. A survey of fetal tissue demonstrated that the transplacental passage of lead becomes detectable at 12 to 14 weeks of gestation, and increases from that point to birth. Therefore, early in pregnancy the fetus may be adversely

affected by maternal lead exposure. Some investigators have suggested that the fetus is most vulnerable to lead during the first trimester. OSHA disagrees with this assertion, but rather believes the fetus is highly vulnerable whatever the stage of development. The fetus is particularly susceptible to neurological damage. In addition, there may also be heme synthesis impairment and renal damage in the fetus. In the newborn child, exposure to lead may continue through the secretion of lead in the mother's milk.

There is little direct data on damage to the fetus from exposure to lead but there are extensive studies which demonstrate neurobehavioral effects in children. OSHA believes that the fetus would be at least as susceptible to heme inhibition and neurological damage as would older children and therefore data on children is relevant to the fetus.

Behavioral disturbances, such as hyperactivity, have been associated with blood lead levels in children as low as 25 μg/100 ml. In general, mild CNS symptoms, behavioral problems, and other neurological signs and symptoms occur around 50 μg/100 ml, but there is evidence of adverse effects at lower PbB levels.

An analysis of the data suggest that in order to protect against lead's adverse effects on the course of reproduction, blood lead levels should be maintained at or below 30 μg/100 ml. The Center for Disease Control, the Toxicology Committee of the National Academy of Sciences and the Environmental Protection Agency recommend that blood lead levels of children be kept below 30 μg/100 ml. Certainly the fetus and newborn should be similarly protected. OSHA recognizes that the PEL of 50 $\mu g/m^3$ acting alone will not maintain blood lead levels of persons planning pregnancies or pregnant women below 30 μg/100 ml. When compliance is achieved, the mean blood lead level for a population of lead workers uniformly exposed to the 50 $\mu g/m^3$ PEL will be approximately 35 μg/100 ml. OSHA believes that damage to the fetus represents impairment of the reproductive capacity of the lead exposed parent. While OSHA believes that a standard should be set which protects all persons affected—male and female workers, and the fetus—the agency is limited by the requirement that a standard be feasible. However, the standard minimizes adverse reproductive effects from lead by a variety of means including (1) establishing a 30 $\mu g/m^3$ action level which will initiate biological and air monitoring, (2) utilizing the provisions of the medical surveillance section, including fertility testing, physician reviews, and medical removal protection to identify and perhaps remove workers who may wish to plan pregnancies or who are pregnant, and (3) insuring through the education and training provisions of the standard that workers are fully informed of the potential hazards from exposure to lead on their reproductive ability, during pregnancy and following birth. Compliance with these provisions of the standard should effectively minimize any risk to the fetus and newborn child, and thereby protect the reproductive systems of both parents.

The record in this rulemaking is clear that male workers may be adversely effected by lead as well as women. Male workers may be rendered infertile or impotent, and both men and women are subject to genetic damage which may affect both the course and outcome of pregnancy. Given the data in this record, OSHA believes there is no basis whatsoever for the claim that women of childbearing age should be excluded from the workplace in order to protect the fetus or the course of pregnancy. Effective compliance with all aspects of these standard will minimize risk to all persons and should therefore insure equal employment for both men and women. There is no evidentiary basis, nor is there anything in this final standard, which would form the basis for not hiring workers of either sex in the lead industry.

During the hearings, industry representatives argued that lead exposed workers will not suffer material impairment of health if blood lead levels are below 80μg/100 g. OSHA finds this argument to be unsubstantiated by scientific or medical evidence, and has concluded that it represents an incorrect assertion. It is not based on the sound evidence in the record which demonstrates adverse health effects as low as 40 μg/100 g. The record indicates that adverse signs and symptoms have been observed in workers who were exposed to lead for less than a year.

During the public hearings the vast majority of the physicians who testified supported the view that blood lead levels should be maintained at or below 40 μg/100 g in order to protect against the onset of the early manifestations of disease previously described as subclinical effects. The following physicians supported a PbB level of 40 μg/100 g: Dr. Lillis (Tr. 2700-01), Dr. Needleman (Tr. 1085-86; 1106-07); Dr. Epstein (Tr. 1051-52, 1058-65, 1067-68, 1072, 1073-74, 1104-05); Dr. Lancrajan (Tr. 1771), Dr. Wolfe (tr. 4140), Dr. Teitlebaum (Tr. 374-78), Dr. Bridbord (Tr. 1976-02), Dr. Fishbein (Tr. 2660-61, 2669) and Dr. Piomelli (Tr. 467).

In addition OSHA has carefully scrutinized the extensive evidence compiled by the Environmental Protection Agency (EPA) which led that Agency to establish a national ambient air quality standard of 1.5 $\mu g/m^3$ designed to address the problem of lead in the urban environment. The EPA standard was based on the following considerations:

> In establishing the final standard, "EPA determined that of the general population, young children (age 1-5 years) are the most sensitive to lead exposure. In 1970, there were 20 million children in the U.S. under 5 years old, of whom 12 million lived in urban areas and 5 million lived in center cities where lead exposure is the highest. The standard is based on preventing children in the U.S. from exceeding a blood level of 30 micrograms lead per deciliter of blood. Blood lead levels above 30 micrograms are associated with an impairment in cell function which EPA regards as adverse to the health of chronically exposed children. There are a number of other adverse health effects associated with blood lead levels above 30 micrograms in children as well as in the general population, including the possibility that nervous system damage may occur in children even without overt symptoms of lead poisioning." (EPA Press Statement, September 29, 1978.)

These conclusions are consistent with the testimony in this record including the policy statements of the Center for Disease Control (Ex. 2 (15)) and the National Academy of Sciences. These conclusions on exposure limits in the general population and children in particular are relevant to OSHA's final standard for a working population. The testimony of Dr. H. Needleman of Harvard University is relevant here.

> I am one of those who believe that a substantial body of evidence is accumulating that the threshold for significant health effect depends on the avidity, sensitivity and sophistication with which we pursue it and that the lowering of acceptable body burdens in children and adults is scientifically and economically sound.
>
> With the passage of time, the defined acceptable blood level for a child under six has moved from 60—when I began my training in pediatrics not too long ago—to 50 to 40 micrograms per deciliter. The CDC now begins to talk about 20 as the threshold for undue lead exposure. And Professor Zielhuis at the Amsterdam meeting in 1972 recommeded an individual limit of 35 micrograms per deciliter and a group average of 20 micrograms per deciliter for children.
>
> There are important differences during the time that the blood brain barrier is being laid down, in that certain enzymes are being induced, but I think that the point that I was trying to generate in that argument, was that in my pediatric experience, when I started training in pediatrics, we said that children with blood leads over 80 were at high risk for the lead poisoning, and now we have been talking about children of 30, 45 or 40, and I think that same argument, deriving out of sharp and clinical and experimental evidence, would apply to the worker that is, that if you look more carefully for evidence of impairment, you are going to find it.
>
> The fact that an adult worker will spill aminolevulinic acid in his urine, at a blood

lead of 40, to me says, that this is a clinical effect of significance. (Tr. 1078, 1106-07.)

The Agency agrees with the conclusions of Dr. Needleman and emphasizes that overt symptoms of lead toxicity occur below 80 μg/100 g and in fact below 60 μg/100 g. OSHA is convinced by the record that large numbers of workers whose blood lead levels are above 40 μg/100 g and whose health will in all probability grow progressively worse, must be identified and protected.

e. *Air to blood relationships.* In order to establish a permissible exposure limit, OSHA was first required to determine the blood levels associated with adverse effects and symptoms of lead exposure, and to correlate these blood lead levels with airborne concentrations of lead. During the hearings, industry representatives steadfastly maintained that blood lead levels cannot be correlated with, nor predicted from, air-lead concentrations. Based on the record evidence, OSHA has concluded to the contrary. While many studies in the record have limitations, these limitations by no means imply that the data are useless or that no reliable relationship exists between long term air lead exposures and blood lead levels. Given the extent to which the likely systematic errors in the short term studies in the record are understood, the observed equations can be used to bound estimates of the true long term relationships of blood lead to occupational air lead exposure. To the extent that the sources of uncontrolled variation within and between studies are understood, estimates of the likely effects of such factors could be explicity incorporated into a more comprehensive description of the general system.

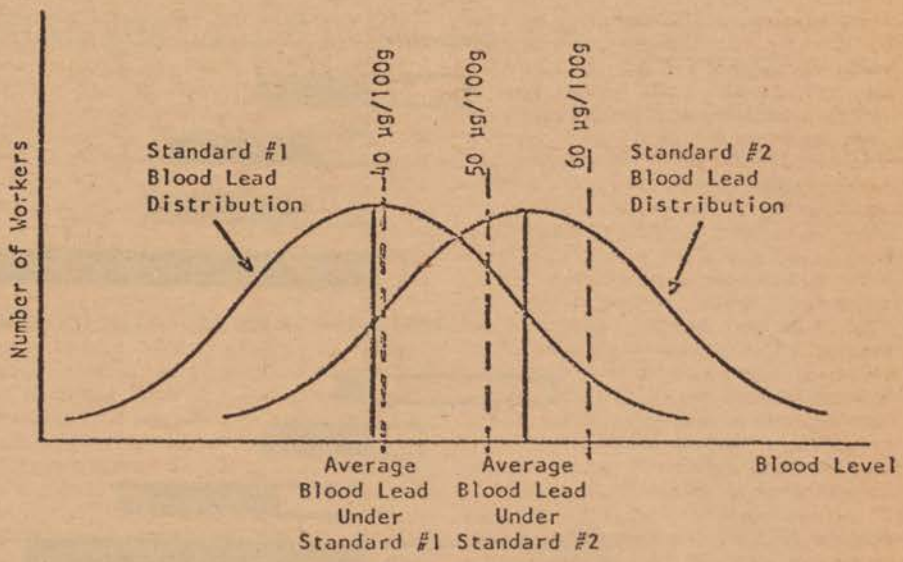
In order to accurately predict the effect on blood lead levels which would be caused by long term exposure to various levels of air lead, it was necessary to construct a model that takes into account the important factors which affect blood lead levels. The physiological model originally developed by S. R. Bernard and adapted by the Center for Policy Alternatives (CPA) combines experimentally observed properties of mammalian lead transport and metabolism, including consideration of the dynamics of blood lead response to long term exposure. The model also accounts for the observed physical properties of airborne particulates encountered in the workplace, in order to produce a complete and accurate picture of the response of blood lead levels to particulate lead exposure. Furthermore, the CPA study includes a specific consideration of individual variability in response to air lead, which is necessary in predicting the responses of large populations of workers to changes in air lead exposure. OSHA believes this model represents the best approximation of the true air lead to blood lead relationship to date. It is superior to the short term studies in the record, insofar as it incorporates the best aspects of the studies in the model and also addresses the particular weaknesses of these studies, such as job tenure and particle size. OSHA has utilized the model in calculating the predicted blood lead distributions at various air lead levels and has determined the incremental benefits of the PEL to be discussed in the next section.

3. *Benefits of the PEL.* The dramatic reduction in the number of workers with blood lead levels over 40, 50 and 60 μg/100 g, is a measure of the incremental benefit derived from a PEL of 50 μg/m³. Ideally, it is desirable to express the benefits of a standard in terms of decreases in the incidence and severity of the various adverse health effects of lead exposure (e.g., neurological damage, kidney damage, etc.). However, the available data does not allow a meaningful quantitative estimation of the degree of prevention of damage which is likely to be achieved by lowering worker exposures and blood leads to specific levels. The record evidence allows estimates to be made of the blood lead levels which are likely to result from compliance with alternative air standards. In the absence of better epidemiologically determined morbidity and mortality data, the best judgment of the relative health benefits achievable under the different PEL's which have been considered is based on the expected reduction in the number of workers with dangerously high blood lead levels.

The results are expressed in terms of the number of workers expected to fall into a particular blood lead range at any one time, after the establishment of long-term equilibrium, and without consideration of medical removal provisions. OSHA believes that this model will provide the best comparison of different assumed compliance levels. However, there are a number of inherent limitations in this approach which need to be clearly appreciated.

First, it should be understood that a change in air lead exposure causes a shift in the entire distribution of blood lead levels in the population:

FIGURE 1



Although the incremental benefits of standard No. 1 over standard No. 2 may be expressed in terms of the decrease in the number of workers (area under the curve) falling in each blood lead level range, the "benefits" of the standard are not really limited to workers who move across the lines drawn at 40, 50, and 60 μg/100g. Under the lower exposure standard, all of the workers are expected, to some degree, to have lower blood lead levels, and therefore possibly some lower level of health risk. It should be noted that the comparison of differences in mean blood lead levels will markedly underestimate the benefits to a population of workers.

Second, it should be stressed that the measurement of benefits chosen represents a continuous "flow," not a "stock." As time passes and workers move into and out of employment in lead-related industries, the differences between compliance with various PEL's continuously generate differences in the population of newly exposed workers. If two standards differ by 1,000 in the number of workers expected to be over 60 μg/100g at any one time, over a period of 10 years, the

difference is clearly 10,000 person-years at the higher blood lead level. This figure depends on the labor turnover in the industries concerned, the frequency with which workers change jobs (and hence exposures) within the industry, as well as other factors.

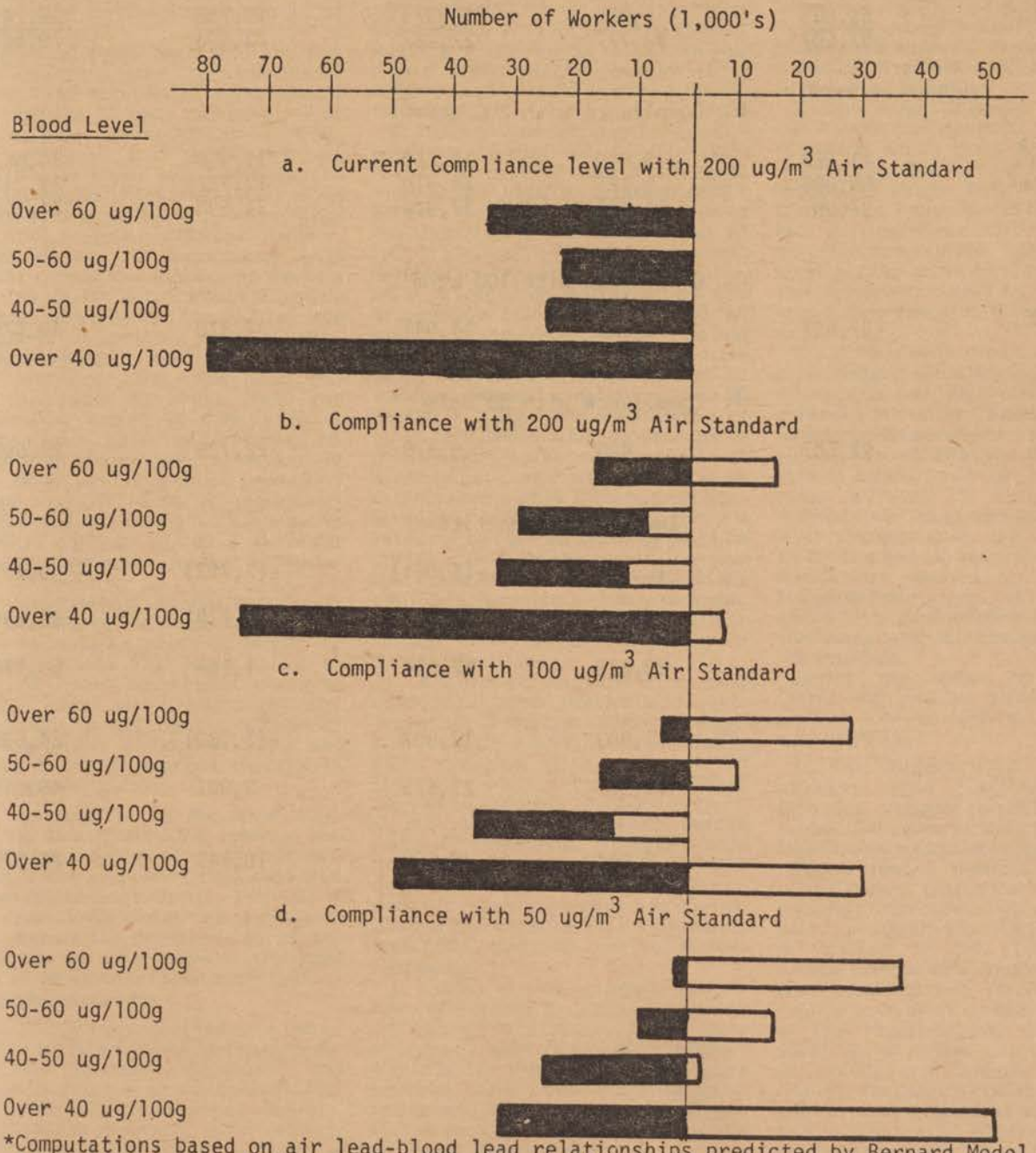
D. B. Associates has presented rough estimates of lead exposure in many industries. OSHA bases its assessments of the incremental benefits of the air lead standard on this data, as it is the most comprehensive compilation of exposure estimates. OSHA estimates based on DBA figures and other record evidence that overall, approximately 41,622 workers are currently exposed to time-weighted-average air lead levels of over 100 $\mu g/m^3$, and an additional 55,885 workers are exposed to air lead levels between 50 and 100 $\mu g/m^3$.

The following results are obtained by multiplying the appropriate exposure estimates by the estimates of the percentages of population expected to have blood levels in each range at any one time, following the establishment of long-term equilibrium. (See figure 2 and table 2.)

BEST POINT ESTIMATES OF ULTIMATE EQUILIBRIUM BENEFITS
OF REDUCING AIR LEAD EXPOSURES UNDER
DIFFERENT BLOOD LEAD LEVEL VARIABILITY ASSUMPTIONS*
Blood Level Standard Deviation = 9/5 ug/100g

"Residual Health Hazard" (Number Remaining in Each Blood Level Range at Any One Time After Equilibrium)

"Benefits of Regulation" (Number Prevented from Being in Indicated Blood Level Range at Any One Time, Compared to the "0" Compliance Level)



*Computations based on air lead-blood lead relationships predicted by Bernard Model and Assumption C and DBA's best point estimates of exposure.

BEST POINT ESTIMATES OF ULTIMATE EQUILIBRIUM BENEFITS
OF REDUCING AIR LEAD EXPOSURES

Blood Level Standard Deviation = 9.5 ug/100g

Long Term Average Air Lead Exposure	Total Number of Workers	≥ 60 ug/100g	50-60 ug/100g	40-50 ug/100g	Total ≥40 ug/100g
		a. Current Compliance Level			
> 100 ug/m^3	41,622	27,652	8,508	4,166	40,326
50-100 ug/m^3	55,885	5,125	14,379	19,732	39,243
	97,507	32,777	22,887	23,898	79,569
		b. Compliance with 200 ug/m^3			
> 100 ug/m^3	41,622	9,340	13,569	11,958	34,867
50-100 ug/m^3	55,885	5,125	14,379	19,732	39,243
	97,507	14,465	27,948	31,690	74,110
		c. Compliance with 100 ug/m^3			
> 50 ug/m^3	97,507	2,562	14,041	32,870	49,475
		d. Compliance with 50 ug/m^3			
< 50 ug/m^3	97,507	498	5,373	22,729	28,599
		Incremental Benefits			
b over a		18,312	-(5,061)	-(7,792)	5,459
c over a		30,215	8,846	-(8,972)	30,094
d over a		32,279	17,514	1,169	50,970
c over b		11,903	13,907	-(1,180)	24,635
d over b		13,967	22,575	8,961	45,511
d over c		2,064	8,668	10,141	20,876

The figure summarizes the best point estimates of the ultimate effects of achieving various air lead compliance levels (a-d). The left side of the figure shows the results of parallel computations of the number of workers in the various blood lead level ranges. The right side of the figure shows the incremental benefits (reduction of the number of workers in each blood level range) of the "b", "c" and "d" compliance levels, compared to the baseline "a" compliance level which reflects the current distribution in the lead industry.

Assuming compliance with the present standard (the "a" compliance level), large numbers of workers could be expected to have potentially hazardous blood levels. At any one time, we anticipate that 32,777 workers would have blood lead levels over 60 μg/100 g, and 79,569 would have blood levels over 40 μg/100 g, in the absence of other remedial measures. Achievement of the "b" compliance level would reduce the number of workers over 60 μg/100 g, but would leave the number of workers in the 50-60 μg/100 g and 40-50 μg/100 g range substantially unchanged. Achievement of the "c" compliance level would be expected to reduce to about 2,500 the number of workers over 60 μg/100 g, and would be expected to produce reduction in the numbers of workers in the 50-60 μg/100 g blood lead level range to 14,000. The "d" compliance level would reduce the total number of workers over 40 μg/100 g to under 28,599, as compared to over 79,569 for the "a" scenario.

The incremental benefit of "d" over "a" in terms of the number of workers over 40 μg/100 g would be 50,970; for workers whose PbB levels would be over 60 μg/m³, the benefit would be 32,279. These are clearly substantial reductions in the number of workers with excessive blood lead levels and would represent marked benefits to lead-exposed workers.

4. *Alternatives to the final PEL.* During this rulemaking process, various parties advanced serious alternatives to the proposed OSHA standard. Since OSHA has adopted a PEL different from the proposal, this section will also discuss the proposed PEL of 100 μg/m³ as an alternative to the final one of 50 μg/m³. There were four alternatives proposed:

(a) *The LIA proposal.* Adopt a standard which emphasizes biological indices and medical surveillance and which establishes an enforcement procedure directly utilizing these indices.

OSHA has decided to place primary reliance on a PEL which is based on environmental monitoring of air lead levels rather than relying on biological indices for the following reasons:

1. Evaluation of the industrial environment by proven industrial hygiene techniques is a direct measure of the sources of lead exposure, adequacy of control technology, progress in implementation of engineering controls, and in general represents a continual check on lead exposure. Since OSHA believes that control of an air contaminant should be accomplished at the source, environmental monitoring then is a direct measure of the control of lead exposure. Biological monitoring is designed to ascertain problems in individual workers and is an indirect measure of the control of lead. In this regard environmental monitoring is better suited to serve as a basis for enforcement.

2. Biological monitoring for compliance purposes is not feasible since there is no discrete value which could serve as the basis for citation. OSHA believes that based on consideration of health effects a PbB of 80, 70, or 60 μg/100 g would be excessive and would not protect workers' health adequately. It is infeasible to require controls to maintain blood lead levels for all workers at the desired 40 μg/100 g and below. Rather, when all controls have been implemented, 30 percent of all workers' PbB will range from 40 to 60 μg/100 g. Given the distribution of blood lead levels when compliance is achieved in a worker population, there is no discrete value which could serve as a maximum PbB. That is, OSHA believes that a PbB above 60 μg/100 g is excessive but a PbB between 40 to 50 μg/100 g may be the result of excessive exposure or it may represent the individual variation within a well controlled environment. Air lead determinations would differentiate between the two situations.

3. A biological standard is not only infeasible it would provide inadequate protection of workers. Excessive exposure to lead would not immediately effect excessive blood lead levels. In fact, some workers' blood leads might not rise to excessive levels for years, if at all, although their body burden would be increasing. Workers should not be expected to wait for protection until their blood leads become excessive. Air monitoring pinpoints overexposures immediately. This technique is preferable, therefore, for compliance purposes.

4. Worker groups uniformly and vehemently oppose biological monitoring for compliance purposes. OSHA views this opposition seriously since workers would be the subjects of a compliance program based upon biological monitoring and their voluntary participation in such an invasive process would be crucial to its success.

5. Industry's arguments that biological monitoring is preferred due to lack of an air lead-blood lead relationship are unsubtantiated. OSHA believes there is no doubt that an air to blood relationship exists and is best described in the CPA application of the Bernard model.

6. Although both biological and air monitoring are subject to errors, OSHA believes that the uncertainties associated with either measurement are not a sufficient basis for choosing one technique over the other. OSHA recognizes there are errors associated with air sampling, but nonetheless believes that evaluation of the plant environment is best and most directly accomplished through a comprehensive industrial hygiene survey as compared to biological sampling.

7. The record indicates that there are currently a significant number of industries which carry out biological monitoring. Given the current distribution of high blood lead levels throughout industry and the admitted lack of compliance with the current air standard OSHA has concluded there is little or no basis for accepting the asserted success of an enforcement mechanism based on future biological monitoring.

8. OSHA is concerned that a biological standard could impact negatively on workers with high blood leads and extended job tenure. Employers might terminate employment of these individuals to avoid citations for overexposure to lead. In addition, an employer could attempt to circumvent the standard by using respirators rather than implementing engineering controls. The use of respirators is not a satisfactory method for compliance. Indiscriminate use of respirators would be a confounding factor in ascertaining successful compliance with the standard.

Based on these considerations, OSHA will rely on determination of air lead level to ascertain compliance with the PEL.

b. *The Proposal—100 μg/M³.* The proposal would have established a PEL for airborne concentrations of lead at 100 μg/m³ as determined on an 8-hour time weighted average.

Based upon a thorough evaluation of the record, OSHA has reached the following conclusions which form the basis for establishing a PEL of 50 μg/m³ instead of 100 μ100g/m³. The health effects data indicates that, to the extent feasible, blood lead levels should be kept at or below 40 μg/100 g. This contrasts with the proposal which set 40 μg/100 g as a mean, with 60 μg/100 g as a maximum. While feasibility limitations inhibit complete achievement of the goal of 40 μg/100 g as a maximum for all employees this goal can generally be achieved by setting the PEL at 50 μg/m³. Nevertheless, it forms an important foundation for OSHA's decision to reduce the PEL

to 50 $\mu g/m^3$. The CPA application of the Bernard model predicts a mean blood lead level of 34.6 $\mu g/100$ g at 50 $\mu g/m^3$ when compliance with the standard is achieved, compared to a mean PbB level of 40.2 $\mu g/100$ g at 100 $\mu g/m^3$.

The number of workers whose PnB levels were initially greater than 60 $\mu g/100$ g will be substantially reduced from 32,777 to 498 with compliance at 50 $\mu g/m^3$. For 100 $\mu g/m^3$, the benefits are also substantial, 32,777 to 2,562 with the incremental benefit for 50 $\mu g/m^3$ over 100 $\mu g/m^3$ being 2,064. There are 22,887 workers whose PbB are between 50 and 60 $\mu g/100$ g. Compliance with 50 $\mu g/m^3$ would reduce that number by 17,514, whereas at 100 $\mu g/m^3$, the number would be 8,846 with incremental benefit of 8,668 for 50 versus 100 $\mu g/m^3$. Between 40 and 50 $\mu g/100$ g there are 23,898 and compliance with 50 and 100 $\mu g/m^3$ results in a decrease at 50 $\mu g/m^3$ of 10,141 and increase at 100 $\mu g/m^3$ of 8,972 with a benefit of 50 versus 100 $\mu g/m^3$ of 10141. Lastly, there are 9,569 workers whose PbB levels are above 40 $\mu g/100$ g. Compliance with 50 $\mu g/m^3$ and 100 $\mu g/m^3$ respectively would reduce the numbers to 28,599 and 49,475 with an incremental benefit of 20,876 for 50 vs 100 $\mu g/m^3$.

SUMMARY

Incremental Benefit (by number of workers) 50 $\mu g/m^3$ vs 100$\mu g/m^3$

Number of Workers removed:

>60 $\mu g/100$ g	2,064
50-60 $\mu g/100$ g	8,668
40-50 $\mu g/100$ g	10,141
>40 $\mu g/100$ g	20,876

In summary, OSHA finds that 50 $\mu g/m^3$ will provide significantly increased protection to exposed employees over what would be achieved at 100 $\mu g/m^3$, and within the limits of feasibility provides substantial incremental benefits toward achieving a maximum of 40 $\mu g/100$ g.

(c) *The LIA Second Alternative—200* $\mu g/m^3$. The LIA has proposed that if OSHA decides to retain a single air lead exposure limit as opposed to a standard with primary reliance on biological monitoring, the limit should not be lower than 200 $\mu g/m^3$.

The evidence of adverse health effects cited in the proposed lead standard and in this final standard demonstrates that a PEL of 200 $\mu g/m^3$ does not nor will not protect the worker in the lead industry from "material impairment of health or functional capacity." A PEL of 200 $\mu g/m^3$ would yield blood levels well above that which is deemed safe by OSHA in terms of both short and long-term exposure duration. Frank signs and symptoms of disease would be expected to occur at this level. The industry has argued that OSHA should not reduce the PEL from its current level of 200 $\mu g/m^3$ until compliance has been achieved at that level and medical evaluation has determined whether or not it is protective. OSHA believes the evidence already exists which demonstrates that 200 $\mu g/m^3$ is not protective and a delay in promulgating a new standard would place workers at severe risk to disease.

The benefits of compliance with 50 $\mu g/m^3$ versus the current level of compliance with 200 $\mu g/m^3$ were described in the benefits section and are substantial. The number of workers whose PbB levels are greater than 40 $\mu g/100$ g would be reduced from 79,569 to 28,599 and the number of workers whose PbB levels would be reduced below 40 $\mu g/100$ g is 50,970. To summarize:

Incremental Benefit of 50 $\mu g/m^3$ vs. 200 $\mu g/m^3$

Number of workers removed:

>60 $\mu g/100$ g	32,270
50-60 $\mu g/100$ g	17,514
40-50 $\mu g/100$ g	1,169
>40 $\mu g/100$ g	50,970

It is important to note that the correct method of determining benefits is to compare a shift in the distribution of blood lead levels in the entire population. Comparison of the differences in average blood lead levels is irrelevant to an accurate understanding of the impact of the standard.

OSHA concludes that there are substantial benefits to be achieved from the promulgation of a 50 $\mu g/m^3$ standard and that the arguments set forth in favor of a 200 μg alternative are not compelling.

(d) 40 $\mu g/m^3$.

The United Steel Workers of America proposed 40 $\mu g/m^3$ as an alternative to 100 $\mu g/m^3$ in the proposal.

OSHA has calculated the equilibrium distribution of blood lead levels assuming rigorous compliance with 40 $\mu g/m^3$ and has compared these results to a similar calculation for 50 $\mu g/m^3$. The results are as follows:

BLOOD LEAD DISTRIBUTION (IN PERCENT)

	>40 $\mu g/100g$	40-50 $\mu g/100g$	50-60 $\mu g/100g$	>60 $\mu g/100g$
40 $\mu g/m^3$ (24.2%)		19.9%	4%	0.3%
50 $\mu g/m^3$ (29.3%)		23.3%	5.5%	0.5%

OSHA has determined that the incremental benefit of 40 $\mu g/m^3$ versus 50 $\mu g/m^3$ is negligible and in fact may be within the error of the measurements. While OSHA agrees with the goal that blood lead levels should be kept below 50 $\mu g/100$ g where possible, and in fact preferably below 40 $\mu g/100$ g, the levels required to achieve the latter value are clearly infeasible in the foreseeable future. Based on the conclusions OSHA believes the considerations which form the final standard are valid and the PEL of 50 $\mu g/m^3$ will be maintained.

C. MEDICAL REMOVAL PROTECTION

1. *Introduction.* The final standard includes provisions entitled Medical Removal Protection. Medical Removal Protection, or MRP, is a protective, preventive health mechanism integrated with the medical surveillance provisions of the final standard. MRP provides temporary medical removals for workers discovered through medical surveillance to be at risk of sustaining material impairment to health from continued exposure to lead. MRP also provides temporary economic protection for those removed. Temporary medical removal is mandated for any worker having an elevated blood lead level at or above 60 $\mu g/100$ g of whole blood, or at or above 50 $\mu g/100$ g of whole blood averaged over the previous 6 months. These two ultimate blood lead level removal triggers are gradually phased in over a period of 4 years. Upon the effective date of the standard, temporary medical removal is also mandated for any worker found by a medical determination to be at risk of sustaining material impairment to health. In most temporary medical removals, the worker must be removed from any exposure to lead at or above the 30 $\mu g/m^3$ action level, with return of the employee to his or her former job status when the temporary medical removal is no longer needed to protect the worker's health. During the period of removal, the employer must maintain the worker's earnings, seniority and other employment rights and benefits as though the worker had not been removed.

2. *Importance of temporary medical removals.* A central element of MRP is the temporary medical removal of workers at risk of sustaining material impairment to health from continued exposure to lead. This preventive health mechanism is especially well suited to the lead standard due to the reversible character of the early stages of lead diseases, and to the relative ease with which a worker's body may be biologically monitored for the presence of harmful quantities of lead. Temporary medical removal protects worker health both by severely limiting subsequent occupational exposure to lead, and by enabling a worker's body to naturally excrete previously absorbed lead which has accumulated in various tissues.

Temporary medical removal is an indispensable part of the lead standard for two significant reasons. Little margin for safety is provided by the final standard's 50 $\mu g/m^3$ permissible exposure limit, thus it is highly likely that some small fraction of workers

(much less than 6 percent will not be adequately protected even if an employer complies with all other provisions of the standard. Temporary medical removal will be the only means of protecting these workers. Many years will be needed for some segments of the lead industry to completely engineer out excessive plant air lead emissions. During this time heavy reliance will have to be placed on respiratory protection—a frequently inadequate means of worker protection. Again, temporary medical removal is essential for those inadequately protected. Temporary medical removal is a crucial element of the inorganic lead standard because it is the only control mechanism which can serve the two preceding functions. Temporary removal is not an alternative means for an employer to control worker lead exposure, however, but rather is a fall-back mechanism to protect individual workers in circumstances where other protective mechanisms were insufficient.

3. *MRP as a means of effectuating the medical surveillance sections of the lead standard.* Temporary medical removals depend on voluntary and meaningful worker participation in the standard's medical surveillance program. Medical surveillance, a major element of the Act's integrated approach to preventive health, can only function as intended where workers (1) voluntarily seek medical attention when they feel ill, (2) fully cooperate with examining physicians to facilitate accurate medical diagnoses, and (3) refrain from efforts to conceal their true health status. No one can coerce these qualities of worker participation—they will occur only where no major disincentives to meaningful worker participation exist. Absent these qualities of worker participation, medical surveillance cannot serve to identify those workers who need temporary medical removals, and consequently the overall protection offered by the lead standard will be diminished.

Participation in medical surveillance offered under the lead standard will sometimes prompt the temporary medical removal of a worker. Absent some countervailing requirement, removal could easily take the form of a transfer to a lower paying job, a temporary lay off, or even a permanent termination. The possibility of these consequences of a medical removal present a dramatic and painful dilemma to many workers exposed to inorganic lead. A worker could fully participate in the medical surveillance program and risk losing his or her livelihood, or resist participating in a meaningful fashion and thereby lose the many benefits that medical surveillance and temporary medical removals can provide. Convincing evidence presented during the lead proceeding established that many workers will either refuse or resist meaningful participation in medical surveillance unless economic protection is provided.

Much of the evidence in the lead proceeding documents the extent to which worker participation is adversely affected by the fear that adverse employment consequences will result from participation in medical surveillance programs. This problem was emphasized by the testimony of many workers and worker representatives. The problem was seen as widespread throughout industry, and as having already seriously affected participation in medical surveillance programs under several prior OSHA health standards which lack MRP benefits. Evidence concerning the issue of worker of fear impeding participation was not confined to testimony from worker representatives, but was verified by a wide variety of experts and industry representative as well. Current industry practices are such that genuine economic disincentives to participation exist. These disincentives will be intensified by the new lead standard, particularly as a result of the temporary medical removal provisions. Finally, OSHA's adoption of MRP as a means of effectuating medical surveillance has been significantly influenced by experience gained under the Black Lung Medical Surveillance and Transfer Program created by Section 203 of the Federal Coal Mine Health and Safety Act of 1969. Experience under this progam reveals the extent to which economic disincentives adversely affect participation even in medical surveillance programs where job transfer and limited economic protection are guaranteed. For all of the preceding reasons, MRP was included in the final standard as a means of maximizing meaningful participation in medical surveillance provided to lead-exposed workers.

4. *MRP as a means of allocating the costs of temporary medical removals.* Temporary medical removal is fundamentally a protective, control mechanism, as is the elimination of air lead emissions through the use of engineering controls. The use of a temporary removal carries the possibility of dislocation costs to an employer through the temporary loss of a trained and experienced employee. And, a removed worker might easily lose substantial earnings or other rights or benefits by virtue of the removal. These costs are a direct result of the use of temporary medical removal as a means of protecting worker health. MRP is meant to place these costs of worker protection directly on the lead industry rather than on the shoulders of individual workers unfortunate enough to be at risk of sustaining material impairment to health due to occupational exposure to lead. The costs of protecting worker health are appropriate cost of doing business since employers under the Act have the primary obligaton to provide safe and healthful places of employment.

One beneficial side-effect of MRP will be its role as an economic incentive for employers to comply with the final standard. Increasing public attention has been focused on the desirability of governmental regulations incorporating economic incentives to compliance, and though not adopted specifically to serve this purpose, MRP will nonetheless strengthen the protection afforded by the lead standard due to its inevitable impact on compliance. Employers who make good faith attempts to comply with the lead standard should experience only small numbers of temporary medical removals—removals which can be absorbed by available transfer alternatives. Employers who make only cursory attempts to comply with the cental provisions of the standard will find that the greater the degree of noncompliance, the greater the number of temporary medical removals and associated MRP costs. MRP will serve as a strong stimulus for employers to protect worker health, and will reward employers who through innovation and creativity devise new ways of protecting worker health not explicitly contemplated by the formal standard.

5. *Alternatives to MRP considered by OSHA.* Before deciding to include MRP in the final lead standard, OSHA considered and rejected several possible alternatives. Mandating that employers compel all employees to participate in medical surveillance offered under the standard was rejected in part due to the fact that this step could not possibly assure the voluntary and meaningful worker participation upon which success of the standard's medical surveillance program depends. Mere participation is not an end in and of itself. For example, no degree of compulsion can prevent workers form obtaining and misusing chelating agents so as to yield apparently low blood lead level results. No degree of compulsion can force workers to reveal subtle, subjective symptoms of lead poisoning which a physician needs to know as part of an adequate medical history.

In addition, OSHA declined to mandate worker participation in medical surveillance due to the substantial personal privacy and religious concerns involved in health care matters. Governmental coercion in this sensitive area would prove counterproductive to the goal of meaningful worker participation. Finally, the foregoing arguments against mandatory participa-

tion arise irrespective of whether or not MRP benefits are provided to removed workers. Thus, mandatory worker participation with MRP is no more satisfactory an alternative than mandatory worker participation without MRP.

A second alternative rejected by OSHA was to mandate that temporary medical removals occur only at the election of individual workers at risk of sustaining material impairment. Workers under this condition should have no reluctance to participate in medical surveillance since they would control the consequences of participation. This alternative would merely inform workers of their health status without providing affirmative protection to those who needed it. Workers who should be removed would far too often choose not to be in the absence of MRP economic benefits, and employers would even be prevented from utilizing removal in situations where it was imperative. These results are inconsistent with the preventive purposes of the Act, and thwart the level of health protection which temporary medical removals can provide.

A third alternative rejected by OSHA was to permit the use of respiratory protection in lieu of temporary medical removal. OSHA rejected this alternative because of the inherent limitations of respiratory protection. The need to temporarily remove a worker from lead exposure is a matter of medical necessity. Relying on a respirator to protect a worker from exposure beyond such a point is unacceptable in light of the numerous inadequacies of respiratory protection. OSHA does not intend, however, to preclude the use of respirators where appropriate as one means (in conjuction with other industrial hygiene measures) of seeking to assure in advance that no worker need ever be removed. The need to temporarily remove a worker due to medical reasons will rarely arise without advance warning, thus providing an advance opportunity to use respiratory protection where appropriate. If respiratory protection proves effective in practice, then there will be no need to temporarily remove a worker.

6. *Feasibility.* MRP as structured in the final standard is a feasible regulatory device. Elevated blood lead levels will in practice be the primary basis for the temporary medical removal of workers. Blood lead level removal triggers are phased in over a 4-year period as follows: (1) Beginning upon the effective date of the standard, the temporary medical removal of employees having blood lead levels at or above 80 μg/100 g of whole blood; (2) beginning 1 year after the effective date of the standard, the temporary medical removal of those having blood lead levels at or above 70 μg; (3) beginning 2 years after the effective date of the standard, the temporary medical removal of those having blood lead levels at or above 60 μg; and (4) beginning 4 years after the effective date of the standard, the temporary medical removal of those having average blood lead levels over the past 6 months at or above 50 μg. This 4-year phasing in process has been designed such that employers will have a reasonable opportunity to reduce their current employees' blood lead levels before particular blood lead level removal triggers come into effect.

Employers who comply with the new standard should experience few temporary medical removals, and thus a minimal economic impact from MRP. The gradual phasing in schedule will enable employers to structure their production operations so that transfer opportunities are provided to all removed workers. Four years will allow collective bargaining relationships to be altered if necessary so that all removals can be smoothly accommodated. Once MRP has been fully phased in and employers are fully in compliance with the new standard, only a small percentage of the exposed work force (much less than 6 percent should need temporary medical removals at any point in time. With experience, employers should acquire the ability to preclude even most of these temporary medical removals by removing sources of lead exposure which are causing the blood lead levels of particular workers to climb toward a removal trigger.

OSHA anticipates no substantially greater impact of MRP upon small employers than upon large employers. The lead record rejects any suggestion that small companies by virtue of size are incapable of protecting worker health. And, the level of health protection an employer provides, not size, will be the prime determinant of an employer's MRP costs.

7. *Temporary medical removal and return criteria.* The ultimate blood lead level removal criteria derive from the conclusion that long-term blood lead levels in excess of 40 μg/100 g of whole blood must be avoided. Removal at a blood lead level of 60 μg is mandatory since this level will invariably represent numerous months of a blood lead level in excess of 40 μg during the overall period of absorption up to 60 μg and excretion down below 40 μg. Removal when an average blood level over the past 6 months is at or above 50 μg is required since this long-term average indicates a worker's blood lead level is either steadily increasing above 40 μg or has stabilized appreciably above 40 μg. Blood lead level measurements have a significant inherent measurement variability. To reduce the impact of this factor, both the temporary removal and return of workers due to elevated blood lead levels are based on the combined results of at least two independent measurements.

The standard provides that the return of a worker removed due to an elevated blood lead level to his or her former job status is also governed by the worker's blood level. During the years that the ultimate removal criteria are being phased in, the return criteria have been set to assure that a worker's blood lead level has substantially declined during the period of removal. A worker removed due to a blood lead level at or above 80 μg must be returned when his or her blood lead level is at or below 60 μg/100 g of whole blood; if removed due to a level at or above 70 μg, return shall follow when a level of 50 μg/100 g of whole blood is achieved. Once the ultimate removal criteria have been phased in, return depends on a worker's blood lead level declining to 40 μg/100 g of whole blood.

The standard requires that an employee be temporarily removed from lead exposure whenever a final medical determination results in a medical finding, opinion or recommendation that the employee has a detected medical condition which places the employee at increased risk of material impairment from exposure to lead. The term "final medical determination" refers to the outcome of the multiple physician review mechanism, or alternative medical determination mechanism, used pursuant to the medical surveillance provisions of the standard. Temporary removal based on medical determinations is included in MRP as a necessary complement to removal based on elevated blood lead levels. During the phasing in of MRP, workers experiencing adverse health effects from lead absorption deserve a temporary medical removal despite the fact that their blood lead levels do not yet require a removal. Even after MRP has been fully phased in, situations may arise where lead poisoning occurs in a worker having a blood lead level below the removal criteria, or a worker may acquire a temporary nonwork-related medical condition which is worsened by lead exposure. In addition, temporary medical removal may in particular cases be needed for workers desiring to parent a child in the near future or for particular pregnant employees. Some males may need a temporary removal so that their sperm can regain sufficient viability for fertilization; some women may need a temporary removal to slightly lower their blood lead levels so that prior lead exposure will not harm the fetus.

A worker removed as a result of a physician determination must be pro-

vided reasonable follow-up medical surveillance during the period of removal. The worker must be returned to his or her former job status when a final medical determination indicates that the employee no longer has a medical condition which places the employee at increased risk of material impairment to health from exposure to lead. The standard does not explicitly define the phrase "material impairment to health" due to the innumerable contexts in which the temporary medical removal of a particular worker might be appropriate. Application of this phrase in a manner consistent with sound medical practice will result from the standard's physician determination mechanisms.

8. *Removal from work at or above the action level.* In most cases where a worker is removed due to an elevated blood lead level or a medical determination, the standard provides that removal be from work having an exposure to lead at or above the 30 $\mu g/m^3$ action level. Work having an exposure to lead at or above the action level refers to the worker's daily 8-hour time weighted average (TWA) exposure to lead. As in all cases where the term "action level" is used, exposure is to be computed without regard to the use of respirators. This job placement limitation for most removals was based first on the need to assure that a worker not be removed to work having lead exposure high enough to further increase risks to health. The second reason for this limitation was to assure that a worker be removed to work having lead exposure low enough to enable the gradual excretion of excess lead so as to permit return of the worker to his or her former job.

During the first year following the effective date of the standard, however, workers removed due to blood lead levels at or above 80 μg need only be removed from work having a daily eight hour TWA exposure to lead at or above 100 μ/m^3. During the second year following the effective date of the standard, workers removed due to blood lead levels at or above 70 μg need only be removed from work having a daily eight hour TWA exposure to lead at or above 50 μ/m^3. These criteria were chosen consistent with the goal of effecting moderate worker blood lead level declines during the first 2 years of the standard's effect, while at the same time providing employers an opportunity to comply with the new lead standard and thereby avoid substantial MRP costs.

OSHA recognizes that situations may arise where removal to lead exposure just below the action level is inadequate to protect worker health. These situations can and should be dealt with on an individual basis in the course of a thorough medical examination conducted pursuant to the standard. The standard implies no unnecessary restriction on a physician's ability to recommend individual actions more protective than the standard's requirements. The standard does, however, embody the judgment that, at a minimum, all removed workers must be removed from work having an exposure to lead at or above the action level.

9. *Return of an employee to his or her former job status.* The standard provides that once a period of removal or limitation has ended, an employee must be returned to his or her former job status. Former job status refers to the position the worker would likely be occupying if he or she had never been removed. If, but for a temporary medical removal, a worker would now be working at the same position held just before removal, then the employer may return the worker to that job. Otherwise, the employer may return the worker consistent with whatever job assignment discretion the employer would have had if no removal had occurred.

10. *The implementation of temporary medical removals.* It is OSHA's intention that employers implement each temporary medical removal in a manner consistent with existing collective bargaining agreements. MRP is meant to override existing contractual obligations only to the extent that specific contract provisions directly conflict with the terms of MRP. MRP has been structured to guarantee maximum employer flexibility in effectuating MRP while minimizing the possibility of conflicts with existing collective bargaining agreements or other relationships. The standard does not specify what an employer must do with a removed worker; practically any action is permissible provided the worker is not exposed to lead at or above the action level. In most cases OSHA expects that a removed worker will be transferred to a low lead exposure position during the period of removal. OSHA intends that these transfers be to work that the employee is capable of performing and which is located in the same geographical area as the employee's normal job. Alternatively, the worker might work shorter hours at his or her normal job such that the time weighted average exposure is below the action level. The worker might even be temporarily laid off or arrangements might be made for the removed worker to temporarily perform comparable work at a non-lead-related facility. OSHA's intention is that the choice between these or other alternatives be a prerogative of the employer unless this flexibility is altered by some countervailing obligation. A removed worker is provided no automatic right to veto an employer choice which meets the standard, but similarly, the standard provides no right for an employer to simply override existing contractual commitments to either removed employees or to other employees.

Arguments have been made that MRP poses major conflicts with existing collective bargaining relationships. To the extent conflicts exist, they should be easily resolved during the lengthy phasein period for MRP. Worker transfer programs with economic protection have had longterm use throughout industry in a variety of contexts. These many programs have apparently melded quite well with collective bargaining relationships, and there is no evidence which suggests that the implementation of MRP will proceed any differently.

The mechanics of each temporary medical removal is a matter for the employer, the removed employee, and his or her collective bargaining representative, if any work out in the context of existing relationships. Some employers and unions may decide to modify their contractual agreements to specify how each removal will be accomplished, and the 4-year period during which MRP is phased in will provide ample opportunity for modifications to be made.

11. *Employer flexibility pending a final medical determination.* In some instances a dispute may arise between an initial physician, chosen by an employer, and a second physician, chosen by the employee, as to the appropriateness of removing or returning a particular worker. Pending the outcome of the standard's physician review mechanism, the standard provides that an employer may act in a manner consistent with the medical findings, opinions or recommendations of any of the physicians who have examined the employee, with two exceptions. First, if an employee was removed or limited as to exposure to lead due to a final medical determination which differed from the opinion of the examining physician chosen by the employer, then the return of the worker (or the removal of limitations placed upon the worker) must be delayed until after a final medical determination has been reached on these issues. The second exception applies to situations where an employee has been on removal status for the preceding 18 months due to an elevated blood lead level, and a medical determination is being obtained as to continued removal of the worker. In this very limited instance the standard requires that the employer maintain the status quo—i.e., removal—until the full physician review mechanism has had an opportunity to form a final medical determination concerning the employee.

12. *Definition of MRP benefits.* The standard requires an employer to provide MRP benefits to a worker on each occasion that a worker is removed from exposure to lead or otherwise limited. This requirement is defined as meaning that the employer must maintain the earnings, seniority and other employment rights and benefits of a worker as though the worker had not been removed or otherwise limited. In most cases this will simply mean that an employer must maintain the rate of pay of a worker transferred to a low-lead-exposure job. The standard, however, uses the all-encompassing phrase "earnings, seniority and other employment rights and benefits" to assure that a removed worker suffers neither economic loss nor loss of employment opportunities due to the removal. The standard explicitly requires that an employer maintain the seniority of a removed worker due to the crucial role that seniority rights might play in defining a worker's economic benefits. In addition, the standard by implication rejects industry suggestions that the provision of MRP benefits should be contingent upon the employer's ability to locate an available transfer position. Such an available position precondition would end MRP's role as a means of effectuating meaningful participation in medical surveillance.

13. *Duration of MRP benefits.* The standard requires that up to 18 months of MRP benefits be provided to a worker on each occasion that he or she is removed from exposure to lead. The prime determinant of this figure is the rate at which workers will naturally excrete lead once removed from significant exposure. The vast majority of removals will be of far shorter duration than 18 months, but some longterm leadworkers will likely require 18 months of removal.

14. *Employees whose blood lead levels do not adequately decline within 18 months of removal.* The standard establishes special procedures to apply in those rare situations where an employee's blood lead level has not adequately declined during 18 months of removal. A medical examination must be made available to obtain a final medical determination as to whether or not the worker may be returned to his or her former job status. In some situations, continued removal may serve no major purpose since the damage done to the worker's body is beyond the point of correction. In this event a physician might permit return of the worker to his or her former job status provided the worker's blood lead level remains fairly constant. In other situations a physician might recommend several additional months of removal where a worker's blood lead level is continuing to decline toward an acceptable level. In rare situations a physician might determine after 18 months that a worker's body burden of lead is so high that the worker will never be able to safely return to prior exposure. All of the preceding situations can best be evaluated and resolved by a final medical determination obtained pursuant to the standard.

Where the worker may not yet be returned to his or her former job status, the employer must continue to provide MRP benefits until either the worker is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status. The standard also provides that if a final medical determination returns a worker to his or her former job status despite what would otherwise be an unacceptable blood lead level, then any subsequent questions concerning removing the worker again are to be decided solely by a final medical determination. Automatic temporary medical removal due to an elevated blood lead level is no longer afforded to such a worker.

15. *Follow-up medical surveillance during the period of employee removal or limitation.* The standard provides that during the period of time that an employee is removed from exposure to lead or otherwise limited, the employer may condition the provision of MRP benefits upon the employee's participation in reasonable follow-up medical surveillance. The standard does not mandate worker participation in follow-up medical surveillance, but rather permits the denial of economic protection to those unwilling to participate in procedures necessary for MRP's smooth operation.

16. *MRP and workers' compensation claims.* In rare situations, a removed worker might be eligible for temporary partial or total disability workers' compensation payments for lost wages. Existing industry practices formed the basis for provisions responsive to these situations. If a removed worker files a claim for workers' compensation payments for a lead-related disability, and an award is made to the worker for earnings lost during the period of removal, then the employer's MRP benefits obligation is reduced by that amount. MRP benefits must be provided pending disposition of any filed claim subject to a credit or payback once an award is finally made.

17. *Other credits.* An employer should not have to provide MRP benefits which duplicate compensation which a removed worker is receiving from other sources for earnings lost during the period of removal. Accordingly, the standard explicitly provides that the employer's obligation to provide MRP benefits to a removed worker shall be reduced to the extent that the worker receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or from employment with another employer made possible by virtue of the removal.

18. *Voluntary removal or limitation of an employee.* A final element of the standard with respect to MRP provides that where an employer, although not required to do so, removes an employee from exposure to lead, or otherwise places limitations on an employee due to the effects of lead exposure on an employee's medical condition, the employer shall provide MRP benefits to the employee. The purpose of this requirement is to avoid the possibility that some employers will attempt to evade the MRP program by voluntarily removing workers (without economic protection) shortly before the standard would mandate removal.

19. *Legal authority for MRP.* The Occupational Safety and Health Act contains ample legal authority for the adoption of MRP as a preventive health mechanism. OSHA's legal authority to adopt MRP was perhaps the greatest source of controversy during the lead proceeding, with industry representatives uniformly arguing that no legal authority for MRP exists. It is true that the Occupational Safety and Health Act contains no language which either explicitly requires or expressly authorizes the inclusion of MRP in OSHA health standards. The legislative history of the Act reveals no evidence that Congress gave any consideration to the appropriateness of MRP as a protective health mechanism. Though these factors are important, they are by no means dispositive of the legal authority question. The Act does not constitute a rigid congressional codification of the only permissible devices OSHA can employ to reduce occupational injury and disease. Rather, the structure and specifics of the Act reflect the congressional decision to create an expert administrative agency with broad regulatory powers to fashion reasonable protective regulations concerning occupational injury and disease in light of agency experience and expertise. The legal authority issue depends on the purposes to be served by MRP, the extent to which MRP is a reasonable response to a genuine problem, and the extent to which MRP is consistent with the Act's grants of and limitations on rulemaking authority by OSHA.

As previously explained, MRP is a protective, preventive health mechanism carefully structured to (1) maxi-

mize meaningful participation in the standard's medical surveillance program, (2) facilitate the use of temporary medical removals, and (3) appropriately allocate the costs of temporary medical removals. These functions are all directly related to the Act's purpose articulated in section 2(b) "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions * * *." MRP responds to genuine occupational health problems and substantially adds to the level of overall worker protection afforded by the final lead standard.

MRP flows directly from and is fully consistent with the Act's express language. Section 6(b) authorizes broad OSHA discretion in the promulgation of each occupational health standard, defined by section 3(8) as a "standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." MRP meets this definition, and further satisfies the dictate of section 6(b)(5) that occupational health standards be based on "experience gained under this and other health and safety laws." MRP is also a regulatory device which addresses the Congressional directive in section 2(b)(5) that healthful working conditions be provided "by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems." OSHA's adoption of MRP is a direct result of the proven value of this protective mechanism, and by adopting MRP, OSHA is following the Congressional mandate in section 2(b)(4) that worker health be provided "by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions." MRP is needed to meet section 6(b)(5)'s requirement that health standards be set to protect all workers over entire working lifetimes because without temporary medical removals, it is doubtful that compliance with the remainder of the lead standard could achieve this mandated level of protection. MRP is also needed to achieve the benefits of medical surveillance envisioned by section 6(b)(7), and section 8(g)(2)'s grant of general rulemaking authority provides additional support for MRP's adoption. The preceding statutory provisions demonstrate that Congress indended OSHA to have broad flexibility in mandating remedial measures, and that MRP resides well within the scope of the flexibility Congress afforded.

The legal sufficiency of MRP's adoption is strengthened by comparable medical removal and economic provisions contained in the Federal Coal Mine Health and Safety Act of 1969, amended by the Federal Mine Safety and Health Amendments Act of 1977. MRP was not considered by Congress during the passage of the OSH Act, but this is hardly surprising in view of the Act's expansive coverage of practically every industry in the country. Congress established a broad regulatory framework without attempting to identify and respond to individual problems of specific industries. The 1969 Coal Act, however, represents the culmination of decades of intense Congressional attention to one extremely hazardous industry—coal mining. The 1969 Coal Act was a comprehensive response to coal mine hazards, including thirty statutory pages of specific health and safety regulations as detailed as any existing OSHA standard. In the context of its comprehensive review of coal mining, Congress considered the appropriateness of an MRP-type program with regard to coal mine workers pneumoconiosis. Congress went beyond merely authorizing the adoption of MRP in this context to explicitly mandate the adoption of a MRP program. Authorization to adopt MRP with regard to other forms of mining was provided by Congress in the 1977 amendments to the Coal Act. Thus, in both of the instances where Congress has considered the appropriateness of MRP in an occupational safety and health statute, Congress voiced approval of MRP. This clear Congressional approval of MRP programs is indicative of how Congress likely would have acted had MRP been considered during passage of the Occupational Safety and Health Act.

Contrary to various suggested arguments, MRP does not violate section 4(b)(4)'s mandate that health standards not act "to supersede or in any manner affect any workmen's compensation law or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment." Section 4(b)(4) was addressed in the legislative history, and has been applied in case law to date, only as a means of either preventing private causes of action under the OSH Act, preventing federalization of state workmen's compensation law, preventing duplication of federal regulations, or preserving state regulatory authority over safety and health matters. MRP is unrelated to all of these policies, including the policy against federalization of state workmen's compensation law. MRP neither intends nor operates to define or expand state law in this area. To the contrary, if MRP as a preventive health mechanism succeeds as intended, there hopefully will be no occupational lead disease left for state workmen's compensation law to address. To the extent such a result constitutes a conflict with state law, it is fully intended by the Act.

Various legal arguments were also presented in the lead proceeding to the effect that MRP somehow impermissibly conflicts with federal labor law, and with the Equal Pay provisions of the Fair Labor Standards Act. Having researched and considered these arguments, OSHA finds them to be without merit.

D. FEASIBILITY

In setting standards for toxic substances, the Secretary is required to give due regard to the question of feasibility. Section 6(b)(5) of the Act mandates that the Secretary shall set the standard which most adequately assures employees' safety and health "to the extent feasible, on the basis of the best available evidence." Additionally, in the development of occupational safety and health standards, "considerations shall be the latest available scientific data in the field, experience gained under this and other health and safety laws."

OSHA has developed a rulemaking record which has enabled OSHA to promulgate a final lead standard which it can confidently state is feasible for all affected industries. The final standard has a PEL of 50 $\mu g/m^3$ as an 8-hour TWA, which, within 90 days, must be met by any combination of engineering controls, work practices (including administrative controls), and personal protective equipment. Compliance with the PEL exclusively by engineering controls and administrative controls including work practices is required to be phased-in over time according to an implementation schedule. The schedule varies by industry on the basis of technological and economic limitations on each industry's ability to comply, and for five industries whose compliance period in the schedule exceeds 1 year, includes an interim exposure limit of 100 $\mu g/m^3$.

The rulemaking record is comprised of studies and assessments of technological feasibility, cost data on various items of compliance, and economic impact assessments from the public participants as well as OSHA consultants. Most of the evidence assessed the feasibility of compliance with the proposed 100 $\mu g/m^3$ standard although various alternatives received attention. On the basis of this information, OSHA has constructed a compliance scheme designed to provide optimal protection to workers, to allow for necessary technological change, and to

encourage long run, cost-effective solutions to compliance problems.

In establishing the requirements of this standard and evaluating whether compliance is feasible, OSHA has identified affected industries and investigated potential compliance methods including the available technology in those industries. It has attempted to estimate the length of time necessary to implement the technology required, taking into account firms' need to plan, construct, test, and refine their efforts.

The implementation schedule also takes economic factors into account in that it incorporates time periods which OSHA expects will enable firms in each industry to comply with the standard without serious economic repercussions to the industry as a whole. Where specific costs of compliance could be assessed they are presented in the industry summaries.

1. *Technological considerations.* In general, inquiry into technological feasibility is only relevant to compliance with the exposure limits in the standard. It is clear that compliance with the 50 $\mu g/m^3$ PEL will be immediately feasible insofar as the standard permits respirators to be used where the required engineering and administrative controls including work practices are not sufficient. The primary issue is whether the PEL and interim level can be achieved in the time set forth in the implementation schedule solely by engineering and work practices. OSHA has concluded that compliance in this manner is possible through the use of presently available process and control technology or foreseeable technological developments.

Testimony and comments from most of the engineers and industrial hygienists in addition to OSHA's past experience with other standards for toxic substances has led OSHA to conclude that rigorous and innovative application of known, conventional techniques for isolating workers from the sources of exposure to toxic substances will, in almost all cases, enable employers to comply with the standard. Compliance in this manner is predicted to be completed in 1 to 5 years depending upon the complexity and extent of change required.

In some cases where accurate identification of exposure sources is difficult or where conventional control techniques are ineffective, reliance on new technology (e.g., new types of control or process equipment or alterations to the production process itself) may be necessary.

OSHA has attempted to be sensitive to the complexities and various aspects of the process of technological change in its attempt to incorporate new technology into its compliance scheme for this standard. This has facilitated prediction of the kinds of technology likely to arise in response to the standard and the time period within which they can be expected, thus allowing OSHA to know, in general terms, what is feasible. It has also suggested different options as alternatives in designing the standard so as to achieve optimal compliance strategies in terms of protective capability and compliance cost.

The following is a summary of the discussion of the technological factors considered in the major industries affected by the standard. Attachment D to the preamble (feasibility) contains a full discussion of these factors including a process-by-process analysis of the problems raised and the range of possible technical solutions to those problems in the most impacted industries.

a. *Primary smelting and refining.* The primary lead industry ranks fifth (after iron, aluminum, copper, and zinc) in tonnage of metals produced in this country. Four companies—ASARCO, St. Joe Minerals, Amax and Bunker Hill—own the seven facilities that smelt and refine primary lead. Western smelters date from the early part of this century; smelters for the Missouri lead belt were built during the 1960's. An estimated 3,055 employees in the primary smelting sector are exposed to lead. (Ex. 26, p. 5-3.)

Primary smelting involves three basic steps—sintering, smelting, and refining. In sintering, a concentrate of galena ore (PbS) is mixed with fluxes and roasted to drive off sulfur dioxide. This operation produces "sinter," a mixture of lead, lead oxide, and slag, which is smelted by a blast furnace at temperatures above 2,000° F. The blast furnace reduces the constituents of the charge (coke, fluxes, and recycled slag sinter) into molten lead and slag. Fifteen ton ladles on overhead bridge cranes transport the molten lead to open drossing kettles about 14 feet in diameter. These kettles rest in firebrick settings that keep the lead at the temperatures needed (700° to 1,200° F.) for drossing. During drossing, the molten lead from the blast furnace is stirred, and the impurities (dross) are skimmed. The impurities in lead ores vary. Colorado ore, unlike Missouri ore, has a high copper content. The lead is further refined through a softening process that removes antimony and other metals.

Because pyrometallurgy (the extraction of metal from ores by heat) requires extreme heat at variable temperatures, control of emissions in primary smelting has been difficult. For example, material that splashes or drips during transfer of molten lead collects and freezes at the rim and pouring lip of the ladle. These thick, lumpy accretions can interfere with a tight fit between hood and vessels. Ore with significant amounts of copper produces copper matte, which corrodes iron, steel, and most steel alloys.

Thus, the corrosive property of the molten metal has prompted the use of open vessels and crude mechanical methods. The nature and scale of primary smelting have made the application of standard engineering techniques difficult. While the problems are difficult, the hearing record indicates that, with new techniques and methods, they are surmountable.

After reviewing the record, OSHA has concluded that in all operations except perhaps maintenance work and where process upsets occur, the 100 $\mu g/m^3$ level is feasible within the 3-year time period in the implementation schedule through retrofitting and some modification of existing processes. This conclusion is not in agreement with the conclusions of DBA and lead industry representatives. (Ex. 355, pp. 122-123.) After reviewing all the exhibits and testimony, OSHA is convinced that the reason for this disagreement is not so much a matter of differing professional judgment in what could be achieved, but in the interpretation of the term "feasibility." Industry representatives' and DBA's claims of infeasibility of the 100 $\mu g/m^3$ level (and even the present 200 $\mu g/m^3$ standard) are, in part, based on the view that for an exposure level to be feasible it must be attainable immediately at all work stations at all times. (Tr. 3971-72; 796, 797.) This interpretation was rejected in *SPI* v. *OSHA.* (Vinyl chloride) and *AISI* v. *OSHA* (coke ovens). DBA and industry representatives also limited their considerations to retrofit technology only and did not generally consider technological change unless it had been proved successful and could be implemented immediately. (Tr. 5793; Tr. 796-97; Tr. 872-73; Ex. 26, pp. 4-5, 4-8; Ex. 29(29A).) Long-run technological solutions were not considered, even those which may be more cost-effective. This creates an a priori limitation on the gamut of possible approaches to compliance.

OSHA has concluded that compliance with the PEL may require up to 10 years for this industry. Primary smelting is not generally regarded as innovative. Dr. First characterizes the history of technological change in this industry as conservative and having "a strong bent to make changes very slowly and in small steps." (Ex. 270, p. 17.) Other limitations on the rate of change are the size and complexity of the hot metal operations in these plants.

Further, the degree of technological change necessary to achieve 50 $\mu g/m^3$ may require development and implementation of innovative technology,

possibly including alternatives to pyrometallurgy. OSHA believes that the 10 years provided in the implementation schedule represent maximum flexibility for compliance by an industry which may need to rebuild in part or in whole to achieve a healthful workplace.

Hydrometallurgical production methods are likely to be commercially viable within the 10-year limit; however, less comprehensive forms of process redesign and/or adaptation of developmental projects discussed in the feasibility attachment on specific operations may prove to be sufficient. (Tr. 1463.)

Witnesses at the hearing were optimistic about the development of new processes for primary smelting. Knowlton Caplan, president of IHE, while skeptical about the current technological feasibility of a 100 $\mu g/m^3$ standard, expressed faith in the future development of "more effective and less costly engineering systems." (Tr. 5723)

Frank Block, research director at the Reno Metallurgy Research Center for the Bureau of Mines, described one such potential development, a hydrometallurgical method for recovering lead from galena concentrate. (Ex. 128; Tr. 3386-34-17.) This process does not involve any sintering or smelting and may require no refining. It leaches galena concentrate in a hot solution of ferric chloride to produce lead chloride, which, in turn, is electrolyzed to produce metallic lead. The new process generates no sulfur dioxide. It would be more economical than current techniques and could operate at smaller capacity. It could also be used with Missouri or Western concentrates.

b. *Secondary smelting and refining.* Secondary smelters produce much of the lead used in the United States. The industry, however, is poorly defined. The estimated number of plants, for example, has ranged from 40 to 140 (Ex. 138D, p. 1). Secondary smelters recycle lead from discarded batteries and other waste materials. This recycling involves two phases: smelting of the old material to recover crude lead and, in some operations, refining of the crude lead to produce pure lead and alloys for reuse.

Secondary lead smelting plants take scrap lead material from many sources, but the majority (61 percent) comes from scrapped lead-acid batteries. Lead cable covers, linotype, and recovered fume and drosses are other major sources. Some scrap is reprocessed to remove lead from other materials. Battery plates and terminals, for example, are mechanically separated, and lead-copper cables are heated to melt off the lead. Materials containing lead oxide may be processed through a blast furnace to reduce the proportion of oxide to lead metal. Lead from the blast furnace and scrap containing lead metal may be melted in refining kettles and treated by drossing to remove copper and other impurities.

Following the drossing, the lead may be "softened" by removing antimony that has been previously added to give the lead hardness and strength. This removal is done by air oxidation in a reverberatory furnace or by oxidative slagging with sodium dioxide or sodium nitrate fluxes. Once the lead has been refined to a desired composition, it is cast into various shapes or fabricated into wires, pipes, sheets, or solders. (Ex. 26, p. 5-29.)

Approximately 4,400 workers in the industry are exposed to lead. (Ex. 26, p. 2-13) Exposure levels vary among different operations, with the highest occurring in blast furnace areas. DBA analyzed OSHA compliance data and found that prior to August 1976, 83 of 171 air lead samples exceeded 200 $\mu g/m^3$. Data after this date showed 102 of 129 air lead levels above 100 $\mu g/m^3$ and 87 of 129 above 200 $\mu g/m^3$. (Ex. 26, pp. 2-17, 2-18.)

The rulemaking record contains uncontroverted evidence that exposures in secondary smelting operations can be controlled below the 100 $\mu g/m^3$ interim level. Based upon its study of seven representative smelters, Dr. Thomas Smith testified for DBA that compliance by secondary smelters with a standard of 100 was technologically feasible. (Tr. 798) One company, Keystone Resources, which operates four secondary smelters across the country commented that "our controls are such that we feel we could also meet the action level (50 $\mu g/m^3$) specifications" (Ex. 3(39)). Before the implementation of engineering controls, average air lead at Keystone Resources was 1,036 $\mu g/m^3$. The controls reduced the average to 126 $\mu g/m^3$. (Ex. 452, p. A-137) The results of a recent OSHA inspection at another secondary smelter indicate that it is presently in compliance with the 100 $\mu g/m^3$ level. (Ex. 26, p. 5-38; Tr. 956.)

Attaining these levels, however, may in a few instances require extensive modifications of current processes. IHE, in a study for the Lead Industries Association, analyzed one plant in detail and concluded that conventional engineering techniques alone could not control battery breaking or scrap and slag handling to 100 $\mu g/m^3$ airborne lead. (Ex. 138D, p. 8) DBA doubted that manual battery breaking, slag and scrap handling, and some maintenance operations could be controlled without process redesign. (Ex. 26, p. 5-29)

The rulemaking record describes new approaches that may be necessary to comply with the PEL. Michael Varner, corporate manager for ASARCO's Department of Environmental Sciences, and Melvin First, a professor of environmental health engineering at Harvard, discussed the possibility of innovations in drossing, such as continuous vacuum drossing. (Tr. 2387-80; Tr. 6530-31.) Svend Bergsoe, president of Paul Bergsoe and Son of Glostrup, Denmark, described in detail his new technique for smelting scrap lead products. (Tr. 5142-5204.) His process eliminates one of the hardest to control processes, battery breaking, by using a new type of furnace that not only digests the entire battery, but also use the battery cases to supply 50 to 80 percent of the fuel required to run the furnace. (Tr. 5194.) In addition a flash furnace agglomerates the flue dust, and the process is entirely enclosed.

With the possible exceptions of installing afterburner and agglomeration systems on existing furnaces (Tr. 5177, 5192), the Bergsoe process would require construction of an entirely new smelting plant, estimated to cost $2.5 million for a 20,000-ton-per-year production, and would take 2 years for construction (Tr. 5192). This cost includes the scrap handling facility (Tr. 5199), furnace, afterburner, baghouse, refinery, and even canteen and washing facilities.

c. *Battery manufacturing.* The battery industry is the largest single user of lead in the United States. The industry produces both SLI (starting-lighting-ignition) batteries and industrial batteries, although the latter accounts for only 7 percent of the industry's production. 138 firms operate 200 plants, which vary tremendously in size and capacity. On one hand, the seven largest firms operate nearly 70 plants and account of over 90 percent of the batteries sold. On the other, 95 battery plants employ fewer than 20 people. Of the 16,000 persons employed by the industry, approximately 12,800, or 77 percent, are exposed to lead. (Ex. 26 p., 5-42.)

Manufacture of batteries begins with production of lead oxide, either by the Barton process, which oxidizes lead in the molten state, or more often, by the ball mill process, in which frictional heat generated by tumbling lead pigs or balls produces lead oxide. Lead oxide powder is mixed into a paste and pressed onto grids cast from lead. The pasted plates are cured, stacked by hand or machine, and connected with molten lead ("burned") into groups that form the individual cells of a battery.

All these processes, especially loading and unloading at each step, generate contamination. The racks that carry the pasted plates from one operation to another are additional sources

of lead dust. Dust forms as well during reclamation of rejected grids, parts, and pasted plates, and during removal of plate groups from defective batteries.

The record indicates that in the battery industry available methods can control employee air levels of lead below 50 $\mu g/m^3$, as an 8-hour TWA, for all major processes. Indeed, more than 40 percent of employees exposed to lead in this industry may already have TWA exposures of less than 50 $\mu g/m^3$. (Ex. 26, p. 5-45.)

Meier Schneider, an experienced industrial hygiene engineer testified that "with proper engineering control coupled with good maintenance and good work practices, proper design of process to minimize emissions, and education of workers and good hygiene that we can, today, achieve levels in the (work room) atmosphere of less than 50 micrograms per cubic meter of air. (TR. 2065-2066) In his study of 17 plants, Bill Thomas of CAL-OSHA concluded that "the general use of respirators should not be needed in a well-designed and managed lead storage battery plant." (Ex. 101A) Similarly, Caplan, testifying on a detailed study of 12 plants IHE did for the Battery Council International ("BCI"), concluded that "technically, if all the things that we recommend were done and well done, it is our opinion that we would be able to control to 100."

It is OSHA's judgment that these systems proposed by IHE, when combined with good work practices and administrative controls will be effective to control exposure below the PEL, primarily because they provide total control of the process and minimize the opportunity for fugitive emissions. As Dr. First stated, "The application of good control methods almost always results in air concentrations far lower than the standard for which they were designed". (Ex. 270, p. 19.)

IHE's specifications are designed primarily for larger operations. They assume that production is continous and that operators remain at each work operation for a full shift, assumptions that do not hold for small plants. Thus, the engineering controls designed by IHE will be effective but may not be appropriate for small plants. The record suggests that less complex controls may be feasible and effective for small plants. Good housekeeping appears especially important. Both Meier Schneider and Albert Stewart, an industrial hygienist who formerly conducted lead inspections for OSHA, testified that control costs might be held down by approaching problems on a case-by-case basis and by emphasizing the use of good housekeeping and techniques for handling materials along with imaginative engineering to minimize the need for ventilation. (Tr. 2057-2077.) Dr. Mirer, the UAW's industrial hygienist, noted that of 30 plants surveyed by the UAW, the one with the lowest lead exposures had only nine workers. (Tr. 1007.)

Testimony from operators of small battery plants also stressed good housekeeping and work practices. For example, Don Hull, president of Dynolite Corp., a plant that employs fewer than 20 people, testified that he gives priority to housekeeping and personal hygiene. (Tr. 1246; see also Tr. 3561.) When OSHA took a series of readings in his plant at the stations for grid casting, stacking, element assembly, battery assembly, and battery filling, only one reading at one location, element stacking, exceeded 100 $\mu g/m^3$, and its was just slightly over, 110 $\mu g/m^3$. (Tr. 1247-48.)

Some operations with high exposures are done only intermittenly in small plants. Small battery plants, for example, may paste plates only once or twice a week. (Tr. 3465; Tr. 1259) To meet the PEL as an 8-hour time weighted average, such plants may not need the same controls as a plant that pastes plates all day every day. In fact, alteration of production schedules or employee rotation may be effective. Employees in small plants do not work exclusively at one station. As Stuart Manix of Lancaster Battery Co. explained, "most people try to do a little bit of everything." (Tr. 3465.) Thus, rotation of employees to positions with higher exposures for less than 8 hours per shift may also reduce 8 hour TWA averages. That is, four employees could each work 2 hours pasting plates.

New approaches may also offer small plants an alternative to IHE's engineering controls. Two firms, APSEE, Inc., and Kermatrol, Inc., testified that they could provide the technology for compliance at sharply reduced costs.

The new approaches might aid large as well as small plants in meeting the 50 $\mu g/m^3$ standard. Some operations in either large or small operations will quickly be able to achieve the 50 $\mu g/m^3$ standard. The UAW asserted that aggressive implementation of such conventional control techniques as enclosure, ventilation, and process redesign can achieve the 50 $\mu g/m^3$ level. (Tr. 5278.) At the same time, the UAW recognized that until innovative processes are introduced, some operations will require respirators as well as ventilation to meet the 50 $\mu g/m^3$ standard. (Tr. 5053.)

d. *Brass and bronze foundries.* The lead content of copper based alloys, i.e. brass and bronze, may amount to as much as 20 percent by weight of the metal core. (Tr. 2786) The lead content of copper based ingots averages 5 percent. (Ex. 26, p. 5-73.) Over 1620 foundries cast brass and bronze at least occasionally; in approximately 770 foundries brass and bronze are the primary raw materials. Most of these foundries are small, 75 percent employing fewer than 50 people. Although small, most of these foundries make a diverse range of products of varying price, size, and composition. (Ex. 26, p. 5-73.) An estimated 26,000 employees are exposed.

Exposure to airborne lead results from insufficient control of fumes from the melting or pouring of alloys. In copper-base alloy foundries, approximately 15 percent of the particulate matter in furnace stack gases from the melting of red and yellow brass is lead oxide, and up to 56 percent of the particulate matter has been shown to be lead oxide when the alloy has a high lead content. Any workers in the vicinity of the melting or pouring operation as well as employees working to operate or maintain baghouse dust collectors may be subject to inhalation of these lead containing fumes. Sources of airborne lead may also include areas where castings are cut or finished and areas where scrap is received or stored. Levels of exposure are highly variable and depend on the amount of general local ventilation, the lead content of the alloy, the type of furnace, and the quality of housekeeping procedures. (Ex. 26, pp. 5-73, 5-75.)

The hearing record indicates that brass and bronze foundries can achieve an exposure level of 100 $\mu g/m^3$ within one year. DBA concluded that feasible engineering controls are available to met this level. (Ex. 26, p. 5-73, Tr. 800.) They found that most plants do not at present have enough control in effect. Significant improvements are necessary for compliance with the proposed standard. For example, half the plants currently do not use baghouses and the majority do not provide heated make-up air. Gary Mosher, representing the American Foundrymens Society, explained that "exhaust systems have been devised and designed that will close capture * * * fumes right at the ladle and the furnace." He further testified that such methods are effective in bringing exposure below 200 $\mu g/m^3$, but did not express an opinion as to whether such techniques are effective in bringing exposure below 100 $\mu g/m^3$. (Tr. 2801).

OSHA, however, has concluded that conventional technology in the industry has been shown effective for lowering exposures from melting and pouring to 100 $\mu g/m^3$. Refinement and development of these technological changes should permit, over time, compliance with the PEL. Examples of these controls include: (1) The adoption of electrical induction furnaces

with local exhaust ventilation installed during the initial furnace installation; (2) covered ladles; (3) segregated melts; (4) use of the Hawley Trav-L-Vent; and (5) increased use of dilution ventilation and directional ventilation during pouring. Compliance will, of course, also require comprehensive housekeeping, maintenance employee training, work practices, and personal hygiene. Further, administrative controls such as worker rotation may prove effective in reducing exposures in many small firms.

e. *Pigment manufacturing.* Of the 114 plants that manufacture pigments in the United States, approximately 25 produce pigments containing lead. Pigment products include red lead (or, litharge), lead sulfates, lead carbonates, lead silicates, lead oxides and lead chromates. Inorganic pigments are a prime component in surface coatings and important components in other products such as linoleum, rubber and plastics, inks, ceramics, and paper coatings. Litharge is used principally in the manufacture of products other than paint, i.e., ceramic glazes, batteries, glasses, and vitreous enamels. (Ex. 26, p. 5-92.) The number of production employees in lead pigment manufacturing is estimated to be 2,000. DBA's survey of several plants indicated that 90 percent of the workers were exposed to levels of lead above 100 $\mu g/m^3$. (Ex. 26, p. 5-93.)

The manufacture of pigments involves a number of different processes. Only pulverizing and grinding processes for reducing the particle size are common to all members in the class. Inorganic pigment manufacture is a combination of chemical-physical processes involving both wet and dry reactions, including precipitation, filtering, washing, fusing, calcining, etc. The processes may be carried out as a batch system, as continuous production, or as a combination of the two.

Pig lead is often the basic raw material in inorganic lead pigment. Litharge and other lead forms, however, are sometimes used. Because litharge is a powder, it presents the potential for lead exposures at every transfer point. Filtering, drying, grinding, sizing, grading, blending, and bagging are all considered to be areas of potential exposure to lead. Cross contamination between operations also occurs.

Most pigment plants are old. All but five plants visited by DBA were at least 50 years old. One plant was said to be 129 years old. (Ex. 26, p. 5-95.) Because of the age of the facilities, retrofitting may not achieve levels below 100 $\mu g/m^3$, although such methods have reduced air-lead levels to 200 $\mu g/m^3$. However, redesign of the process, including "total enclosure of certain steps and/or automation" is expected to be able to reduce levels to a 100 $\mu g/m^3$ level. (Ex. 26, p. 5-98.) The same conclusion applies to the 50 $\mu g/m^3$ PEL. As Dr. First explained, "every operation that can be mechanized and automated is capable of being enclosed by tight physical barriers and placed under slight negative pressure to prevent outleakage of dust or fume-laden air to the workroom." (Ex. 270, pp. 29-30.) While such technology may require time and money to install, it is available and adaptable to the pigment industry.

Using substitutes for lead pigments, such as organic pigments, would eliminate exposures. While substitutes may not exhibit all the properties of lead, such as resistance to corrosion and weathering, they would nonetheless be adequate in many cases. Such substitution would also reduce or eliminate exposures in all the industries that involve lead pigment—wallpaper manufacturing, glove manufacturing, pottery manufacturing, ink manufacturing, paint manufacturing, shipbuilding, and automobile manufacturing.

f. *Other industries.* For the 11 other industries that were discussed in the DBA report or its supplement (Ex. 65-B), technological considerations are detailed in the feasibility attachment. OSHA found the PEL to be generally feasible within 1 year from the effective date by use of engineering and administrative controls. For a few operations, particularly in the shipbuilding and automotive manufacturing industries, airline hoods or other supplementary personal protective equipment may be necessary on a periodic basis.

Other industries were assessed for technological feasibility in the Short report (Ex. 22). They were generally found to have very low lead exposure and any compliance activities will only require very simple engineering controls.

2. *Economic considerations.* OSHA has attempted to determine, for all affected industries, the costs of compliance of the final standard and to assess the economic impacts in terms of plant closures, industry competition, product prices, employment, and other economic factors. In many respects accurate and reliable cost estimates were difficult to determine for several reasons. OSHA and industry consultants who performed economic impact analyses found it difficult to avoid various forms of "double counting" of costs. Almost all of the information came from the regulated industries unverified by objective sources, and financial data, necessary to analyze the impacts, were not made available by individual firms.

In attachment D to the preamble, OSHA has made a detailed examination of the cost estimates of its contractor (DBA) and those of the principal industry consultants (CRA). Differences in estimates are discussed and reconciled where possible. In several instances, OSHA has reduced the estimates where obvious methodological errors required that such revisions be made. It should be noted that both of these studies attempted only to assess the cost of reducing exposures, by means of retrofit technology, from current levels to the proposed 100 $\mu g/m^3$ standard.

OSHA has concluded that the record contained adequate cost information for most industries. In addition, review of the record revealed that compliance with levels below 100 $\mu g/m^3$ might, in several industries, require extensive technological development for which long periods of implementation time would be required, thus precluding meaningful quantification of cost. However, the record was sufficient to predict that compliance within the times given would not result in undue economic hardship on those industries. This impact analysis is based on the record evidence concerning the financial and technical resources available to the various industries, the certainty of product and factor (production inputs) markets, and the availability of most cost-effective alternative methods of compliance.

The implementation schedule, itself, represents a merging of both economic and technological factors used to evaluate feasibility. Firms can choose from an array of technical solutions over a time frame sufficient for long run economic optimization. Since all firms in each industry face the identical PEL and time constraints, the process of the internalization of the cost of compliance acts on the decision-making process of the firm and the industry in the same manner as any other market signal. Depending on how firms judge a number of long-run factors including product demand, amount of investment sunk in the existing physical plant and managerial expertise, and alternative rates of return available on the necessary capital, some firms may choose to exit the market and invest in alternative ventures. Of course, other firms with different long-run expectations may choose to enter the market.

A brief review of the major affected industries follows:

a. *Primary smelting and refining.* In all operations, except perhaps maintenance work and where process upsets occur, compliance with the 100 $\mu g/m^3$ level by engineering controls and work practices is feasible within the 3 year implementation period through the use of conventional control techniques as well as some modification of existing processes. Attainment of the PEL may require the development and im-

plementation of substantial technological change, possibly including alternatives to pyrometallurgy which are now in the experimental stage. Ten years for this goal is considered by OSHA to be sufficient to encourage commercially viable technological solutions for this industry.

Given the earlier discussion about the unreliability of cost estimates, OSHA has determined that the capital expenditure to meet the 100 $\mu g/m^3$ interim level is in a range between $32 million and $47 million (in 1976 dollars). The total annualized cost at the 100 $\mu g/m^3$ level is estimated to range between $11.927 and $15.641 million. After-tax cost, figured on the corporate rate of 48 percent, should then be between $6.202 and $8.133 million. Based on total 1975 industry production, this would be equivalent to $0.004 to $0.006 per pound. OSHA has reached the following conclusions regarding economic impact in this industry:

(1) The primary smelting companies will probably be able to raise the price of refined lead as much as 1¢ per pound in order to pass compliance costs to consumers of its product. This increase will be sufficient to cover the incremental costs of meeting the 100 $\mu g/m^3$ interim level. DBA and CRA concluded that it would not be possible for firms to increase the price of lead. CRA attributes this to the high elasticity of foreign supply (Ex. 127, pp. 2-51 to 2-56), and DBA concludes that high elasticity of the demand for lead will have the same effect (Ex. 26, p. 6-25). CRA's and DBA's conclusion is somewhat doubtful for several reasons. First, given OSHA's revision of estimated costs to the industry, the necessary price increase would be smaller than predicted by CRA and DBA. Second, the demand for lead in the long-run, as well as in the short-run, will most likely be price inelastic, and finally, the foreign supply of refined lead will probably be relatively inelastic in the short-run, the significant period in which domestic producers could recapture a substantial portion of compliance costs. As to the long-run, several factors can and may operate to make the foreign response to changes in U.S. price indeterminate.

The demand for lead will probably be substantially price inelastic in the long run. CRA's studies over the past 10 years, Dr. Burrows' (of CRA) repudiation of Heineke's work (the basis of the DBA analysis), and OSHA's evaluation of Heineke's conclusions support this. Therefore, demand factors should not play a significant role in the industry's pricing decisions. With respect to supply, the factors affecting the long-run behavior of firms are numerous. The increasing cost of producing lead (absent new discoveries) may impact on foreign producers sufficiently in the short run to reduce the incentive to shift production to the U.S. market. Foreign governments may follow the U.S. lead and compel similar environmental and occupational health constraints on their industry. Trade barriers or trade agreements limiting foreign imports may be adopted.

These factors affecting supply are highly speculative and no firm conclusions can be drawn other than that foreign supply is probably price inelastic in the short run, thereby allowing a short-run price increase, and possibly inelastic in the long run if one or more of several possible factors materialize.

At least one major producer, Amax, is confident that the industry will be able to pass costs forward. They stated that the costs of the standard "would certainly add to the price of our final product which in turn will have to be passed on to the consumer." (Ex. 3(67), p. 5.)

(2) Compliance costs can, in part, be shifted backward to suppliers of ore. CRA concluded that costs could be shifted, in part, backward onto suppliers through a reduction in the price paid for ores and concentrates (Ex. 127, Exec. Summ., pp. 8-10). DBA did not evaluate backward shifting of costs. The extent to which this could be accomplished minimizes the cost impact on the primary producers. OSHA has concluded that the limits on the backward shifting of costs are not as sever as indicated in the CRA analysis. The increasing price of lead has improved the marginal conditions attributed to several mines by CRA. Further, the incentive to ship abroad depends on foreign costs maintaining their present relationship to U.S. costs excluding OSHA impacts, a questionable assumption. Finally, OSHA believes that the differential can rise somewhat above the cost of transporting the ore to foreign smelters because of the obvious advantages of adequate U.S. smelting and refining capacity to the domestic mines.

(3) The industry has the ability to pass costs forward or backward sufficient not only to recover the cost of the 100 $\mu g/m^3$ interim level, but to assure that any likely cost associated with the PEL will not jeopardize long-run profitability. In the assessment of market power, OSHA disagrees with the conclusion in the CRA report. The difference is most apparent in the analyses of the non-Missouri operations of ASARCO. (Ex. 127, pp. 2-79 through 2-84.) CRA calculates the annual compliance cost of the proposed standard to these operations at $3.7 million or approximately 1 cent per pound of refined lead. They are aware that ASARCO had announced its intention to spend $55.2 million at El Paso and $32.2 million at East Helena to control air quality problems associated with lead productions. These capital costs, when annualized, produce an additional 6.2-cents-per-pound expense to the company, almost one-third of the market price of lead used in the analysis. The CRA cost pass-back analysis limits ASARCO's recovery from the mines to a maximum of 2 cents per pound. Their elasticity analyses preclude any long-run price increase. They conclude that the incremental OSHA costs seriously jeopardize continuing operation of the ASARCO Western smelters and refinery since the air quality controls would seem to cost ASARCO 4 cents per pound out of profit. They attribute ASARCO's willingness to continue in business to the externalities of custom smelters which extract "metals such as silver, cadmium, bismuth, and selenium as well as the slag processing which improves the flexibilty of the ASARCO system." (Ex. 127, p. 2-84) CRA makes no attempt to document this claim. It is obvious that ASARCO was willing to risk an enormous sum of money. Either they anticipated an ability to recover that long-run expense in terms of price increases or cost pass backs or some combination of both.

OSHA concludes that the segment of the primary industry claimed to be in the most financial trouble, the Western custom smelters, have sufficient market power to survive enormous increases in costs. The money scheduled to be spent on air quality problems may alleviate some occupational lead problems as well. More important, it is the most impressive possible statement of the perception of the long-run viability of the industry by the largest producer. Since ASARCO announced these commitments, the price of lead has nearly doubled.

(4) If primary smelting firms were forced to absorb all the costs of compliance in the short run, they would nevertheless remain profitable and competitive. To the extent that increased costs cannot be passed back to suppliers or forward to consumers, the primary lead producers must absorb them internally, i.e., pay for them out of profits. From the record evidence as a whole, it appears that each of the affected firms can shift or absorb compliance costs of the interim level and remain profitable and competitive. Of all the primary producers, only Bunker Hill's profitability is in question and the cost impact should be such that OSHA costs alone would not threaten the company's economic viability.

DBA's conclusions regarding Bunker Hill are misleading because its calculations are based upon cost estimates

that are significantly overstated. The cost estimates it used for the Bunker Hill smelter show the impact on Gulf Resources to be a reduction in the rate of return on total assets from 13.34 percent to 6.28 percent. (Ex. 26, p. 6-13.) This, however, is based on compliance costs at least double those which OSHA has determined to be reasonable. Similarly, the percentage decrements for the other firms, St. Joe (1.56 percent), ASARCO (1 percent), and Amax (0.3 percent) would be even smaller if adjustments were made using the revised cost estimates. The same is true in the percentage decrements predicted for value of the firms' common shares. The result is that DBA's conclusion that Bunker Hill would have to shoulder an inordinate compliance burden compared to the other firms is weakened. Gulf Resources' return on assets will decrease more than the other firms', but it will still have a rate higher than ASARCO and Amax.

The steelworkers asserted that each of the four firms could pay for all the capital improvements estimated by CRA out of 1976 profits alone. (Ex. 343, p. 172.) Their calculations showed that compliance costs as a percentage of 1976 profits were as follows:

Company	Capital costs (percent)	Annual costs (percent)
ASARCO	45.6	11.3
Amax	5.4	1.7
St. Joe	15.4	4.5
Gulf Resource	54.3	15.9

CRA evaluated each firm's profitability and their ability to shift costs back to suppliers of ore. They concluded that Bunker Hill, with the heaviest costs of compliance and little chance to shift cost back to suppliers, might prove uneconomical for Gulf Resources to continue to operate. Initially, production at Bunker Hill is expected to increase (Ex. 343, p. 173), thereby lowering the cost per pound, but more important, the cost attributable to the OSHA standard is less than 1 cent per pound. (0.95 cent by CRA's calculations.) This is only 0.23 cent in excess of the 0.72 cent per pound that CRA estimates Bunker Hill can pass back to the mines under the best conditions. (Ex. 127, p. 2-73.) Under the worst conditions, the differences would be 0.8 cent (Ex. 127, p. 2-74). The firm would have to absorb between $0.579 to $2.016 million in compliance costs.

Looking then at profitability, CRA concluded that if Bunker Hill was forced to absorb between $2.3 to $3.9 million, the consequences would be "severe." However, Bunker Hill's 1975 profit was $6.2 million. Its average profit between 1970 and 1975 was $10.664 million overall and about $5.332 million from lead operations. Absorbing costs of $0.579 to $2.016 million will cut into profits, but those costs are only 5 to 19 percent of the firm's average profits. This mitigates CRA's conclusion.

In fact, the decision of the management of Gulf Resources on whether or not to make the investment required at Bunker Hill will be determined by its assessment of the long-run profitability of the industry. Profits in 1975 were reduced because of production restrictions related to air quality problems since alleviated. Also, as noted earlier, the price of lead is almost double its 1975 level.

(5) If compliance costs reduced the profitability of Bunker Hill to a point where Gulf Resources decided to close its lead operations, the competitive structure of the primary sector would be largely unaffected. DBA stated it this way (Ex. 26, p. 6-26):

> If one or more producers of primary refined lead should be forced to shut down lead refining operations, concentration in primary refined lead production could increase substantially. Such an event would no doubt facilitate cooperative behavior among the surviving primary lead producers. However, this probably would not affect significantly the nature of competition in refined lead.
>
> The degree of concentration in primary refined lead production is already potentially high enough to achieve a joint monopolistic result as a consequence of the mutually recognized interdependence of the four large producers. This could occur without the necessity of resorting to overtly collusive conduct.
>
> That this result is not presently attained is due to forces being exerted from outside the primary lead segment of the market, viz., from secondary lead, refined lead imports, and the threat of entry. These forces would still be operating no matter what the degree of concentration in primary refined lead. Thus the competitive situation probably would not be significantly affected even if the imposition of the proposed occupational lead exposure standard leads to a reduction of the number of firms engaged in primary lead production.

(6) The compliance schedule for meeting the 50 $\mu g/m^3$ standard assures economic viability.

The 10-year period set forth in the methods of compliance section is based primarily on technological factors. This time should be sufficient for any firm to completely rebuild an existing smelter (Ex. 3(103), p. 5) or to construct new capacity.

This extended compliance period also assures economic viability of the PEL. Production efficiencies may arise from new processes, such as hydrometallurgy, sufficient to offset EPA and OSHA costs. Retrofit technology may be refined that will effect control greater than now envisioned for existing equipment and thus lower long-run costs of compliance. DBA stated that "we can expect to see new, innovative and cost-effective compliance methods being introduced as a result of enforcement of the standard." (Ex. 26, p. 2-16.)

The 10-year compliance time constitutes a planning horizon sufficient to allow all firms maximum flexibility in capital planning. OSHA believes the long-run outlook for the industry is favorable and there exists some combination of engineering controls and work practices, including administrative controls, which will permit all four firms to remain in the market. Because the economic and environmental conditions of the western smelters vary widely from those in Missouri and among themselves, OSHA has established a time frame designed to maximize the technological and economic options for the industry. This compliance period is sufficient to allow each firm the opportunity to assess the likely state of the market and to raise the capital necessary for conversions required by air and water quality standards, other OSHA standards, and the 50 $\mu g/m^3$ lead standard. OSHA has concluded that this flexibility is necessary for achieving the most cost-effective solution for the industry consistent with necessary worker protection.

(b) *Secondary smelting and refining.* Compliance with the interim level in 3 years and PEL in 5 years appears feasible since extensive process modification as well as refinement of recent technological developments may be necessary for some firms. In addition, the Bergsoe smelting process, a cleaner, more fuel efficient smelting technology used for many years outside the United States, is available for either partial adaptation to existing facilities or total adaptation if new facilities are built. Construction of new plants employing this technology would take 2 to 3 years and may provide a more cost-effective alternative to present technology.

Capital costs for compliance by means of retrofit controls with the interim level have been estimated to range from $34.1 to $51.1 million. Pretax annualized costs associated with these estimates are $18.9 million and $28.5 million, respectively. After taxes, the figures range from $9.8 to $14.8 million. The annual cost of the best estimate is equal to $0.013 per pound of 1975 production.

The cost of attaining the PEL of 50 $\mu g/m^3$ cannot be ascertained precisely because the industry faces several options for long-run compliance. However, an upper limit (the cost of completely rebuilding the industry with the latest available technology) is determinable. To completely rebuild with the Bergsoe process would cost

approximately $90.6 million excluding land costs.

OSHA has concluded that compliance with neither the 100 $\mu g/m^3$ nor the final PEL of 50 $\mu g/m^3$ is likely to have severe impacts in this industry. This is in general accordance with the views of CRA and DBA. Both predicted some closures from high-cost marginal operations but expected no drastic impact on the structure of this industry. DBA seemed to be somewhat more pessimistic about closure than the industry study. DBA noted that although concentration has been increasing (Ex. 26, pp. 6-6, 6-7), production within the industry is still not highly concentrated, primarily as a result of low entry barriers. Sources of scrap can be easily acquired and initial capital requirements are low. (Ex. 127, p. 1-29.) As a result, secondary producers have little control over prices, even in the short run, essentially following the market. (Ex. 26, p. 6-10.) They will be able to shift compliance costs forward onto product prices only if primary producers raise prices. OSHA has determined that the DBA impact assessment is faulty in two respects. First, DBA did not consider the possibility that primary smelters might be able to pass through some of the compliance costs and secondary smelters would benefit accordingly. More importantly, DBA did not analyze the ability of secondary firms to pass cost back to scrap dealers. CRA anticipates that the average compliance cost will be passed back and thus only firms whose costs exceed the average would have to absorb any compliance cost even absent a price rise.

These estimates make no allowance for the use of administrative controls which should bring further reduction from these estimates. Firms will be able to increase prices to the extent that the primary producers do so. However, at least the average compliance costs can be passed back to the scrap dealers. Thus only the highest cost marginal firms are likely to face a decision on whether or not to cease operations.

(c) *Battery manufacturing.* Control of lead exposure for the more than 12,000 exposed employees in accordance with the implementation schedule for this industry is feasible through the use of conventional engineering and industrial hygiene techniques, although significant modifications may be required in the production process. Less complex, and less expensive compliance solutions appear to be possible for small producers, including the use of employee rotation.

OSHA estimates the capital cost of meeting the 100 $\mu g/m^3$ interim level to be in the range of $205.1 to $230 million with annualized costs of $25 to $28.1 million.

The battery industry is essentially an oligopolistic industry with a fringe of small independent producers who compete in regional or specialty markets (Ex. 26, p. 6-37). It is comprised of 138 companies who operate a total of 200 plants, but the 5 largest companies, who operate 55 plants having 78 percent of the total industry capacity, dominate the market. (Ex. 26, pp. 6-33, 6-37.) The seven largest companies operate 70 plants and sell 90 percent of all the batteries sold (Ex. 26, p. 5-42). It is also an industry that has been in the process of consolidation for many years. In the past 20 years the number of firms in the industry has steadily decreased from over 300 in 1954 (Ex. 127, p. 3-4) to just 138 in 1972 (Ex. 26, p. 6-33).

The questionable assumptions underlying the IHE report (the engineering which provided the basis for the cost estimates) lead to the conclusions drawn by DBA and CRA that approximately 100 small battery manufacturers would exit the industry as a result of the proposed standard. (Ex. 127, p. 3-53; Ex. 26, p. 6-24.) OSHA does not believe that the approximately 100 small plants will have to assume the magnitude of cost used by DBA and CRA because of the overestimation of costs by IHE, because the lead quantity in small plants is lower (Ex. 349, pp. 16-18), and because of several available low-cost compliance alternatives, discussed earlier, which are uniquely suited to small plants. In addition, some small manufacturers might take advantage of economies of scale by increasing production, e.g., expanding a one-shift operation to a two- or three-shift operation.

Some of these small firms will probably exit the market irrespective of the OSHA standard. There has been a trend in recent years of very small firms (95 firms have less than 20 employees and a total of 2 percent of the market) leaving the industry because of unprofitability. These firms have discovered shrinking markets for their products, and an inability to compete with larger companies because size is related to production efficiency. Most of the new plants in the industry have been quite large. (Ex. 127, pp. 3-6.) These factors are expected to continue to put severe stress on the small battery manufacturer without respect to additional costs due to OSHA regulations, and the consolidation trend is expected to continue.

OSHA has concluded that even if the questionable DBA and CRA prediction that approximately 100 small manufacturers would exit the market were true, the standard is nonetheless feasible for the battery industry.

Closure of 100 small businesses would have a minimal impact on the competitive structure of the industry. Thirty firms operating 100 plants will remain, and the capacity of the 7 largest firms, now 90 percent of industry capacity, will increase a few percent. Competition from the smaller firms has little or no effect on the price of batteries, which is set by the major producers, except in those "interstices of the market which the major producers do not choose to capture." (Ex. 349, p. 19; Ex. 26, p. 6-42; Ex. 127, pp. 3-7 through 3-9.) The small producers may set prices in small local markets where they supply retailers directly and take, in price, the equivalent of distributor markups or where special services (picking up old batteries, fast delivery, etc.) to the retailer allow price increases. (Ex. 127, p. 3-8.)

Battery prices will increase as a result of the passthrough of compliance cost. The industry price setters, the five major producers, will have compliance costs of about $0.74 per battery, with an industry average of $1.11. (Ex. 127, p. 3-35.) CRA has estimated that a cost passthrough of $0.74 will result in a retail price increase, due to markups in the distribution chain, of about $1.75 per battery. (Ex. 127, Exec. Summ., p. 37.) This will allow small producers who enter the distribution chain at advanced stages to pass through costs of about $1.04 per battery (Ex. 127, Exec. Summ, p. 37.) except where they are not in competition with the major firms.

Closing of 100 plants employing 10 persons each would mean the loss of approximately 1,000 jobs. Compliance activities require additional manhours, however, and it is estimated that the net gain in employment, if production remains at the prestandard level, would be approximately 2,000 employees. Productivity, therefore, would decrease by just over 9 percent. The impact on wages would be small. (Ex. 26, p. 6-43 and 6-44.)

OSHA's evaluation of the technology available to the battery industry indicates that compliance with the PEL may be achieved by the same types of technological changes required to achieve the interim level of 100 $\mu g/m^3$, although further refinement, additions, and modifications may also be necessary. The compliance schedule requiring engineering controls and work practices to be used to reach 100 $\mu g/m^3$ in 2 years and the PEL in 5 years is based on the time it should take to implement the relatively conventional control methods required. Large manufacturers should have little problem meeting the costs involved, especially since they will be able to pass on all of the increased costs of production to consumers. For smaller manufacturers, OSHA has concluded that simple and inexpensive approaches can be effective in many situations, thereby drastically decreas-

ing their inordinately excessive estimates of compliance cost. Where capital acquisition problems are encountered in meeting the implementation schedule, the flexibility in the compliance scheme for the standard should, under certain conditions, enable employers to spread compliance costs over 5 years.

(d) *Brass and Bronze Foundries.* Compliance with the interim level of 100 $\mu g/m^3$ in 1 year is feasible in this industry with presently available technology, while compliance with the PEL may require some further development and refinement of the same technology.

Cost estimates for compliance with the interim level are $161 million for capital expenditures and $41.2 million in after-tax annualized cost. Costs of compliance will be passed on to the purchasers of castings, and DBA estimates that price increase would be equivalent to about $0.16 per pound of casting. This assumes that industry profit rates will be maintained since it is double the price necessary for full cost recovery. Some small firms with higher than average costs of compliance may leave the industry thereby reducing competition, and since substitutes for brass and bronze castings exist for some uses total industry output may fall. The industry association which testified at the hearings did not plead economic hardship.

(e) *Pigment manufacturing.* Control of employee exposure in pigment plants to comply with the implementation schedule will probably require extensive modification of the present production processes. Substitution of other materials for lead is also possible for some uses of pigment.

Cost estimates for this industry for the interim level are between $17.6 million and $21.1 million and $6.4 million in annualized costs. These costs are for retrofit technology which may not be adequate to comply with the PEL. If compliance with the PEL requires the redesign of the production process, the capital costs for the industry may be in the area of $109 million with after-tax annualized costs of $21.8 million.

DBA concluded that almost all costs of production would be passed on to the consumers, and competition in the industry would decrease slightly as marginal firms exit. The DBA analysis was based on estimates of the cost of totally rebuilding the industry ($109 million—capital; $14.8 million—annual). Given the product substitution option, OSHA doubts that such estimates would ever be realized. However, if such sums are ever spent, they would be expended to comply with the PEL over a 5-year period. OSHA's revised estimates of the cost to achieve the 100 $\mu g/m^3$ interim level would require a price increase of 1.7-3.7 percent instead of the DBA prediction of 16.6-21.6 percent. This would substantially mitigate the impact on marginal firms.

(f) *Other industries.* At least 33 other industries have been identified as having some lead exposure. In almost all cases control of lead levels below the PEL should be feasible within 1 year using conventional methods, but in some operations, such as solder grinding and paint spraying, elaborate personal protective equipment may be necessary to comply with the PEL.

(g) *Aggregate economic impacts.* While the costs of compliance are significant for some industries and the employment impacts may have regional significance, the aggregate impacts are minimal. The effect of costs associated with the interim level is estimated to increase the Consumer Price Index by only 0.02 to 0.03 percent.

IV. Summary and Explanation of the Standard

The following sections discuss the individual requirements of the standard. Each section includes an analysis of the record evidence and the policy considerations underlying the decisions adopted pertaining to specific provisions of the standard. To the extent appropriate, the requirements in this standard are similar to requirements in other OSHA health standards and reflect OSHA's regulatory policy for comprehensive health protection of workers.

Each provision is an integral part of the comprehensive health program contained in this standard and as such provides a discrete but necessary contribution to the overall objective of the standard. Because of this, the benefits attributable to any specific provision can not be quantified and compared to its costs. For example, the training and education provision provides an essential function in assisting workers to recognize hazards and to minimize lead absorption by means within their control, i.e., better hygiene and work practices. This provision does not, however, provide any quantifiable benefits apart from the complex of other provisions which also minimize absorption because the contribution of poor hygiene or work practices, as percentage of total absorption, varies among individuals and is thus not determinable.

On the other hand, OSHA has assessed the costs of individual provisions (see Ex. 26; Ex. 22; Ex. 127) and has minimized costs to the extent possible without compromising the level of health protection and the integrity of the standard. OSHA has accomplished this by decreasing the frequency of periodically recurring requirements (e.g., air monitoring) or by providing a certain condition at which the obligation begins (e.g., an action level, the PEL, or a minimum duration of exposure).

In many cases, the standard does not create new costs for employers because the obligations already preexisted the final standard (e.g., current OSHA standards for respirators, personal protective equipment, hygiene facilities, engineering controls (29 CFR Part 1910)) or because employers have voluntarily instituted them as part of a comprehensive industrial hygiene program. OSHA thus believes the standard has been constructed in the most cost efficient manner and that the cost burdens imposed on employers are reasonable.

A. Scope and Application: Paragraph (a)

This standard for occupational exposure to lead is applicable to all employment and places of employment over which OSHA has statutory jurisdiction and in which lead, in any amount, is present in an occupationally related context. Exposure of employees to the ambient environment which may contain small concentrations of lead is not subject to this standard; however, where the source of lead is employment related, all exposure to lead is covered by the standard. The lead to which this standard applies is defined to include metallic lead, all inorganic lead compounds, and organic lead soaps. All of these substances are covered within the scope of a single standard because they generally react in a chemically and toxicologically similar manner in the human body. On the other hand, most organic lead compounds, except for organic lead soaps, have varying degrees of toxicity or have toxicological properties different than the inorganic group,[1] and thus are excluded from the scope of this standard. Some of these excluded compounds are covered by existing OSHA standards,[2] and others will be treated in separate standards to be developed in the future.

Some covered compounds may be covered by this and one or more other OSHA standards. Lead chromate, for example, is covered under this comprehensive standard for lead as well as

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[1] E.g., tetraethyl and tetramethyl lead are absorbed through the skin, unlike the inorganic compounds. See *Documentation of the Threshold Limit Values for Substances in Workroom Air*, American Conference of Governmental Industrial Hygienists, 3rd ed., 1971, 3rd printing, 1976, pp. 251-54.

[2] Tetraethyl lead has a permissible exposure limit of 0.075 mg (as Pb)/m^3 and tetramethyl lead a permissible exposure limit of 0.07 mg (as Pb)/m^3, both as an 8-hour TWA. 29 CFR 1910.1000, Table Z-1.

under the permissible exposure limit for chromic acid and chromates in Table Z-2 of S1910.1000, 29 CFR. Lead arsenate is covered under this standard and the standard for inorganic arsenic, S1910.1018. The requirements of each standard would apply to the extent applicable.

It should be recognized that although this standard may have general applicability to a particular employer or workplace, almost all of the obligations in the standard are predicated on an initial determination of certain minimum lead exposure conditions. For example, the requirements for periodic environmental monitoring and medical surveillance apply only if employees are exposed to airborne lead in excess of the action level (30 $\mu g/m^3$); employers whose employees are exposed below the action level are not required to conduct periodic monitoring or medical surveillance or to comply with most other provisions of the standard. This distinction is made in order to differentiate between more hazardous and less hazardous work operations and impose obligations commensurate to the degree of hazard present. For a more complete discussion of each particular requirement, see following paragraphs (C) through (R).

The notice of proposed rulemaking stated that the standard would apply to all industries covered by the Act, including general industry, construction and maritime and that corresponding standards for maritime and construction industries in Parts 1915-1918 and 1926 and in Subpart b of Part 1910, 29 CFR, would be superceded if they were determined to be not as effective as the final standard.

Several parties to the rulemaking contended that the construction industry should be exempt from coverage of the standard or that the standard should have special provisions for the construction industry because of the inherently different nature of construction employment as compared to industrial employment. (Ex. 3(30); 3(64); 3(98); 3(130); and 381A; Tr. 7290-7341.)

The primary reasons cited to support exemption of the construction industry are the infeasibility (technical and economic) of compliance with certain provisions of the standard and the apparent purposelessness of others given the facts that the nature of construction work (1) often exposes employees to lead for very brief periods of time; (2) requires the employee and his tools to move from place to place, resulting in varying exposure conditions; and (3) has a high number of temporary employees.[3] These factors are claimed to impact on the construction industry's ability to comply with the standard's provisions in the following ways:

1. *Exposure determinations and environmental monitoring.* Environmental monitoring is not claimed to be infeasible other than where the length of the job could be shorter than the time it could take for air samples to be taken and analyzed (Tr. 7293; 7309-10; Ex. 3(64), p. 3).[4] It is claimed, however, that the mobility of the worker and the impermanence of the worksite renders the environmental monitoring requirements useless in the construction context because the value of air monitoring, beyond use as a historical record of exposure, is primarily based upon "the degree to which the results of the monitored activity can be related to some future repetition of that activity." (Ex. 3(30), p. 3.) In a construction environment, the contaminant source and exposure levels are often unique in any given task at any given time, and the air monitoring data derived can not serve its primary purpose of evaluating the need and efficiency of engineering controls and other protective measures triggered by the result of air monitoring.

2. *Methods of compliance.* Engineering controls are contended to be inherently not feasible for certain construction activities, such as abrasive blasting or certain mobile activities. It is also claimed that on short-term jobs amortization of some controls, e.g., a conditioned-air ventilation system, would not be economically feasible. Technological and cost considerations aside, the time to design, procure and install such a system might exceed the entire time to complete the whole construction job. (Ex. 3(64), p. 4; Ex. 3(30), p. 4-6.)

3. *Hygiene facilities.* On remote construction sites, minimal amounts of water may be available, and the use of mobile, self-contained facilities providing lockers, change rooms, showers, etc. would probably be economically prohibitive, especially for short duration jobs. (Ex. 3(64), p. 7.)

4. *Medical surveillance and MRP.* Medical monitoring, medical removal and MRP requirements are also claimed to be unworkable. Because initial medical surveillance and periodic follow-up is predicated upon air monitoring results, the shortcomings of air monitoring for the construction industry, as discussed above, undermines the medical programs' effectiveness. The temporary worker may thus not get a medical exam or blood test until after the lab results of air sampling return, and follow-ups may be due long after he leaves the job. The need to protect the worker who begins employment with elevated blood lead levels may then only be ascertained after employment has been terminated. Also, high turnover rates and minimum medical personnel in remote and nonurban areas tend to aggravate the time problem.

OSHA has considered all the evidence in the rulemaking record on this issue and has concluded that there is insufficient evidence to satisfactorily resolve all the issues raised with respect to applicability of this standard to the construction industry. Construction is a diverse activity about which no valid generalizations can be drawn concerning the nature of lead exposure, the duration of a project, or the the duration of an employer-employee relationship, and the record does not support drawing rational distinctions between groups that can feasibly be covered by the standard and groups that cannot. OSHA's own contractor on the EIS suggested that "the feasibility of applying the various provisions of the standard should be examined before including the construction industry in the scope of the standard." (Ex. 65B, p. 31.) Accordingly, OSHA intends to utilize the expertise of the Construction Advisory Committee and will request that it review the rulemaking record and make recommendations on the most appropriate way the lead standard can be applied to the construction industry. These recommendations will then become the basis for a proposed modification to part 1926.

OSHA has determined that the final lead standard would be more effective than corresponding standards for the maritime industries because, as a comprehensive health standard integrating air monitoring, medical surveillance, training and other requirements, it would provide greater protection to employees exposed to lead than that provided by the current maritime standards. Unlike the construction industry, representatives from the maritime industries who participated in the rulemaking did not claim that the standard should not be applicable to maritime activities. In fact, the Shipbuilders Council of America, and industry trade association, stated that compliance with the proposed standard was feasible even though it objected to specific provisions. (Ex. 230.)

Specifically, the new standard would supercede references to the 1970 TLV's in sections 1915.11, 1915.21, and

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[3] Construction work has a high turnover rate (300-600 percent (Tr. 7292; Ex. 3(30), p. 11), and construction subcontractors commonly hire local craftsmen through local unions for brief, specified periods. (Tr. 7297, 7301.)

[4] The Council of Construction Employers states that "large construction companies use air monitoring techniques to determine toxic concentrations of airborne contaminants. There is no doubt that such techniques are available and can readily provide useful information . . ." (Ex. 3(64), p. 2)

1917.11. The TLV for lead in 1970 was 200 $\mu g/m^3$ and to not supercede the current maritime standard would clearly allow a less protective, and hence less effective, standard to apply to the maritime industry. In addition, there are general standards for the maritime industries which, while not specifically applicable to lead exposure, would apply when lead exposure occurs in those industries. Where provisions in those standards clearly conflict with the new standard, the provisions of the new standard are intended to apply (e.g., s1915.23(a)(4)); however, where the present maritime standards are more specific or require additional protective action, they shall not be superceded. Examples of the latter case are in 1915.31(c), which deals with welding, cutting, or heating of toxic metals and sets forth specific work practices when these activities are performed. These sections would still apply, along with the new lead standard, but only to the extent they do not conflict with the new standard.

Finally, this standard does not apply to agricultural operations, standards for which are found in Part 1928, since OSHA had not proposed to cover agricultural operations and no comments were received on the issue.

B. DEFINITIONS: PARAGRAPH (b)

The final standard has deleted, as unnecessary, two definitions contained in the proposal. The definition of action level has been added to the final standard.

C. PERMISSIBLE EXPOSURE LIMIT (PEL); PARAGRAPH (c)

The final standard has a permissible exposure limit of 50 $\mu g/m^3$ as an 8-hour, time-weighted average.[5] This is the highest level of lead in air to which an employee may permissibly be exposed, exposure being defined as the actual concentration of airborne lead in an employee's breathing zone. Thus, the methods by which the employer chooses to reduce an employee's exposure to lead are not relevant to a determination of whether the PEL has been exceeded. The standard requires that the PEL be complied with immediately and at all times whether by engineering controls, work practices (including administrative controls), or respirators. A second obligation exists in the "Methods of Compliance" provision, paragraph (e) of the regulation, which requires engineering and work practices controls to be implemented according to a schedule to attain compliance with the PEL, and a violation of this paragraph may exist if the required means are not used to achieve permissible limits.

[5]The rationale for choosing this level as the PEL is discussed in part III and Attachment B of this preamble.

The PEL is an eigth-hour average of exposure for any work day. If respiratory protection is permissibly being used to comply with the PEL and all of the requirements relating to selection, fitting, and maintenance of respirators are met, the employee needs to wear the respirator only for a period of time that, when averaged with periods of time the respirator is not worn, will result in a TWA exposure below permissible limits. For this purpose, the employee's exposure level when a respirator is worn may be considered to be the airborne concentration, without regard to the respirator, divided by the protection factor of the respirator. For example, if an employee is exposed to 100 $\mu g/m^3$ for 8 hours without a respirator, he would have to wear a respirator with a protection factor of 10 for about 4.4 hours or with a protection factor of 60 for about 4.1 hours, in order to comply with the PEL.

Of course, a class of respirator more protective than required by paragraph (f) may be selected, and if selected, would reduce the amount of time a respirator would need to be worn.

OSHA recognizes that workshifts can extend beyond the regular 8-hour period as the result of overtime or other alterations of the work schedule. This extension of worktime also extends the time during which the employee is exposed. The effects of this additional exposure time must be considered in arriving at a permissible level of exposure. For the purpose of calculating such a level, the relationship of concentration and length of time of exposure has been assumed to be linear. As the exposure time increases, the factor of concentration multiplied by time ($C \times T$) should remain constant. As a result, it is believed that by equating exposure with the 8-hour time-weighted average, reasonable assurance of maintaining a safe exposure level is retained.

The final standard contains a formula by which adjustments to the permissible exposure limit can be made due to overtime. For example, if an employee is exposed to lead for 10 hours, the permissible limit, as a 10 hour average, would be 400/10 or 40 $\mu g/m^3$.

The proposed standard expressed the PEL as an 8-hour, time-weighted average "based on a 40-hour week." This has been deleted to avoid ambiguity since it was misconstrued by some commenters as a conversion of the PEL to a 40-hour average.

Information was also presented during the rulemaking proceeding regarding the variation in solubility and toxicity of different lead compounds. (Ex. 3 (4), (57), (59), (67), (103), (107); Ex. 80; Ex. 234(16); Ex. 234(22); Ex. 247 A and B; Ex. 311A.) The key issue which emerged is whether the final standard should differentiate between different lead compounds in the establishment of permissible exposure limits.

Stanley D. Koremus, Deputy Assistant Secretary of the Interior, advocated the tolerance of some lead compounds at higher airborne concentrations. Koremus pointed out that some lead compounds, particularly lead sulfide which is common to the majority of lead ores, are virtually insoluble in biological tissue. He calls it "inconsistent" to institute the same low exposure limits for lead compounds which "would not result in excess blood lead" (Ex. 3(57), p. 2) as the others which would result in elevated blood leads.

D.A. Bissonnette, corporate industrial hygienist for PACCAR, Inc., advanced precisely the same complaints about the proposed lead standard. Bissonnette said the standard failed to take into account the different degrees of toxicity of lead in its different forms, citing the availability of the lead ion for absorption, the physical characteristics of the compound, and the route of absorption as distinguishing characteristics. (Ex. 3 (59).)

Bissonnette pointed specifically to the paint industry where the lead compounds used in paint pigments are "relatively insoluble." When paint is sprayed, the lead is "suspended and encapsulated in the paint mist" rendering it much less toxic than lead fumes or dust, according to Bissonnette. He stated that this explains why painters highly exposed to lead still exhibit normal blood lead levels. (Ex. 3(59), p. 1.)

Most of the other arguments presented on this point reflected the view expressed by St. Joe Minerals Corp. that lead sulfide is absorbed little by man, if at all. St. Joe's D. H. Berlsterm claimed that lead sulfide "does not pose a significant adverse health problem and should be specifically exempted" from the lead standard. (Ex. 3 (107), p. 1.)

After evaluating industry claims that solubility and other factors of lead toxicity should be incorporated into the PEL, OSHA does not believe that the final standard poses what Bissonnette called "an unnecessary administrative and economic burden" on the less toxic lead compound industries. (Ex. 3(59), p. 2.) Several factors lead to this conclusion. Decreasing the airborne exposure reduces the amount of lead available for ingestion. Second, with the exception of lead sulfide, almost all lead to which employees covered by this standard will be exposed (e.g., lead fume, lead oxides) is relatively soluble. Most employees exposed to lead sulfide are mine and mill workers who fall under the jurisdiction of the Mine Safety and Health

Administration and are not covered by OSHA standards. Only the few employees involved in the handling of ore and concentrates at lead smelters will be exposed to lead sulfide and many of them may also be exposed to other, more soluble forms of lead such as recycled flue dusts, drosses, etc. (Ex. 26, p. 5-3.) With regard to paint, not enough is known about the biological response to paint particulates (Tr. 1203) for OSHA to assume that exposure to lead-based paints are less toxic. Bissonnette's suggestion that painters' blood lead levels are normal despite high air lead levels because of lower toxicity is perhaps better explained by the fact that painters always wear respirators as protection from toxic vapors of solvents in the paint. (Tr. 1200.)

Another factor suggested by participants is the particle size of the lead aerosol. Particle size affects the respirability and hence absorption of lead into the blood. However, nonrespirable particles may also be absorbed into the blood through direct ingestion or from swallowing nonrespired particles trapped on the mucous membranes in the respiratory tract. (Ex. 439A, p. 3-12.) The rate of absorption in the gut is clearly different than in the lung. OSHA agrees that particle size is relevant to the determination of a PEL and accounted for particle size in developing its air-lead to blood-lead relationship.

D. EXPOSURE MONITORING: PARAGRAPH (d)

The monitoring requirements of the final standard are imposed pursuant to section 6(b)(7) of the Act which mandates that standards promulgated under section 6(b) shall, where appropriate, "provide for monitoring or measuring of employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees." The primary purpose of monitoring is to identify the sources of lead emission and to determine the extent of employee lead exposure. This will enable the employer to select proper control methods and to evaluate the effectiveness of the selected methods. Additionally, monitoring enables employers to notify employees when their exposure levels exceed permissible limits, as required by section 8(c)(3) of the Act, and provides information necessary to the examining physician.

Paragraph (d) of the regulation contains provisions for monitoring employee exposure to airborne lead without regard to the use of respirators. The final standard is essentially unchanged from the proposal except for three differences: (1) the initial determination of employee exposure must be based, at least in part, on air sampling and analysis, (2) periodic monitoring must include full-shift personal samples, and (3) the monitoring frequency is reduced.

The proposed standard would have required all employers to make an initial determination of whether any employee might be exposed to lead in excess of the action level. The basis of this determination for most employers did not include exposure monitoring. Only employers in certain industries known to have high lead exposure would have been required to monitor. The purpose of this requirement was to minimize the burden on employers where limited exposure to lead existed.

OSHA has reassessed this provision and decided that employers in all industries where lead is present in an occupational context should perform a minimal amount of exposure monitoring because it is the only precise method of determining lead-in-air concentrations and because it cannot be confidently predicted that lead exposures exceed the action level in only certain industries.

In its criteria document on lead, NIOSH identified 113 occupations or trades in which exposure to inorganic lead is possible. (Ex. 1, p. x-3.) The preliminary technological feasibility and economic impact anaylsis identified and collected information on 46 industries, representing at least 57 SIC codes, where employee exposure to lead is believed to occur. (Ex. 22.) However, because of the changing usage of lead in industry and the widely varied trades where exposure occurs, there is no reporting system in the United States to analyze the prevalence of lead poisoning and no precise measure of the extent of lead exposure. (Ex. 1, p. III-1.) For these reasons, it is important for each employer in whose workplace lead is present or used in an occupational context to make an initial determination of potential employee exposure based on a reliable and accurate method. To exclude all employers except those in traditionally high exposure industries from initial monitoring (as the proposed standard would have done) is to fail to recognize the need to accurately identify and measure all occupational sources of lead exposure.

The initial monitoring reguirement is minimal in that it only requires monitoring of a repesentative sample of the employees believed to have the highest exposure levels. If these measurements indicate exposure below the action level, no further monitoring is required except where subsequent process or control changes would trigger a redetermination pursuant to paragraph (d)(7). If any employee is determined to be at or above the action level, then full-scale representative monitoring for all exposed employees is required.

In conducting the monitoring of employee exposures, the standard does not require that each individual employee's exposure level be measured. Although individual measurement is the ultimate indicator of an employee's exposure, OSHA believes that a requirement for individual measurement may be too burdensome, and that representative monitoring will adequately insure that the worker's exposure is maintained within the requirements of this standard. In establishments having more than one work operation involving the use of lead, in order for monitoring to be representative, it must be performed for each type of employee exposure within each operation. It should be noted that the requirement for representative monitoring does not preclude an employer from taking individual exposure measurements of each of his employees; individual measurements are certainly considered to be representative; however, representative monitoring merely establishes the minimum that the employer must meet.

OSHA disagrees with testimony which suggests that little or no confidence can be placed in determinations of employee exposure which are not based on an actual measurement of the exposure of each individual employee. (Tr. 6073.) If the representative employee chosen is, in fact, representative and a sampling protocol utilizing full-shift samples is used, OSHA believes this will be adequate in ascertaining employee exposure without being unduly burdensome. (Tr. 91-92.)

Accordingly, the standard requires that the measurements be made by monitoring which is representative of each employee's exposure to lead over a full shift period without regard to the use of respirators. A full-shift sample is considered to be at least 7 hours long; this provides a sufficiently long sampling period while allowing time for equipment set-up and calibration. (Ex. 3 (12), p. 4; Tr. 3626)

The objective of environmental monitoring is twofold: first, full shift personal sampling will enable the employer to determine an individual employee's exposure to airborne concentrations of lead.[6] Individual monitoring information combined with biological monitoring data and clinical evalua-

[6] OSHA recognizes that there will be day-to-day variability in airborne lead exposure experienced by a single employee. The permissible exposure limit is a maximum allowable value which is not to be exceeded; hence exposure must be controlled to an average value well below the permissible exposure limit in order to remain in compliance. This consideration forms the basis for OSHA's 95 percent confidence level requirements. (Ex. 314; Ex. 235; Ex. 150 A, pp. 30-32.)

tion form the basis for ascertaining the lead-related health status of an individual worker.

For example, if a worker had high blood lead level but a low air lead exposure as determined by individual sampling, other sources of lead exposure (ingestion, non-occupational sources, etc.) would be suspected. The physician could make use of this information to ascertain and correct the associated problem.

Second, thorough environmental monitoring also enables the employer to determine the source of lead emission, the efficacy of control technology, and progress achieved during implementation of controls. In industries with high lead exposure, a comprehensive industrial hygiene survey may be required to determine the nature and extent of the lead exposure problem. This survey may require far more than a single full shift personal sample. Multiple area and personal samples may be necessary and a variety of sampling times may be needed to determine precisely the source of emission. Short-term samples may determine ceiling values in a markedly fluctuating environment, whereas continuous area sampling may be required in relatively stable situations.

Thus environmental monitoring serves two different but related functions. The monitoring requirements of this section reflects these different goals. The requirement of full shift personal sampling is mandatory for two reasons: First, it enables the employer to determine whether he is in compliance with the action level and/or the PEL, and second, to obtain data on the individual employee which may be used in conjunction with biological monitoring to better insure that an individual suffer no loss of health from other sources of lead.

The standard also requires that air monitoring data obtained to define the sources of emission and to assist in the development of the compliance plan be contained in the compliance plan. This data is necessary in order to determine what environmental controls will be required to achieve compliance and will enable OSHA to fully evaluate the proposed compliance plan.

The final standard reduces the frequency of periodic monitoring from monthly to quarterly when the PEL is exceeded and from quarterly to semiannually when the action level is exceeded. This was favored by both industry (Ex. 3 (125)) and labor (Ex. 343, pp. 83-84) representatives. OSHA believes that accurate and representative sampling can be achieved by this schedule while reducing the economic costs of sampling between 50 percent and 66 percent.

Finally, the standard requires that the initial determination be made within 30 days of the effective date and the initial monitoring to be conducted and the results obtained within 90-days of the effective date of the standard. OSHA believes that these periods, in addition to the 90 day delayed effective date, is sufficient to enable employers to secure sampling equipment, take sufficient samples and obtain the results. Moreover, the standard permits employers, who have monitored within the last year as many have (Ex. 26, pp. 5-9, 5-35, 5-67), to utilize these measurements for purposes of compliance with the initial monitoring requirements, provided that the sampling and analytical method used meets the accuracy and confidence levels of this standard and provided that the employer maintains a record of these measurements and notifies employees of their exposure levels.

E. METHODS OF COMPLIANCE: PARAGRAPH (e)

The final standard requires employers to institute engineering controls and work practices, including administrative controls, according to a specific implementation schedule to reduce employee exposure to lead below the PEL. For some industries, interim levels are established which the employer must achieve solely by means of engineering and work practice controls. During the interim period before full compliance with the PEL in this manner is required and thereafter where engineering controls and work practices are not sufficient to comply with the PEL, they must be supplemented with appropriate respiratory protection. The standard also requires the employer whose initial monitoring reveals that employee exposure exceeds the PEL to develop a written compliance plan which is intended to promote rational planning and implementation of the employer's compliance efforts within the time permitted. The written plan also will enable OSHA and affected employees and their representatives to monitor the employer's progress toward compliance. Finally, if mechanical ventilation or administrative controls are used, some specific requirements are set forth.

In order to comply with the PEL, an employer will need to conduct an industrial hygiene survey, including environmental sampling, to identify sources of lead exposure and then devise methods to reduce exposure to within permissible limits. Employees covered by this standard are generally exposed to airborne lead particulate either when it is generated or released into the air directly from a production process or work operation or when it is dispersed after settling on floors, rafters, or other surfaces, including the worker's body and clothes. Methods commonly employed by industrial hygienists to control these exposures fall into three basic categories: engineering controls, work practice controls, including administrative controls, and personal protective equipment.

Several comments, including one from California's Occupational Safety and Health Administration, suggested that the terms "engineering controls," "work practice controls" and "administrative controls" are not understood by many employers and employees and need definition. (Ex. 3(31), p. 1.) These terms admittedly do not have precise meaning and often overlap, and the following is an attempt to set forth the meanings of these terms as they are commonly understood in the industrial hygiene community and used in this regulation.

"Engineering controls" employ mechanical means or process redesign to eliminate, contain, divert, dilute, or collect lead emissions at their source. Examples of this type of control include process isolation or enclosure; employee isolation (excluding respirators) or enclosure; closed material handling systems; product substitution or process redesign to eliminate the contaminant; and dilution or exhaust ventilation. "Work practice controls" or "work practices" accomplish the same results as engineering controls, but rely upon employees to repeatedly perform certain activities in a specified manner so that airborne lead concentrations are eliminated or reduced. This may be accomplished as simply as instructing employees to keep lids on containers, to clean up spills immediately, or to observe required hygiene practices. Good work practices are often required in conjunction with engineering controls; for example, where employees perform an operation under an exhaust hood, they must perform their work in such a way as to maximize the efficiency of the ventilation equipment.

Work practices also incorporate administrative controls within their scope. Administrative controls simply involve moving the employee to a place of lower exposure or reducing his work hours so that his daily, time-weighted average exposure is reduced. This type of control method does not act in any way on the source of the emissions.

Finally, personal protective equipment is a method of exposure control that isolates the employee from the emission source. Respirators are the primary type of personal protective equipment used when the concern is protection from an inhaled air contaminant.

The priority of control methods required by this standard, i.e., use of res-

piratory protection only as a supplement to engineering controls and work practices or as an interim measure while engineering controls and work practices are being implemented, is supported by evidence from the record and is consistent with the policy approach taken in all prior air contaminant standards promulgated by OSHA. Almost all representatives of the lead industries, including LIA and BCI, concurred with this approach provided engineering and work practice controls were feasible. (Ex. 342, p. 6; Ex. 355; Ex. 341, p. 12). The rationale behind this approach is based primarily on two principles. One is that protection of the employee is most effectively attained by elimination or minimization of the hazard at its source, which work practices and engineering controls are both designed to do, and the other is that methods which depend upon the vagaries of human behavior are inherently less reliable than well-maintained mechanical methods. The validity of these generalizations has been borne out by agency experience obtained throughout OSHA's existence and has been reiterated by many professional industrial hygienists for the lead record. (Tr. 2068.)

Engineering control is unquestionably the best method for effective and reliable control of employee exposure to lead. (Tr. 1366; Ex. 270, p. 20.) It acts on the source of the emission and eliminates or reduces employee exposure without reliance on the employee to take self-protective action. This method encompasses product substitution, process or equipment redesign, process or equipment enclosure, exhaust or dilution ventilation, and employee isolation (e.g., a standby pulpit, but not personal protective equipment). Once it is implemented, it protects the employee permanently, subject only, in some cases, to periodic preventive maintenance. Work practices also act on the source of the emission, but rely upon employee behavior, which in turn relies upon supervision, motivation, and education to make them effective. For this reason, work practices are not as desirable a method as engineering controls, but because the two methods often must be employed together to make either one effective (Ex. 270, pp. 22-23; Tr. 2069) and because they are the only methods that act to eliminate or reduce the hazard at its source, they have been given equal status in the compliance priorities of the final lead standard.

Administrative control, as a type of work practice, is also included in the group of primary methods of exposure control that must be used before respiratory protection. This modifies the approach in the proposed standard in which engineering controls were to be given priority over work practices, and reference to administrative controls was omitted. The approach in the final standard is primarily a result of recognizing the important role of work practices and clarifying the definition of the term "work practices" to include "administrative controls." These terms have been somewhat ambiguous in that the term "work practices" has been commonly thought to include employee rotation or other administrative types of control. However, OSHA's policy has generally been to denigrate the use of administrative controls (while still approving of other work practices) because they not only fail to eliminate the hazard but they expose more workers to the contaminant, albeit for shorter periods of time. The latter reason makes administrative controls unacceptable when the contaminant is one for which no effect levels are unknown, e.g., carcinogens. (See preamble to standard for occupational exposure to inorganic arsenic, 43 FR 19617, May 5, 1978.). In the case of lead, however, the PEL is based on dose-response data and although administrative controls do not eliminate or reduce the hazard as engineering controls and other work practices do, they can be a relatively safe and effective means of maintaining TWA levels below permissible limits.

Respiratory protection is relegated to the bottom of the compliance priority list because it is an ineffective, unreliable, and unsafe method of reducing employee exposure. The Council on Wage and Price Stability (Ex. 224) and some industry representatives (e.g., Ex. 3(107)) suggested a control strategy which would permit employers to place principal reliance on respiratory protection where employers determined that it was a "less costly method of achieving the same level of worker health." (Ex. 224, p. 14.) It is true that respirators are usually less costly than engineering controls, hence CWPS's and employers' eagerness to prefer them as the solution to control problems, but it is also true that respirators are not comparable alternatives to engineering controls, work practices, and administrative controls because they do not eliminate the source of the exposure, are generally not capable of providing the protection required, and create additional hazards by interfering with vision, hearing, and mobility. (Tr. 1967; 1462.) Some employees develop skin rashes where the facepiece makes contact with the skin, and some employees with cardiopulmonary impairment, otherwise able to work, cannot safely work with a respirator placing stress on their breathing. It may be difficult to fit female employees or employees with unusual facial configurations since respirators are manufactured with males as standards. (Tr. 1360.) The OSH Act places the primary burden of compliance on the employer, and to shift it to the employee, as respirators do, is, according to NIOSH, inappropriate (Tr. 1462) and is contrary to established OSHA policy. (See preamble to cotton dust standard, 43 FR 27384 (June 23, 1978).)

Respirators do, however, serve a useful function where engineering and work practice controls are inadequate by providing supplementary, interim, or short-term protection, provided they are properly selected for the environment in which the employee will be working, properly fitted to the employee, maintained and cleaned periodically, and worn by the employee when required.

It is clear from the discussion on feasibility (attachment D) that compliance with the PEL solely by means of engineering controls and work practices is feasible in all the affected industries, although in certain ones major process and control modifications may be required. The steelworkers noted that "the question of feasibility is basically one of length of time necessary for any plant to achieve compliance. . . ." (Tr. 4634.) Dr. First also agreed that "stringent limits for lead exposure should be treated as goals to be reached over reasonable time periods." (Ex. 270, p. 19.) The Court of Appeals for the Third Circuit in its review of the asbestos standard also recognized the need to allow "sufficient time to permit an orderly industry-wide transition. . . ." *IUD v Hodgson*, 499 F. 2d 467, 479 (3d Cir 1974).

The time necessary to implement these modifications will vary from industry to industry according to the magnitude of the modification required, but essentially it is based on the time necessary to plan, design, acquire, install, and test them. OSHA has taken these factors into account by developing an implementation schedule for compliance solely by the use of engineering controls and work practices. This schedule represents OSHA's best estimate of when each industry as a whole can feasibly come into compliance. This approach was what the third circuit apparently expected when it remanded the asbestos standard for clarification of why interindustry distinctions were not recognized in establishing the effective date for the two fiber PEL. (499 F. 2d at 479-81.) The rationale for the times chosen for each industry is contained in the discussion of feasiblity in attachment D.

The language of paragraph (e)(1) is intended to impose on the employer the affirmative obligation to comply with the implementation schedule

solely by means of engineering and work practice controls. This obligation has been determined to be feasible (see attachment D) and thus the obligation in the proposal to implement only "feasible" controls has been deleted in the final standard. OSHA's intent is to preclude individual employers from raising and proving the defense of infeasibility of compliance in an enforcement action and having citations vacated. OSHA has established industrywide feasibility and does not believe that any individual employer should be able to escape obligations that the industry as a whole can meet. On the other hand, OSHA will take individual claims of infeasibility into account through abatement programs tailored to meet the needs of individual firms and their employees. In addition, where an employer needs more time to comply with the implementation schedule and a temporary variance under section 6(b)(6)(A) of the Act is appropraite, it should be sought. Similarly, the mandatory nature of these requirements is not intended to discourage or inhibit the development of different, equally effective means of providing the required protection. The variance provisions of section 6(d) of the Act, and the implementing regulations in Part 1905 of this title, provide a mechanism for employers to obtain variances from the provisions of this section where the employer has developed alternative procedures which are as "safe and healthful as" those required by this section. The variance provisions of the Act permit the flexibility which contributes to efficient compliance with the standard. OSHA encourages interested employers to utilize the variance provisions of the Act where equally safe and healthful protective means are available.

Additionally, since the standard has been deemed to be feasible in all industry segments, the standard establishes an employer's failure to meet the exposure levels in accordance with the implementation schedule as a prima facie violation of paragraph (e)(1). However, the preamble recognizes that engineering and work practice controls may not be adequate or appropriate at certain times (e.g., unexpected process upsets) or for some job task which are performed in locations which are not predeterminable (e.g., repair, non-routine maintenance) or inaccessible (e.g., lead burning in ship hulls). In these and other cases, it should properly be the employer's burden to prove impossibility or technological infeasibility of compliance. The employer is familiar with his workplace and the production processes and control technology available to his industry and should properly bear the responsibility of proving an inability to comply.

The standard also has a requirement for the development and implementation of a written compliance plan where the employer has employees exposed to lead, without respect to respiratory protection, in excess of the PEL. The plan should be a written strategy for achieving compliance with the implementation schedule solely through the use of engineering and work practice controls, and must incorporate all relevant information that relates to those goals so that in an examination of the plan, one could determine whether the employer reasonably analyzed the problems and their solutions, including alternatives and implemented the plan in accordance with its schedules.

This plan is required primarily to promote systematic and rational compliance by employers and to assist OSHA in its enforcement function by enabling compliance personnel to monitor employers' compliance activities.

The standard requires the employer to have the written plan completed and made available at the worksite according to a schedule determined by the compliance implementation schedule in table I of paragraph (e)(1). OSHA considers 6 months to be a sufficient planning period when the total compliance time is 1 year and the compliance effort is not complex. For those industries where compliance will require between 2 and 5 years, 1 year for planning and preparation of the plan is deemed adequate; for the primary lead production industry which has 10 years to comply with the PEL, as much as 5 years may be needed so as to incorporate the latest developments in emerging technology.

Upon examining the employer's compliance plan, the Secretary will determine whether the plan's schedule for implementation of engineering and work practice controls is designed to and will achieve compliance with the PEL by the required date. OSHA will take enforcement action in cases where the compliance program does not project the implementation of these controls by that date, or where it appears that the schedule for implementation is extended such as to render completion by the required date unlikely. In addition the employer who has developed an adequate plan for reducing employee exposure below the PEL but does not meet the scheduled implementation dates in the plan will be subject to citation.

These written plans must be furnished upon request for examination and copying to representatives of the Assistant Secretary and the Director and to affected employees and their designated representatives. They must be reviewed and updated periodically at least every 6 months to reflect the current status of exposure control. OSHA views the requirement for written plans as an essential part of the compliance program since it will form the basis for determining the employer's ability to achieve the controls and provide the necessary documentation to OSHA of the compliance methods chosen, the extent to which controls have been instituted, and of the plans to institute further controls.

The inclusion of the 200 $\mu g/m^3$ level in the schedule is simply intended to continue the present standard, which has been in effect since 1971. This level will continue to be enforced until compliance with a lower level is required. For the five named industries, compliance with 100 $\mu g/m^3$ by engineering and work practice controls will be enforced at the times indicated as an interim milestone until ultimate compliance with the PEL is achieved. The time allowed for each industry to comply is based on record evidence of the nature of the action required in each industry and the time reasonably necessary to accomplish it. Since ultimate compliance in several industries will take as much as five or more years, compliance with 100 $\mu g/m^3$ as an intermediate milestone is required because it will assure a greater measure of employee protection than might otherwise be provided if no intermediate goal were specified. OSHA recognizes that in some limited cases ultimate compliance with the PEL may require action that is inconsistent with action that would be required to reduce levels to the 100 $\mu g/m^3$ interim level. This is meant to cover the situation where the allocation of technical or economic resources to compliance with the interim level would divert resources from the final goal and clearly preclude compliance with the PEL, which would otherwise be attainable, by the required time. An example of where this situation may arise is where compliance with the interim level could be achieved by retrofitting an antiquated production process with expensive dust control devices, but only removal of those devices and costly redesign and modernization of the process could achieve compliance with the PEL. If the employer's compliance program contemplates achieving the PEL within the schedule, and the employer can demonstrate why compliance with the interim level is incompatible with compliance with the PEL, the employer must conform the compliance plan accordingly and notify the OSHA Area Director nearest the workplace. This notification requirement is intended to alert OSHA that an employer intends to bypass the interim level and to initiate an in-

spection of the compliance plan if appropriate.

The final standard retains the requirement that where mechanical ventilation is used, quarterly measurements of the system's effectiveness must be made. Some parties claimed that this was too costly, but OSHA believes that periodic checks are absolutely necessary to insure the integrity of a ventilation system. It should be noted that the three measurements listed in the regulation are only examples. Any measurement which assures the system's effectiveness will comply with the standard. In addition, because of the cost and minimal utility, the requirement that a record of these measurements be kept has been deleted.

The proposed standard prohibited the recirculation of workspace air. However, as Dr. First explained during the hearings, "energy conservation by recirculation of industrial exhaust ventilation air is a highly desirable goal" if "a system of that type would be sufficiently reliable given the general degree of maintenance and repair of air control equipment that we see in industry." (Tr. 2320; Tr. 5310)

The weight of the evidence from the hearing is that safe recirculation is technologically feasible and economically desirable for dry particulate dusts. The post-hearing brief of the Steelworkers concluded from the hearings that "it is now possible for plants to operate recirculation systems safely with the advent of sophisticated back up equipment." (Ex. 343, p. 126) The Battery Council International agreed. (Ex. 342, p. 7) The LIA suggested that "since the outdoor ambient air in the vicinity of a lead plant often contains a relatively high air-lead concentration, properly designed recirculation systems may furnish the workplace with air that is in fact lower in lead concentration than the air which would otherwise be drawn in through conventional air systems." (Ex. 335) Similarly, Caplan of IHE stated that "a well-designed recirculation system could provide a healthier working environment than would a conventional exhaust and make-up air system . . . If you would permit recirculation, again and always with adequate safeguards, then the designer and the owner and operator can afford to be more generous with the amount of air handled in the exhaust hoods and dust control hoods, and therefore achieve better results." (Tr. 3719)

In its report for the BCI, IHE described a safe design for recirculation. (Ex. 29(29A), pp. 6-7) The system would consist of a self-cleaning fabric filter as the first air cleaning devices followed by a second or high-efficiency backup filter of the HEPA type. This second filter can be tested in place to assure its proper functioning, and there are no moving parts to reduce the efficiency of such a filter bank. Other controls can easily be installed to monitor the concentration of lead oxide dust in the air, and to bypass the recirculation systems automatically if it fails. Schneider also described a safeguard system used in the beryllium industry. (Tr. 2075-76) Based on the availability of these designs, OSHA believes that safe recirculation of air is technologically feasible and can be sufficiently protective. Recirculation is also fuel efficient and economically desirable because tempering of additional make-up air would not be required and additional air quality systems may not be necessary. (Ex. 342, p. 7) IHE performed cost calculations with and without recirculation in its cost study of 12 battery plants to illustrate the fuel savings. (Ex. 29(29A).) Caplan testified that the capital cost of installing a safe recirculation system can be recovered in one year by the savings in fuel. (Tr. 3718-19) OSHA thus has permitted recirculation of air under conditions which will provide cost savings to employers and fuel efficiency with adequate protection of employee health.

Finally, the fiscal standard requires that when administrative controls are used to lower employee exposure, a rotation schedule is to be kept and followed and made a part of the written compliance plan. This will enable OSHA and affected employees to determine the effectiveness of the administrative control program.

F. RESPIRATORY PROTECTION: PARAGRAPH (f)

This section contains specific requirements for the usage, selection, maintenance, and fitting of respirators. It is, in essence, unchanged from the proposal except certain provisions have been added to account for the possibility that substantial reliance may be placed on respirators to achieve permissible limits while engineering and work practice controls are being implemented. As a general matter, few objections to the proposed respirator provision were made; specific ones are discussed below.

The final standard, like the proposal, requires that respirators be used during the time period necessary to install or implement engineering and work practice controls, when engineering and work practice controls are not sufficient to reduce exposure to the permissible exposure limit, or whenever an employee requests a respirator. This last requirement is to provide protection for those employees who wish to reduce their lead burden below that which is required by the standard. For example, male and female workers whose blood lead levels are in the 30-50 $\mu g/100g$ range may desire increased protection, especially if they intend to parent in the near future.

While respirators are the least satisfactory means of exposure control, they are capable of providing protection if properly selected, fitted, maintained, replaced when they cease to provide adequate protection, and worn when required. While it is theoretically possible for all of these conditions to be met, it is often the case that they are not, and as a consequence, the protection of employees by respirators is not considered effective. Further, employees with impaired respiratory function may not be able to wear certain types of respirators, such as those operating in the negative pressure mode.

Several witnesses addressed the difficulty in obtaining a proper fit in some employees. Robert Schutz, of NIOSH's Testing and Certification Branch, noted that respirators have traditionally been designed to fit men and only recently has NIOSH proposed regulations to amend Subpart K of Part 11, 30 CFR, for dust, fume and mist respirators, to include a test panel composed of women test subjects. (Tr. 1360)

Edward Baier, Deputy Director of NIOSH, further emphasized that while respirators are not suited to women's faces, they are also not suitable for persons wearing a beard or mustache or even persons with a scar. (Tr. 1459). Many other participants elaborated on other problems associated with respirator fit. (Ex. 91, Tr. 1240-1; Tr. 6433; Tr. 6476; Ex. 155A).

There are more problems associated with respirator use than those of fit. Fatigue and reduced efficiency occur more rapidly among workers wearing respirators due to increased breathing resistance, hearing stress and reduced vision. (Ex. 91; Tr. 6476) Safety problems presented by respirators must be considered. (Ex. 91) Respirators may limit vision, which is a significant factor where numerous physical hazards exist and the employee's ability to see is important. Speech is also limited. (Ex. 91) Voice transmission through a respirator can be difficult, annoying and fatiguing. (Tr. 5871, 6616) Communication may make the difference between a safe, efficient operation and a hazardous operation, especially in dangerous jobs. Entanglement of hoses of air respirators as well as limited mobility due to hose lengths, are problems in heavy industrial environments. (Ex. 91, Tr. 4014) Self-contained breathing apparatus have the double problem of restriction of motion and necessity for carrying around heavy weight. (Ex. 91)

Despite the inherent difficulties associated with respirator use, they remain the only viable form of protec-

tion when engineering and work practice controls are not adequate to achieve permissible limits. Witnesses for NIOSH, labor and industry agreed that respirators are only acceptable as an interim measure (Tr. 1459; Tr. 2594-95; Tr. 6455; Tr. 6476; Tr. 1313; Tr. 1561; Tr. 1240-41; Tr. 1966; Tr. 5812; Tr. 5821; Tr. 5508), and OSHA emphatically agrees that respirators are not to be used as a primary method of control. However, because of the lengthy compliance periods required by some industries to implement engineering controls and work practices, respirators will be necessary in the interim as the only available protective method.

A daily limit on duration of respirator usage (e.g., Tr. 1459; Tr. 5801-11; Ex. 343, p. 118) has been considered by OSHA, especially for those industry segments which presently have high lead exposure and will require a year or more to reduce levels to permissible limits. In most cases respirators will not be required to be worn for a full day; the respirator will only be required to be worn for a period of time which, when averaged with the period the respirator is not worn, does not exceed the PEL. For example, if environmental monitoring shows that an employee's exposure level without regard to a respirator is 100 $\mu g/m^3$, the respirator need be worn only a little more than 4 hours. (See paragraph (c)(3) of the regulation and discussion in paragraph C of the Summary and Explanation.)

The evidence in the record on the inadequacy, discomfort, and hazards associated with respirator usage support some limitation of full-shift wearing of respirators for long periods of time. (Ex. 155, p. 9) Four industries (secondary lead production, battery manufacturing, pigment manufacturing, and nonferrous foundries) are not required to meet the PEL for five years; one industry (primary lead production) is not required to meet it for 10 years. OSHA has concluded that for these industries the time for compliance with the interim level of 100 $\mu g/m^3$ should begin a limitation for respirator usage for employees. Accordingly, the final standard limits to 4.4 hours the amount of time an employee may be required to wear a respirator after 3 years in primary smelting, secondary smelting, and pigment manufacturing; after 2 years in battery manufacturing and after 1 year in nonferrous foundries. The time limit is based on the maximum amount of time an employee would have to wear a respirator (assuming a protection factor of 10) if the employer has complied with the interim level, and as such, imposes no additional burden on the employer. If the interim level of 100 $\mu g/m^3$ is not achieved within the compliance dates specified, the employee will not be required to wear respirators more than 4.4 hours per day, and the employer will be required to use other means, for example, worker rotation, to achieve compliance with the PEL of 50 $\mu g/m^3$. OSHA anticipates that some firms will not attempt to achieve the interim 100 $\mu g/m^3$ PEL but will develop a compliance plan which by-passes the interim level. OSHA believes this is an acceptable method of compliance, but the agency does not believe the employee should be required to bear the burden of the continued high lead levels by being required to wear respirators 8 hours per day. OSHA has attempted to provide a great deal of flexibility in the methods of compliance in order to reduce the burden to the employer without compromising the health of the employee. The employees cannot be expected to accept these more flexible compliance provisions if they are to bear the brunt of the effects of that flexibility by being required to wear respirators continuously. Worker antipathy toward respirators is well documented in the rulemaking records of this and other OSHA standards and in addition the agency is concerned that respirator use for 8 hours over an extended period of time may constitute a health risk to individual employees, especially those with cardio-respiratory disorders.

Because of the discomfort and hazards associated with negative pressure respirators, coupled with the possiblity of long-term use in some industries, OSHA has required employers to provide powered, air purifying (positive pressure) respirators (PAPR) to employees who request one, so long as it will provide adequate protection against the hazard for which a respirator is worn. Powered positive-pressure respirators provide greater protection to individuals (Tr. 1556), especially those who cannot obtain a good face fit on a negative pressure respirator (Ex. 155, p. 8), and will provide greater comfort when a respirator needs to be worn for long periods of time. OSHA believes employees will have a greater incentive to wear respirators if discomfort is minimized.

The standard requires the employer to select respirators in accordance with Table II from those approved by MSHA or NIOSH. The respirator selection table will enable the employer to provide the type of respirator which affords the proper degree of protection based on the airborne concentration of lead. While the employer must select the appropriate respirator from the table on the basis of the airborne concentration of lead, he may always select a respirator providing greater protection, that is, one prescribed for higher concentration of lead than present in his workplace. The respirator table is based on the NIOSH recommendation presented during the March 1977 hearing. (Ex. 86I, 86J, 87, 88, 89, 90, 91)

Similar to the proposal, single use respirators are not permitted to be used by the final standard. The 3M Company criticized the exclusion of the single use respirator from the respiratory selection table. (Ex. 3(36)) The original exclusion of single use respirators was based primarily on the inadequate protection factor, the fact that lead is a systemic poison, and the current provisions of 30 CFR Part 11 for approving single use respirators.

OSHA is particularly concerned about the penetrability of the single use respirator in a lead environment, which raises doubts about the protection factor of 5. OSHA will request that NIOSH study the efficacy of single use respirators in the future and make their findings known to the Agency. OSHA has reviewed the basis of its original decision concerning the protection afforded by a single use respirator and accepts the respirator decision logic in eliminating single use respirators for use with systemic poisons.

The standard further requires that the employer institute a respiratory protection program in accordance with 29 CFR 1910.134. This section contains basic requirements for proper selection, use, cleaning and maintenance of respirators.

The standard also requires that respirators be properly cleaned and filters replaced when necessary. (Tr. 5565, Ex. 91, Chapters 8 and 9)

The employer is also required to assure that the respirator facepieces fit. Proper fit of the respirator is critical. (Ex. 91; Tr. 1828, 4724) As a negative pressure is created within the facepiece when the wearer breathes, unfiltered air may enter the facepiece if gaps exist. (Ex. 91) Obtaining a proper fit on each employee may require the employer to provide two or three different mask styles.

In order to insure that the employee's respirator fits properly and that facepiece leakage is minimized, there was agreement by industry, government and labor that fit testing should be done. (Tr. 1554, 1556, 1966, 2311, 3203-04, 4721, 4935, 6480, 2401, 2311; Ex. 91) A quantitative fit test on negative pressure respirators is required by the standard because it is more accurate and provides greater assurance that the respirator is providing proper protection to the employee than any other type of fit testing. (Tr. 3203-4; 1554-56; 2311; 4721; 1966) Whereas the qualitative fit test is subjective, relying upon the employee's sense of smell, the quantitative fit test uses instrumentation inside the facepiece to determine the integrity of the seal.

One type of quantitative fit test involves using a simple hood, sodium chloride vapor, and automated instrumentation. It can be performed rapidly and easily. The cost of the quantitative fit testing equipment is substantial, but since the standard only requires it to be done twice a year and since some employees will be wearing respirators for extended periods of time, OSHA has concluded that good respirator fit must be assured and that the benefit of quantitative fit testing far outweighs the costs involved. NIOSH confirmed the feasibility of such testing (Tr. 1556), and the costs for small employers can be minimized because the testing equipment is mobile and could be brought to the workplace on a fee basis. (Tr. 1555; 4722)

In addition, the standard requires that employees be properly trained in the use of respirators. (Ex. 91) The employee must be properly trained to wear the respirator, to know why the respirator is needed and to understand the limitations of the respirator. (Tr. 4010, 4011, 4085; Ex. 91) An understanding of the hazard involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform to the program set forth in 29 CFR 1910.134.

The standard requires that the employer shall provide respirators at no cost to the employee. This has been added to make explicit what was implicit before and has been common practice in all industries. Allocation of respirator costs to the employer was made in the EIS (Ex. 26).

G. PROTECTIVE CLOTHING AND EQUIPMENT: PARAGRAPH (g)

This paragraph contains requirements that the employer provide employees with protective clothing and equipment that are appropriate for the hazard. The purposes are to protect employees from lead compounds which may cause skin or eye irritation (e.g., lead arsenate, lead azide) and, for employees who are exposed to lead above the PEL, to assure that clothing, shoes, and equipment on which lead dust can accumulate during the work shift are not worn home or in the lunchroom. Wearing contaminated clothing outside the work area where exposure controls are operating will lengthen the duration of exposure through both inhalation and ingestion routes. In addition, lead dust will accumulate in employees' cars and homes exposing other family members to the hazard. (Tr. 4146)

These provisions generally met with approval by all participants to the rulemaking, and, in fact, most employers presently provide clothing and equipment at no cost to employees. (Ex. 26, pp. 5-11, 5-35, 5-68; Tr. 2215, 3788, 4078, 4147, 5055, 5263, 5554, 5656, 6156, 6256, 6257, 6287, 6300, 6310, 6393).

The proposal did not specify the frequency with which work clothing must be provided. OSHA has determined that if clean work clothing is provided at least weekly to employees whose exposure levels are above the PEL and daily for those above 200 $\mu g/m^3$, adequate protection will be afforded and unnecessary costs minimized.

The final standard also emphasizes the need to assure that contaminated clothing is stored, cleaned, or disposed of in a safe manner. It requires that contaminated clothing be stored in sealed containers prior to laundering or disposal so that contamination in the change room is minimized and that employees who later handle the clothing are protected. The latter group are further protected by the requirements to put warning labels on the containers and to provide written warning of the hazards of lead. These practices commonly occur in the lead industries today and thus do not impose significantly new obligations on employers. (Tr. 1253, 1656)

Some confusion arose over the language in the proposal that "the employer shall launder, maintain, and dispose of all protective clothing." (Paragraph (h)(2)) This was interpreted by some employers as requiring the employer to operate his own laundry facilities. This was not OSHA's intent, and the final standard attempts to make clear that the employer may utilize commercial laundries by stating that the "employer shall provide for the cleaning, laundering, or disposal. * * *" Some witnesses testified that discarded and dirty uniforms should never leave the plant (e.g., Dr. Teitlebaum, Tr. 530), but OSHA believes that the labelling and warning requirements of the standard will minimize exposure outside the plant.

H. HOUSEKEEPING: PARAGRAPH (h)

The final standard requires that all surfaces be maintained as free as practicable of accumulation of lead dust. This is to be accomplished primarily by vacuuming of floors, rafters, and other surfaces or by methods equally effective in preventing the dispersal of lead into the workplace. This is an exceptionally important provision because it minimizes additional sources of exposure that engineering controls are generally not designed to control. All participants to the rulemaking agreed to the need for scrupulous housekeeping. (Ex. 335, p. A-9; Ex. 270) Donald Hull, president of a small battery manufacturing company, testified that he attributed the success of his industrial hygiene program to a primary emphasis on housekeeping. (Tr. 1246)

The proposed language for this provision required "surfaces to be maintained free of accumulation of lead which, if dispersed, would result in airborne concentrations above the permissible exposure limit." (Paragraph (i)(7)) This requirement would be very difficult for the employer to comply with and OSHA to enforce because it would be nearly impossible to objectively determine when the condition in the standard would occur. (Ex. 3(71), p. 13) OSHA's view is that a rigorous housekeeping program is absolutely necessary to keep airborne lead levels below permissible limits but that the obligation should be measured by a standard of practicability. (Tr. 5747) This contemplates a regular housekeeping schedule based on exposure conditions at a particular plant and the capability for emergency cleanup of spills or other unexpected sources of exposure.

Vacuuming is considered by all experts to be the most reliable method of cleaning surfaces on which dust accumulates (Tr. 2379; 2069) but equally effective methods may be used, for example, a wet floor scrubber. (Tr. 2922) Dry or wet sweeping, shoveling, or blowing with compressed air may not be used except where vacuuming or other equally effective methods have been tried and do not work. (Tr. 2196-99; 2379)

I. HYGIENE FACILITIES: PARAGRAPH (i)

This provision requires employers to provide hygiene facilities and to assure employee compliance with basic hygiene practices which are recognized industrial hygiene tools for minimizing additional sources of lead absorption from inhalation or ingestion of lead that accumulates on a worker's clothes or body. No later than one year from the effective date of the standard, the employer must provide adequate shower and washing facilities, clean rooms for changing clothes, and filtered air lunchrooms for employees who have exposure above the PEL. In addition, employers must assure that employees use the facilities as required by the standard as well as observe prohibitions on tobacco, food, and cosmetics in contaminated areas. OSHA expects that strict compliance with these provisions will virtually eliminate several sources of lead exposure which substantially contribute to increased lead absorption.

Several of these facilities and practices are presently required under current OSHA standards for General Environmental Controls in Subpart J of 29 CFR Part 1910. For example, § 1910.141(e) requires the employer to provide change rooms with separate storage facilities for street and work

clothing, and section 1910.141(g) requires the employer to prohibit the consumption of food and beverages in areas where there is exposure to toxic substances. The provisions of this standard are intended to augment Subpart J with additional requirements which are specifically applicable to lead exposure and to consolidate all related provisions under one standard.

Many firms affected by this standard have already instituted facilities similar to those required in the final standard. (Tr. 1231; 2176; 2905; 2943; 3655; 3785; 4395; 4397; 4844; 4875; 5651; 5655; 6154; 6209; 6270) Employee usage of these facilities has been limited in some cases because, absent mandatory obligations, employers have not been successful in encouraging such usage. (Tr. 2567, 4875, 6318, 6453-54) The standard does not impose mandatory obligations on employees, as some employers have suggested, because employers are in a better position to impose and enforce work rules or practices. OSHA does however believe that employees have a responsibility to act consistent with the objectives of the standard and to comply with all reasonable work rules designed to implement them.

Employers generally conceded the authority to impose and enforce reasonable work rules or make compliance with them a condition of employment. (Tr. 2070; 2943) Labor union officials have offered to assist industry in enforcing equitable hygiene practices. (Tr. 1038, 2943, 2969) OSHA's experience has been that if employees understand the need for these provisions and if the hygiene rules are imposed in a fair and equitable manner, employers will experience a minimal lack of cooperation from employees.

The final standard requires employers to prohibit smoking, eating, applying cosmetics and the presence of tobacco products, food stuffs, or cosmetics in all work areas except those designated. (Tr. 6459) This prohibition will prevent unnecessary contamination of food or tobacco products caused by exposure to lead dust or fumes within the work area. It also decreases the likelihood of lead absorption in employees due to ingestion or inhalation of products contaminated with lead within the work environment.

The standard reiterates specifications in section 1910.141 pertaining to the type of change room an employer must provide. OSHA believes it is essential that employees have separate storage areas for street and work clothing to prevent cross-contamination between the two. This provision coupled with showering and the prohibition on wearing work clothing home will minimize employee exposure to lead after the work shift ends because it reduces the period in which work clothes coated with lead dust may be worn.

Employers are also required to assure that employees exposed to lead during their work shift shower before leaving the plant and do not leave wearing work clothing. Showering reduces the worker's period of exposure to lead and removes lead particles which accumulate on the skin and hair. Employees are not permitted to leave the plant wearing any work clothes, including shoes and underwear, because this practice would negate any advantage gained by showering.

During the hearings, some employers protested that this provision is impractical because it would require close supervision of employees, but none challenged the provision as unnecessary. In fact, many industries maintain shower facilities and advise their employees to shower at the end of their shift. Some companies require that workers shower. (Tr. 5658, 6259) OSHA believes showering is a necessary practice providing protection to employees and their families which far outweighs the limited burden placed on employers.

The final standard requires employers to provide persons working in lead areas with filtered air lunchrooms which are readily accessible. Employers must also assure that employees wash their hands and face prior to eating or smoking and do not enter the lunchroom wearing protective clothing, unless cleaned beforehand. OSHA feels it is imperative that employees have a clean place to eat, free from the toxic substance with which they work all day. Filtered air lunchrooms will shield employees from the dangers of food which would otherwise become contaminated by lead dust, mist or fume. (Tr. 2074) Employees are required to wash before eating to further minimize the possibility of food contamination and reduce the likelihood of additional lead absorption from contaminated food, beverages or tobacco. To further insure minimal food contamination, protective clothing must either be removed or cleaned before entering the lunchroom (Tr. 2074). Instead of requiring any particular method, employers are given discretion to choose any method for removing surface lead dust which does not disperse the dust into the air.

The hygiene provisions in the final standard are necessary and appropriate to protect employees within affected industries from unwarranted and dangerous exposure to lead not necessary to job performance. Few, if any, participants in the rulemaking denied the benefits afforded by these provisions.

J. MEDICAL SURVEILLANCE: PARAGRAPH (J)

The medical surveillance program is part of this standard's comprehensive approach to prevention of lead-related disease. Its purpose is to supplement the standard's primary mechanisms of disease prevention, the elimination or reduction of airborne concentrations of lead and sources of ingestion, by facilitating the early detection of medical effects associated with exposure to lead. Control of airborne lead below the permissible exposure limit will protect most workers from the adverse effects of lead exposure, but may not be satisfactory to protect individual workers (1) who have high body burdens of lead acquired over many years working in the lead industries, (2) who have additional, uncontrolled sources of lead exposure (e.g., non-occupational), (3) who exhibit abnormal variation in lead absorption rates, or (4) who have specific medical conditions which could be aggravated by lead exposure (e.g., renal disease, anemia). In addition, control systems may fail or hygiene and respirator programs may be inadequate, and periodic medical surveillance of individual workers may help detect those failures.

The proposed standard contained provisions for a medical surveillance program which combined periodic biological monitoring with preplacement and followup medical examinations. In general, the proposal met with approval from all interested parties although there was disagreement on specific issues such as the content of the medical exam and the frequency of biological monitoring. OSHA has reviewed all the rulemaking evidence on this subject and has concluded that the final standard, while similar to the proposal, contains a medical program that is reasonably necessary and appropriate for the early detection of the effects associated with overexposure to lead. OSHA has deleted the unnecessary or objectionable aspects of the proposal and supplemented it with only those medical tests and procedures which the lead record documents are necessary to identify early indications of lead-related disease in the affected systems. The final standard also contains provisions which will maximize voluntary and willing participation and will foster employee confidence in the program, both of which are often lacking in current industrial medical programs (Ex. 343).

The employer's obligation to commence a medical surveillance program for an employee is triggered by a determination that the employee's exposure exceeds the action level for more than 30 days a year. Some firms in the primary smelting industry claimed that all employees working with lead should be subject to periodic medical surveillance without regard to air lead

levels. (Ex. 3(67); Ex. 3(103), p. 59; Ex. 3(71), p. 15.) This may be desirable for lead industries where lead exposure is so pervasive, but the OSHA standard applies to many industries in which lead exposure is relatively low, infrequent, or incidental. OSHA believes there is no need or justification for employees whose TWA exposure levels are below the action level, or above the action level for less than 30 days a year, to undergo medical surveillance or for their employers to bear the related costs.

Upon completion of initial air monitoring, the employer must begin the medical surveillance program for all covered employees. The standard does not make participation in the medical surveillance program mandatory for the employee. The employer's obligation is to "provide" and "make available" the medical tests and procedures as required. Where employee confidence in the medical program exists, refusal to participate should be minimal. (See discussion of mandatory medical examinations in the MRP Attachment.)

Initial biological monitoring and medical examinations must be completed no later than 180 days from the effective date thus allowing 90 days from the completion of air monitoring. (See paragraph (r) of the regulation.) In most cases, this extended startup date should compensate for the predicted short-run unavailability of medical and technical personnel, and OSHA believes the problems will be minimal since some type of medical surveillance program is commonplace in most industries where lead is handled, even in the smallest firms.

The standard requires that priority for medical surveillance be given to employees who are at the greatest risk from continued exposure. This determination should be made on the basis of the air monitoring results, along with any other information the employer may possess, such as past medical or air monitoring records, employees' job tenure in the lead industries, etc. This should assure that those employees most in need of medical surveillance obtain it as soon as possible so that remedial action may be taken if necessary.

Biological monitoring required by the final standard is somewhat different than that in the proposal. The proposal would have combined blood lead level monitoring (PbB) with monitoring of urine lead levels (PbU) or urine ALA levels (ALAU); urine measurements have been deleted and replaced by monitoring of zinc protoporphyrin (ZPP) levels. The preamble to the proposal expressed the medical community's doubt about the usefulness of urine monitoring; with a few exceptions (Tr. 4358), the consensus in the record was in favor of deleting urine measurements and adding ZPP monitoring. (Tr. 1309, 1311-12, 2656, 2732, 2771, 2877, 4358, 4735.) PbB's have been the traditional means of biological monitoring in the lead industries. It is a relatively accurate measurement of current lead absorption, and almost all dose-response studies of lead-related disease have used PbB's as an index of exposure dosage. (Tr. 1311.) Hence, OSHA has had to rely on PbB's to establish the PEL and now retains PbB's as an essential part of the biological monitoring program. (Ex. 284A, p. G1.) However, the advent of simplified ZPP monitoring through the use of the hematofluorometer has convinced OSHA that ZPP monitoring, in concert with PbB's, will provide, at minimal cost, a greatly improved biological monitoring program over PbB's alone. PbB measures only absorption of lead; ZPP gives an indication of the biological effect of absorption on heme synthesis.

Heme is the basic component of both hemoglobin, which functions in the transport of oxygen from the lungs to the body cells, and the cytochromes, which function in the respiration of the individual cells. Therefore, any interference with heme synthesis may create a considerable adverse effect on the body. (Tr. 429.) Lead is one substance known to produce such interference, causing changes, not only in heme production, but also in the level of some of the circulation intermediate metabolites formed during heme synthesis. These metabolites include delta-amino-levulinic acid dehydratase (ALAD), delta-aminolevulinic acid (ALA), coproporphyrin, and zinc protoporphyrin (ZPP). (Ex. 275.) Zinc protoporphyrin is actually the result of the inhibition of an enzyme, ferrochelatase, which catalyzes the insertion of an iron molecule into the protoporphyrin molecule, which then becomes heme. If iron is not inserted into the molecule, then zinc, having a great affinity for protoporphyrin, takes the place of the iron, thus forming ZZP. (Tr. 435.) Whereas the heme molecule serves in a very necessary body funciton, ZPP is useless to the body, but it is the most easily measured heme metabolite. (Tr. 436; Ex. 343.)

Measuring the level of ZPP in the blood is one means of determining the internal toxic effect of lead absorption, relative to heme synthesis impairment. In fact, the level of ZPP is a far superior indicator of lead toxicity than the level of blood lead itself, which actually only measures the level of individual exposure. (Ex. 343) Furthermore, an elevation in the level of circulating ZPP may occur at a very low blood lead, i.e., 20-30 μg/100 g in some workers. (Ex. 262.)

Once the blood lead level has reached 40 μg/100 g, however, there is a precipitous rise in the ZPP value from its normal range of less than 100 μg/100 g whole blood. (Ex. 105E) As the evidence within the record indicates, there is a strong correlation between elevations in these two biological parameters, blood lead and ZPP. In fact, it has been shown that after the blood lead level reaches 40 μg/100 g, any arithmetical increase in blood lead will correspond to an exponential increase in ZPP. (Ex. 105E; Ex. 23(39); Tr. 439.) It is possible that the ZPP test is one of the earliest and most reliable means of monitoring chronic lead absorption in workers. (Ex. 105E; Ex. 309; Tr. 465; Ex. 99B; Ex. 343.)

An elevation in ZPP may be the key to the multiple clinical effects of lead toxicity on several body systems, which become apparent as the exposure continues. (Tr. 466; Tr. 2432.) Substantiation for this is demonstrated by the correlation between elevated ZPP and other measureable biological parameters, including blood lead. For instance, it is reasonable to expect a lowered hemoglobin level as ZPP values increase, and significant correlations have been found between reduced hemoglobin and elevated ZPP. (Ex. 118C; Ex. 105E; Ex. 23(39).) Elevations in blood urea nitrogen (BUN) and serum creatinine (S-Creat) have also been found to correlate well with increased ZPP levels. Since both BUN and S-Creat are biological indicators of kidney damage, the monitoring of ZPP may serve as an early herald of renal toxicity. (Ex. 23(39).) There is also some evidence available that elevated ZPP values are found in workers with peripheral neuropathy and CNS symptoms. (Ex. 23(14); Tr. 2432; Ex. 23(39).)

The accumulation of ZPP in the red blood cells quite clearly indicates a chronic interference by lead with heme synthesis. (Ex. 24(2).) In practice, the monitoring of ZPP on a bimonthly basis will provide an index of lead effect, as well as lead exposure. (Tr. 1312.) Moreover, in contrast to blood lead, the ZPP test is a quick, efficient, economic and safe means of monitoring workers. By utilization of the hematofluorometer, the ZPP test can be conducted at the worksite, and the workers can almost instantly see accurate test results. (Ex. 343; Tr. 433, 662.)

Finally, as the result of the variability of lead absorption and its subsequent distribution within the body, blood lead levels fluctuate over short time spans, whereas ZPP levels remain relatively stable. (Ex. 343; Tr. 2445.) For example, ZPP, once it becomes the heme substitute has been shown to remain there for the lifetime of the red blood cell (about 120 days). The

rate of production of ZPP is, however, a function of the concentration of lead within the bone marrow—the primary site not only of heme synthesis, but of the blood cells themselves. (Tr. 2445.)

During their testimony NIOSH discussed some of the weaknesses of the ZPP method:

> One of the major problems with ZPP is that this is a very recently developed test and only limited data are available on blood lead-ZPP correlations. Further, ZPP may present calibration problems, and careful attention must also be given to quality control procedures. Under these circumstances, it would seem wise to develop a biologic screening approach which incorporates ZPP or an equivalent screening test with blood lead determinations. (Ex. 84)

OSHA agrees with these concerns but believes the utility of the ZPP method outweighs its drawbacks. In order to eliminate any uncertainties associated with the method OSHA will request NIOSH to carry out a careful evaluation of the ZPP technique especially with respect to quality control requirements and report their findings to OSHA at a later date.

If the employee's airborne lead exposure is above the action level at least 30 days a year, then, routine monitoring of an employee's blood lead and ZPP levels is to be made available at least every 6 months after the initial tests. If the PbB exceeds 40 μg/100 g the monitoring frequency must be increased to at least every 2 months and not reduced until two consecutive PbB's are below 40 μg/100 g. If PbB levels exceed the removal criteria under paragraph (k)(1)(i), a second PbB must be provided within 2 weeks to confirm the accuracy of the results. This followup is intended to assure that no unnecessary removals occur.

Since the goal of this standard is to maintain PbB's below 40 μg/100 g, individuals with higher levels should be monitored periodically to detect further unacceptable elevations. OSHA believes that every 2 months is a reasonable and adequately protective monitoring frequency for employees above 40 μg/100 g. For those below 40 μg/100 g but above the action level, semiannual monitoring is sufficient to detect elevated levels if they occur.

During the hearings there was considerable testimony which questioned the accuracy of blood lead determinations and suggested there were significant discrepancies in blood lead results depending on the source of testing. (Ex. 343; Tr. 1647, 1675, 1311-12.) A graphic illustration of the difficulties in measuring blood levels was provided by NIOSH in their submission of a report on the blood lead proficiency testing program of the Center for Disease Control which demonstrated that only 33 percent of the laboratories achieved an acceptable score (Ex. 86F). An acceptable score was based on the following criteria:

1. The accuracy required is 15 percent or 6 μg/100 ml, whichever is greater

2. Grade=Number of responses within acceptable range/number of challenges × 100.

An annual grade of 75 is considered satisfactory.

Blood lead level determinations have a crucial role in this standard with respect to their use to protect the health of the individual worker. The impact of blood lead levels is especially important in terms of medical removal protection. Inaccurate PbB could increase costs to the employer and fail to protect the employee. Testimony in the record reflects the participants' concern that OSHA insure that blood lead levels are determined accurately. LIA stated: "Laboratory control and certification procedures are essential," (Ex. 335, p. 88) and similarly, the USWA argued:

> Testimony at the hearings strongly suggests significant discrepancies in blood lead results depending on who is conducting the biological monitoring. While it is impossible to police all biological monitoring, some further beefing up of the "Accuracy" language is warranted to cut down on any attempts at cheating. Accordingly, we suggest that, at a minimum, blood lead samples be analyzed in established laboratories which are certified by the Center for Disease Control. (Ex. 452, pp. 52, 61.)

In addition, testimony from the Motor Vehicle Manufacturers Association (Ex. 402, p. 10), Drs. Wolfe (Tr. 8005-07) and Teitlebaum (Tr. 390-92) and the Amalgamated Clothing and Textile Workers Union (Tr. 7280) supported the recommendation that laboratory certification should be required. OSHA is concerned about the evidence which demonstrates the inadequacies in the proficiency records in blood lead determinations, and therefore based on the recommendations cited in the record will require blood lead samples be analyzed in laboratories which are licensed by the Center for Disease Control or which have received satisfactory grades in proficiency testing by CDC in the previous year. The accuracy requirements in the proposal will be adjusted to coincide with the accuracy requirements of CDC, i.e. 15 percent or 6 μg/100 ml, whichever is greater.

The standard requires medical examinations to be provided to an employee initially (for new workers, prior to assignment to a job where lead exposure would exceed the action level, and for current employees, within 180 days of the completion of air monitoring) and annually thereafter if the employee's blood lead level exceeded 40 μg/100 g at any time during the preceding year. Initial examinations are necessary to provide information to establish a baseline to which subsequent data can be compared. (Tr. 1405-06; 1501; 4358.) They will also be helpful in identifying individuals who would be at increased risk from lead exposure. (Tr. 1405-06; 1501.) Followup exams will document the continuing effect of lead exposure on individual workers and will facilitate a medical evaluation of whether continuing exposure is advisable.

The required examination includes a work history and medical history; a physical examination; determinations of blood lead level (PbB), hematocrit, hemoglobin, peripheral smear morphology and red cell indices; (Tr. 6562); levels of zinc protoporphyrin (ZPP), routine urinalysis (specific gravity, sugar, protein determinations, and microscopic examination), blood urea nitrogen (BUN), and serum creatinine (S-Creat). (Ex. 284A, p. E1.) This is similar to the requirement in the proposed standard except that mandatory pregnancy testing has been deleted and ZPP, BUN, and serum creatinine tests have been added. BUN and serum creatinine, although late indicators of kidney disease, are the best available routine diagnostic tests for kidney function and have been included for that reason. (Tr. 6562-63.) They can also be performed from the single blood sample taken for the other tests. Measurement of glomerula filtration rates or creatinine clearance would provide earlier indications of decreased renal function, but those tests are more in the nature of research techniques, are expensive, and would be clearly impractical for almost all employers to provide.

Medical consultations, with examinations as appropriate, are required to be provided upon request by an employer (1) whenever an employee has developed symptoms commonly associated with lead-related disease, (2) when an employee desires advice concerning the effects of lead on reproductive capacity, and (3) when an employee has demonstrated difficulty in breathing when wearing a respirator. Additional examinations must be made available when an employee is removed from exposure or otherwise limited under paragraph (k) of the regulation. The content and frequency of these examinations is to be at the discretion of the physician. Upon request of an employee, however, a pregnancy test or male fertility test (at a minimum analyzing sperm number, motility, and morphology) must be provided. These tests will facilitate the protection of reproductive capacity.

The medical surveillance provisions of the final standard contain a multiple physician review mechanism which gives workers an opportunity to obtain a second and possibly third opinion regarding the medical determinations

made pursuant to the standard. An employee may designate a second physician to review any findings, determinations or recommendations of an initial physician chosen by the employer. Efforts are to be made to resolve any disagreement which may arise between the two physicians. Should they be unable to agree, a third physician they select will resolve the disagreement. OSHA's reasons for the provision of this review process are twofold: first, to broaden and strengthen the basis for medical determinations in situations where a worker questions the results of the initial examination or consultation; and second, to assure employee confidence in the soundness of medical determinations made pursuant to the standard. OSHA views the multiple physician review mechanism as an important element of the lead standard's medical surveillance program both due to the importance attached to medical surveillance by the Act, and due to the crucial role medical surveillance will play in the operation of the standard's medical removal protection program.

Medical surveillance pursuant to section 6(b)(7) of the Act must be provided by employers without cost to employees. Since the multiple physician review mechanism will be one means by which medical surveillance is provided to an employee, employers must bear the expense of this mechanism when it is used. In practice, the costs of this mechanism will not be burdensome, particularly since employers will have substantial control over the frequency of its use. Where employers carefully structure and administer medical surveillance programs which engender, merit and maintain worker confidence, workers will see no need to seek a second medical opinion.

OSHA's first reason for the provisions of a physician review opportunity is to strengthen and broaden the basis for medical determinations made under the standard in situations where a worker questions the results of an initial medical examination or consultation. The education and training provisions of the lead standard should assure that workers become knowledgeable in the nature and symptoms of the numerous lead-related diseases. Thus, when a worker disputes the results of an initial medical examination or consultation conducted by an employer-retained physician, adequate justification will exist for seeking a second medical opinion.

Two medical doctors testified in the lead proceeding that multiple physician review is a desirable diagnostic device as a general matter (Tr. 7375-7376; 7978-7980) for such reasons as the inherent biological variability of disease. (Tr. 7393-7394) The Black Lung medical surveillance and transfer program of the 1969 Coal Act includes multiple physician review of X-rays in all cases to improve the quality of medical diagnosis. (Tr. 7361-7362, 7386-7387, 7392-7393; Ex. 379A(2), p. 31) In light of the major shortage of trained and experienced occupational physicians in this country, and the number and varied nature of lead-related diseases, no one medical specialty is uniquely suited to provide error-free diagnoses under the lead standard. Accurate medical determinations under this standard are vital due to the interdependence between medical surveillance and the preventive medical removal protection program. Additionally, the facts that the standard's PEL is not a completely safe exposure level, that many lead workers have years of substantial prior exposure to lead, and that some lead-related diseases are reversible if detected at an early stage, support a conclusion that physician review would be appropriate in all cases of medical surveillance under the lead standard.

Rather than mandate additional opinions in all cases, however, OSHA has limited the opportunity for physician review to situations where a worker questions the findings, determinations or recommendations of the initial physician. OSHA's choice of a multiple physician review mechanism, as opposed to some other mechanism, is based on the common and increasing use of multiple physician participation in the formation of medical determinations. A formal physician review process is incorporated not only in the Coal Act program but in at least two other federal programs. A multiple physician review mechanism appears in physical qualifications and examinations regulations concerning motor vehicle drivers subject to the Federal Motor Carrier Safety Act. (Tr. 8098; Physical Qualifications and Examinations, 49 CFR sections 391.41-391.49 (1977)) A similar review process operates under medical care and supervision regulations of the Longshoreman's and Harbor Workers' Compensation Act. (Medical Care and Supervision, 20 CFR sections 702.401-702.422 (1977)) In addition, recent congressional attention has been focused on the benefits to be gained from review as to the advisability of surgical procedures. (Quality of Surgical Care: Hearings before the Subcommittee on Oversight and Investigations of the House Committee on Interstate and Foreign Commerce, 95th Cong., 1st sess. (1977).) The Department of Health, Education, and Welfare strongly promotes the use of second medical opinions in this regard (Hearings before the Subcommittee on Oversight and Investigation, supra, pp. 227-232 (statement of Hale Champion, Department of Health, Education, and Welfare Undersecretary)), and in recent weeks has launched a national campaign to urge patients to get a second doctor's opinion before surgery. (Washington Post, Sept. 14, 1978, p. A17, col. 2)

Multiple physician review mechanisms are also widely used in the private sector. This mechanism frequently appears in conjunction with physical examination requirements contained in collective bargaining agreements (Ex. 365, p. 37), and commonly occurs in the determination of a worker's eligibility for a disability pension. (Tr. 7652, 7664-7666; Ex. 416C, pp. 11-12) The lead record contains some twenty specific examples of multiple physician review mechanisms. (Tr. 8224; Ex. 157, pp. 10-11; Ex. 158, p. 75; Ex. 368, pp. 15-16; Ex. 369, p. 15; Ex. 379A, Att. 1; Ex. 404B (D-1), p. 4; Ex. 404B (D-2), pp. 16-17; Ex. 404B (D-4), pp. 26-27; Ex. 404B (D-5), p. 53; Ex. 404B (D-7), p. 13; Ex. 404B (D-9), p. 132; Ex. 415A. p. 23; Ex. 415B, p. 74; Ex. 426, pp. 18-19; Ex. 427, p. 59; Ex. 430C-2; Ex. 430C-3; Ex. 430D(4b), Sections 78-79; Ex. 430 D(15), Art. 27; Ex. 430H, pp. 64-65) The multiple physician review mechanism adopted by the lead standard incorporates characteristics common to many of these private sector and federal programs: The worker has an opportunity to select a second examining physician if dissatisfied with the results of the first examination, and if the two physicians disagree, they choose a third physician to resolve the differences of opinion. OSHA is convinced that the use of this multiple physician review mechanism will significantly improve the quality of the medical determinations provided under the lead standard.

OSHA's second reason for the provision of a physician review opportunity is to assure employee confidence in the soundness of the medical determinations made pursuant to the standard. Considerable evidence in the lead record documents the fact that workers question the objectivity of some employer-retained physicians. Furthermore, since there is documentation in the lead record of specific abuses by a portion of employer-retained physicians, OSHA has concluded that the problem cannot be ignored in the context of this standard.

Attachment C to the standard concerning Medical Removal Protection discusses the major importance of meaningful worker participation in the medical surveillance program created by this standard. The standard's ability to prevent material impairment to worker health and functional capacity—particularly with respect to reproductive health, and the health of the long term lead worker—will significantly depend on workers trusting and

confiding in examining physicians. OSHA adopted the multiple physician review mechanism as a means of providing workers with an opportunity to obtain independent review of the determinations of physicians they do not trust. More importantly, use of this review mechanism should serve to engender worker trust and confidence in the employer-retained physician where merited. If workers distrust a company doctor and the diagnoses of a second physician on several occasions proves there is no basis for distrust, then workers will be much more likely to trust the company doctor in the future. If the choice of a second and third physician repeatedly results in medical determinations greatly at variance with that of the employer-retained physician, then the multiple physician review mechanism will have served the beneficial purposes of (1) correcting inadequate medical determinations, and (2) exposing a major deficiency in the employer's medical surveillance program.

A substantial body of testimony in the lead proceeding focused on the lack of worker trust and confidence in some company doctors. (Tr. 2210-2211, 4254, 4261-4262, 4284, 4852, 5088-5090, 6026-6029, 6049, 7262, 7623, 7691-7692, 7976-7978, 8053, 8096, 8221-8223, 8241-8245; Ex. 167, pp. 2-4; Ex. 343, pp. 91-97, 103-104; Ex. 393, p. 6, Ex. 450B, pp. 3-5; Ex. 452, p. 66. The company doctor is often viewed as simply a paid agent of the employer, not as a neutral physician maintaining a close doctor-patient relationship with the employee. (Tr. 4284, 4780-4782, 4851, 5088-5090, 6032-6033, 7276-7279, 7623, 8053, 8223, 8240, 8245-8247; Ex. 393, p. 6; Ex. 450B, pp. 3-5.) The company doctor is sometimes viewed as an employer representative charged with minimizing the costs of successful workers' compensation claims, therefore at odds with devotion to worker health. (Tr. 4284, 4809-4811, 7276-7279, 8096; Ex. 379A, p. 12; Ex. 411B(4), pp. 5-6.) The lead record contains numerous reports of employer physicians refusing to divulge to an employee his or her blood lead level (Tr. 2569, 4757, 4773-4774, 4854-4855, 8076; Ex. 167, pp. 2-4; Ex. 450B, p. 5; See also, Tr. 4811), as well as numerous reports of employer physicians making gross misrepresentations of the toxic properties of lead—for example, statements to the effect that one is not lead—poisoned until one's teeth fall out, or Blacks are not susceptible to high blood lead elevations, or one is not lead-poisoned until irreversible nervous system damage occurs. (Tr. 533-535, 2169-2172, 4178-4179, 4757-4759, 4773-4774, 4806-4807, 5094-5095; Ex. 167, pp. 2-4.) Additionally, there was testimony of employer physicians reporting the results of medical examinations not to the worker, but directly to the employer such that the worker learned of his or her health status from a company official, not from the physician. (Tr. 4833, 8096.) Finally, evidence in the record points to a practice of some employer physicians failing to report crucial adverse health effects information either to affected employees or to the broader medical community. (Tr. 5007-5008, 5644-5647; EX. 379B, p. 4.)

In addition to the above, the lead record documents numerous instances of the practice by employers of prophylactic chelation, a grossly improper medical procedure dependent upon the active participation of the employer-retained physician. (Tr. 222, 226-240, 530-532, 1111-1112, 1272-1273, 2169-2172, 2200-2201, 2537-2539, 2542, 2676-2681, 2983(13)-2983(17), 4998-5002, 5022, 5102, 6026, 6043-6045, 6878-6879, 6881; Ex. 20; Ex. 84, p. 9; Ex. 86H; Ex. 117A; Ex. 118D; Ex. 166; Ex. 167, pp.; 5-7; Ex. 246A.) The practice has been condemned for several decades by the LIA itself (Tr. 3242-3245; Ex. 335, p. 88), though they note that the practice continues. (Tr. 3242-3245.) This practice vividly demonstrates that there are some physicians examining lead-exposed workers who fail to accord protection of worker health the priority it deserves. The multiple physician review mechanism is designed to check the influence of these physicians, and assure employees that no matter what the practices of the initial physician, the standard contains a mechanism whereby competent and impartial medical determinations can be achieved.

A final source of evidence indicating the need for a physician review opportunity comes from the ongoing debate within the occupational medical community. (Tr. 8241, 8247.) For example, the Journal of Occupational Medicine has in recent years carried numerous articles concerning worker confidence in employer-retained physicians. (Ex. 413A-413H.) Widely divergent opinions have been expressed in these articles, but a substantial portion of this professional commentary verifies the existence of a crisis of confidence. As one employer representative in the lead proceeding remarked:

> I would like to assure you that the competent occupational health physicians that I know are as concerned and frustrated as you about the existence of poor practitioners of occupational medicine in the profession. (Tr. 5137.)

There is general recognition that a significant problem exists, and OSHA has adopted the multiple physician review mechanism in part to assure that the problem does not obstruct successful operation of the standard's medical surveillance program.

The preceding paragraphs explain in some detail OSHA's reasons for the inclusion of a multiple physician review mechanism since this is a relatively new component of OSHA health standards. (See, Medical Requirements, 40 FR 37650, 37658 (July 22, 1977), 29 CFR, § 1910.411(f); *Taylor Diving and Salvage Co.*, v. *Department of Labor*, Civ. No. 77-2875 (5th Cir., filed Sept. 16, 1977.)) The discussion concerning and the inclusion of this mechanism, however, is not implicit criticism of the general medical community. Based on the lead record, OSHA has no cause to conclude that a majority of employer-retained physicians are not sincerely devoted to worker protection. Even worker representatives most critical of some "company doctors" agree that there are many competent and concerned corporate physicians. (Tr. 4281, 5088-90.) The multiple physician review opportunity contained in the final standard addresses problems presented by a minority of physicians. OSHA is convinced that there are situations where employer-retained physicians have a close doctor-patient relationship with lead exposed employees, and the employees have confidence in the physician's abilities and devotion. In those circumstances, there will seldom be any use of the multiple physician review mechanism. Where this close relationship of trust and confidence does not exist, however, an opportunity for a second medical opinion is appropriate.

The multiple physician review mechanism operates in a simple and straightforward fashion. It is important initially to stress that this mechanism is meant to apply to all forms of medical surveillance provided under the standard. If an employee's past, present, or future exposure to lead is a relevant consideration in the examination or consultation being provided, then the opportunity for an additional medical opinion must be provided.

The multiple physician review mechanism commences after an initial medical examination or consultation provided by a physician chosen by the employer. OSHA recognizes the value to employers and employees alike of the mechanism operating in an expeditious fashion, and thus has established explicit criteria for the beginning of the process. After an initial physician conducts an examination or consultation pursuant to the standard, the employer must promptly notify the employee of his or her right to seek a second medical opinion. This notification need be no more than an oral reminder of the existence and content of this multiple physician review mechanism. After this notification has been given, an employer may condition its participation in, and payment for, the

mechanism upon the employee acting within 15 days after receipt of the foregoing notification, or receipt of the physician's written opinion, whichever is later. Before or within this 15-day period the employee must inform the employer (orally or otherwise) that the employee intends to seek a second medical opinion. The employee must also initiate steps within this time to make an appointment with a second physician. These steps would include actually making an appointment, or contacting a physician with the request that a referral to a specialist be arranged.

The standard contains no more limitation upon an employee's choice of a second physician than the standard places on an employer's choice of the initial physician. The second physician, like the initial physician, need only be licensed to practice medicine. There is no subspecialty of medicine solely concerned with lead-related diseases, and since lead-related diseases affect numerous systems of the body, it would not be appropriate to limit the choice of doctors to any one specialty. It is certainly to an employee's advantage to choose a competent physician, thus OSHA relies on this self-interest to assure the value of the second opinion. For example, where am employee's difference with the initial physician revolves around a particular body system—e.g., nervous system—it is likely that the employee will choose a specialist in that body system—e.g., a neurologist. Where, however, the dispute revolves around several body systems, or the employee cannot identify one specific system, the employee will likely choose the general practitioner or internist most familiar with the employee's medical history or current health status.

The standard provides that the second physician shall review any findings, determinations or recommendations of the initial physician, and may conduct such examinations, consultations and laboratory tests as the second physician deems necessary to facilitate this review. An additional provision in the standard requires the employer to supply the same information to the second physician upon request that must be supplied to an initial physician. The second physician, therefore, is provided an opportunity to fully assess the employee's health status with access to the same background information supplied to the initial physician.

If the second physician's findings, determinations, and recommendations are the same as those of the initial physician, then the multiple physician review process comes to an end. If, however, the opinions of the two physicians are in conflict, then the standard provides that the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement. OSHA expects that the two physicians would as a general professional matter communicate with each other to resolve their differences, but the standard makes this expectation explicit. This professional interaction among peers should in most cases resolve any differences between the two physicians. The preceding elements of the multiple physician review mechanism assure that if differences of opinion remain, these differences are likely to be genuine and substantial.

Where the first two physicians have been unable to quickly resolve any differences of opinion with respect to an employee, then it is necessary for a third qualified physician to resolve the dispute. It is important that this third physician be competent to resolve the dispute, thus the standard provides that the third physician shall be designated by the employer and the employee jointly through their respective physicians. It is the responsibility of the employer and the employee to assure that a third physician is selected, but the selection is to be made by the two prior physicians. Since the third physician is chosen by the joint endorsement of the two prior physicians, the professional competence of the third physician will be assured.

The standard provides the third physician a full opportunity to review the findings, determinations, and recommendations of the prior physicians by conducting such examinations, consultations, and laboratory tests as the third physician deems necessary. The standard incorporates the expectation that the third physician will consult with the two prior physicians, and upon request the employer must supply the same information to the third physician given to the initial physician. The third physician is required to provide a written medical opinion to the employer, which will operate to resolve the disagreement between the earlier physicians. The standard finally requires the employer to act in a manner consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians. This requirement, however, is not intended to preclude an employer from establishing and implementing legitimate general medical criteria for its employees which may in special cases result in medical determinations even more conservative than the outcome of the multiple physician review process. The possibility of such a case arising, though, is extremely remote since there is no evidence that any employer using lead currently employs general protective medical criteria for its employees which are more restrictive than the final standard's requirements.

As with many of the provisions of the final lead standard, the success of the multiple physician review mechanism will largely depend upon employers and employees acting in a reasonable manner and with good faith. There are means by which an employer could attempt to frustrate the operation of this physician review process—for example, by instructing the initial physician to refuse to agree on the selection of a third physician. Such actions, however, would constitute a deliberate violation of the standard since the regulation necessarily implies that the employer will act in a manner calculated to effectuate the multiple physician review mechanism. Operation of the multiple physician review mechanism also depends on the cooperation and good faith of the employee. In most cases, good faith on the part of the employee will be assured, since it is the employee who is seeking to reverse the initial medical determination. The employee will be eager for the review mechanism to proceed as quickly and efficiently as possible. This will especially be so since the medical removal protection provisions of the standard provide that in most situations, the employer may act consistent with the opinion of the initial physician pending the final medical determination of the multiple physician review mechanism. In some cases, however, an employee might act in a manner clearly calculated to delay or otherwise prevent the review process from operating in an orderly manner. In this regard it is important to note that this physician review process is voluntary on the part of the employee, and the employee can terminate or abandon the review process at any time. Where an employee clearly acts to frustrate the operation of the multiple physician review mechanism, the employer may safely assume that the employee no longer desires the peer review process to continue.

Employer representatives raises in the lead proceeding a wide variety of objections to the multiple physician review mechanism. (Tr. 7461-7462, 7481-7482, 7527-7528, 7543-7546; Ex. 354(F), p. 3; Ex. 354(H), p. 3; 354(O), pp. 3-4; Ex. 354(V), p. 4; Ex. 354(W), p. 1; Ex. 354(Y), p. 5; Ex. 354(AA), pp. 13-15; Ex. 354(FF), p. 3; Ex. 354(GG), p. 2; Ex. 354(HH), p. 7; Ex. 385, pp. 13-14; Ex. 396A, pp. 4-5; Ex. 453, pp. 32-36; Ex. 457, pp. 35-36; but see, Tr. 8460-8461; Ex. 354(P), p. 3; Ex. 354(II), p. 3; See also, Ex. 354(M), p. 2) Worker representatives, with one exception, strongly endorsed adoption of the

mechanism. (Tr. 7202-7205, 7246-7247, 7264, 7609-7610, 7691-7692, 7976-7980, 8072-8074, 8224-8226; Ex. 354(D), p. 5; Ex. 372, pp. 8-9; Ex. 374, pp. 139-140; Ex. 378, pp. 4-5; Ex. 450B, pp. 3-10; Ex. 452, pp. 63-68; contra, Ex. 395, p. 3; See also, Ex. 464B, p. 2) Many of the employer objections have been dealt with by the preceding paragraphs explaining the justifications for, and operation of, the multiple physician review mechanism. The thrust of most employer objections was that this review process is unworkable and unduly burdensome. Were the physician review process adopted by the final standard a completely new and untried concept, then it would be appropriate for OSHA to discuss at greater length each specific criticism. As discussed earlier, however, the multiple physician review mechanism as adopted by this standard is currently in widespread use in a variety of contexts. No evidence was offered suggesting that any of these existing mechanisms have proven unworkable or overly burdensome. In view of this, OHSA rejects employer criticisms of the final standard's peer review process as being mere allegations unsupported by concrete evidence—evidence which employers could easily have brought forward had it existed. OSHA is convinced that the multiple physician review mechanism can and will substantially add to the health protection afforded workers by this lead standard, and thus included this mechanism in the final standard.

The medical surveillance section of the standard includes a provision stating that the employer and employee or authorized employee representative may agree upon the use of any expeditious alternate physician determination mechanism in lieu of the multiple physician review mechanism. The only condition is that the alternate mechanism otherwise satisfy the standard's requirements. OSHA's inclusion of this alternate mechanism provision follows the recommendation of the United Steelworkers of America. (Ex. 452, pp. 63, 68) The lead record indicates that some employers and unions are negotiating on special medical determination procedures which are not founded upon an employer's unilateral choice of the examining physician. (Tr. 8243-8244, 8271-8272; Ex. 430C-2; Ex. 452, p. 68) For example, the parties might decide in cases of dispute for an employee to go directly from an initial physician chosen by the employer to an agreed upon final physician—thus dispensing with the need for a second physician. Alternately, a final physician might be used in the first instance without recourse to other physicians. Or, an employee might be given the opportunity to choose this final physician. OSHA desires to encourage employers and employees to adopt medical determination procedures in which all parties have trust and confidence. The standard includes an explicit provision embodying this intention.

A major issue addressed in the proposed standard and throughout the rulemaking was chelation. The final standard prohibits prophylactic chelation of any employee by any person the employer employs, retains, supervises, or controls, and requires the employer to assure that any therapeutic or diagnostic chelation, if administered, is done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring.

Moreover, in cases where the examining physician determines that chelation is appropriate, the employee must be notified of this fact before such treatment. This should serve the purposes of informing the employee of a potentially harmful treatment, and affording the employee the opportunity to seek the review of this determination by another physician (see multiple physician review, above) thereby possibly acting as a check on an overly broad definition of "therapeutic" chelation by the examining physician.

A considerable body of testimony was presented concerning the use and abuse of chelation therapy in the treatment of lead poisoning. Experience accumulated by the medical and scientific communities over 20 years has largely confirmed the effectiveness of this type of therapy for the treatment of lead poisoning. It has also been established that there can be important adverse side effects associated with the use of chelating agents. The medical community has balanced the advantages and disadvantages resulting from the use of chelating agents in various circumstances establishing when the use of these agents is or is not acceptable. The general consensus of these professionals is that therapeutic chelation is acceptable but prophylactic chelation is not. Unfortunately, testimony given by lead workers has indicated that prophylatic chelation is occurring. Given that there is a glaring contradiction between theory and practice with regards to this issue, it is useful and necessary to review the health effects of chelation.

Blejer has described the development and functioning of the various chelating agents, stating:

A chelating agent is a chemical substance which will bind lead and certain other metals into a metal-chelate complex so as to make them biochemically and toxicologically inactive or unavailable. Chelation therapy in modern medicine had its inception during the First World War when dimercaprol, a heavy metal antagonist, was developed as an antidote for a lethal, arsenic-containing war agent called Lewisite. Thus, another name for dimercaprol is British antilewisite, or BAL for short. In the early 1950's a chelating agent began to be used: Ethylene-diamine-tetraacetate, or just EDTA. However, an adverse, very serious side of EDTA was that it chelated calcium in the blood and body tissues and that, when severe enough, this removal or chelation of calcium—an essential metal in human muscular biochemistry and function—could produce potentially fatal tetany. Consequently, other EDTA compounds which contain calcium in the molecule were developed. One of these and currently the most widely used, is calcium disodium edetate—also called Calcium EDTA, CaEDTA, Calcium Disodium Versenate, or Versenate. The calcium in CaEDTA is readily displaced by heavy metals, such as lead, to form stable complexes with the metallic ion locked or sequestered in the EDTA molecule. Following intravenous or intramuscular injections of Versenate, the chelate form is excreted in the urine with about 50% appearing in the first hour after administration.

In recent years another chelating agent called d-penicillamine, also known as pencillamine or Cuprimine, was developed for the treatment of excess copper in patients with a rare condition called Wilson's disease and also for the reduction of excess of cystine excretion in cystinuria, another rare condition. Judging from the California State reporting experience (Ex. 6(26)) in the last five or six years many physicians have begun to use pencillamine extensively and instead of Versanate or CaEDTA, either in the treatment of lead poisoning, or to reduce increased levels of lead absorption—as measured by elevated blood lead concentration—among occupationally lead-exposed workers.

The route and mode of administration of these three chelating agents vary: BAL is administered by intramuscular injection only and, to my knowledge, it is very seldom used to treat occupationally lead-exposed workers. CaEDTA, on the other hand, is commonly used by physicians among these workers: It can be administered by mouth, intramuscular injection or intravenous infusion. The third therapeutic compound, penicillamine or Cuprimine, is given orally only. (Ex. 53, p. 7, 8, 9)

The possible adverse side effects of the various possible chelating agents were reviewed by several experts. Blejer stated:

The main adverse effect of dimercaprol or BAL are nervousness, nausea, a feeling of pressure in the chest, and a transient rise in blood pressure. Currently, the use of BAL is recommended in conjunction with CaEDTA for severe lead poisoning with acute encephalopathy in children only. According to Hamilton and Hardy (Ex. 23(30)), BAL is contra-indicated in adult lead poisoning because, although it increases lead excretion, it may increase lead toxicity by forming a BAL-lead complex which is more toxic than the lead per se. Further, in lead workers concurrently occupationally exposed to cadmium, iron or selenium, such as occurs in some primary nonferrous smelters, BAL is contraindicated because the BAL-metal complexes are more toxic especially to the kidneys, than any of the metals by itself.

. . . . . .

Penicillamine or Cuprimine also has some very serious adverse effects which include the nephrotic syndrome and aplastic anemia. * * * (T)he drugs should not be given to patients allergic to penicillin because of cross-sensitivity between penicillin and penicillamine. Penicillamine has a plethora of other adverse effects which are detailed in the package insert which comes with capsules of Cuprimine. In part, that insert warns against its use during pregnancy because of penicillamine's affinity for metals and cystine and its effect on collagen. Also, it advises performing routine urinalyses, white and differential blood counts, hemoglobin determinations and direct platelet counts as well as frequent liver and kidney function tests during therapy. Penicillamine causes allergic skin reactions, including urticaria and may cause eye cataracts. Other adverse reactions that have been reported include hepatic dysfunction, tinnitus, falling hair, throbocytopenia, thrombotic thrombocytopenic purpura, bone marrow hypoplasia, leukopenia and granulocytopenia ranging in severity from asymptomatic and reversible to agranulocytosis with fatalities. Thrombophlebitis, pancreatitis, cheilosis, glossitis, gingivostomatitis, sometimes with ulceration of the mucous membrane; polymyositis; mammary hyperplasia; peptic ulcer; myasthenia; elastosis perforans serpiginosa have been reported but are unusual. A syndrome closely resembling disseminated lupus erythematosus and pemphigus have occurred, as well as severe and ultimately fatal glomerulonephritis and intraalveolor hemorrhage (Goodpasture's syndrome). Iron deficiency may develop, especially in menstruating women and in children. Reversible optic neuritis and cheilosis, possibly connected with pyridoxine (vitamin B6) deficiency, have been reported.

In fact, some of the above warnings, precautions and adverse reactions pertain to long-term uses of penicillamine and many of the adverse effects occur rarely. Nevertheless, one still wonders why many physicians are using this drug in the so-called prophylaxis of increased lead absorption, or even in the treatment of lead poisoning among lead workers.

One is even more puzzled about such uses, especially because penicillamine has not been approved by the U.S. Food and Drug Administration for the treatment of lead poisoning either in children or adults. As stated by the Commissioner of FDA in a related memorandum dated May 28, 1976, to the Director of NIOSH, "Penicillamine is a certified antibiotic drug which was approved in 1974 for Wilson's disease and cystinuria. At the present time it is also being studied under investigational new drug exemptions for its use in rheumatoid arthritis and chronic lead poisoning in children. There are currently nine active individual investigators (approved) for the study of the use of penicillamine in chronic lead poisoning in children." (Ex. 53, pp. 9-13)

Bridbord and Blejer, in a review article extensively discussed effects of CaEDTA, stated:

A number of studies suggest that oral EDTA increases the absorption of lead from the gastrointestinal tract in instances where exposure to lead continues to occur.

Other studies have observed T-wave changes in the electrocardiograms of patients given chelation therapy. Studies also suggest that the metabolism of trace metals other than lead may be affected by long-term chelation therapy.

The effects of lead and of EDTA on the kidneys were evaluated in two recent papers. Lead-poisoned rats were given injections of EDTA IP. Inclusion bodies (lead-protein complexes believed to possibly protect against lead effects) in renal cell nuclei were found in various stages of dissolution and migration out of the nucleus. Cytoplasmic vacuoles were observed which contained material that resembled portions of intact nuclear inclusions. Inclusion bodies have not been observed in renal biopsies of male workers occupationally exposed to lead who have been repeatedly treated with chelating agents. Excretion of lead through the kidneys appears to be less in older men compared to younger men who have nuclear inclusion bodies in their renal tuble lining cells. These data suggest that chelation therapy reduces the ability of the kidneys to protect themselves against the toxic effects of lead by virtue of the action of chelating agents in removing the lead-induced inclusion bodies. This conclusion is further supported by observations that renal tubula dysfunction may follow EDTA administration in lead poisoned children". (Ex. 86H, p. 7, 8)

Lilis and Fishbein, in their review, also evaluated the effects of CaEDTA. They noted the side effects associated with the use of this drug but concluded that most of these effects could be avoided if the drug was used appropriately. They stated:

Edetate disodium calcium has been shown, in terms of lead elimination and excretion, to be superior to both dimercaprol and penicillamine. The metal mobilizes as a nonionizable complex, and the maximum effect is reached six hours after intravenous administration, when 95% to 98% of the total amount has been excreted. When the therapeutic dosages of 50 mg/kg/day are not exceeded, the rate of administration is less than 20 mg/min, and the course of therapy restricted to five to seven days, practically no adverse side effects are observed.

Renal damage is the most important side effect associated with edetate disodium calcium chelation therapy; a small number of cases of acute tubular necrosis were described in the early days of edetate disodium calcium therapy. Most of these were due to very large doses, rapid administration, or severe preexisting renal disease (such as hypercalcemia and multiple myeloma) . . .

Various mucocutaneous lesions have been described in patients after prolonged administration of disodium edetate and edetate disodium calcium; one possible explanation considered was zinc depletion.

Treatment of lead poisoning with edetate disodium calcium given intravenously in five-day courses, with dosage and rate of administration not exceeding those previously mentioned and repeated if necessary after a free interval of two to five days, has been successful and has not been associated with clinically significant side effect. (Ex. 118D)

Wedeen concurred with Lilis' and Fishbein's conclusions concerning the acceptability and appropriateness of chelation therapy when administered therapeutically for treatment of lead poisoning. (Tr. 1745-1746)

The decision to use chelating agents involves a weighing of the risks of the adverse effects of use against the benefits of use. The medical community has defined three separate circumstances under which chelation might be used and has generally established what is acceptable practice in each. "Therapeutic" chelation is the use of chelating agents for the treatment of the frank symptoms of lead poisoning. "Diagnostic" chelation is the use of chelating agents to assist in making the diagnosis of lead poisoning or lead induced disease. "Prophylactic" chelation was defined by Bridbord and Blejer "both as the routine use of chelating or similarly acting drugs to prevent elevated blood lead levels in workers who are occupationally exposed to lead or as the use of these drugs to routinely lower blood lead levels to predesignated concentrations believed to be 'safe.'" (Ex. 86H, p. 20)

OSHA agrees with this definition and emphasizes that an employer who hospitalizes an asymptomatic worker and has chelation carried out by a physician solely to reduce the worker's blood lead level will be performing prophylactic chelation. The use of a hospital and a physician is not the definition of therapeutic chelation. Routine chelation to reduce blood lead level is unacceptable whatever the setting.

The risks and benefits vary with the circumstances of use. Thus, in different circumstances the use of chelating agents might or might not be considered medically appropriate. With reference to therapeutic chelation, Bridbord and Blejer stated in their review that: "Most authorities agree that chelating or similarly acting agents have a proper place in the therapy of the acute symptomatology of severe lead intoxication, a condition accompanied by pronounced gastroenteric, neurologic and other symptoms and signs." (Ex. 86H p. 1)

Those who testified were generally in agreement with this statement though there was some variation in what witnesses felt was the degree of severity of symptoms necessary for instituting chelation therapy. It was also generally agreed that chelation must be done only under careful medical supervision involving specific monitoring to minimize the risks involved.

Blejer testified extensively concerning the circumstances under which therapeutic chelation should occur:

The therapeutic use of chelating agents on occupationally lead-exposed adults is warranted only when there is frank and, in my opinion, severe symptomatology of lead poisoning, such as the now-rare lead encephalopathy and the still-common lead colic. In most cases, it is my professional opinion that the health risks of administering che-

lating agents far outweigh the benefits of relieving mild to moderate symptomatology. In such cases, "natural deleading," i.e., removal from exposure, plus symptomatic/supportive treatment will achieve the same end results more safely and probably just as quickly.

Moreover, as demonstrated and published recently by Dr. Richard P. Wedeen, Professor of Medicine and a specialist in nephrology at the New Jersey Medical School in Newark, N J, there is a state where golmerular filtration dysfunction due to lead may be reversible by intravenous administration of CaEDTA. In my opinion, for such purposes, in expert hands and in appropriate clinical facilities, chelation therapy could therefore be used in the absence of overt symptomatology. In all of these instances, however, the affected worker must be monitored clinically by physicians expert or competent in the treatment of lead poisoning, with the treatment administered in appropriate clinical facilities and, in the case of intravenous CaEDTA administration, on an in-patient basis. Needless to add, any such treatment would be thoroughly unproductive and essentially wasted if the worker is allowed to return to an uncontrolled lead exposure at the work place. As stated previously—and it bears repetition often—such treatment still constitutes secondary rather than primary prevention." (Ex. 53, p. 13, 14)

Fishbein took a position similar to Blejer's stating:

Chelation therapy should be resorted to only in cases of acute exacerbations in the course of chronic lead poisoning, such as encephalopathy, lead colic, or rapid and threatening increase of blood lead levels, and should always be done under careful medical supervision and after cessation of lead exposure. (Tr. 2643)

The use of chelation agents as a test for the existence of lead induced kidney disease as described by Wedeen, is a new and experimental diagnostic use of chelating agents. Blejer discussed a more conventional use of these agents for diagnostic purposes and suggested that in many cases diagnosis is possible without resort to the risks of chelation. (Ex. 53, p. 12-13) OSHA concurs in the view that in appropriate circumstances chelation may be used for therapeutic and diagnostic purposes.

The third type of use of chelating agents is "prophylactic" use. Prophylactic chelation is prohibited by the standard.

There was a remarkable degree of consensus in the testimony concerning this aspect of the proposal. Condemnation of prophylactic chelation was virtually universal. (Ex. 343, p. 91; Ex. 335, p. 88; Tr. 3242, 3683; Ex. 86H, pp. 8, 10, 11; Ex. 82, p. 12; Ex. 284A, p. 577; Ex. 53, p. 14)

The health effects related to the use of chelating agents have been described above in some detail. With reference to the prophylactic use of these drugs, it is important to note certain particular effects. While the PbB levels are lowered by chelation, various authors have noted that in prophylactic chelation "effect" measures are not lowered to a comparable degree. Selander (Ex. 118D, ref. 12) noted that oral CaEDTA had little effect on ALA-U levels. The results of Fishbein et al. suggested that prophylactic chelation did not lower ZPP levels to a degree comparable to PbB levels. The study results of Fishbein et al. also suggested that workers who had been chelated prophylactically were not protected from neuropathy or lead colic effects. Thus they concluded that "without such cessation of exposure, chelating drugs may be ineffective, or even deleterious." (Ex. 105 D)

Similarly, Dr. Finklea has stated that:

We in the National Institute for Occupational Safety and Health also strongly oppose this practice. Prophylactic treatment of workers with chelating agents while failing to control the source of lead exposure in effect places workers in double jeopardy, by virtue of the potential harmful effects of long term versenate therapy particularly on the kidneys combined with continued excess exposure to lead, a known renal toxin. (Ex. 246A)

Blejer testified that:

Prophylactic administration of $CaNa_2$ EDTA by whatever route under conditions of continued lead exposure is judged to be particularly hazardous. Use of chelating agents is not an adequate substitute for engineering controls and proper industrial hygiene practices. Both lead and $CaNa_2$ EDTA in sufficient dosages are established to be toxic to the kidneys. Prophylactic chelation may decrease the ability of the kidneys to protect themselves against the toxic effects of lead. A recent mortality study of workers exposed to lead conducted by Cooper and Gaffey, (Ex. 5(28)), for example, demonstrated an increase in deaths from end stage renal disease. In conclusion, prophylactic use of chelation to control lead absorption represents an unacceptable medical practice that cannot be condoned. (Ex. 6(19), p. 20)

Lilis and Fishbein reviewed the effects of prophylactic chelation and similarly concluded that:

Oral prophylactic treatment with chelating agents such as edetate disodium calcium or penicillamine is contraindicated for the prevention of lead poisoning in workers exposed to lead. Among the reasons are the poor absorption of edetate disodium calcium from the gastrointestinal tract, the concomitant possible increased absorption of ingested lead, and the unsatisfactory effect of oral administration of edetate disodium calcium on blood lead, urinary coproporphyrin, and -amino levulinic acid indicating a failure to prevent adverse metabolic lead effects. These constraints explain the repeated failures of oral chelation therapy with symptomatic lead poisoning developing in some workers in spite of the prophylactic treatment.

Further, the effect of long-term chelation therapy on serum iron, copper, magnesium, and zinc levels and the probable interference with metal-dependent enzymatic activity adds to the disadvantage of this treatment, as do the side effects of penicillamine, such as renal damage, leukopenia, agranulocytosis, eosinophilla, and decreased serum iron levels.

Finally, it may not be unimportant that alteration of biological measurements used to estimate the current extent of absorption of lead by individuals occupationally exposed occurs and is bound to make the clinical management of lead disease more difficult and confused.

Adequate control of occupational lead exposure cannot and should not be replaced by inappropriate and potentially hazardous attempts at prophylactic treatment. (Ex. 118D)

Moreover the membership of the American Occupational Medical Association at a general session in 1976 approved and adopted a statement of ethics which in essence stated that "the use of chelating agents as a prophylactic measure to prevent lead intoxication among workers in place of environmental controls would be considered as unethical practice of medicine and the subject physician would be subject to censure." (Tr. 251)

In his testimony Blejer expressed his opinion that routine administration of chelating agents constitutes "prophylactic" chelation: "Routine administration of chelating agents amounts to essentially prophylaxis, meaning you are just treating the blood leads or the symptomatology and you are sending the individual back to the exposure, * * * to be re-exposed." (Tr. 243) These views were supported by Epstein (Tr. 1112) and Finklea. (Ex. 246A)

In view of the strong criticisms that have been made against prophylactic chelation and in view of the fact that such warnings have a twenty year history, it is tragic that any major instances of prophylactic chelation should have occurred. Nevertheless, extensive testimony was presented which did demonstrate that prophylactic chelation has occurred and is occurring in workplaces throughout the country (Tr. 5631, 5634, 6125); hence the necessity for prohibiting any chelation which falls within the Blejer and Bridbord definition of "prophylactic".

Various workers and their union officials testified concerning their direct experiences with prophylactic chelation.

George Becker of the United Steelworkers of America, (USWA) testified concerning his personal experience with prophylactic chelation. (Tr. 4991-4992) He also testified that one worker told a NIOSH investigator in 1973 that he took as many as 250 versenate pills a week "to make sure that he didn't become leaded." (Tr. 4992)

In addition, union testimony reinforced the experience of Becker. Givens, Teamsters (Tr. 2171), Mirer, UAW (Tr. 446), Beliczky, Rubber

Workers (Tr. 2537-39; Ex. 38c, p. 4), all discussed the indiscriminant use of prophylactic chelation.

One of the most thoroughly studied cases of prophylactic chelation presented were the combined cases of the NL and Quemetco smelters studied by Fishbein et al. Becker described his initial contacts with the problems at these plants through USWA Local 5554:

Employees from each smelter had complained to the company doctor of nausea, stomach cramps, headaches and fatigue. Chelation was still practiced, although under different circumstances. Oral chelation had been halted at the NL smelter. Instead, employees were receiving EDTA administered solution intravenous IV treatments at the local hospital on an outpatient basis * * *.

The situation at Quemetco smelter appeared to be even worse. Oral chelation, pills of the cuprimine variety were being distributed by the company doctor. In response to my expressed concern about this form of chelation I was told by Quemetco's doctor that, "They are absolutely safe and if I had my way they would be handed out to the lead workers like salt." (Tr. 4999)

The study of Fishbein et al. gives a more detailed description of what was occuring in these smelters:

The 47 workers in Plant 1 and 24 in Plant 2 had had at least one course of chelation therapy, but 45 (24 in Plant 1 and 21 in Plant 2) had had it repeatedly (up to 10 times) (Table 16). The fact that there were more workers with repeated courses of chelation therapy in Plant 2 is consistent with the longer duration of employment of these workers.

Over the years, histories given indicated that several patterns of chelation therapy had been followed. For example, the duration of courses of intravenous versenate varied from 3 days to 10 days. The prevailing practice in one plant had been to administer chelating agents in most cases without removing the worker from his usual lead exposure. Under such circumstances, it was not surprising that chelation therapy had to be used frequently, since the deleading effect of the chelating agent would be counterbalanced by continuous exposure and absorption of lead.

Most workers were given chelation therapy on an ambulatory basis. However, 14 had had hospital admissions for lead poisoning over the years, for what seemed to have been acute episodes (colic) in the course of their chronic lead poisoning. Change in job assignment, to areas of lesser lead-exposure, was reported by only 23 of the examined workers. The fact that chelation therapy had been used to a much larger extent than had removal from exposure might have been due to the existence of rather homogeneous air lead levels in the plants, which had large open workspaces. (105 F, pp. 30, 31)

Frequency of Chelation Therapy in Secondary Lead Smelter Workers

	Total number examined	Chelation therapy		Repeated courses of chelation therapy	
		No.	Pct.	No.	Pct.
Plant 1.....	113	47	42	24	20
Plant 2.....	45	24	53	21	44
Total.....	158	71	45	45	27

(Ex. 105F, Table 16)

The California State Occupational Disease report data . . . as well as the results of the Indianapolis, Indiana, and Vernon, California, clinical field surveys—conducted by the Environmental Sciences Laboratory, Mt. Sinai School of Medicine, City University of New York, as reported in May 1976 and January 1977, respectively—all indicate that not only is such chelation therapy with CaEDTA and/or penicillamine quite prevalent, but also that so has been the practice of administering CaEDTA intravenously on ambulatory, nonhospitalized basis, such as in a physician's office or even in a plant's dispensary or first-aid room. Moreover, in practically all of these cases there were not available data to indicate that the occupationally lead-exposed workers being thus medicated were being monitored for any of the untoward or adverse effects or oral penicillamine and/or CaEDTA or of intravenous CaEDTA administration. Although it is true that in many cases such lead-exposed workers were being medicated by physicians other than those retained full or part-time by the plant, it is also true that some of these workers were thus medicated by company-designated and/or employed physicians sometimes, as already stated, right in the physician's office or even at the work place itself. (Ex. 53, p. 18)

In summary, the use of chelating agents is known to involve certain health risks. These risks are minimized when the drug is administered under a strictly controlled setting with appropriate medical monitoring, over a short period of time, and in appropriate dosages. The use of such agents prophylactically is considered inappropriate. The repeated use of such compounds is not at all appropriate when an alternative such as controlling employee exposure is possible.

OSHA believes that chelating agents, such as calcium disodium edetate (EDTA), and penicillamine, are useful in the therapy of acute overexposure to lead. Such therapy should be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring of the patient. Medical experts were not uniformly in agreement concerning the circumstances under which therapeutic chelation should be used, and OSHA can not define appropriate medical practice for the individual patient. Such decisions must be made by the physician, exercising sound medical judgment after an evaluation of all the relevant factors.

The testimony given by workers and health professionals which clearly indicated that prophylactic chelation has occurred and continues to occur in spite of the well established body of medical knowledge opposing it is of grave concern to OSHA. OSHA believes that the record indicates a need for extensive education both of health professionals and of workers concerning the circumstances of use and abuse of chelating agents and a mandatory prohibition in the standard of improper use of chelating agents.

The final standard requires, under the authority of section 6(b)(7), that the employer pay the costs of medical surveillance and make all the tests or procedures available to employees at a reasonable time and manner. The proposed standard required medical surveillance to be provided during the employee's normal working hours, but as was pointed out by several parties (e.g., Ex. 3(31)), medical personnel would probably not be available outside the regular daytime hours. Thus, employees who worked night shifts could not have examinations during their regular working hours. OSHA's concern is that medical surveillance is provided at a time and in a manner so as not to discourage employees from participating in the program. A standard of reasonableness should accomplish this goal.

K. MEDICAL REMOVAL PROTECTION: PARAGRAPH (K)

See summary in Part III and full exposition in Attachment C.

L. EMPLOYEE INFORMATION AND TRAINING: PARAGRAPH (L)

The final standard requires the employer to provide an information and training program for all employees exposed to lead above the action level. Information and training are an essential aspect of the overall protection of employees who can do much to protect themselves if they are informed of the nature of the hazards in the workplace. To be effective an employee education system must apprise the employee of the specific hazards associated with his work environment, protective measures which can be taken, and his rights under the standard. The need to train employees was agreed upon by virtually all of the participants in the rulemaking proceeding, and a training requirement was included in both the NIOSH Criteria Document (Ex. 1) and the proposed standard.

In addition, OSHA will require that materials provided to the employer by OSHA be made readily available to all affected employees. This requirement was not included in the proposal

which only specified that the standard and its appendices be available. There was testimony which suggested OSHA "track employer compliance with the educational requirements very closely." (Ex. 343, p. 106.) While OSHA believes employer compliance with this provision is essential, the agency considers it important to assist in this process by providing both written and audio visual materials to the employer for use in training. OSHA intends to develop, in the future, specific safety and health training and education materials on lead for distribution and presentation to employees by employers in addition to the training requirements in this regulation. These materials will inform employees of the hazards of exposure to lead and appropriate protective measures as discussed in this preamble and final regulation. Where these materials are designated by the Assistant Secretary, the employer will be required to include them as part of his education and training program.

Although the emphasis of education and training is for the worker subject to exposure at or above the action level, training requirements exist which must be observed even if the initial monitoring or determination indicates that exposures are below the action level. Specifically, the final standard's accessibility of information requirements extend to all employees. The employer must also inform all employees, including those below the action level, of the contents of Appendices A and B of the regulation, when published.

The training program for employees subject to exposure to lead at or above the action level or for whom the possibility of skin/eye irritation exists, is generally in keeping with the proposal. During the hearings there was considerable testimony on the need to inform workers, both male and female, of the severe effects on the reproductive system from exposure to lead. (Tr. 657, 694, 4511, Ex. 343, p. 106.) For example, Andrea Hricko stated:

> Employee and job applicants must be informed that excessive exposures to lead have resulted in reproductive difficulties, including fertility problems, menstrual disorders, stillbirths, miscarriages and other hazardous effects so that they understand the significance of blood, sperm, and pregnancy testing (Tr, 694).

OSHA is in complete agreement with this view and therefore will require the employer to develop an education program which addressed the danger of exposure to lead on the reproductive system, and on employee options as part of the medical surveillance program, e.g., fertility and pregnancy testing. OSHA believes this is a crucial provision of the standard. A worker, whether male or female, who is fully informed of the hazards of lead will be better able to avoid the adverse reproductive effects documented in the preamble. The knowledge of the hazard in this instance is crucial since there is concern that workers whose blood leads do not exceed the 30 μg/100 g level may still be at risk especially if they have extended tenure in a lead industry.

The training program is required to be completed for employees initially covered by the standard within 180 days of the effective date, thus allowing 90 days after the completion of initial monitoring, and for all new employees at the time of initial assignment to areas where there is a possibility of exposure over the action level. OSHA believes that it is important to train employees as soon as possible in order to maximize the benefits of the training program, and has acted accordingly.

The standard requires that the training program be provided at least annually. OSHA believes that an annual training program is both necessary and sufficient to re-inform the employees of the hazards and their rights and duties under the standard.

M. SIGNS: PARAGRAPH (M)

The final standard requires a sign to be posted in areas where lead exposure exceeds the PEL. The standard specifies the legend for these signs.

The proposal did not require the posting of signs, but raised the issue of whether signs or labels would be appropriate. However, it is important, and section 6(b)(7) of the Act requires, that appropriate forms of warning, as necessary, be used to apprise employees of the hazards to which they are exposed in the course of their employment. OSHA believes, as a matter of policy, that employees should be given the opportunity to make informed decisions on whether to work at a job under particular working conditions. Furthermore, when the control of potential safety and health problems involves the cooperation of employees, the success of such a program is highly dependent upon the worker's understanding of the hazards attendant to that job.

In light of the serious nature of the hazard of exposure to lead, OSHA believes that sign posting is needed as well as periodic training to adequately inform employees of the poisoning hazard. The appearance of the phrase "Poison" on the warning sign will serve as a daily reminder of the hazards and as an objective check on whether employees are actually being informed of this hazard. The warning signs will inform all employees entering such areas of the need to utilize respirators and other protective equipment which the employer is to provide. Additionally, the phrase "No Smoking or Eating" relates directly to requirements in the standard which limit activities within lead contaminated areas. (See discussion in paragraph on Hygiene Facilities and Practices.)

N. RECORDKEEPING: PARAGRAPH (N)

Section 8(c)(3) of the Act (29 U.S.C. 657) mandates the inclusion of provisions requiring employers to maintain accurate biological and environmental monitoring records of employee exposures to potentially toxic materials. It also provides that employees or their representatives have access to such records.

The final standard requires records of exposure measurements. The records required include name and job classification of employees measured, details of the sampling and analytic techniques, results, and type of respiratory protection worn. The standard also requires records of medical surveillance (biological monitoring & medical exam results). These include names of employees, the physician's written opinion, and a copy of the results of the examination. These records must be kept for 40 years or for at least 20 years after termination of employment, whichever is longer.

The final standard also contains a limited recordkeeping requirement concerning temporary medical removals effected pursuant to the medical removal protection program. The employer must establish and maintain an accurate record for each employee removed from current exposure to lead. The record is to contain four entries each time an employee is removed. First, the employee must be identified by name and social security number. Second, the date of removal and return must be stated. Third, the employer must briefly explain how each removal was or is being accomplished. This description need be no more detailed than such statements as "Employee X was transferred from position A to position B during the entire period of removal," or "Employee X was laid off for the entire period of removal," or "Employee X is currently working half shifts until a transfer opportunity becomes available." Fourth, the record must indicate whether or not the reason for the removal was an elevated blood lead level. If removal is due to a reason other than an elevated blood lead level, this precise reason should not be stated so as to prevent disclosure of confidential medical information.

The purpose of the foregoing recordkeeping requirement is to enable the Secretary, employees, and their authorized representatives to assess the operation of, and an employer's compliance with, the medical removal protection program. The limited but per-

tinent information contained in these records will, in most cases, enable these assessments to be made without interviewing large numbers of employees or placing undue burdens on employers by requiring further time consuming and burdensome examinations of payroll, production, or confidential medical records—examinations which likely would be necessary in the absence of the standard's limited recordkeeping requirement. Due to the limited purposes to be served by these records, the standard requires an employer to maintain each medical removal record only for so long as the duration of an employee's employment.

In the final standard, there have been deletions in two areas of recordkeeping which OSHA has determined to be excessively costly and minimally effective: (1) mechanical ventilation measurements and (2) employee training. A third deletion has been made, specifically in the area of medical surveillance records. The proposal required that a signed copy of any employee's refusal to participate in the medical surveillance program be included among the other records. This provision has been removed. OSHA believes that the problem of employee refusal will be mitigated by the standard's Medical Removal Protection program, which will minimize disincentives to worker participation. Therefore, this provision has been deleted in the final standard.

The participants at the hearing generally agreed with the necessity for keeping records but objected to the length of the record retention period. The extended retention period is needed for several purposes. Lead is known to have both acute and chronic effects, depending on the level and duration of exposure. The onset of clinical symptoms may occur many years after exposure. OSHA requires these records be maintained to document the medical and exposure history of the worker in order to assist the physician in determining whether lead was an etiologic agent in a disease progression. For example, renal and neurological disease do not necessarily have early warning indicators which physicians might use for evaluation. The records will serve to aid the physician in determining the dose to the worker over his work tenure.

OSHA is also concerned that the physician be able to follow asymptomatic workers who have been exposed to low lead levels over long periods of time, in order to ascertain the long-term effects of low level exposure. In this regard, another important function the combined records serve is to provide a data base for much-needed scientific and epidemiological research into the effects of chronic low level lead exposure. Lastly, maintenance of records for 40 years will enable a future review of the adequacy of the standard.

The final standard requires that records be made available to the Director and Assistant Secretary, that environmental and biological monitoring records be available to employees and their authorized representatives, and medical records to an employee or to a physician or other person designated by an employee or former employee. These provisions carry out statutory requirements. In addition, it is necessary for the Assistant Secretary and Director to have access for enforcement and research purposes. Employees and their representatives need access to both environmental and blood lead level monitoring records to assess an employer's progress in (1) controlling worker exposure to lead, and (2) complying with the lead standard, particularly the medical removal protection provisions. Blood lead level records are particularly useful in this regard. Consistent with the current widespread dissemination of individual blood lead level results, and the need for employers and employees to have this data, the standard makes blood lead level results available to all employees and their representatives. In so deciding, the agency has carefully balanced the pressing need for worker access to this limited form of medical data against the confidentiality that would normally be afforded to most forms of laboratory test results.

The transfer provisions in the proposal have been left unchanged except that NIOSH is to be notified at the expiration of the retention period so that it can determine if the records are still needed for research purposes.

O. OBSERVATION OF MONITORING: PARAGRAPH (O)

Section 8(c)(3) of the Act requires that employers provide employees or their representatives with the opportunity to observe monitoring of employee exposures to toxic materials or harmful physical agents. In accordance with this section and consistent with the proposal and other OSHA standards, the standard contains provisions for such observation. To insure that this right is meaningful, observers are entitled to an explanation of the measurement procedure, to observe all steps related to the measurement procedure, and to record the results obtained. Since results will not normally be available at the time of monitoring, the standard has been clarified to indicate that the observers are entitled to receive the results of the monitoring when returned by the laboratory. The observer, whether an employee or designated representative, must be provided with, and is required to use, any personal protective devices required to be worn by employees working in the area that is being monitored, and must comply with all other applicable safety and health procedures.

P. EFFECTIVE DATE: PARAGRAPH (P)

The effective date is February 1, 1979. The approximate three month period between the issuance of the standard and its effective date is intended to provide sufficient time for employers and employees to become informed of the existence of the standard and its requirements.

Any petitions for administrative reconsiderations of this standard or for an administrative stay pending judicial review must be filed with the Assistant Secretary of Labor for Occupational Safety and Health within 45 days of the publication of this standard in the FEDERAL REGISTER. Any petitions filed after this date will be considered to be filed untimely. This requirement is considered essential to permit the Agency to give full consideration to each petition and respond in advance of the effective date of the standard.

Q. APPENDICES: PARAGRAPH (Q)

The appendices included with the regulation are intended to provide information and are not intended to create any additional obligations not otherwise imposed.

R. STARTUP DATES: PARAGRAPH (R)

Startup dates for specific provisions have been extended from the proposal. This is based on OSHA's experience with other standards as to the time required for employers to complete air monitoring, and medical surveillance, and to obtain necessary equipment, respirators, and protective clothing. If there is no specific start up date set forth in the standard, then the startup date is the effective date of the standard. If the time period for meeting any of these startup dates cannot be met because of technical difficulties, any employer is entitled to petition for a temporary variance under § 6(b)(6)(A) of the Act.

V. AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., NW, Washington, D.C. 20210.

Accordingly, pursuant to sections 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1599; 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is hereby

amended by adding a new permanent standard for occupational exposure to inorganic lead at § 1910.1025 and by making consequential amendments to Table Z-1 of 29 CFR 1910.1000.

In addition, pursuant to the above authority, section 4(b)(2) of the Act (84 Stat. 1592; 29 U.S.C. 653) and the specific statutes referred to in section 4(b)(2), OSHA has determined that this new standard is more effective than the corresponding standards now in Subpart B of Part 1910, in Parts 1915, 1916, 1917, and 1918 of Title 29, Code of Federal Regulations, and also the safety and health standards promulgated under the Walsh-Healy Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.). Therefore, to the extent that these corresponding standards are inconsistent with this new standard, they are superseded by the new § 1910.1025.

The application of the new standard to the maritime industry is implemented by adding a new paragraph (g) to § 1910.19.

Signed at Washington, D.C., this 8th day of November, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations (CFR) is amended as follows:

1. A new paragraph (g) is added to § 1910.19 to read as follows:

§ 1910.19 Special provisions for air contaminants.

* * * * *

(g) Section 1910.1025 shall apply to the exposure of every employee to lead in every employment and place of employment covered by §§ 1910.13, 1910.14, 1910.15, 1910.16, in lieu of any different standard on exposure to lead which would otherwise be applicable by virtue of those sections.

§ 1910.1000 [Amended]

2. Table Z-2 in § 1910.1000 is amended by deleting the following entry:

Lead and its inorganic compounds (Z37.11-1969)	0.2 mg/m³

3. A new § 1910.1025 is added to Part 1910 to read as follows:

§ 1910.1025 Lead.

(a) *Scope and application.* (1) This section applies to all occupational exposure to lead, except as provided in paragraph (a)(2).

(2) This section does not apply to construction work as defined in 29 CFR 1910.12(b) or to agricultural operations covered by 29 CFR Part 1928.

(b) *Definitions.* "Action level" means employee exposure, without regard to the use of respirators, to an airborne concentration of lead of 30 micrograms per cubic meter of air (30 μg/m³) averaged over an 8-hour period.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Director" means the Director, National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health, Education, and Welfare, or designee.

"Lead" means metallic lead, all inorganic lead compounds, and organic lead soaps. Excluded from this definition are all other organic lead compounds.

(c) *Permissible exposure limit (PEL).* (1) The employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air (50 μg/m³) averaged over an 8-hour period.

(2) If an employee is exposed to lead for more than 8 hours in any work day, the permissible exposure limit, as a time weighted average (TWA) for that day, shall be reduced according to the following formula:

Maximum permissible limit (in μg/m³) = 400 ÷ hours worked in the day.

(3) When respirators are used to supplement engineering and work practice controls to comply with the PEL and all the requirements of paragraph (f) have been met, employee exposure, for the purpose of determining whether the employer has complied with the PEL, may be considered to be at the level provided by the protection factor of the respirator for those periods the respirator is worn. Those periods may be averaged with exposure levels during periods when respirators are not worn to determine the employee's daily TWA exposure.

(d) *Exposure monitoring* (1) *General.* (i) For the purposes of paragraph (d), employee exposure is that exposure which would occur if the employee were not using a respirator.

(ii) With the exception of monitoring under paragraph (d)(3), the employer shall collect full shift (for at least 7 continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(iii) Full shift personal samples shall be representative of the monitored employee's regular, daily exposure to lead.

(2) *Initial determination.* Each employer who has a workplace or work operation covered by this standard shall determine if any exployee may be exposed to lead at or above the action level.

(3) *Basis of initial determination.* (i) The employer shall monitor employee exposures and shall base initial determinations on the employee exposure monitoring results and any of the following, relevant considerations:

(A) Any information, observations, or calculations which would indicate employee exposure to lead;

(B) Measurements of airborne lead made in the preceding year if the sampling and analytical methods used meet the accuracy and confidence levels of paragraph (d)(9) of this section; and

(C) Any employee complaints of symptoms which may be attributable to exposure to lead.

(ii) Monitoring for the initial determination may be limited to a representative sample of the exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of lead in the workplace.

(4) *Positive initial determination.* Where a determination conducted under paragraphs (d)(2) and (d)(3) of this section shows the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace which is exposed to lead.

(5) *Negative initial determination.* Where a determination, conducted under paragraph (d)(2) and (d)(3) of this section is made that no employee is exposed to airborne concentrations of lead at or above the action level, the employer shall make a written record of such determination. The record shall include at least the information specified in paragraph (d)(3) of this section and shall also include the date of determination, location within the worksite, and the name and social security number of each employee monitored.

(6) *Frequency.* (i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in paragraph (d)(7) of this section.

(ii) If the initial determination or subsequent monitoring reveals employee exposure to be at or above the action level but below the permissible exposure limit the employer shall repeat monitoring in accordance with this paragraph at least every 6 months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided in paragraph (d)(7) of this section.

(iii) If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employ-

er shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer may repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.

(7) *Additional monitoring.* Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to lead, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to lead, additional monitoring in accordance with this paragraph shall be conducted.

(8) *Employee notification.* (i) Within 5 working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall incude in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

(9) *Accuracy of measurement.* The employer shall use a method of monitoring and analysis which has an accuracy (to a confidence level of 95%) of not less than plus or minus 20 percent for airborne concentrations of lead equal to or greater than 30 $\mu g/m^3$.

(e) *Methods of compliance.* (1) *Engineering and work practice controls.* The employer shall implement engineering and work practice controls (including administrative controls) to reduce and maintain employee exposure to lead in accordance with the implementation schedule in Table I below. Failure to achieve exposure levels without regard to respirators is sufficient to establish a violation of this provision.

TABLE I.—*Implementation schedule*

Industry [1]	Compliance dates [2]		
	200 $\mu g/m^3$	100 $\mu g/m^3$	50 $\mu g/m^3$
Primary lead production	([3])	3	10
Secondary lead production	([3])	3	5
Lead-acid battery manufacturing	([3])	2	5
Nonferrous foundries	([3])	1	5
Lead pigment manufacturing	([3])	3	5
All other industries	([3])	0	1

[1] Includes ancillary activities located on the same worksite.

[2] Expressed as the number of years from the effective date by which compliance with the given airborne exposure level, as an 8-hour TWA, must be achieved.

[3] On effective date.

(2) *Respiratory protection.* Where engineering and work practice controls do not reduce employee exposure to or below the 50 $\mu g/m^3$ permissible exposure limit, the employer shall supplement these controls with respirators in accordance with paragraph (f).

(3) *Compliance program.*

(i) Each employer shall establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit and interim levels if appropriate, solely by means of engineering and work practice controls in accordance with the implementation schedule in paragraph (e)(1).

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which lead is emitted; e.g. machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures and maintenance practices;

(B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to lead;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Air monitoring data which documents the source of lead emissions;

(E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;

(F) A work practice program which includes items required under paragraphs (g), (h) and (i) of this regulation;

(G) An administrative control schedule required by paragraph (e)(6), if applicable;

(H) Other relevant information.

(iii) Written programs shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, Director, any affected employee or authorized employee representatives.

(iv) Written programs shall be revised and updated at least every 6 months to reflect the current status of the program.

(4) *Bypass of interim level.* Where an employer's compliance plan provides for a reduction of employee exposures to or below the PEL solely by means of engineering and work practice controls in accordance with the implementation schedule in table I, and the employer has determined that compliance with the 100 $\mu g/m^3$ interim level would divert resources to the extent that it clearly precludes compliance, otherwise attainable, with the PEL by the required time, the employer may proceed with the plan to comply with the PEL in lieu of compliance with the interim level if:

(i) The compliance plan clearly documents the basis of the determination;

(ii) The employer takes all feasible steps to provide maximum protection for employees until the PEL is met; and

(iii) The employer notifies the OSHA Area Director nearest the affected workplace in writing within 10 working days of the completion or revision of the compliance plan reflecting the determination.

(5) *Mechanical ventilation.* (i) When ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made at least every 3 months. Measurements of the system's effectiveness in controlling exposure shall be made within 5 days of any change in production, process, or control which might result in a change in employee exposure to lead.

(ii) *Recirculation of air.* If air from exhaust ventilation is recirculated into the workplace, the employer shall assure that (A) the system has a high efficiency filter with reliable back-up filter; and (B) controls to monitor the concentration of lead in the return air and to bypass the recirculation system automatically if it fails are installed, operating, and maintained.

(6) *Administrative controls.* If administrative controls are used as a means of reducing employee's TWA exposure to lead, the employer shall estabish and implement a job rotation schedule which includes:

(i) Name or identification number of each affected employee;

(ii) Duration and exposure levels at each job or work station where each affected employee is located; and

(iii) Any other information which may be useful in assessing the reliability of administrative controls to reduce exposure to lead.

(f) *Respiratory protection.*

(1) *General.* Where the use of respirators is required under this section, the employer shall provide, at no cost to the employee, and assure the use of respirators which comply with the requirements of this paragraph. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement engineering or work practice controls, except that

after the dates for compliance with the interim levels in table I, no employer shall require an employee to wear a respirator longer than 4.4 hours per day;

(ii) In work situations in which engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit; and

(iii) Whenever an employee requests a respirator.

(2) *Respirator selection.*

(i) Where respirators are required under this section the employer shall select the appropriate respirator or combination of respirators from table II below.

TABLE II.—*Respiratory Protection for Lead Aerosols*

Airborne concentration of lead or condition of use	Required respirator[1]
Not in excess of 0.5 mg/m³(10X PEL).	Half-mask, air-purifying respirator equipped with high efficiency filters.[2 3]
Not in excess of 2.5 mg/m³(50X PEL).	Full facepiece, air-purifying respirator with high efficiency filters.
Not in excess of 50 mg/m³(1000X PEL).	(1) Any powered, air-purifying respirator with high efficiency filters; or (2) Half-mask supplied-air respirator operated in positive-pressure mode.[2]
Not in excess of 100 mg/m³(2000X).	Supplied-air respirators with full facepiece, hood, helmet, or suit, operated in positive pressure mode.
Greater than 100 mg/m³, unknown concentration or fire fighting.	Full facepiece, self-contained breathing apparatus operated in positive-pressure mode.

[1]Respirators specified for high concentrations can be used at lower concentrations of lead.

[2]Full facepiece is required if the lead aerosols cause eye or skin irritation at the use concentrations.

[3]A high efficiency particulate filter means 99.97 percent efficient against 0.3 micron size particles.

(ii) The employer shall provide a powered, air-purifying respirator in lieu of the respirator specified in Table II whenever:

(A) An employee chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(iii) The employer shall select respirators from among those approved for protection against lead dust, fume, and mist by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(3) *Respirator usage.*

(i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) Employers shall perform quantitative face fit tests at the time of initial fitting and at least semiannually thereafter for each employee wearing negative pressure respirators. The test shall be used to select facepieces that provide the required protection as prescribed in table II.

(iii) If an employee exhibits difficulty in breathing during the fitting test or during use, the employer shall make available to the employee an examination in accordance with paragraph (j)(3)(i)(C) of this section to determine whether the employee can wear a respirator while performing the required duty.

(4) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece whenever necessary to prevent skin irritation associated with respirator use.

(g) *Protective work clothing and equipment.*

(1) *Provision and use.* If an employee is exposed to lead above the PEL, without regard to the use of respirators or where the possibility of skin or eye irritation exists, the employer shall provide at no cost to the employee and assure that the employee uses appropriate protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, hats, and shoes or disposable shoe coverlets; and

(iii) Face shields, vented goggles, or other appropriate protective equipment which complies with § 1910.133 of this Part.

(2) *Cleaning and replacement.* (i) The employer shall provide the protective clothing required in paragraph (g)(1) of this section in a clean and dry condition at least weekly, and daily to employees whose exposure levels without regard to a respirator are over 200 μg/m³ of lead as an 8-hour TWA.

(ii) The employer shall provide for the cleaning, laundering, or disposal of protective clothing and equipment required by paragraph (g)(1) of this section.

(iii) The employer shall repair or replace required protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms provided for that purpose as prescribed in paragraph (i)(2) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of lead outside the container.

(vi) The employer shall inform in writing any person who cleans or launders protective clothing or equipment of the potentially harmful effects of exposure to lead.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment required by paragraph (g)(2)(v) are labelled as follows: CAUTION: CLOTHING CONTAMINATED WITH LEAD. DO NOT REMOVE DUST BY BLOWING OR SHAKING. DISPOSE OF LEAD CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, OR FEDERAL REGULATIONS.

(viii) The employer shall prohibit the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air, except as provided for in paragraph (i)(6) of this section.

(h) *Housekeeping.*

(1) *Surfaces.* All surfaces shall be maintained as free as practicable of accumulations of lead.

(2) *Cleaning floors.* (i) Floors and other surfaces where lead accumulates may not be cleaned by the use of compressed air.

(ii) Shoveling, dry or wet sweeping and brushing may be used only where vacuuming has been tried and found not to be effective.

(3) *Vacuuming.* Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner which minimizes the reentry of lead into the workplace.

(i) *Hygiene facilities and practices.* (1) The employer shall assure that in areas where skin or clothing may come in contact with fume, dust, mist, or liquids containing lead or where employees are exposed to lead above the PEL, without regard to the use of respirators, food or beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in change rooms, lunchrooms, and showers required under paragraphs (i)(2)–(i)(4) of this section.

(2) *Change rooms.* (i) The employer shall provide clean change rooms for employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that change rooms are equipped with separate storage facilities for protective work clothing and equipment and for street clothes which prevent cross-contamination.

(3) *Showers.* (i) The employer shall assure that employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL, without regard to the use of respirators, shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with § 1910.141 (a)(3) of this Part.

(iii) The employer shall assure that employees who are required to shower pursuant to paragraph (i)(3)(i) do not leave the workplace wearing any clothing or equipment worn during the work shift.

(4) *Lunchrooms.* (i) The employer shall provide lunchroom facilities for employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply, and are readily accessible to employees.

(iii) The employer shall assure that employees who work in areas where their skin or clothing comes into contact with fume, dust, mist, or liquids containing lead or where their airborne exposure to lead is above the PEL without regard to a respirator wash their hands and face prior to eating, drinking, smoking or applying cosmetics.

(iv) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface lead dust has been removed by vacuuming, downdraft booth, or other cleaning method.

(5) *Lavatories.* The employer shall provide an adequate number of lavatory facilities which comply with § 1910.141(d) (1) and (2) of this Part.

(6) *Effective date for construction plans.* Construction plans for changerooms, showers, lavatories and lunchroom facilities shall be completed no later than 6 months from the effective date and these facilities shall be constructed and in use no later than 1 year from the effective date.

(j) *Medical surveillance.* (1) *General.* (i) The employer shall institute a medical surveillance program for all employees who are or may be exposed above the action level for more than 30 days per year.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician.

(iii) The employer shall provide the required medical surveillance without cost to employees and at a reasonable time and place.

(2) *Biological monitoring.* —(i) *Blood lead and ZPP level sampling and analysis.* The employer shall make available biological monitoring in the form of blood sampling and analysis for lead and zinc protoporphyrin levels to each employee covered under paragraph (j)(1)(i) of this section on the following schedule:

(A) At least every 6 months to each employee covered under paragraph (j)(1)(i) of this section;

(B) At least every two months for each employee whose last blood sampling and analysis indicated a blood lead level at or above 40 μg/100 g of whole blood. This frequency shall continue until two consecutive blood samples and analyses indicate a blood lead level below 40 μg/100 g of whole blood; and

(C) At least monthly during the removal period of each employee removed from exposure to lead due to an elevated blood lead level.

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i), the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

(iii) *Accuracy of blood lead level sampling and analysis.* Blood lead level sampling and analysis provided pursuant to this section shall have an accuracy (to a confidence level of 95 percent) within plus or minus 15 percent or 6 μg/100ml, whichever is greater, and shall be conducted by a laboratory licensed by the Center for Disease Control (CDC) or which has received a satisfactory grade in blood lead proficiency testing from CDC in the prior twelve months.

(iv) *Employee notification.* Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level exceeds 40 μg/100 g: (A) of that employee's blood lead level and (B) that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

(3) *Medical examinations and consultations.*—(i)*Frequency.* The employer shall make available medical examinations and consultations to each employee covered under paragraph (j)(1)(i) of this section on the following schedule:

(A) At least annually for each employee for whom a blood sampling test conducted at any time during the preceding 12 months indicated a blood lead level at or above 40 μg/100 g;

(B) Prior to assignment for each employee being assigned for the first time to an area in which airborne concentrations of lead are at or above the action level;

(C) As soon as possible, upon notification by an employee either that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice concerning the effects of current or past exposure to lead on the employee's ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during use; and

(D) As medically appropriate for each employee either removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited pursuant to a final medical determination.

(ii) *Content.* Medical examinations made available pursuant to paragraph (j)(3)(i)(A)–(B) of this section shall include the following elements:

(A) A detailed work history and a medical history, with particular attention to past lead exposure (occupational and non-occupational), personal habits (smoking, hygiene), and past gastrointestinal, hematologic, renal, cardiovascular, reproductive and neurological problems;

(B) A thorough physical examination, with particular attention to teeth, gums, hematologic, gastrointestinal, renal, cardiovascular, and neurological systems. Pulmonary status should be evaluated if respiratory protection will be used;

(C) A blood pressure measurement;

(D) A blood sample and analysis which determines:

(*1*) Blood lead level;

(*2*) Hemoglobin and hematocrit determinations, red cell indices, and examination of peripheral smear morphology;

(*3*) Zinc protoporphyrin;

(*4*) Blood urea nitrogen; and,

(*5*) Serum creatinine;

(E) A routine urinalysis with microscopic examination; and

(F) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

The content of medical examinations made available pursuant to paragraph (j)(3)(i)(C)–(D) of this section shall be determined by an examining physician and, if requested by an employee, shall include pregnancy testing or laboratory evaluation of male fertility.

(iii) *Multiple physician review mechanism.* (A) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, the employee may designate a second physician:

(*1*) To review any findings, determinations or recommendations of the initial physician; and

(*2*) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(B) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen (15) days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(*1*) The employee informing the employer that he or she intends to seek a second medical opinion, and

(*2*) The employee initiating steps to make an appointment with a second physician.

(C) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(D) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(*1*) To review any findings, determinations or recommendations of the prior physicians; and

(*2*) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(E) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(iv) *Information provided to examining and consulting physicians.* (A) The employer shall provide an initial physician conducting a medical examination or consultation under this section with the following information:

(*1*) A copy of this regulation for inorganic lead including all Appendices;

(*2*) A description of the affected employee's duties as they relate to the employee's exposure;

(*3*) The employee's exposure level or anticipated exposure level to lead and to any other toxic substance (if applicable);

(*4*) A description of any personal protective equipment used or to be used;

(*5*) Prior blood lead determinations; and

(*6*) All prior written medical opinions concerning the employee in the employer's possession or control.

(B) The employer shall provide the foregoing information to a second or third physician conducting a medical examination or consultation under this section upon request either by the second or third physician, or by the employee.

(v) *Written medical opinions.* (A) The employer shall obtain and furnish an employee with a copy of a written medical opinion from each examining or consulting physician which contains the following information:

(*1*) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at increased risk of material impairment of the employee's health from exposure to lead;

(*2*) Any recommended special protective measures to be provided to the employee, or limitations to be placed upon the employee's exposure to lead;

(*3*) Any recommended limitation upon the employee's use of respirators, including a determination of whether the employee can wear a powered air purifying respirator if a physician determines that the employee cannot wear a negative pressure respirator; and

(*4*) The results of the blood lead determinations.

(B) The employer shall instruct each examining and consulting physician to:

(*1*) Not reveal either in the written opinion, or in any other means of communication with the employer, findings, including laboratory results, or diagnoses unrelated to an employee's occupational exposure to lead; and

(*2*) Advise the employee of any medical condition, occupational or nonoccupational, which dictates further medical examination or treatment.

(vi) *Alternate Physician Determination Mechanisms.* The employer and an employee or authorized employee representative may agree upon the use of any expeditious alternate physician determination mechanism in lieu of the multiple physician review mechanism provided by this paragraph so long as the alternate mechanism otherwise satisfies the requirements contained in this paragraph.

(4) *Chelation.* (i) The employer shall assure that any person whom he retains, employs, supervises or controls does not engage in prophylactic chelation of any employee at any time.

(ii) If therapeutic or diagnostic chelation is to be performed by any person in paragraph (j)(4)(i), the employer shall assure that it be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring and that the employee is notified in writing prior to its occurrence.

(k) *Medical Removal Protection.*

(1) *Temporary medical removal and return of an employee.*

(i) *Temporary removal due to elevated blood lead levels.*

(A) *First year of the standard.* During the first year following the effective date of the standard, the employer shall remove an employee from work having a daily eight hour TWA exposure to lead at or above 100 $\mu g/m^3$ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 80 $\mu g/100$ g of whole blood;

(B) *Second year of the standard.* During the second year following the effective date of the standard, the employer shall remove an employee from work having a daily 8-hour TWA exposure to lead at or above 50 $\mu g/m^3$ on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 70 $\mu g/100$ g of whole blood;

(C) *Third year of the standard, and thereafter.* Beginning with the third year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a periodic and a follow-up blood sampling test conducted pursuant to this section indicate that the employee's blood lead level is at or above 60 $\mu g/100$ g of whole blood; and,

(D) *Fifth year of the standard, and thereafter.* Beginning with the fifth year following the effective date of the standard, the employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 $\mu g/100$ g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 $\mu g/100$ g of whole blood.

(ii) *Temporary removal due to a final medical determination.* (A) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead;

(B) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the multiple physician review mechanism or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section.

(C) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to lead, the employer shall implement and act consistent with the recommendation.

(iii) *Return of the employee to former job status.* (A) The employer shall return an employee to his or her former job status:

(*1*) For an employee removed due to a blood lead level at or above 80 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 60 μg/100 g of whole blood;

(*2*) For an employee removed due to a blood lead level at or above 70 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 50 μg/100 g of whole blood;

(*3*) For an employee removed due to a blood lead level at or above 60 μg/100 g, or due to an average blood lead level at or above 50 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 40 μg/100 g of whole blood;

(*4*) For an employee removed due to a final medical determination, when a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead; and

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iv) *Removal of other employee special protective measure or limitations.* The employer shall remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(v) *Employer options pending a final medical determination.* Where the multiple physician review mechanism, or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) *Removal.* The employer may remove the employee from exposure to lead, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) *Return.* The employer may return the employee to his or her former job status, end any special protective measures provided to the employee, and remove any limitations placed upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions. If—I11(*1*) the initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician;

(*2*) the employee has been on removal status for the proceeding eighteen months due to an elevated blood lead level, then the employer shall await a final medical determination.

(2) *Medical removal protection benefits.*

(i) *Provision of medical removal protection benefits.* The employer shall provide to an employee up to eighteen (18) months of medical removal protection benefits on each occasion that an employee is removed from exposure to lead or otherwise limited pursuant to this section.

(ii) *Definition of medical removal protection benefits.* For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to lead or otherwise limited.

(iii) *Follow-up medical surveillance during the period of employee removal or limitation.* During the period of time that an employee is removed from normal exposure to lead or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iv) *Workers' compensation claims.* If a removed employee files a claim for workers' compensation payments for a lead-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment related expenses.

(v) *Other credits.* The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or from employment with another employer made possible by virtue of the employee's removal.

(vi) *Employees whose blood lead levels do no adequately decline within 18 months of removal.* The employer shall take the following measures with respect to any employee removed from exposure to lead due to an elevated blood lead level whose blood lead level has not declined within the past eighteen (18) months of removal so that the employee has been returned to his or her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(B) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and if not, what steps should be taken to protect the employee's health;

(C) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status.

(D) Where the employer acts pursuant to a final medical determination

which permits the return of the employee to his or her former job status despite what would otherwise be an unacceptable blood lead level, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the blood lead level removal criteria provided by this section.

(vii) *Voluntary Removal or Restriction of An Employee.* Where an employer, although not required by this section to do so, removes an employee from exposure to lead or otherwise places limitations on an employee due to the effects of lead exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by paragraph (k)(2)(i) of this section.

(l) *Employee information and training.*

(1) *Training program.*

(i) Each employer who has a workplace in which there is a potential exposure to airborne lead at any level shall inform employees of the content of Appendices A and B of this regulation.

(ii) The employer shall institute a training program for and assure the participation of all employees who are subject to exposure to lead at or above the action level or for whom the possibility of skin or eye irritation exists.

(iii) The employer shall provide initial training by 180 days from the effective date for those employees covered by paragraph (1)(l) (ii) on the standard's effective date and prior to the time of initial job assignment for those employees subsequently covered by this paragraph.

(iv) The training program shall be repeated at least annually for each employee.

(v) The employer shall assure that each employee is informed of the following:

(A) The content of this standard and its appendices;

(B) The specific nature of the operations which could result in exposure to lead above the action level;

(C) The purpose, proper selection, fitting, use, and limitations of respirators;

(D) The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproductive effects on both males and females);

(E) The engineering controls and work practices associated with the employee's job assignment;

(F) The contents of any compliance plan in effect; and

(G) Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician;

(2) *Access to information and training materials.*

(i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(iii) In addition to the information required by paragraph (1)(l)(v), the employer shall include as part of the training program, and shall distribute to employees, any materials pertaining to the Occupational Safety and Health Act, the regulations issued pursuant to that Act, and this lead standard, which are made available to the employer by the Assistant Secretary.

(m) *Signs.*

(1) *General.* (i) The employer may use signs required by other statutes, regulations or ordinances in addition to, or in combination with, signs required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign required by this paragraph which contradicts or detracts from the meaning of the required sign.

(2) *Signs.* (i) The employer shall post the following warning signs in each work area where the PEL is exceeded:

WARNING

LEAD WORK AREA

POISON

NO SMOKING OR EATING

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(n) *Recordkeeping.*

(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring required in paragraph (d) of this section.

(ii) This record shall include:

(A) The date(s), number, duration, location and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of employee exposure.

(iii) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (j) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of the duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to lead.

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of the medical examination results including medical and work history required under paragraph (j) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information;

(C) A copy of the results of biological monitoring.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment plus 20 years, whichever is longer.

(3) *Medical removals.* (i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to lead pursuant to paragraph (k) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date on each occasion that the employee was removed from current exposure to lead as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating whether or not the reason for the removal was an elevated blood lead level.

(iii) The employer shall maintain each medical removal record for at

least the duration of an employee's employment.

(4) *Availability.* (i) The employer shall make available upon request all records required to be maintained by paragraph (n) of this section to the Assistant Secretary and the Director for examination and copying.

(ii) Upon request, the employer shall make environmental monitoring, biological monitoring, and medical removal records available to affected employees, former employees or their authorized employee representatives for inspection and copying.

(iii) Upon request, the employer shall make an employee's medical records required to be maintained by this section available to the affected employee or former employee or to a physician or other individual designated by such affected employee or former employees for examination and copying.

(5) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by paragraph (n) of this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least 3 months prior to the disposal of such records and shall transmit those records to the Director if requested within the period.

(o) *Observation of monitoring.* (1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to lead conducted pursuant to paragraph (d) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to lead requires entry into an area where the use of respirators, protective clothing or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of lead performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(p) *Effective date.* This standard shall become effective February 1, 1979.

(q) *Appendices.* The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(r) *Startup dates.* All obligations of this standard commence on the effective date except as follows:

(1) The initial determination under paragraph (d)(2) shall be made as soon as possible but no later than 30 days from the effective date.

(2) Initial monitoring under paragraph (d)(4) shall be completed as soon as possible but no later than 90 days from the effective date.

(3) Initial biological monitoring and medical examinations under paragraph (j) shall be completed as soon as possible but no later than 180 days from the effective date. Priority for biological monitoring and medical examinations shall be given to employees whom the employer believes to be at greatest risk from continued exposure.

(4) Initial training and education shall be completed as soon as possible but no later than 180 days from the effective date.

(5) Hygiene and lunchroom facilities under paragraph (i) shall be in operation as soon as possible but no later than 1 year from the effective year.

(6) Respiratory protection required by paragraph (f) shall be provided as soon as possible but no later than the following schedule:

(A) Employees whose 8-hour TWA exposure exceeds 200 $\mu g/m^3$—on the effective date.

(B) Employees whose 8-hour TWA exposure exceeds the PEL but is less than 200 $\mu g/m^3$—150 days from the effective date.

(C) Powered, air-purifying respirators provided under (f)(2)(ii)—210 days from the effective date.

(7) Written compliance plans required by paragraph (e)(3) shall be completed and available for inspection and copying as soon as possible but no later than the following schedule:

(A) Employers for whom compliance with the PEL or interim level is required within 1 year from the effective date—6 months from the effective date.

(B) Employers in secondary smelting and refining, lead storage battery manufacturing lead pigment manfacturing and nonferrous foundry industries—1 year from the effective date.

(C) Employers in primary smelting and refining industry—1 year from the effective date for the interim level; 5 years from the effective date for PEL.

(D) Plans for construction of hygiene facilities, if required—6 months from the effective date.

(8) The permissible exposure limit in paragraph (c) shall become effective 150 days from the effective date.

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federal register

TUESDAY, NOVEMBER 14, 1978
PART V

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

■

HOLDING OF BLOCKED FUNDS IN INTEREST-BEARING ACCOUNTS

Proposed Rulemaking

[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[31 CFR Part 500]

FOREIGN ASSETS CONTROL REGULATIONS

Holding of Blocked Funds In Interest-Bearing Accounts

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

ACTION: Proposed rule.

SUMMARY: The Office of Foreign Assets Control is proposing to amend its Foreign Assets Control Regulations by the addition of §§ 500.205 and 500.611. The purpose of § 500.205 is to require any person holding certain types of blocked property for a designated country or national thereof to hold such property in an interest-bearing account in a domestic bank. The need for the amendment is that in many instances interest has not been credited on such property, which includes funds in demand accounts, even though in the case of demand deposits the depositor has not had the right of withdrawal or of payment on demand by reason of the blocking. The effect of the amendment is that most of these types of blocked funds henceforth will be held in interest-bearing accounts, the continued holding of blocked funds in Non-interest-bearing status being prohibited.

The purpose of § 500.611 is to require persons subject to § 500.205 to report on the nature of blocked accounts affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving the administration and control of blocked assets by providing such information in simple, efficient, and useful form.

In addition, the Office of Foreign Assets Control proposes to revoke § 500.561 of the Regulations which contains a statement of licensing policy regarding transfers of abandoned property under State law. The need for the amendment is that the transfer of blocked assets to State administration may interfere with the effective regulation of blocked property by the Office. The effect of the amendment is that blocked assets will remain in the custody of the present holders, subject to direct Federal regulation and without being subject to the application of State abandoned property laws.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Send comments to the Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Room 401, 1331 G Street NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 202-376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 (U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable. Nonetheless, because of the technical nature of the regulations, comments are being requested. However, the comment period has been limited to 30 days.

Information available to the Treasury Department indicates that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in view of the inequity of continuing to hold the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand withdrawal. However, a substantial amount of funds blocked under the regulations is still being held by banks and other persons in Non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of § 500.205 requires the holding of certain property identified in paragraph (g) in interest-bearing accounts in domestic banks. Any further holding of such blocked funds without crediting interest thereon is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 5 days of the effective date of this section.

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these instruments and credit the proceeds to a blocked, interest-bearing account. All transactions by any person incident to the negotiation, processing, presentment, collection, or payment of such instruments are authorized.

Paragraphs (d) and (e) specify certain exceptions to the basic transfer directive and prohibition.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any setoff claimed against the owner by the holder of the funds. For example, if a corporation holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraphs (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a setoff, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from the effective date of the regulation, if the setoff is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) defines the "interest-bearing account" in which the blocked funds must be held under paragraph (a), (b), and (c) of the regulation; namely, a blocked account earning interest at the current applicable market rate in the domestic bank where the account is held. It provides that in no event may the interest paid on such accounts be less than the minimum rate payable on the shortest time deposit available in the bank.

Paragraph (g) indentifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims and obligations; and the proceeds of the negotiation of checks and drafts under paragraph (c).

Implementation of § 500.205 will enhance the value of the funds without affecting the owner's interest therein. Under the provisions of section 5(b) of the Trading With the Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

Comments are particularly invited with respect to technical aspects of § 500.205, such as types of blocked funds subject to the regulation and the definition of "interest-bearing account." Treasury will be evaluating the need for, and the appropriate scope of, exceptions to the regulation. In this regard, persons who would be affected by the regulation should use the opportunity of the comment period to bring to Treasury's attention information on situations possibly meriting an exception, including the amount of blocked funds involved.

With respect to paragraph (c) of § 500.205, most of the blocked checks and drafts subject to the provision may be stale-dated and present special problems of collection. Treasury's objective is to accomplish either collection of such instruments or the identi-

fication of underlying blocked obligations in drawee banks. Such blocked obligations would be subject to the requirements of § 500.205. Holders of blocked assets should utilize the comment period to advise Treasury of practical and legal problems involved in the collection of blocked checks and drafts.

It should be noted that the requirements of § 500.205 apply to blocked funds held by governmental agencies or instrumentalities, as well as funds by private holders. These funds would include, for example, funds held by State abandoned property custodians and funds which have been paid into courts (e.g., funds of decedents' estates). Affected agencies should utilize the comment period to bring to the attention of Treasury and problems which may result from the imposition of the interest requirement with respect to blocked funds presently held by them.

With regard to the proposed revocation of § 500.561, containing the statement of licensing policy on transfers of abandoned property under State law, Treasury has notified States having licenses that the licenses are suspended pending a review of whether the policy will be continued. Among other matters, Treasury's reconsideration of the policy is prompted by information that the condition stated in § 500.561 that blocked assets be separately indexed and maintained has not been complied with by State abandoned property administrations to whom licenses have been issued. It is believed that effective control of the assets by the Office of Foreign Assets Control will be more readily maintained if the assets remain in the custody of private institutions such as banks and brokers than if they are transferred to State agencies.

State departments of abandoned property should utilize the comment period to make recommendations regarding the issue of whether the past policy of issuing licenses for the transfer of blocked property under State abandoned property laws should continue. Among other matters, States may wish to consider suggestions as to ways in which the administration of blocked assets under State administration could better conform to the requirements of existing licensing policy.

Section 500.611 requires that any person holding property subject to the requirements of § 500.205, including property with respect to which an exemption is claimed, must submit a report on form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for an accurate determiniation for planning purposes of the amount of blocked assets at any time.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d) and (e) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

The proposed draft of the form is reproduced after the text of the proposed regulations. Comments are particularly invited with respect to the scope and wording of questions. Recommendations as to how accurate and useful information can be derived with the least burden on reporters are encouraged. An attempt will be made to produce a final version of the form that wil ease the burden on the holders of providing the information as much as is reasonably possible consistent with Treasury's need for the information.

Suggestions will be considered for alternate methods of reporting of the required data including submission of printed output by data processing equipment and/or submission of data in machine-readable form (e.g., magnetic tape). Suggestions for standardizing such a method of submission by reporters are encouraged.

1. 31 CFR Part 500 is amended by the addition of § 500.205 as follows:

§ 500.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d) and (e) below, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (g) is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, or privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to, or hold such property or cause such property to be held in an interest-bearing account in any domestic bank within 5 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of § 500.201 is authorized and directed to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account are hereby authorized: *Provided*, That:

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any othe country or person; and,

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument.

(d) Property subject to the provisions of paragraphs (a) or (b) of this section, held by a person claiming a setoff against such property, is exempt from the provisions of paragraphs (a), (b), and (c) to the extend of the setoff: *Provided, however*, That interest shall be due from the effective date of this section if it should ultimately be determined that the claim to a setoff is without merit.

(e) Property subject to the provisions of paragraphs (a) an (b) of this section, held in a customer's account by a registred broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with § 500.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the minimum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at the current applicable market which shall not in any event be less than the minimum rate payable on the shortest time deposit available in the demostic bank where the account is held.

(g) The following types of property are subject to paragraphs (a) and (b) above:

(1) Any currency, bank deposits, and bank accounts subject to the provisions of § 500.201;

(2) Any property subject to the provisions of § 500.201 which consists, in whole or in part, of undisputed and

either liquidated or matured debts, claims, obligations, or other evidence of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) above.

2. Section 500.561 is revoked as follows:

§ 500.561 Transfers of abandoned property under State law.

[Revoked]

3. Section 500.611 is added to read as follows:

§ 500.611 Reports concerning property subject to § 500.205.

(a) Any person holding property to which § 500.205 applies, including property as to which an exemption under § 500.205 (d) or (e) is claimed, is hereby required to submit a report on form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information including account numbers, of such account;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under § 500.205, if any; and,

(8) The date of any previous report concerning the property filed with the Office of Foreign Assets Control under § 500.610 (1970 Census of Chinese Assets).

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. On or before ————, 1978, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: November 1, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[4810-25-C]

TREASURY DEPARTMENT

APPROVAL OF THE OFFICE OF MANAGEMENT & BUDGET NOT REQUIRED

TFR-611 - REPORT OF BLOCKED PROPERTY

FORM TFR-611--Any person holding property subject to Section 500.205 of the Foreign Assets Control Regulations, Section 515.205 of the Cuban Assets Control Regulations or Section 520.05 of the Foreign Funds Control Regulations, including property as to which an exemption is claimed under paragraphs (d) or (e) are required to submit a report concerning such property on FORM TFR-611. This report is to be submitted in duplicate to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Additional copies of FORM TFR-611 and Reporting instructions may be obtained from the Office of Foreign Assets Control or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045. Reports filed in accordance with this Section are regarded as containing commercial & financial information which is privileged and/or confidential and will be held in confidence.

BEFORE PREPARING THIS REPORT READ CAREFULLY SECTION 500.611, 515.611 or 520.611 of the Foreign Assets Control Regulations, Cuban Assets Control Regulations or the Foreign Funds Control Regulations respectively.

(Typewrite or print)

PART A.-INFORMATION CONCERNING NATIONAL FOR WHOM OR FOR WHOSE BENEFIT PROPERTY IS HELD.

1 Name _____
(Last Name) (First Name) (Middle Name)

2. Any aliases or variant spellings of name _____

3 Last known address _____
(Street) (City) (Country)

4 Nationality (Check one)

People's Republic of China	[ ] C	East Germany	[ ] G
North Korea	[ ] K	Czechoslovakia	[ ] Z
Viet-Nam	[ ] V	Latvia	[ ] L
Cambodia	[ ] A	Lithuania	[ ] I
Cuba	[ ] U	Estonia	[ ] E

5 Type of Person

Individual	[ ] I	Unincorporated Association	[ ] U
Corporation	[ ] C	Government or Agency thereof	[ ] R
Partnership	[ ] P	Other (describe)_____	[ ] O

6. Nature of the Interest of the Designated Country or National thereof in the Blocked Property:

Owner	[ ] O	Mortgagor	[ ] M
Claimant	[ ] C	Other (Explain)_____	[ ] O
Lien Holder	[ ] L	_____	

PART B.-SCHEDULE OF PROPERTY--REPORT VALUE AS OF DATE ON WHICH PROPERTY WAS ORIGINALLY BLOCKED.

1. TYPE [Currency, Check, Draft, Debt to National]	VALUE	DATE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

2. Did you report this property under any of the following:

Report	Date Filed	
China-Form TFR-603 (1951)	_____	[ ] A
China-Form TFR-610 (1970)	_____	[ ] B
Cuba-Form TFR-607 (1964)	_____	[ ] C
World War II Reports	_____	[ ] D

PART C.-EXEMPTION

1. An exemption from the interest requirements is claimed under the following:

subparagraph (d)-setoff
subparagraph (e)-broker/dealer accounts
other (specify)_____

2. Basis for exemption_____

3. Value of funds exempted_____

PART D.-INFORMATION REGARDING RATE OF INTEREST

For each account on which interest is being paid provide the following information.

	ACCOUNT NUMBER	PRESENT RATE	DATE RATE BEGAN	PRIOR RATES*	DATES FROM / TO	CURRENT BALANCE (_____, 1978)
a)	_____	_____	_____	_____	_____/_____	_____
b)	_____	_____	_____	_____	_____/_____	_____
c)	_____	_____	_____	_____	_____/_____	_____
d)	_____	_____	_____	_____	_____/_____	_____

* If more than one rate change has occurred with respect to an account, provide additional information on a blank sheet and attach it to this form.

PART E.-NAME OF PERSON HOLDING PROPERTY

Name _____ Business_____
Address_____

PART F.-CERTIFICATION

I, _____certify that I am the _____ of the _____
(State relationship of signatory person making this report) (Name of partnership, association corporation or other organization)
making this report, that I am authorized to make this certification. To the best of my knowledge and belief the statements set forth in this report, including any papers attached hereto or filed herewith, are true and accurate and all material facts in connection with said report have been set forth therein.

_____ (Date)

_____ (Signature)

_____ (Address)

[FR Doc. 78-31921 Filed 11-13-78; 8:45 am]

[4810-25-M]

[31 CFR Part 515]

CUBAN ASSETS CONTROL REGULATIONS

Holding of Blocked Funds in Interest-Bearing Accounts

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

ACTION: Proposed rule.

SUMMARY: The Office of Foreign Assets Control is proposing to amend its Cuban Assets Control regulations by the addition of sections 515.205 and 515.611. The purpose of section 515.205 is to require any person holding certain types of blocked property for a designated country or national thereof to hold such property in an interest-bearing account in a domestic bank. The need for the amendment is that in many instances interest has not been credited on such property, which includes funds in demand accounts, even though in the case of demand deposits the depositor has not had the right of withdrawal or of payment on demand by reason of the blocking. The effect of the amendment is that most of these types of blocked funds henceforth will be held in interest-bearing accounts, the continued holding of blocked funds in non-interest-bearing status being prohibited.

The purpose of section 515.611 is to require persons subject to section 515.205 to report on the nature of blocked accounts affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving the administration and control of blocked assets by providing such information in simple, efficient, and useful form.

In addition, the Office of Foreign Assets Control proposes to revoke section 515.554 of the regulations which contains a statement of licensing policy regarding transfers of abandoned property under State law. The need for the amendment is that the transfer of blocked assets to state administration may interfere with the effective regulation of blocked property by the Office. The effect of the amendment is that blocked assets will remain in the custody of the present holders, subject to direct Federal regulation and without being subject to the application of State abandoned property laws.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Send comments to the Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Room 401, 1331 G Street NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 202-376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable. Nonetheless, because of the technical nature of the regulations, comments are being requested. However, the comment period has been limited to 30 days.

Information available to the Treasury Department indicates that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in view of the inequity of continuing to hold the funds in demand status and earning income of the funds while the depositor has not had the effective power to demand withdrawal. However, a substantial amount of funds blocked under the Regulations is still being held by banks and other persons in non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of § 515.205 requires the holding of certain property identified in paragraph (g) in interest-bearing accounts in domestic banks. Any further holding of such blocked funds without crediting interest thereon is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 5 days of the effective date of this section.

Paragraph (c) requires than any person holding checks or drafts which are presently blocked shall collect on these intruments and credit the proceeds to a blocked, interest-bearing account. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments are authorized.

Paragraphs (d) and (e) specify certain exceptions to the basic transfer directive and prohibition.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any set-off claimed against the owner by the holder of the funds. For example, if a corporation holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraph (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a set-off, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from the effective date of the regulation, if the set-off is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) defines the "interest-bearing account" in which the blocked funds must be held under paragraphs (a), (b) and (c) of the regulation; namely, a blocked account earning interest at the current applicable market rate in the domestic bank where the account is held. It provides that in no event may the interest paid on such accounts be less than the minimum rate payable on the shortest time deposit available in the bank.

Paragraph (g) identifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims and obligations; and the proceeds of the negotiation of checks and drafts under paragraph (c).

Implementation of § 515.205 will enhance the value of the funds without affecting the owner's interest therein. Under the provisions of section 5(b) of the Trading With the Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

Comments are particularly invited with respect to technical aspects of § 515.205, such as types of blocked funds subject to the regulation and the definition of "interest-bearing account." Treasury will be evaluating the need for, and the appropriate scope of, exceptions to the regulation. In this regard, persons who would be affected by the regulation should use the opportunity of the comment period to bring to Treasury's attention information on situations possibly meriting an exception, including the amounts of blocked funds involved.

With respect to Paragraph (c) of § 515.205, most of the blocked checks and drafts subject to the provision may be stale-dated and present special problems of collection. Treasury's objective is to accomplish either collection of such instruments or the identi-

fication of underlying blocked obligations in drawee banks. Such blocked obligations would be subject to the requirements of section 515.205. Holders of blocked assets should utilize the comment period to advise Treasury of practical and legal problems involved in the collection of blocked checks and drafts.

It should be noted that the requirements of section 515.205 apply to blocked funds held by governmental agencies or instrumentalities, as well as funds by private holders. These funds would include, for example, funds held by state abandoned property custodians and funds which have been paid into courts (e.g., funds of decedents' estates). Affected agencies should utilize the comment period to bring to the attention of Treasury any problems which may result from the imposition of the interest requirement with respect to blocked funds presently held by them.

With regard to the proposed revocation of section 515.554, containing the statement of licensing policy on transfers of abandoned property under State law, Treasury has notified States having licenses that the licenses are suspended pending a review of whether the policy will be continued. Among other matters, Treasury's reconsideration of the policy is prompted by information that the condition stated in § 515.544 that blocked assets be separately indexed and maintained has not been complied with by State abandoned property administrations to whom licenses have been issued. It is believed that effective control of the assets by the Office of Foreign Assets Control will be more readily maintained if the assets remain in the custody of private institutions such as banks and brokers than if they are transferred to State agencies.

State departments of abandoned property should utilize the comment period to make recommendations regarding the issue of whether the past policy of issuing licenses for the transfer of blocked property under state abandoned property laws should continue. Among other matters, States may wish to consider suggestions as to ways in which the administration of blocked assets under State administration could better conform to the requirements of existing licensing policy.

Section 515.611 requires that any person holding property subject to the requirements of § 515.205, including property with respect to which an exemption is claimed, must submit a report on form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for an accurate determination for planning purposes of the amount of blocked assets at any time.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d) and (e) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

The proposed draft of the form is reproduced after the text of the proposed amendment to the Foreign Assets Control Regulations. Comments are particularly invited with respect to the scope and wording of questions. Recommendations as to how accurate and useful information can be derived with the least burden on reporters are encouraged. An attempt will be made to produce a final version of the form that will ease the burden on the holders of providing the information as much as is reasonably possible consistent with Treasury's need for the information.

Suggestions will be considered for alternate methods of reporting of the required date including submission of printed output by data processing equipment and/or submission of data in machine-readable form (e.g., magnetic tape). Suggestions for standardizing such a method of submission by reporters are encouraged.

1. 31 CFR Part 515 is amended by the addition of section 515.205 as follows:

§ 515.205 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d) and (e) below, or as authorized by the Secretary of the Treasury of his delegate by specific license, any person holding any property included in paragraph (g) is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, privilege with respect to any such property, unless it is held in an interest-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section which, as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account in any domestic bank within 5 days of the effective date of this section.

(c) Any person holding any checks or drafts subject to the provisions of section 515.201 is authorized and directed to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. All transactions by any person incident to the negotiations, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account are hereby authorized, provided that:

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person; and,

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument.

(d) Property subject ot the provisions of paragraphs (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b) and (c) to the extent of the set-off, provided however, that interest shall be due from the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this setion, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with § 515.513. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the minimum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at the current applicable market rate which shall not in any event be less than the minimum rate payable on the shortest time deposit available in th domestic bank where the account is held.

(g) The following types of property are subject to paragraphs (a) and (b) above:

(1) Any currency, bank deposits and bank accounts subject to the provisions of § 515.201;

(2) Any property subject to the provisions of § 515.201 which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidences of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and,

(3) Any proceeds resulting from the payment of an obligation under paragraph (c) above.

2. Section 515.554 is revoked as follows:

§ 515.554 Transfers of abandoned property under state law.

[Revoked]

3. Section 515.611 is added to read as folows:

§ 515.611 Reports concerning property subject to section 515.205.

(a) Any person holding property to which § 515.205 applies, including property as to which an exemption under § 515.205 (d) or (e) is claimed, is hereby required to submit a report on form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information, including account numbers, of such accounts;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under section 515.205, if any; and,

(8) The date of any previous report concerning the property filed with the Office of Foreign Assets Control under 31 CFR §§ 515.607 and 515.608 (1964) (1963 Census of Cuban Assets).

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. On or before, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, sec. 620(a), 75 Stat. 445; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR, Comp. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: November 1, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31922 Filed 11-13-78; 8:45 am]

[4810-25-M]

[31 CFR Part 520]

FOREIGN FUNDS CONTROL REGULATIONS

Holding of Blocked Funds in Interest-Bearing Accounts

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

ACTION: Proposed rule.

SUMMARY: The Office of Foreign Assets Control is proposing to amend its Foreign Funds Control Regulations by the addition of §§ 520.05 and 520.611. The purpose of § 520.05 is to require any person holding certain types of blocked property for a designated country or national thereof whose property remains blocked under § 520.101 to hold such property in an interest-bearing account in a domestic bank. The need for the amendment is that in many instances interest has not been credited on such property, which includes funds in demand accounts, even though in the case of demand deposits the depositor has not had the right of withdrawal or of payment on demand by reason of the blocking. The effect of the amendment is that most of these types of blocked funds henceforth will be held in interest-bearing accounts, the continued holding of blocked funds in non-interest-bearing status being prohibited.

The purpose of § 520.611 is to require persons subject to § 520.05 to report on the nature of blocked accounts affected thereby. The need for the amendment is that such information is not now readily available, and the amendment will have the effect of improving the administration and control of blocked assets by providing such information in simple, efficient, and useful form.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Send comments to the Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Room 401, 1331 G Street NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Acting Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, 202-376-0236.

SUPPLEMENTARY INFORMATION: Since these amendments involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date are inapplicable. Nonetheless, because of the technical nature of the regulations, comments are being requested. However, the comment period has been limited to 30 days.

Information available to the Treasury Department indicates that, in certain cases, blocked bank accounts may have already been transferred at the owner's request from demand to interest-bearing status. In other cases, the depository institution may have already made such a transfer on its own initiative, in view of the inequity of continuing to hold the funds in demand status and earning income on the funds while the depositor has not had the effective power to demand withdrawal. However, a substantial amount of funds blocked under the regulations is still being held by banks and other persons in non-interest-bearing status.

To clarify the situation, in the interest of preserving the assets, paragraph (a) of section 520.05 requires the holding of certain property identified in paragraph (g) in interest-bearing accounts in domestic banks. Any further holding of such blocked funds without crediting interest thereon is prohibited.

Paragraph (b) requires any person not presently holding funds in compliance with paragraph (a) to cause such funds to be held in interest-bearing accounts in any domestic bank within 5 days of the effective date of this section.

Paragraph (c) requires that any person holding checks or drafts which are presently blocked shall collect on these instruments and credit the proceeds to a blocked, interest-bearing account. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments are authorized.

Paragraphs (d) and (e) specify certain exceptions to the basic transfer directive and prohibition.

Paragraph (d) defers the immediate effect of the interest requirement as to the amount of any set-off claimed against the owner by the holder of the funds. For example, if a corporation

holds blocked on its own books a debt of $500,000 owed to a blocked national, but is owed $100,000 by that national, paragraph (d) exempts $100,000 from the transfer directive. The $100,000 against which the holder has a set-off, as well as the $400,000 that must be transferred, remains blocked. However, any use of this exemption is subject to a duty to pay interest from the effective date of the regulation, if the set-off is ultimately determined (by any competent judicial, quasi-judicial or administrative body) to be without merit.

Institutions holding blocked funds include broker/dealers holding cash balances in customers' securities accounts. Paragraph (e) exempts such balances from transfer to domestic banks, provided interest is credited to the accounts by the holders.

Paragraph (f) defines the "interest-bearing account" in which the blocked funds must be held under paragraphs (a), (b) and (c) of the regulation; namely, a blocked account earning interest at the current applicable market rate in the domestic bank where the account is held. It provides that in no event may the interest paid on such accounts be less than the minimum rate payable on the shortest time deposit available in the bank.

Paragraph (g) identifies the types of property subject to the requirements of paragraphs (a) and (b); namely, currency; bank deposits and bank accounts; undisputed and either liquidated or matured debts, claims and obligations; and the proceeds of the negotiation of checks and drafts under paragraph (c).

Implementation of section 520.05 will enhance the value of the funds without affecting the owner's interest herein. Under the provisions of section 5(b) of the Trading With The Enemy Act, holders of blocked property subject to this regulation shall not be liable for anything done or omitted in good faith in reliance thereon.

Comments are particularly invited with respect to technical aspects of § 520.05 of the regulation such as types of blocked funds subject to the regulation and the definition of "interest-bearing account." Treasury will be evaluating the need for, and the appropriate scope of, exceptions to the regulation. In this regard, persons who would be affected by the regulation should use the opportunity of the comment period to bring to Treasury's attention information on situations possibly meriting an exception, including the amounts of blocked funds involved.

With respect to paragraph (c) of § 520.05, most of the blocked checks and drafts subject to the provision may be stale-dated and present special problems of collection. Treasury's objective is to accomplish either collection of such instruments or the identification of underlying blocked obligations in drawee banks. Such blocked obligations would be subject to the requirements of § 520.05. Holders of blocked assets should utilize the comment period to advise Treasury of practical and legal problems involved in the collection of blocked checks and drafts.

It should be noted that the requirements of section 520.05 apply to blocked funds held by governmental agencies or instrumentalities, as well as funds held by private holders. These funds would include, for example, funds held by State abandoned property custodians and funds which have been paid into courts (e.g., funds of decedents' estates). Affected agencies should utilize the comment period to bring to the attention of Treasury any problems which may result from the imposition of the interest requirement with respect to blocked funds presently held by them.

State departments of abandoned property should utilize the comment period to make recommendations regarding the issue of whether the past policy of issuing licenses for the transfer of blocked property under State abandoned property laws should continue. Among other matters, States may wish to consider suggestions as to ways in which the administration of blocked assets under State administration could better conform to the requirements of existing licensing policy.

Section 520.611 requires that any person holding property subject to the requirements of section 520.05, including property with respect to which an exemption is claimed, must submit a report on form TFR-611.

It is believed that this form will provide Treasury with very useful data on blocked assets. It will provide Treasury with a check on the implementation of, and compliance with, the requirement to transfer blocked funds into interest-bearing status. Information on the amounts of funds subject to the regulation and the rate of interest being paid thereon is essential for an accurate determination for planning purposes of the amount of blocked assets at any time.

With respect to assets subject to the regulation which were reported during a prior census of blocked property, the new report may supply important information regarding changes in the amount, type, and holder of the assets since the relevant census. Furthermore, the reports may bring to the attention of the Treasury blocked accounts not previously reported in any manner.

In addition, in light of the exemptions offered by paragraphs (d) and (e) from the provisions of paragraphs (a) and (b), the reporting requirement will provide a simple means of reviewing situations in which an exemption is being claimed.

The proposed draft of the form is reproduced after the text of the proposed amendment to the Foreign Assets Control Regulations. Comments are particularly invited with respect to the scope and wording of questions. Recommendations as to how accurate and useful information can be derived with the least burden on reporters are encouraged. An attempt will be made to produce a final version of the form that will ease the burden on the holders of providing the information as much as is reasonably possible consistent with Treasury's need for the information.

Suggestions will be considered for alternate methods of reporting of the required data including submission of printed output by data processing equipment and/or submission of data in machine-readable form (e.g., magnetic tape). Suggestions for standardizing such a method of submission by reporters are encouraged.

1. 31 CFR Part 520 is amended by the addition of section 520.05 as follows:

§ 520.05 Holding of certain types of blocked property in interest-bearing accounts.

(a) Except as provided by paragraphs (d) and (e) below, or as authorized by the Secretary of the Treasury or his delegate by specific license, any person holding any property included in paragraph (g) is prohibited from holding, withholding, using, transferring, engaging in any transactions involving, or exercising any right, power, privilege with respect to any such property, unless it is held in an interesting-bearing account in a domestic bank.

(b) Any person presently holding property subject to the provisions of paragraph (a) of this section, which as of the effective date of this section, is not being held in accordance with the provisions of that paragraph, shall transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account in any domestic bank with 5 days of the effective date of this section.

(c) Any person holding any checks or drafts which remain blocked under the provisions of § 520.101(a) (1)-(5) is authorized and directed to negotiate or present for collection or payment such instruments and credit the proceeds to interest-bearing accounts. All transactions by any person incident to the negotiation, processing, presentment, collection or payment of such instruments and deposit of the proceeds into an interest-bearing account are hereby authorized, *Provided that:*

(1) The transaction does not represent, directly or indirectly, a transfer of the interest of a designated national to any other country or person; and,

(2) The proceeds are held in a blocked account indicating the designated national who is the payee or owner of the instrument.

(d) Property subject to the provisions of paragraphs (a) or (b) of this section, held by a person claiming a set-off against such property, is exempt from the provisions of paragraphs (a), (b), and (c) to the extent of the set-off, *Provided however*, That interest shall be due from the effective date of this section if it should ultimately be determined that the claim to a set-off is without merit.

(e) Property subject to the provisions of paragraphs (a) and (b) of this section, held in a customer's account by a registered broker/dealer in securities, may continue to be held for the customer by the broker/dealer provided interest is credited to the account on any balance not invested in securities in accordance with section 520.4. The interest paid on such accounts by a broker/dealer who does not elect to hold such property for a customer's account in a domestic bank shall not be less than the minimum rate payable on the shortest time deposit available in any domestic bank in the jurisdiction in which the broker/dealer holds the account.

(f) For purposes of this section, the term "interest-bearing account" means a blocked account earning interest at the current applicable market rate which shall not in any event be less than the minimum rate payable on the shortest time deposit available in the domestic bank where the account is held.

(g) The following types of property are subject to paragraphs (a) and (b) above:

(1) Any currency, bank deposits and bank accounts which remain blocked under the provisions of § 520.101(a) (1)-(5);

(2) Any property which remains blocked under the provisions of § 520.101(a) (1)-(5) and which consists, in whole or in part, of undisputed and either liquidated or matured debts, claims, obligations or other evidences of indebtedness, to the extent of any amount that is undisputed and either liquidated or matured; and,

(3) Any proceeds resulting from the payment of an obligation under subsection (c) above.

2. Section 520.611 is added to read as follows:

§ 520.611 Reports concerning property subject to § 520.05.

(a) Any person holding property to which section 520.05 applies, including property as to which an exemption under § 520.05 (d) or (e) is claimed, is hereby required to submit a report on form TFR-611 concerning such property, containing the following information:

(1) The name of the person for whom or for whose benefit the property is being held;

(2) The nature of the interest of the designated country or national thereof in the property so held;

(3) The original amount and type of such property in each case;

(4) The location and other identifying information, including account numbers, of such accounts;

(5) The rate of interest being paid thereon at the time of the report, the date from which interest was credited, and the rates of interest during different periods if changes were made prior to the report;

(6) The current balance in the account;

(7) The exemption claimed under section 520.05, if any; and,

(8) The date of any previous report concerning the property filed with the Treasury Department or the Office of Alien Property, Department of Justice.

(b) Reports required by paragraph (a) of this section shall be prepared in duplicate. On or before ————, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220. Form TFR-611, with reporting instructions, can be obtained from the Office of Foreign Assets Control or from the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

(c) Reports filed in accordance with this section are regarded as containing commercial and financial information that is privileged and/or confidential.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5; E.O. 8389, Apr. 10, 1940, 5 FR 1400, as amended by E.O. 8785, June 14, 1941, 6 FR 2897, E.O. 8832, July 26, 1941, 6 FR 3715, E.O. 8963, Dec. 9, 1941, 6 FR 6348, E.O. 8998, Dec. 26, 1941, 6 FR 6785, E.O. 9193, July 6, 1942, 7 FR 5205; 3 CFR, 1943 Cum. Supp.; E.O. 10348, Apr. 26, 1952, 17 FR 3769, 30 FR, 1949-1953 Comp., p. 871; E.O. 11281, May 13, 1966, 31 FR 7215, 3 CFR, 1966 Supp.)

Dated: November 1, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

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