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Monday	Tuesday	Wednesday	Thursday	Friday
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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 January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

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[3195-01-M]

Title 3
The President

Executive Order 12113 of January 4, 1979

Independent Water Project Review

By the authority vested in me as President by the Constitution and laws of the United States of America, in furtherance of the Water Resources Planning Act (79 Stat. 244; 42 U.S.C. 1962 *et seq.)*, and in order to ensure coordinated planning and independent review of Federal water resource programs and projects, it is hereby ordered as follows:

1–101. The Water Resources Council shall ensure that it has established a current set of principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects (42 U.S.C. 1962a–2).

1–102. The Council shall ensure that an impartial technical review is performed on preauthorization reports or proposals and preconstruction plans for Federal and Federally assisted water, and related land resources, projects and programs, as they are defined in the Council's principles and standards.

1–103. The Council shall develop a planning manual for use by each agency (a) in calculating benefits and costs by using the best available techniques and (b) in applying the principles and standards in a consistent manner.

1–104. The impartial technical review shall evaluate each report, proposal, or plan for compliance with (a) the Council's principles and standards, (b) the planning manual or, pending issuance of the manual, established agency procedures, (c) other Federal laws, regulations and guidelines relevant to the planning process, and (d) the goal of wide public participation in the development of project plans, including adequate opportunity for public comment and adequate consideration of those views.

1–105. (a) Beginning April 1, 1979, all agencies shall submit, prior to their approval by the head of the agency, preauthorization reports or proposals and preconstruction plans for Federal and Federally assisted water, and related land resources, projects and programs to the Council at least 90 days prior to the scheduled time for their submission to the Office of Management and Budget in support of authorization or funding requests for those activities in fiscal year 1981 and subsequent years.

(b) An agency shall not submit to the Council more than one-third of the total reports, proposals, and plans scheduled for review in any fiscal year during any quarter of that fiscal year.

(c) Within 60 days of the submission by an agency of a report, proposal, or plan, the Chairman of the Council shall transmit the results of the impartial technical review to the appropriate agency head, including identification of any specific variations from Council approved procedures and manuals and the steps necessary to bring the plan into conformance therewith.

1–106. (a) All agency reports, proposals and plans submitted to the Council for review shall include sufficient information to allow an adequate technical review. In particular, this information shall include:

(1) Sufficient documentation to allow a technical review of the analysis by the agency of the ratio of the benefit to the cost.

(2) Evidence that an adequate evaluation has been made of reasonable alternatives, including nonstructural ones, for addressing the water-related problems of the affected regions and communities.

(3) An explanation of the relationship of the plan to any approved regional water resource management plans.

(4) A summary of the consideration given to water conservation measures and a listing of those measures incorporated into the plan.

(5) Evidence that there has been compliance with relevant environmental and other laws and requirements.

(6) Evidence that the public and State and local officials have been involved in the plan formulation process.

(b) If the documents and information necessary for the review are not initially submitted, the Chairman may extend the review period by not more than 30 days. If the documents and information submitted do not demonstrate compliance, a finding detailing the areas of noncompliance will be transmitted to the agency head.

1–107. Before any agency submits to the Congress, or to any committee or member thereof, a report relating to, or affecting in whole or in part its advance programs, or the public works and improvement projects comprising such programs, or the results of any plan preparation for such programs or projects, such report or plan shall be submitted to the Office of Management and Budget for advice as to its relationship to the program of the President. When such report or plan is thereafter submitted to the Congress, or to any committee or member thereof, it shall include a statement of the advice received from the Office of Management and Budget.

1–108. Agency submissions to the Office of Management and Budget of the reports, proposals or plans reviewed pursuant to this Order shall be accompanied by a statement of the findings transmitted to the agency head.

1–109. Executive Order No. 9384 of October 4, 1943, as amended, is revoked.

Jimmy Carter

The White House,
January 4, 1979.

[FR Doc. 79–868
Filed 1–5–79; 3:37 pm]

[3195-01-M]

Title 3
The President

Executive Order 12114 of January 4, 1979

Environmental Effects Abroad of Major Federal Actions

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1.

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

Sec. 2.

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2–4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2–3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2–4(a), with respect to actions described in Section 2–3, as follows:

(i) for effects described in Section 2–3(a), an environmental impact statement described in Section 2–4(a)(i);

(ii) for effects described in Section 2–3(b), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2–3(c), a document described in Section 2–4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2–3(d), a document described in Section 2–4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2–4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2–5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with

relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2–1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3–2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2–5. *Exemptions and Considerations.* (a) Notwithstanding Section 2–3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2–1 implementing Section 2–4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2–1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemp-

tions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2–5 do not apply to actions described in Section 2–3(a) unless permitted by law.

Sec. 3.

3–1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3–2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3–3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3–4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2–5(a)(v) does not mean or include direct loans to finance exports.

3–5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

Jimmy Carter

The White House,
January 4, 1979.

[FR Doc. 79–869
Filed 1–5–79; 3:38 pm]

rules and regulations

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

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

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment revokes the Schedule A authority for the National Commission on the International Year of the Child because, as statutory authority (P.L. 95-561) provides for appointment of staff personnel by the commission without regard to 5 U.S.C. provisions governing classification and competitive civil service appointments, the Schedule A authority is no longer needed.

EFFECTIVE DATE: December 18, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3199(i) is revoked, as follows:

§ 213.3199 Temporary Boards and Commissions.

* * * * *

(i) [Revoked]

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

OFFICE OF PERSONNEL MANAGEMENT,
JAMES C. SPRY,
Special Assistant to the Director.

[FR Doc. 79-680 Filed 1-8-79; 8:45 am]

[1505-01-M]

Title 6—Economic Stablization

CHAPTER VII—COUNCIL ON WAGE AND PRICE STABILITY

PART 706—SPECIAL PROCEDURAL RULES

Adoption of Interim Final Procedural Rules Relating to Voluntary Pay/Price Standards and Request for Public Comment

Correction

In FR Doc. 79-395 appearing at page 1346 in the issue for Thursday, January 4, 1979, on page 1351, the FR Doc. line at the end of the document should read as follows:

[FR Doc. 79-395 Filed 1-3-79; 12:00 pm]

[3410-08-M]

Title 7—Agriculture

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amt. No. 1]

PART 402—RAISIN CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties in which raisin crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 402 for raisin crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 402.1 of the Raisin Crop Insurance Regulations for the 1977 and Succeeding Crop Years (42 FR 31427 June 21, 1977), provides that before raisin crop insurance is offered in any county under Part 402, there shall be published by appendix to § 402.1, the names of the counties in which raisin crop insurance will be offered. In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 402 for raisin crop insurance for the particular crop year, repeating the entire process each successive year.

This has been accomplished by publishing an appendix to § 402.1 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where raisin crop insurance is offered under Part 402 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rulemaking process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Raisin Crop Insurance Regulations for the 1977 and Succeeding Crop Years (42 FR 31427, June 21, 1977), § 402.1 of such regulations as found in 7 CFR Part 402 is hereby amended effective with the 1979 and

succeeding crop years by adding the following appendix to § 402.1 effective with the 1979 and succeeding crop years:

APPENDIX

The counties where raisin crop insurance is authorized to be offered under the provisions of 7 CFR Part 402 are as follows:

CALIFORNIA

Fresno	Merced
Kern	Stanislaus
Kings	Tulare
Madera	

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-704 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 403—PEACH CROP INSURANCE

Subpart—Regulations for the 1976 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties where peach crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 403 for peach crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 403.40 of the Peach Crop Insurance Regulations for the 1976 and Succeeding Crop Years (40 FR 44823, September 30, 1975), provides that before peach crop insurance is offered in any county under Part 403, there shall be published by appendix to § 403.40 the names of the counties in which peach crop insurance will be offered. In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 403 for peach crop insurance, repeating the entire process each successive year. This has been accomplished by publishing an appendix to § 403.40 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where peach crop insurance is offered under Part 403 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest.

Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Peach Crop Insurance Regulations for the 1976 and Succeeding Crop Years (40 FR 44823, September 30, 1975), § 403.40 of such regulations as found in 7 CFR Part 403 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 403.40 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where peach crop insurance is authorized to be offered under the provisions of 7 CFR Part 403 are as follows:

ALABAMA

Chilton

ARKANSAS

Cross	Lee
Johnson	St. Francis

GEORGIA

Houston	Upson
Peach	

SOUTH CAROLINA

Aiken	Greenville
Allendale	Lexington
Barnwell	Spartanburg
Chesterfield	York
Edgefield	

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 5, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-710 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 2]

PART 404—WESTERN UNITED STATES APPLE CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties in the Western United States in which apple crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 404 for apple crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 404.20 of the Western United States Apple Crop Insurance Regulations for the 1977 and Succeeding Crop Years (41 FR 52289, November 29, 1976), provides that, before apple crop insurance is offered in any county under Part 404, there shall be published by appendix to § 404.20 the names of the counties in which apple crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the

full list of counties eligible under Part 404 for apple crop insurance, repeating the entire process each successive year.

This has been accomplished by publishing an appendix to § 404.20 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties in the Western United States where apple crop insurance is offered under Part 404 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops.

Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Western United States Apple Crop Insurance Regulations for the 1977 and Succeeding Crop Years (41 FR 52289, November 29, 1976), § 404.20 of such regulations as found in 7 CFR Part 404 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 404.20 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where apple crop insurance is authorized to be offered under the provisions of 7 CFR Part 404 are as follows:

OREGON

Umatilla

WASHINGTON

Chelan	Okanogan
Columbia	Yakima
Douglas	

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-705 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 406—CALIFORNIA ORANGE CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of California counties where orange crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 406 for orange crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 406.1 of the California Orange Crop Insurance Regulations for the 1977 and Succeeding Crop Years (42 FR 39953, August 8, 1977), provides that before orange crop insurance is offered in any county under Part 406, there shall be published by appendix to § 406.1 the names of the counties in which orange crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 406 for orange crop insurance, repeating the entire process each successive year.

This has been accomplished by publishing an appendix to § 406.1 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where orange crop insurance is offered under Part 406 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the California Orange Crop Insurance Regulations of the 1977 and Succeeding Crop Years (42 FR 39953, August 8, 1977), § 406.1 of such regulations as found in 7 CFR Part 406 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 406.1 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where orange crop insurance is authorized to be offered under the provisions of 7 CFR Part 406 are as follows:

CALIFORNIA

Fresno	Tulare
Kern	

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-701 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 408—EASTERN UNITED STATES APPLE CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties in the Eastern United States where apple

corp insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 408 for apple crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 408.1 of the Eastern United States Apple Crop Insurance Regulations for the 1977 and Succeeding Crop Years (41 FR 53803, December 9, 1976), provides that before apple crop insurance is offered in any county under Part 408, there shall be published by appendix to § 408.1 the names of the counties in which apple crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 408 for apple crop insurance, repeating the entire process each successive year.

This has been accomplished by publishing an appendix to § 408.1 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where apple crop insurance is offered under Part 408 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops.

Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Eastern United States Apple Crop Insurance Regulations for the 1977 and Succeeding Crop Years (41 FR 53803, December 9, 1976), § 408.1 of such regulations as found in 7 CFR Part 408 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 408.1 effective with the 1979 and succeeding crop years.

APPENDIX

The counties in the Eastern United States where apple crop insurance is authorized to be offered under the provisions of 7 CFR Part 408 are as follows:

NORTH CAROLINA

Alexander Wilkes
Henderson

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-700 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 409—ARIZONA-DESERT VALLEY CITRUS CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation; USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties in the Arizona-Desert Valley where citrus crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 409 for citrus crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 409.30 of the Arizona-Desert Valley Citrus Crop Insurance Regulations for the 1977 and Succeeding Crop Years (42 FR 39956, August 8, 1977), provides that before citrus crop insurance is offered in any county under Part 409, there shall be published by appendix to § 409.30 the names of the counties in which citrus crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 409 for citrus crop insurance repeating the entire process each successive year. This has been accomplished by publishing an appendix to § 409.30 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where citrus crop insurance is offered under Part 409 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops.

Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Arizona-Desert Valley Citrus Crop Insurance Regulations for the 1977 and Succeeding Crop Years (42 FR 39956, August 8, 1977), § 409.30 of such regulations as found in 7 CFR Part 409 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 409.30 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where citrus crop insurance is authorized to be offered under the provisions of 7 CFR Part 409 are as follows:

ARIZONA

Maricopa

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved:

BOB BERGLAND,
Secretary.

[FR Doc. 79-702 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 2]

PART 410—FLORIDA CITRUS CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of Florida counties where citrus crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 410 for citrus crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 410.1 of the Florida Citrus Crop Insurance Regulations for the 1976 and Succeeding Crop Years (41 FR 5106 through 5109, February 4, 1976), provides that before citrus crop insurance is offered in any county under Part 410, there shall be published by appendix to § 410.1 the names of the counties in which citrus crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 410 for citrus crop insurance, repeating the entire process each successive year. This has been accomplished by publishing an appendix to § 410.1 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where citrus crop insurance is offered under Part 410 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Florida Citrus Crop Insurance Regulations for the 1976 and Succeeding Crop Years (41 FR 5106 through 5109, February 4, 1976), § 410.1 of such regulations as found in 7 CFR Part 410 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 410.1 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where citrus crop insurance is authorized under the provisions of 7 CFR Part 410 are as follows:

FLORIDA

Brevard	Marion
De Soto	Martin
Hardee	Orange
Hernando	Osceola
Highlands	Palm Beach
Hillsborough	Pasco
Indian River	Polk
Lake	St. Lucie
Manatee	Seminole

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-703 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 411—GRAPE CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties where grape crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 411 for grape crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 411.1 of the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years (41 FR 36792 through 36795, September 1, 1976), provides that, before grape crop insurance is offered in any county under Part 411, there shall be published by appendix to § 411.1 the names of the counties in which grape crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 411 for grape crop insurance, repeating the entire process each successive year.

This has been accomplished by publishing an appendix to § 411.1 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where grape crop insurance is offered under Part 411 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public,

and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Grape Crop Insurance Regulations for the 1977 and Succeeding Crop Years (41 FR 36792 through 36795, September 1, 1976) § 411.1 of such regulations as found in 7 CFR Part 411 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 411.1 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where grape crop insurance is authorized to be offered under the provisions of 7 CFR Part 411 are as follows:

CALIFORNIA

Merced	Stanislaus

NEW YORK

Chautauqua	Seneca
Niagara	Steuben
Ontario	Yates
Schuyler	

PENNSYLVANIA

Erie

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-706 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 413—TEXAS CITRUS CROP INSURANCE

Subpart—Regulations for the 1977 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties in Texas where citrus crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 413 for citrus crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 413.20 of the Texas Citrus Crop Insurance Regulations for the 1977 and Succeeding Crop Years (42 FR 28141, June 2, 1977), provides that before citrus Crop Insurance is offered in any county under Part 413, there shall be published by appendix to § 413.20 the names of the counties in which citrus crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 413 for citrus crop insurance, repeating the entire process each successive year. This has been accomplished by publishing an appendix to § 413.20 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where citrus crop insurance is offered under Part 413 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rulemaking process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Texas Citrus Crop Insurance Regulations for the 1977 and Succeeding Crop Years (42 FR 28141, June 2, 1977), § 413.20 of such regulations as found in 7 CFR Part 413 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 413.20 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where citrus crop insurance is authorized to be offered under the provisions of 7 CFR Part 413 are as follows:

TEXAS

Cameron	Willacy
Hidalgo	

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-708 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 414—FORAGE SEEDING CROP INSURANCE

Subpart—Regulations for the 1978 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties where forage seeding crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 414 for forage seeding crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 414.1 of the Forage Seeding Crop Insurance Regulations for the 1978 and Succeeding Crop Years (43 FR 16693 through 16697, April 20, 1978), provides that, before forage seeding crop insurance is offered in any county under Part 414, there shall be published by appendix to § 414.1 the names of the counties in which forage seeding crop insurance will be offered.

In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 414 for forage seeding crop insurance, repeating the entire process each successive year.

This has been accomplished by publishing an appendix to § 414.1 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where forage seeding crop insurance is offered under Part 414 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Forage Seeding Crop Insurance Regulations for the 1978 and Succeeding Crop Years (43 FR 16693 through 16697, April 20, 1978), § 414.1 of such regulations as found in 7 CFR Part 414 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 414.1 effective with the 1979 and succeeding crop years.

APPENDIX

The counties where forage seeding crop insurance is authorized to be offered under 7 CFR Part 414 are as follows:

NEW YORK

Ontario

NORTH DAKOTA

Morton

WISCONSIN

Dane

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by.

BOB BERGLAND,
Secretary.

[FR Doc. 79-709 Filed 1-8-79; 8:45 am]

[3410-08-M]

[Amdt. No. 1]

PART 417—SUGARCANE CROP INSURANCE

Subpart—Regulations for the 1979 and Succeeding Crop Years

COUNTIES AND CROPS DESIGNATED FOR CROP INSURANCE FOR THE 1979 CROP YEAR

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This rule provides the complete listing of counties in Florida and Texas where sugarcane crop insurance has been approved by the Board of Directors of the Federal Crop Insurance Corporation and designated under 7 CFR Part 417 for sugarcane crop insurance effective for the 1979 and succeeding crop years. This list is provided for the convenience and information of all interested parties as a base list. Any additions or deletions of counties or crops in this or succeeding crop years will be made by amendment to this list.

EFFECTIVE DATE: January 9, 1979.

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: Section 417.1 of the Sugarcane Crop Insurance Regulations for the 1979 and Succeeding Crop Years (43 FR 36423, August 17, 1978), provides that before sugarcane crop insurance is offered in any county under Part 417, there shall be published by appendix to § 417.1 the names of the counties in which sugarcane crop insurance will be offered. In accordance with these regulations, the Federal Crop Insurance Corporation has published annually the full list of counties eligible under Part 417 for sugarcane crop insurance, repeating the entire process each successive year. This has been accomplished by publishing an appendix to § 417.1 of the regulations.

The Board of Directors of the Federal Crop Insurance Corporation has determined that it would be more effective administratively, less costly, and less time consuming if the full roster of counties where sugarcane crop insurance is offered under Part 417 were to be published as a document to remain in effect indefinitely and amended when necessary to add or delete counties and/or crops. Inasmuch as the publication of counties and crops insured by the Corporation merely provides guidance for the general public, and publication as described above will be beneficial to present and potential policyholders, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable, unnecessary, and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Under the authority contained in the Sugarcane Crop Insurance Regulations for the 1979 and Succeeding Crop Years (43 FR 36423, August 17, 1978), § 417.1 of such regulations as found in 7 CFR Part 417 is hereby amended effective with the 1979 and succeeding crop years by adding the following appendix to § 417.1 effective with the 1979 and succeeding crop years.

APPENDIX

The counties in Florida and Texas where sugarcane crop insurance is authorized to be offered under the provisions of 7 CFR Part 417 are as follows:

FLORIDA

Glades	Palm Beach
Hendry	

TEXAS

Cameron	Willacy
Hidalgo	

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

Approved by the Board of Directors on December 20, 1978.

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

Dated: January 3, 1979.

Approved by:

BOB BERGLAND,
Secretary.

[FR Doc. 79-707 Filed 1-8-79; 8:45 am]

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Notification of Authority Citation

AGENCY: Department of Energy.

ACTION: Notification of authority citation.

SUMMARY: At page 48986 of the October 19, 1978, FEDERAL REGISTER, the Department of Energy adopted a final rule amending its test procedures for water heaters. This document adds the authority citation for that amendment, effective November 28, 1978.

FOR FURTHER INFORMATION CONTACT:

James A. Smith, Office of Conservation & Solar Applications, Department of Energy, Room 2248, 20 Massachusetts Avenue, NW., Washington, D.C. 20545, 202-376-4815.

SUPPLEMENTARY INFORMATION: In document 78-29535, published at page 48986 of the October 19, 1978, FEDERAL REGISTER, the following citation of authority is added:

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended by Pub. L. 94-385; Department of Energy Organization Act., Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

Issued in Washington, D.C., January 3, 1979.

OMI WALDEN,
Assistant Secretary, Conservation and Solar Applications, Department of Energy.

[FR Doc. 79-772 Filed 1-8-79; 8:45 am]

[6450-1-M]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Test Procedures for Unvented Home Heating Equipment; Correction

AGENCY: Department of Energy.

ACTION: Correction.

SUMMARY: This document corrects a final rule that appeared on page 20128 in the FEDERAL REGISTER of May 10, 1978.

EFFECTIVE DATE: These regulations became effective on June 15, 1978.

FOR FURTHER INFORMATION CONTACT:

James A. Smith U.S. Department of Energy Office of Conservation and Solar Applications, Room 2248, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545 (202) 376-4614

SUPPLEMENTARY INFORMATION: In FR Doc. 78-12461 appearing at page 20128 in the FEDERAL REGISTER of May 10, 1978, references in amendment 1 on page 20131 in both the amendatory statement and text of Section 430.2, subparagraph "7(i)" is changed to "7".

Issued in Washington, D.C., January 3, 1979.

OMI WALDEN,
Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79-817 Filed 1-8-79; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

[Regulation ER-1073; Amdt. No. 32 to Part 241]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Revision of Route Air Carrier Reporting Entities

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule revises the listing of geographic reporting entities included in the Board's Economic Regulations for three route air carriers which were recently granted authority to conduct transatlantic flights.

DATES: Adopted: August 31, 1978. Effective: August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5270.

SUPPLEMENTARY INFORMATION: Section 21 of Part 241 of the Board's Economic Regulations lists the operating authority of each air carrier according to geographical area ("entity") for purposes of reporting financial and statistical data. On January 26, 1978, the Board granted transatlantic operating authority to Braniff Airways, Delta Air Lines and Northwest Airlines, Order 78-1-118. Section 21 of Part 241 is therefore amended to reflect the addition of these routes.

Because this amendment reflects a grant of authority that has already been made, the Board finds that notice and public procedure are unnecessary and that an immediate effective date is in the public interest.

Accordingly, Part 241 of the Economic Regulations (14 CFR Part 241) is amended as follows:

1. Amend Section 21, "Introduction to System of Reports," revising the list of route air carrier reporting entities contained in paragraph (i) to read in pertinent part as follows:

SECTION 21—INTRODUCTION TO SYSTEM OF REPORTS

* * * * * *

(i) * * *

ROUTE AIR CARRIER REPORTING ENTITIES

Air Carriers	Entities
Airlift International, Inc	Domestic, Latin America
Air Micronesia, Inc	Pacific
Air Midwest, Inc	Domestic
Air New England, Inc	Domestic
Alaska Airlines, Inc	Domestic
Allegheny Airlines, Inc	Domestic
Aloha Airlines, Inc	Domestic
American Airlines, Inc	Domestic, Latin America
Aspen Airways, Inc	Domestic
Braniff Airways, Inc	Domestic, Atlantic, Latin America
Chicago Helicopter Airways, Inc	Domestic
Continental Air Lines, Inc	Domestic, Pacific
Delta Air Lines, Inc	Domestic, Atlantic, Latin America
Eastern Air Lines, Inc	Domestic, Latin America
The Flying Tiger Line, Inc	Domestic, Pacific
Frontier Airlines, Inc	Domestic
Hawaiian Airlines, Inc	Domestic
Hughes Air Corps., d/b/a Hughes Airwest	Domestic
Kodiak-Western Alaska Airlines, Inc	Domestic
Munz Northern Airlines, Inc	Domestic
National Airlines, Inc	Domestic, Atlantic, Latin America
New York Airways, Inc	Domestic
North Central Airlines, Inc	Domestic
Northwest Airlines, Inc	Domestic, Atlantic, Pacific
Ozark Air Lines, Inc	Domestic
Pan American World Airways, Inc	Domestic, Atlantic, Latin America, Pacific
Piedmont Aviation, Inc	Domestic
Reeve Aleutian Airways, Inc	Domestic
Seaboard World Airlines, Inc	Atlantic
Southern Airways, Inc	Domestic
Texas International Airlines, Inc	Domestic

ROUTE AIR CARRIER REPORTING ENTITIES—Continued

Air Carriers	Entities
Trans World Airlines, Inc	Domestic, Atlantic, Pacific
United Air Lines, Inc	Domestic
Western Air Lines, Inc	Domestic, Latin America
Wien Air Alaska, Inc	Domestic
Wright Air Lines, Inc	Domestic

* * * * * * *

(Authority: Secs. 204(a) and 407, Federal Aviation Act of 1958, as amended (72 Stat. 743, 766, as amended (49 U.S.C. 1324(a) and 1377.))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-771 Filed 1-8-79; 8:45 am]

[3510-07-M]

Title 15—Commerce and Foreign Trade

CHAPTER I—BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE

PART 30—FOREIGN TRADE STATISTICS

MISCELLANEOUS AMENDMENTS

AGENCY: Bureau of the Census, Commerce.

ACTION: Notification of Authority Citation.

SUMMARY: At 43 FR 56030, November 30, 1978, the Bureau of the Census adopted a final rule incorporating miscellaneous amendments into the Foreign Trade Statistics Regulations. This document adds the authority citation under which the amendments were issued.

EFFECTIVE DATE: November 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Emanuel A. Lipscomb, Chief, Foreign Trade Division, Bureau of the Census, Washington, D.C. 20233, 301-763-5342.

SUPPLEMENTARY INFORMATION: The proper authority citation for FR Doc. 78-33481 published at 43 FR 56030 is as follows: (title 13, United States Code, section 302; and 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35-2A, August 4, 1975, 40 FR 42765).

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

JANUARY 4, 1979.

[FR Doc. 79-717 Filed 1-8-79; 8:45 am]

[3510-25-M]

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 373—SPECIAL LICENSING PROCEDURES

Revision of Distribution License Procedure and Phasing out of Foreign-Based Warehouse Procedure

AGENCY: Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: Two of the special licensing procedures of the Office of Export Administration (OEA), the Foreign-Based Warehouse procedure and the Distribution License procedure, have many elements in common. The major difference is that a wider range of reexports is permitted under the Warehouse procedure. As part of OEA's program of simplifying the Export Administration Regulations, the Distribution License procedure is revised to encompass the reexport provisions of the Warehouse procedure, thus permitting the latter to be phased out.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230 (Tel. 202-377-4196).

SUPPLEMENTARY INFORMATION: The Foreign-Based Warehouse procedure was established a number of years ago to authorize a U.S. exporter (1) To stock commodities abroad at a central location for distribution to customers in the country where the stock is located or in other countries; (2) To ship commodities directly from the United States to these customers to fill an urgent need or a specialized requirement that cannot be filled from the Foreign-Based Stock; or (3) To ship directly from the United States to these customers parts or components not stocked abroad to be used to repair equipment exported by the U.S. exporter.

Subsequently, the Distribution License procedure was established to authorize exports of certain commodities under an international marketing program to consignees that have been approved in advance as foreign distributors or users. Also, the Service Supply procedure was established to enable persons or firms in the United States or abroad to provide prompt service of equipment (1) Exported from the United States, (2) Produced abroad by a subsidiary, affiliate, or branch of a U.S. firm, or (3) Produced abroad by a manufacturer who uses parts imported from the United States in the manufactured product.

The latter two procedures offered advantages to the U.S. exporter not found in the Foreign-Based Warehouse procedure, and most firms that had been using the latter switched to the Distribution and the Service Supply procedures. However, reexports under the Distribution License procedure could only be made from one approved consignee to another, whereas an approved customer under the Foreign-Based Warehouse procedure who had been assigned a sales territory encompassing several countries could be authorized to reexport to customers in those countries, even though the customers had not been approved in advance as participants in this procedure. Therefore, a few exporters elected to remain under the Foreign-Based Warehouse procedure. This revision makes foreign subsidiaries which have been assigned multinational sales territories and other foreign distributors who have entered into written agreements with U.S. exporters to distribute commodities in more than one country eligible as foreign consigneees under the Distribution License procedure. Inasmuch as there no longer exists any advantage for a U.S. exporter to use the Foreign-Based Warehouse procedure, the Export Administration Regulations can be simplified by phasing out this now-extraneous procedure. Foreign-Based Warehouse licenses and authorizations that are valid as of February 8, 1979, will remain in effect until they expire, are replaced by other licenses or authorizations or until June 30, 1979, whichever is earliest. No new licenses or authorizations will be

issued under the Foreign-Based Warehouse procedure after February 8, 1979.

Accordingly, Part 373 of the Export Administration Regulations (15 CFR Part 373) is revised as follows:

1. Section 373.3 is amended by revising paragraphs (a) (c) (i) (ii), (d) (3) (iii) and (iv), (h) (4), and (i) (1) as follows:

§ 373.3 Distribution License.

* * * * *

(a) *Eligible Countries*

The Distribution License procedure may authorize exports and reexports to:

(1) All countries in Country Group T; and

(2) All countries in Country Group V, except:

Algeria	Sudan
Egypt	Syria
Iraq	Yemen (Aden)
Libya	Yemen (Sanaa)

* * * * *

(c) *Eligible Exporters and Consignees*

(1) Applicant-consignee relationship. The ultimate consignee of a Distribution License must be:

* * * * *

(ii) An agent, representative, or any other person or firm distributing the commodities to be exported under this license pursuant to a written agreement with the U.S. exporter or its wholly-owned subsidiary that (*a*) Effectively assures compliance with U.S. Export Administration Regulations, including the provisions set forth in § 373.3(1), and (*b*) lists the country or countries in which the commodities are to be distributed, or

* * * * *

(d) * * *

(3) * * *

(iii) *Form ITA-6052.* Unless the ultimate consignee is a foreign-government agency, other than a government-controlled institution of higher learning (university, academy, college, etc.), three copies of Form ITA-6052 shall be manually signed by the consignee or by a responsible official of the consignee who is authorized to bind the consignee to all of the terms, undertakings, and commitments set forth on the form. All copies shall be cosigned by the applicant and submitted with the application to the Office of Export Administration. If reexport authorization is sought, the specific countries of destination shall be included in Item 5 of the form. If the ultimate consignee is a foreign government agency, see § 373.3(d)(3)(ii)(c) for required notation on application.

(iv) *Comprehensive narrative statement.* A comprehensive narrative statement shall be submitted by the applicant in support of the application. This statement shall describe the applicant's marketing program pertinent to the application and shall detail the nature and duration of the business relationship existing between the applicant and each consignee. If the consignee is a subsidiary, affiliate, or branch of the U.S. exporter, the statement shall show clearly that the qualifications set forth in § 373.3(c) are met and shall show the form of ownership or other control exercised by the U.S. exporter. If the U.S. exporter has assigned a sales territory to the consignee that includes a country or countries other than the one in which the consignee is located, the statement shall list the country or countries. If the consignee is a distributor other than a subsidiary, affiliate, or branch of the U.S. exporter, the statement shall include the terms of the distributorship agreement and a copy of the portion of the written agreement assuring compliance with U.S. Export Administration Regulations as described in § 373.3(c)(1)(ii). If the written agreement assigns a sales territory to the consignee that includes a country or countries other than the one in which the consignee is located, a copy of that portion of the written agreement shall also be included. In addition, the statement shall list, for each consignee, the volume of business in the commodities involved for the preceding year, describing the commodities in the same detail as on the license application. If the government of the country where the consignee is located prohibits the inspection of records by a representative of the U.S. government, the narrative statement must be accompanied by a statement from the consignee describing in full an alternative arrangement that would permit a review of his activities adequate to determine whether or not he has complied with the U.S. export control laws and regulations, as required by § 373.3(1)(4).

* * * * *

(h) * * *

(4) *Destination control statement.* The U.S. exporter shall enter one of the two following destination control statements on the commercial invoice and bill of lading or air waybill covering exports under the Distribution License procedure:

(i) "These commodities licensed by the United States for ultimate destination (name of country where the distributor is located). Diversion contrary to U.S. law prohibited."

(ii) "These commodities licensed by the United States for ultimate destination (name of country where the distributor is located) and for distribution or resale in (name(s) of country(ies) to which reexport has been authorized as indicated on approved Form ITA-6052). Diversion contrary to U.S. law prohibited."

Use of statement (i) does not preclude the consignee from reexporting to any of the exporter's other approved consignees or to other countries for which *specific* prior approval has been received from the Office of Export Administration. In such instances, diversion (i.e., reexport) is *not* contrary to U.S. law and, hence, is not prohibited.

* * * * *

(i) *Reexports.* (1) *Distributor.* A distributor who is an approved consignee under a Distribution License may reexport commodities received under the Distribution License in accordance with the following rules.

(i) An approved consignee may reexport to any of the U.S. exporter's other consignees who have been approved under the Distribution License procedure.

(ii) An approved consignee who is a subsidiary, affiliate or branch of the U.S. exporter may reexport to any approved destination included in the sales territory assigned by the U.S. exporter, provided the country is an eligible country as defined in § 373.3(a).

(iii) Other approved distributors may reexport to any approved destination that is included in a formal written agreement with the U.S. exporter or its wholly-owned subsidiary, provided the country is an eligible country as defined in § 373.3(a).

(iv) An approved consignee, regardless of whether it is a subsidiary, affiliate or branch of the U.S. exporter, may reexport for use or distribution within Switzerland or Yugoslavia only if the reexport is covered by a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate, as applicable. The Swiss Blue Import Certificate need *not* be submitted to the Office of Export Administration, but shall be retained in accordance with the recordkeeping provisions described in § 373.3(1)(3). The original of each Yugoslav End-Use Certificate issued, or a reproduced copy, if the original is required by the government of the country in which the distributor is located, shall be immediately forwarded by the distributor to the U.S. exporter. The original or reproduced copies received from the distributor shall be submitted by the U.S. exporter, on a monthly basis, to the Office of Export Administration (Room 1617M), U.S. Department of Commerce, Washington, D.C. 20230, with a letter identifying the distribu-

tors from which received. While an approved consignee in Switzerland, without obtaining a Swiss Blue Import Certificate, may stock commodities in Switzerland for reexport to other approved consignees in other countries, such commodities may be released for distribution or use within Switzerland only after a Swiss Blue Import certificate covering the transaction has been obtained. These documents shall be retained in accordance with the record-keeping provision of § 373.3(1)(3).

* * * * *

2. Section 373.4 is amended by adding a note immediately under the title to that section to read as follows:

§ 373.4 Foreign-based warehouse procedure.

NOTE.—The Distribution License procedure (§ 373.3) was revised, effective January 9, 1979, to include provisions under which distributors may be authorized to reexport commodities received under the procedure. At the time this revision was made, the Office of Export Administration announced that the Foreign-based Warehouse Procedure was being phased out. Export licenses and authorizations issued under this procedure that were valid as of February 8, 1979, will remain in effect until they expire, are replaced by other licenses or authorizations or until June 30, 1979, whichever is earliest. No new licenses or authorizations will be issued under the Foreign-based Warehouse procedure after February 8, 1979.

* * * * *

(Sec. 4 Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E. O. 12002, 42 FR 35623 (1977); Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

JANUARY 4, 1979.

[FR Doc. 79-729 Filed 1-8-79; 8:45 am]

[1505-01-M]

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 377—SHORT SUPPLY CONTROLS

Establishment of Supplementary Export Quota for Butane During the Fourth Quarter 1978

Correction

In FR Doc. 78-34050 appearing at page 57141 in the issue for Wednesday, December 6, 1978, in the middle column of page 57142, the amendatory language for § 377.6 now reading "A new § 377.6 (d)(1) is established to read as follows:" should have read "A new § 377.6 (d)(12) is established to read as follows:"

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15423]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES AND EXCHANGE ACT OF 1934

Uniform Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting previously proposed amendments to this uniform net capital rule, which set forth the treatment to be accorded specific receivables and undue concentration deductions relating to transactions in municipal securities.

EFFECTIVE DATE: February 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Nelson S. Kibler, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 376-8131.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain amendments to Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934, the uniform net capital rule. The amendments [1] which become effective on February 1, 1979 are substantially the same as those contained in Securities Exchange Act Release No. 14995, July 26, 1978, 43 FR 33935 (August 2, 1978), with minor modifications to Rule 15c3-1(c)(2)(iv)(C) distinguishing secondary joint accounts from underwritings, and Rule 15c3-1(c)(2)(vi)(M) and Rule 15c3-1(f)(3)(iii) clarifying that the 20 consecutive day holding period for determining the application of the undue concentration haircut requirements begins on the date of delivery of the securities to the broker or dealer and not on the date the commitment is made by the broker or dealer to purchase municipal securities from a syndicate.

Six comment letters were received to the amendments proposed in Release No. 14995. All commentators favored the adoption of the proposed amendments with minor technical modifications. One commentator, however, expressed the opinion that municipal broker-brokers should be exempt from the undue concentration requirements. It is the view of the Commission that such an exemption is not necessary as such brokers generally do not take a position in municipal securities. However, to the extent such firms are required to take a position they should conform to the same undue concentration requirement as apply to other brokers or dealers in municipal securities.

DISCUSSION

Rule 15c3-1(c)(2)(iv)(C) originally required the deduction from net worth of good faith deposits arising in connection with an underwriting of any security and outstanding longer than eleven business days. In addition, profits derived from participation in an underwriting syndicate were treated as "unsecured receivables" which pursuant to Rule 15c3-1(c)(2)(iv)(E) were deducted from net worth. In Securities Exchange Act Release No. 11854 [2] the Commission adopted temporary amendments to Rule 15c3-1(c)(2)(iv)(C) permitting the inclusion in net worth, for ninety (90) days after settlement of the underwriting with the issuer, good faith deposits and receivables arising from participation in municipal securities underwritings. In Release No. 14995 the Commission proposed to reduce the ninety (90) day period to sixty (60) days. It was also proposed in Release No. 14995 that profits receivable from municipal securities secondary joint accounts would be includable in net worth for 60 days. Rule 15c3-1(c)(2)(iv)(C) has been adopted substantially as proposed with minor language modifications indicating that secondary joint accounts are not considered to be underwritings for purposes of that provision, and to distinguish non-municipal securities underwritings from municipal securities underwritings.

[1] Those sections amended are §§ 240.15c3-1(c)(2)(iv)(C); 240.15c3-1(c)(2)(vi)(M) and 240.15c3-1(f)(3)(iii).

[2] Securities Exchange Act Release No. 11854, November 20, 1975; 40 FR 57786 (December 12, 1975).

Rule 15c3-1(c)(2)(vi)(M) in general provides that a deduction from net worth equal to half the appropriate haircut shall be taken against long or short positions in the securities of an issuer of a single class or series, the market value of which positions exceed ten percent of tentative net capital. A similar provision, Rule 15c3-1(f)(3)(iii), applies to computations under the alternative net capital requirement. In Release No. 11854, the Commission exempted positions in municipal securities from the undue concentration provisions of Rule 15c3-1 on a temporary basis. In Release No. 14995 the Commission proposed to amend Rule 15c3-1(c)(2)(iv)(M) and 15c3-1(f)(3)(iii) to require that the undue concentration haircut provisions apply to municipal securities if the issue has the same security provisions, date, interest rate, day, month and year of maturity and such securities have a market value in excess of $500,000 in bonds ($5,000,000 in notes) or 10% of tentative net capital, whichever is greater,[3] and are held in position longer than 20 business days.

These amendments to Rule 15c3-1(c)(2)(iv)(M) and Rule 14c3-1(f)(3)(iii) have been adopted substantially as proposed with minor language modifications clarifying that the 20 consecutive day holding period for determining the application of the undue concentration haircut requirements begins on the date of delivery of the securities to the broker or dealer and not on the date the commitment is made by a broker-dealer to purchase municipal securities from a syndicate.

STATUTORY BASIS, COMPETITIVE CONSIDERATION AND EFFECTIVE DATE

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(3) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w(a), the Commission amends § 240.15c3-1 in Part 240 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below, effective February 1, 1979. The Commission finds that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under Section 15 (c)(3) thereof, 14 U.S.C. 78o(c)(3), to provide minimum safeguards with respect to financial responsibility of brokers and dealers.

[3]This amendment is designed to exclude all but very large and older positions in municipal securities from its provisions. Also, it should be noted that the dollar limitations of these provisions apply to each serial bond installment having the same maturity and not to the entire issue which may contain many maturity dates.

TEXT OF AMENDMENTS TO § 240.15c3-1

§ 240.15c3-1 Net capital requirements for brokers or dealers.

* * * * *

(c) * * *
(2) * * *
(iv) * * *

(C) Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits which shall be treated as required in paragraph (c)(2)(iv)(E) of this section), mutual fund concessions receivable and management fees receivable from registered investment companies, all of which receivables are outstanding longer than thirty (30) days from the date they arise; dividends receivable outstanding longer than thirty (30) days from the payable date; good faith deposits arising in connection with a non-municipal securities underwriting, outstanding longer than eleven (11) business days from the settlement of the underwriting with the issuer; receivables due from participation in municipal securities underwriting syndicates and municipal securities joint underwriting accounts which are outstanding longer than sixty (60) days from settlement of the underwriting with the issuer and good faith deposits arising in connection with an underwriting of municipal securities, outstanding longer than sixty (60) days from settlement of the underwriting with the issuer; and receivables due from participation in municipal securities secondary trading joint accounts, which are outstanding longer than sixty (60) days from the date all securities have been delivered by the account manager to the account members.

* * * * *

In § 240.15c3-1, the last sentence of paragraphs (c)(2)(vi)(M) and (f)(3)(iii) is amended to read as follows: *Provided further*, this provision will be applied to an issue of municipal securities having the same security provisions, date of issue, interest rate, day, month and year of maturity only if such securities have a market value in excess of $500,000 in bonds ($5,000,000 in notes) or 10% of tentative net capital, whichever is greater, and are held in position longer than twenty (20) business days from the date the securities are received by the syndicate manager from the issuer.

* * * * *

Because the amendments contained in this release will not become effective until February 1, 1979 the Commission extends until January 31, 1979 the temporary provisions[4] of the net capital rule which allow good faith deposits and syndicate or joint account receivables arising in connection with municipal securities to be included in the net worth of a broker or dealer for 90 days, and which exempt municipal securities from the undue concentration requirements.

By the Commission.

SHIRLEY E. HOLLIS,
Assistant Secretary.

DECEMBER 21, 1978.

[FR Doc. 79-697 Filed 1-8-79; 8:45 am]

[4]For a more detailed discussion of the temporary provisions see Securities Exchange Act Release No. 14994, July 26, 1978; 43 FR 33906, August 2, 1978.

[8010-01-M]

[Release No. 34-15453]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Amendments to Conform to the Securities Investor Protection Act of 1970

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its Rules in conjunction with the amendments to the Securities Investor Protection Act of 1970 ("SIPA"). The Commission is deleting from its broker-dealer reserves and segregation rule the definition of specifically identifiable property for purposes of customer protection under SIPA and amending a broker-dealer reporting rule to provide that no supplemental report on either the Securities Investor Protection Corporation ("SIPC") annual general assessment reconciliation or the exclusion from membership form need be filed for any period during which the SIPC assessment is a minimum assessment as provided for in SIPA.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael A. Macchiaroli, Special Counsel, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 376-8127.

SUPPLEMENTARY INFORMATION: The Securities Investor Protection Act Amendments of 1978 (Pub. L. No. 95-283, 92 Stat. 249) ("SIPA") necessitate that the Commission make a technical revision to Rule 15c3-3 (17 CFR 240.15c3-3). In addition, SIPA now provides for fixed minimum membership

assessments. In years where the Securities Investor Protection Corporation ("SIPC") determines to levy only the minimum assessment, it would be unnecessary to require the filing of a certain financial reports by SIPC members which would verify that the assessment had been accurately computed.

Prior to amendment, Section 6(c)(2)(C)(iii) of SIPA allowed the Commission to determine by rule or regulation what property should be deemed "specifically identifiable" for purposes of customer protection under SIPA. Paragraphs 4 and 5 of Section 16 of SIPA as amended define "customer property" and "customer name securities" for purposes of customer protection. The term "specifically identifiable property" was deleted from SIPA. Paragraph (j) of Commission Rule 15c3-3 (17 CFR 240.15c3-3(j)) defining "specifically identifiable property" thus no longer has any relevance under SIPA as amended in 1978 and should be deleted.

Section 4 of SIPA before amendment required SIPC to levy an annual assessment based on gross revenues of members. In conjunction therewith, Rule 17a-5(e)(4) (17 CFR 240.17a-5(e)(4)) requires a supplemental report covering the SIPC annual general assessment reconcilation or exclusion from membership form. Section 4(d)(1)(C) of SIPA as amended allows for a minimum assessment, not based on revenue, for which it is not necessary to file the supplemental report. The Commission hereby amends the Rule to relieve a member or excluded person from the obligation of filing the supplemental report or form in years where only the minimum assessment is levied. In years during which the assessment is based on revenue, the report must be filed, but it does not have to cover any part of the year during which the assessment was only a minimum one.

The Commission finds it will be unnecessary to publish the above described action for notice and public comment. Under the Administrative Procedure Act, 5 U.S.C. Section 553, the amendments described in the Text of Amendments will be effective January 9, 1979.

STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

The Securities and Exchange Commission acting pursuant to the Securities Exchange Act of 1934, and particularly Sections 3, 15(c)(3), 17(a) and 23 thereof (15 U.S.C. 78c, 78o, 78q(a) and 78u) hereby deletes paragraph (j) of Rule 15c3-3 (17 CFR 240.15c3-3 (j)) and revises Rule 17a-5(e)(4) (17 CFR 240.17a-5(e) (4)), as set forth below.

It appears to the Commission that no burden will be imposed on competition by adoption of the above mentioned amendments. If there is any burden on competition, it is necessary and appropriate in furtherance of the Commission's obligation to adopt financial responsibility rules.

TEXT OF AMENDMENTS

1. Accordingly, 17 CFR Part 240 is amended by deleting and reserving § 240.15c3-3(j) as follows:

§ 240.15c3-3 Customer protection—reserves and custody of securities.

* * * * *

(j) [Deleted and reserved.]

* * * * *

2. Section 240.17a-5 is amended by revising paragraph (e)(4) as follows:

§ 240.17a-5 Reports to be made by certain brokers and dealers.

* * * * *

(e) * * *

(4) The broker or dealer shall file with the report a supplemental report which shall be covered by an opinion of the independent public accountant on the status of the membership of the broker or dealer in the Securities Investor Protection Corporation ("SIPC") if, pursuant to paragraph (e)(1) of this section, a report of the broker or dealer is required to be covered by an opinion of a certified public accountant or a public accountant who is in fact independent. The supplemental report shall cover the SIPC annual general assessment reconciliation or exclusion from membership forms not previously reported on under this paragraph (e)(4) which were required to be filed on or prior to the date of the report required by paragraph (d) of this section: *Provided*, That the broker or dealer need not file the supplemental report on the SIPC annual general assessment reconciliation or exclusion from membership form for any period during which the SIPC assessment is a minimum assessment as provided for in Section 4(d)(1)(c) of the Securities Investor Protection Act of 1970, as amended. The supplemental report, an original of which shall be submitted to the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, the principal office of the designated examining authority for such broker or dealer and the office of SIPC, shall be bound separately, be dated and be signed manually, and shall include the following:

* * * * *

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 2, 1979.

[FR Doc. 79-769 Filed 1-8-79; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

National Advisory Food and Drug Committee

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) announces the termination of the National Advisory Food and Drug Committee and amends the regulations to delete it from the list of standing advisory committees. The agency has determined that the purposes for which the Committee was established can be accomplished through other means.

EFFECTIVE DATE: November 15, 1978.

FOR FURTHER INFORMATION CONTACT:

William V. Whitehorn, Office of Health Affairs (HFY-4), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1547.

SUPPLEMENTARY INFORMATION: The Committee's functions were to review and evaluate agency programs and advise on policy matters of national significance as they relate to the statutory mission of the Food and Drug Administration in the areas of foods, drugs, cosmetics, medical devices, biological products, and electronic products, and to review and make recommendations on applications for grants-in-aid for research projects related to the mission of the Food and Drug Administration as required by law.

Authority for the Committee expired on November 15, 1978.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 14 is amended in § 14.100

List of standing advisory committees by deleting paragraph (a)(2) and marking it reserved.

Effective date. Because this is a technical conforming amendment to Part 14, the Commissioner finds that there is good cause for the rule to be effective immediately upon publication in the FEDERAL REGISTER, January 9, 1979.

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

Dated: January 3, 1979.

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

[FR Doc. 79-719 Filed 1-8-79; 8:45 am]

[4110-03-M]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

[Docket No. 78N-0182]

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

Chlortetracycline Hydrochloride-Neomycin Tablets; Revocation of Certification Provision

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Director of the Bureau of Veterinary Medicine is revoking the regulation providing for certification of chlortetracycline hydrochloride-neomycin tablets. This revocation is made because there is a lack of substantial evidence that the combination drug is effective for its labeled uses.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 18, 1978 (43 FR 30895), the Director of the Bureau of Veterinary Medicine issued a notice of opportunity for hearing proposing to withdraw approval of NADA 55-055V, Calf Scour Oblets, which contain 125 milligrams (mg) chlortetracycline in combination with 125 mg neomycin base (present as sulfate) and vitamins A, D, and niacin. In the same issue of the FEDERAL REGISTER (43 FR 30808), the Director of the Bureau of Veterinary Medicine proposed to revoke § 546.110f *Chlortetracycline hydrochloride-neomycin tablets* which provides for the certification of the drug pursuant to the requirements of section 512(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(n)). This proposal was made because there was a lack of substantial evidence that the combination drug was effective for its labeled uses.

Elsewhere in this issue of the FEDERAL REGISTER is a notice withdrawing approval of NADA 55-055V for Calf Scour Oblets, because the sponsor did not file a timely request for hearing within the 30-day period provided.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343-351) (21 U.S.C. 357, 360b) 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 5.84), Part 546 is amended by revoking § 546.110f *Chlortetracycline hydrochloride-neomycin tablets.*

EFFECTIVE DATE: This regulation is effective January 9, 1979.

(Secs. 507, 512, 59 Stat. 463 as amended, 82 Stat. 343-351 (21 U.S.C. 357, 360b))

Dated: December 28, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-718 Filed 1-8-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4322]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the City of LaCoste, Medina County, Texas

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the city of LaCoste, Medina County, Texas These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the city of LaCoste, Medina County, Texas.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the city of LaCoste, Medina County, Texas, are available for review at the City Office, P.O. Box 112, LaCoste, Texas 78039.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for the city of LaCoste, Medina County, Texas.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Polecat Creek	Just upstream of Southern Pacific Railroad.	710
	Just upstream of D'Harris Street.	715
	Just upstream of Casiano Street..	722
South Polecat Creek.	Just upstream of Lytle LaCoste Road.	707
	Just upstream of Carle Avenue.	715
	Just upstream of Castro Avenue.	721

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

NOTE: In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: October 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-582 Filed 1-8-79; 8:45 am]

[4210-01-M]

[Docket No. FI-4188]

PART 1917—APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Final Flood Elevation Determination for the Town of Bedford, Hillsborough County, New Hampshire

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the Town of Bedford, Hillsborough County, New Hampshire.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

EFFECTIVE DATE: The date of issuance of the flood insurance rate map (FIRM), showing base (100-year) flood elevations, for the Town of Bedford, Hillsborough County, New Hampshire.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the final elevations for the Town of Bedford are available for review at the Building Inspector's Office, Bedford, New Hampshire.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for Town of Bedford, Hillsborough County, New Hampshire.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917.4(a)). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 24 CFR Part 1910.

The final base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Merrimack River...	At South Corporate Limits With Merrimack.	125
	Just Upstream of Boston and Maine Railroad.	127
	Confluence of Bowman Brook.	129
	Just Downstream of North Corporate Limit with Manchester.	133
Baboosic Brook	Just Upstream of Parkhurst and Woodword Road.	218
	1625 feet Upstream of Parkhurst and Woodword Road.	219
	At South Corporate Limit with Merrimack.	223
	At Corporate Limit with Merrimack (Just Upstream of Dam).	233
	475 feet Upstream of Pulpit Brook.	233
	750 feet Upstream of Pulpit Brook.	234
	At Corporate Limit with Amherst.	235
Pointer Club Brook.	Confluence with Merrimack River.	125
	240 feet Upstream of Boston and Maine Railroad.	125
	1140 feet Upstream of Boston and Maine Railroad.	142
	Just Downstream of South River Road.	150
	Just Upstream of South River Road.	155
	Just Downstream of U.S. Route 3.	156
	Just Upstream of U.S. Route 3.	161
	740 feet Upstream of U.S. Route 3.	161
	1270 feet Upstream of U.S. Route 3.	169
	2620 feet Upstream of U.S. Route 3.	187
	1110 feet Downstream of Back River Road.	200
	100 feet Downstream of Back River Road.	208
	Just Downstream of Back River Road.	214
Tioga River	At Confluence with Merrimack River.	128
	200 feet Upstream of the Confluence with Merrimack River.	128
	570 feet Upstream of the Confluence with Merrimack River.	145
	1690 feet Upstream of the Confluence with Merrimack River.	148
	2133 feet Upstream of the Confluence with Merrimack River.	156
	Just Downstream of Dirt Road (500 feet Downstream of Everett Turnpike).	159
	Just Downstream of Everett Turnpike.	161
	Just Upstream of Everett Turnpike.	169
	1055 feet Downstream of State Route 3 Bridge.	177
	105 feet Upstream of State Route 3 Bridge.	198
	1055 feet Upstream of State Route 3 Bridge.	198
	Just Upstream of the Foot Bridge at Golf Course (1370 feet Downstream from Patten Road).	203
	Just Upstream of a Dirt Road (765 feet Downstream from Patten Road).	206
	Just Downstream of Patten Road..	206
	Just Upstream of Patten Road.	211
	Just Downstream of John Goffe Road.	211
	Just Upstream of John Goffe Road.	216
Bowman Brook.....	At Confluence with Merrimack River.	129
	475 feet Upstream of Everett Turnpike.	129
	Just Downstream of Dam, 440 feet Upstream of Covered Footbridge.	135
	Just Downstream of Sheraton Wayfarer Building.	145
	Just Upstream of South River Road.	150
	Just Upstream of Dam, Upstream of South River Road.	157
	Just Downstream of State Route 101 (South Crossing).	163

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	1325 feet Upstream of State Route 101 (South Crossing).	175
	Just Downstream of State Route 101 and Boynton Street Culvert.	195
	Just Upstream of State Route 101 and Boynton Street Culvert.	207
	Just Downstream of Old Bedford Road.	219
	Just Upstream of Old Bedford Road.	230
	900 feet Upstream of Old Bedford Road.	230
	105 feet Downstream of Donald Street.	235
	Just Upstream of Donald Street.	248
	Just Downstream of State Route 114.	249
	Just Upstream of State Route 114.	250
Riddle Brook	At South Corporate Limit with Merrimack.	178
	Just Downstream of Meadow Road.	183
	Just Upstream of Abandoned Railroad Bridge (Downstream of Nashua Road).	184
	1637 feet Downstream of Nashua Road.	185
	Just Downstream of Nashua Road.	202
	Just Upstream of Nashua Road.	211
	2900 feet Upstream of Nashua Road.	214
	Just Downstream of County Road West.	226
	130 feet Upstream of County Road West.	229
	Just Upstream of Bedford Center Road.	235
	Just Upstream of Wallace Road.	251
	Just Upstream of Amherst Road.	264
	2000 feet Upstream of Amherst Road.	266
McQuade Brook	At South Corporate Limit with Merrimack.	179
	800 feet Downstream of Jenkins Road.	182
	700 feet Downstream of Jenkins Road.	187
	340 feet Downstream of Jenkins Road.	189
	Just Upstream of Jenkins Road.	217
	4860 feet Upstream of Jenkins Road.	217
	1450 feet Downstream of Beal Road.	223
	975 feet Downstream of Beal Road.	241
	Just Downstream of Beal Road.	255
	Just Upstream of Beal Road.	258
	80 feet Downstream of State Route 101.	271
	Just Upstream of State Route 101.	278
	900 feet Downstream of North Amherst Road.	278
	105 feet Downstream of North Amherst Road.	281
	Just Upstream of North Amherst Road.	290
Pulpit Brook	At Confluence with Baboosic Brook.	233
	2112 feet Upstream of Confluence with Baboosic Brook.	236
	Just Downstream of State Route 101.	238
	Just Upstream of State Route 101.	244
	At West Corporate Limit.	245

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).)

NOTE: In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: August 9, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-584 Filed 1-8-79; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAX

[T.D. 7571]

PART 54—PENSION EXCISE TAX REGULATIONS

PART 141—TEMPORARY EXCISE TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Employee Stock Ownership Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of full text of final regulations.

SUMMARY: This document sets forth the full text of previously adopted final regulations (43 FR 53718), November 17, 1978, FR Doc. 78-32151 relating to employee stock ownership plans.

DATE: The regulations are generally effective for plan years ending after December 31, 1974.

FOR FURTHER INFORMATION CONTACT: Thomas Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:EE), 202-566-3589, not a toll-free number.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 2, 1977, the FEDERAL REGISTER (42 FR 44396) published proposed amendments to the Pension Excise Tax Regulations (26 CFR Part 54). These proposed amendments were adopted as temporary regulations in a Treasury decision published in the same issue of the FEDERAL REGISTER (42 FR 44394). After consideration of all written comments received regarding the proposed amendments, those amendments were adopted, as revised, by Treasury Decision 7571, published in the FEDERAL REGISTER for November 17, 1978 (43 FR 53718). Treasury Decision 7571 also superseded the related temporary regulations.

However, Treasury Decision 7571 as published in the FEDERAL REGISTER contained only the changes to the notice of proposed rulemaking published on September 2, 1977, rather than the full text of the final regulations. This document sets forth the full text of the final regulations.

DRAFTING INFORMATION

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Accordingly, the full text of the final regulations adopted by Treasury Decision 7571 is as follows.

GEORGE H. JELLY,
Director, Employee Plans and Exempt Organizations Division.

26 CFR is amended as follows:

1. In Part 54, § 54.4975-11 is amended by—

a. Revising paragraph (a)(3), (7)(ii), (8)(iii), and (10),

b. Adding a new sentence at the end of paragraph (d)(3),

c. Revising paragraph (e)(2), and

d. Revising paragraph (f)(3).

These revised and added provisions read as follows:

§ 54.4975-11 "ESOP" requirements.

(a) In general. * * *

(3) *Continuing loan provisions under plan*—(i) *Creation of protections and rights.* The terms of an ESOP must formally provide participants with certain protections and rights with respect to plan assets acquired with the proceeds of an exempt loan. These protections and rights are those referred to in the third sentence of § 54.4975-7(b)(4), relating to put, call, or other options and to buy-sell or similar arrangements, and in § 54.4975-7(b)(10), (11), and (12), relating to put options.

(ii) *"Nonterminable" protections and rights.* The terms of an ESOP must also formally provide that these protections and rights are nonterminable. Thus, if a plan holds or has distributed securities acquired with the proceeds of an exempt loan and either the loan is repaid or the plan ceases to be an ESOP, these protections and rights must continue to exist under the terms of the plan. However, the protections and rights will not fail to be nonterminable merely because they are not exercisable under § 54.4975-7(b)(11) and (12)(ii). For example, if, after a plan ceases to be an ESOP, securities acquired with the proceeds of an exempt loan cease to be publicly traded, the 15-month period prescribed by § 54.4975-7(b)(11) includes the time when the securities are publicly traded.

(iii) *No incorporation by reference of protections and rights.* The formal requirements of paragraph (a)(3)(i) and (ii) of this section must be set forth in the plan. Mere reference to the third sentence of § 54.4975-7(b)(4) and to the provisions of § 54.4975-7(b)(10), (11), and (12) is not sufficient.

(iv) *Certain remedial amendments.* Notwithstanding the limits under paragraph (a)(4) and (10) of this section on the retroactive effect of plan amendments, a remedial plan amendment adopted before December 31, 1979, to meet the requirements of paragraph (a)(3)(i) and (ii) of this section is retroactively effective as of the later of the date on which the plan was designated as an ESOP or November 1, 1977.

* * * * *

(7) *Certain arrangements barred.* * * *

(ii) *Integrated plans.* A plan designated as an ESOP after November 1, 1977, must not be integrated directly or indirectly with contributions or benefits under title II of the Social Security Act or any other State or Federal Law. ESOP's established and integrated before such date may remain integrated. However, such plans must not be amended to increase the integration level or the integration percentage. Such plans may in operation continue to increase the level of integration if under the plan such increase is limited by reference to a criterion existing apart from the plan.

(8) *Effect of certain ESOP provisions on section 401(a) status.* * * *

(iii) *Income pass-through.* An ESOP will not fail to meet the requirements of section 401(a) merely because it provides for the current payment of income under paragraph (f)(3) of this section.

* * * * *

(10) *Additional transitional rules.* Notwithstanding paragraph (a)(9) of this section, a plan established before November 1, 1977, that otherwise satisfies the provisions of this section constitutes an ESOP if by December 31, 1977, it is amended to comply from November 1, 1977, with this section even though before such date the plan did not satisfy the following provisions of this section:

(i) Paragraph (a) (3) and (8) (iii);

(ii) The last sentence of paragraph (d)(3); and

(iii) Paragraph (f)(3).

* * * * *

(d) *Allocations to accounts of participants.* * * *

(3) *Income.* * * * Certain income may be distributed currently under paragraph (f)(3) of this section.

* * * * *

(e) *Multiple plans* * * *

(2) *Special rule for combined ESOP's.* Two or more ESOP's, one or more of which does not exist on November 1, 1977, may be considered together for purposes of applying section 401(a) (4) and (5) or section 410(b) only if the proportion of qualifying employer securities to total plan assets is substantially the same for each ESOP and—

(i) The qualifying employer securities held by all ESOP's are all of the same class; or

(ii) The ratios of each class held to all such securities held is substantially the same for each plan.

(3) *Amended coverage, contribution, or benefit structure.* For purposes of paragraph (e)(1)(i) of this section, if the coverage, contribution, or benefit structure of a plan that exists on November 1, 1977 is amended after that date, as of the effective date of the amendment, the plan is no longer considered to be a plan that exists on November 1, 1977.

(f) *Distribution.* * * *

(3) *Income.* Income paid with respect to qualifying employer securities acquired by an ESOP in taxable years beginning after December 31, 1974, may be distributed at any time after receipt by the plan to participants on whose behalf such securities have been allocated. However, under an ESOP that is a stock bonus plan, income held by the plan for a 2-year period or longer must be distributed under the general rules described in paragraph (f)(1) of this section. (See the last sentence of section 803(h), Tax Reform Act of 1976.)

* * * * *

§ 141.4975-11 [Deleted]

2. Part 141 is amended by deleting § 141.4975-11.

[FR Doc. 79-698 Filed 1-8-79; 8:45 am]

[4510-43-M]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

SUBCHAPTER H—EDUCATION AND TRAINING

PART 48—HEALTH AND SAFETY TRAINING AND RETRAINING OF MINERS

Final Rule; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; Correction.

SUMMARY: This document corrects errors appearing in the final regulations pertaining to health and safety training and retraining of miners, published at 43 FR 47454, October 13, 1978.Q04

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Edward P. Clair, Counsel for Coal Mine Safety and Health, Office of the Solicitor, Room 430, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, 703-235-1157.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-29001 appearing at page 47454 in the FEDERAL REGISTER of October 13, 1978, the following corrections are made:

1. The fourth paragraph of section c, of the "Discussion of Major Issues" in the preamble on page 47456 is corrected in the ninth line of that paragraph by deleting the word "in" immediately before the words "a state" and immediately after the word "association" and replacing it with the word "or."

2. The last paragraph of the "Discussion of Other Significant Issues" in the preamble on page 47459 is corrected in the twelfth line of that paragraph by deleting the word/numbers "pages 14-16" immediately before the words "of the preamble" and immediately after the words "discussed on"

and replacing it with the word/number "page 47456."

3. The authority citation appearing on page 47460 is corrected in the second line by deleting the letter/number "(a)(2)" immediately following the number "101" and immediately before the words "of the Federal Mine Safety."

4. Paragraph (f) of § 48.3 appearing on page 47461 is corrected in the second line of that paragraph by deleting the word "to" immediately before the words "the MSHA approved" and replacing it with the word "of."

5. Paragraph (a)(2)(i) of § 48.7 appearing on page 47463 is corrected in the seventh line of that paragraph by deleting the word "of" immediately after the semicolon and replacing it with the word "or."

6. Paragraph (b) of § 48.22 appearing on page 47464 is corrected in the eighth line of that paragraph by deleting the number "1" immediately before the word "months" and immediately after the words "within the preceding" and replacing this number "1" with the number "12."

Dated: January 2, 1979.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-871 Filed 1-9-79; 8:45 am]

[4310-84-M]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5655; ES-16068]

FLORIDA

Partial Revocation of Executive Order of November 12, 1838

AGENCY: Bureau of Land Management (Interior).

ACTION: Final Rule.

SUMMARY: This document will revoke the reservation of 78 acres, more or less, to the U.S. Coast Guard for lighthouse purposes, leaving 8 acres, more or less, originally reserved, under the jurisdiction of the Coast Guard, and will place the subject lands under the sole jurisdiction of the U.S. Fish and Wildlife Service, which now shares jurisdiction with the Coast Guard. The purpose of this action is to eliminate the dual management of the portion of the tract of the tract originally reserved that is no longer needed for lighthouse purposes.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Keith Corrigall—202-343-8731.

By virtue of the authority contained in the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714), it is ordered as follows:

1. The Executive Order of November 12, 1838, which reserved the following described public land to the United States Coast Guard for lighthouse purposes, is hereby revoked, so far as it affects the following described lands:

TALLAHASSEE MERIDIAN

T. 5 S., Rs. 1 and 2 E.,
Sec. 1 (fractional), more particularly described as follows:
Beginning at a point which marks the intersection of the township line between Ts. 4 and 5 S., and the range line between Rs. 1 and 2 E., thence S. 87°13' W., 1,690 feet, thence southerly and easterly following the shoreline of Apalachee Bay to a point marking the intersection of the shoreline and the range line between Rs. 1 and 2 E., thence N. 2°47' W., 2,200 feet along the range line to the point of beginning. Containing approximately 86 acres in Wakulla County.
Excepting therefrom the following described parcel of land, including submerged areas, to be retained for Coast Guard use: Beginning at a point which marks the center of the light structure, thence due North (magnetic) a distance of 350 feet to the point of beginning; a strip of land 500 feet in width, the axial centerline of which runs from the point of beginning due South (magnetic) a distance of 700 feet, more or less, to the shoreline of Apalachee Bay, comprising 8.0 acres, more or less, as shown on plat dated January 2, 1902, by Office of L. H. Engineers, 7th and 8th District, Mobile, Alabama.

The lands form a segment of the coastal marshland on the north side of Apalachee Bay, and include open waters of the Gulf of Mexico. The marshland is primarily suitable for wildlife habitat. Much of the surrounding area is within the St. Marks National Wildlife Refuge or the State wildlife management areas. The subject tract is entirely within the wildlife refuge.

2. The land, except for the tract containing the St. Marks Lighthouse and reserved herein to the U.S. Coast Guard, will remain under the sole jurisdiction of the Fish and Wildlife Service, Department of the Interior, as the St. Marks National Wildlife Refuge by provisions of Executive Order No. 5740 of October 31, 1931.

GUY R. MARTIN,
Assistant Secretary of the Interior.

[FR Doc. 79-774 Filed 1-8-79; 8:45 am]

[3510-20-M]

Title 45—Public Welfare

CHAPTER XX—UNITED STATES FIRE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 2012—ISSUING AND REVIEW OF USFA REGULATIONS

CROSS REFERENCE: For a document affecting 45 CFR Part 2012 see Appendix G of the Department of Commerce document appearing as Part II of this issue.

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Parts 1608, 1610, 1611]

REASONABLE AND REPRESENTATIVE TESTS AND GUARANTIES UNDER THE FLAMMABLE FABRICS ACT

Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time.

SUMMARY: The Commission extends by sixty days (until February 16, 1979) the period for submitting written comments on its proposed revision and amendment of the Flammable Fabrics Act regulations concerning (1) guaranties, (2) "reasonable and representative" tests for guaranties issued under the Standard for the Flammability of Clothing Textiles and the Standard for the Flammability of Vinyl Plastic Film and (3) general regulations for all products subject to a standard issued under the Flammable Fabrics Act. In the proposal, the Commission proposed eliminating class testing of fabric. The National Retail Merchants Association asked for the extension to allow time for it to plan and coordinate a program to develop a test system for classes of fabrics. The Commission granted the request since the development of a class test system with adequate criteria for defining a class would lessen the possible adverse economic impact of the proposed amendments.

DATES: Written comments must be submitted on or before February 26, 1979.

ADDRESSES: Written comments preferably in five copies, should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Phyllis Buxbaum, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6626.

SUPPLEMENTARY INFORMATION: On October 17, 1978, (43 FR 47952) the Commission proposed revisions and amendments of the Flammable Fabrics Act regulations concerning (1) guaranties issued by the sellers of products subject to the Act that the products conform to the applicable standard, (2) "reasonable and representative" tests to show the basis for guaranties of fabrics covered by the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611), and (3) general regulations applicable to all products subject to a standard issued under the Flammable Fabrics Act (16 CFR Part 1608). The comment period on the proposal was originally set to expire December 18, 1978.

The purpose of the proposed amendments is to update the regulations and to simplify and clarify them so they can be more easily understood, and so that compliance will be easier. Few substantive amendments were proposed. However, one of the proposed changes to these rules is the deletion of the references to class tests (present §§ 1608.2, 1610.37(a), and 1611.37(a)). The Commission proposed the deletion because the present rules provide no definitive criteria for what constitutes a class. The present rules refer to class tests as follows:

> "Class" • • • means a category of textile fabrics having certain general constructional or finished characteristics, sometimes in association with a particular fiber, and covered by a class or type description generally recognized by the trade. In certain instances the use of class tests is restricted • • • to a particular textile fabric of the same fiber composition, construction, and finish type. The results of such class tests may be used by any person as a basis for furnishing guaranties under section 8 of the act on all textile fabrics of the same class.

On December 12, 1978, the Commission received a request from the National Retail Merchants Association (NRMA) for a sixty day extension of time for filing written comments on the proposal. The extension request states that "class testing has proved an effective and economical means of assessing the safety of many fabrics, • • • [and] could save industry (and the public) hundreds of thousands of dollars, at no loss in safety." The extension is desired to allow for the planning and coordination of a program to develop a new class test system.

Since the proposed amendments are largely for the purposes of simplification and clarification, and affect few substantive safety-related provisions, the Commission is willing to provide a reasonable period of time for the exploration of ways to devise a class test system incorporating adequate criteria for defining a class. Accordingly, the Commission extends the period for filing written data, views, and arguments concerning the proposal until February 16, 1978. Comments received after that date will be considered only to the extent practicable.

Written submissions and any accompanying data or materials should be submitted preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be supported by a memorandum or brief.

Any comments that are received and all other material which the Commission has that is relevant to this proposal may be seen in, or copies obtained from, the Office of the Secretary, Third Floor, 1111 18th Street, N.W., Washington, D.C. 20207.

Dated: January 4, 1979.

SHELDON D. BUTTS,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 79-757 Filed 1-8-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release No. 34-15452; File No. S7-765]

FINANCIAL RESPONSIBILITY RULES AND BROKER-DEALER REPORTING RULE

Amendments to Conform to the Securities Investor Protection Act of 1970

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing for public comment a rule designating "financial responsibility rules" to conform to the amendments to the Securities Investor Protection Act of 1970, and proposing for public comment an amendment to its broker-dealer reporting rule making clear that the report on the Securities Investor Protection Corporation assessment is an non-public document.

DATE: Comments should be received on or before February 5, 1979.

ADDRESS: All comments should be submitted in triplicate and directed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to file No. S7-768 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Michael A. Macchiaroli, Special Counsel, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. (202) 376-8127.

SUPPLEMENTARY INFORMATION: The Securities Investor Protection Act Amendments of 1978 (Pub. L. No. 95-283, 92 Stat. 249) ("SIPA") necessitate that the Commission add a new rule to be designated Rule 3a40-1 (17 CFR 240.3a40-1).

Under Section 5 of SIPA, the court may enter a protective decree on behalf of customers if the court finds, among other things, that a debtor broker-dealer is not in compliance with applicable requirements under the Act or rules with respect to financial responsibility or hypothecation of customers' securities, or if the debtor broker-dealer is unable to make such computations as may be necessary to establish compliance. Section 13 of SIPA also refers to financial responsibility rules in connection with inspections of broker-dealers which are members of the Securities Investor Protection Corporation ("SIPC"). Section 16 of SIPA amended Section 3(a) of the Securities Exchange Act of 1934 (the "Exchange Act") by adding a new paragraph defining "financial responsibility rules" as "the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules."

The proposed new rule would designate as "financial responsibility rules" all rules and regulations adopted pursuant of Section 8, 15(c)(3), 17(a) and 17(e)(1)(A) of the Exchange Act, all rules and regulations relative to hypothecation or lending of customer securities, and all rules adopted by self-regulatory organizations relating to capital or margin requirements, recordkeeping requirements, hypothecathion requirements or any other rule adopted by the Commission or a self-regulatory organization relating to the protection of funds or securities.

In addition, Rule 17a-5(e)(4) (17 CFR 240.17a-5(e)(4)) requires the filing of a supplemental report covering the SIPC annual general assessent reconiliation or exclusion from membership form for periods when the SIPC assessment is not the minimum assessment as provided for in new Section 4(d)(1)(C) of SIPA. The Commission is proposing for comment an amendment to the Rule which would make clear that the report on the SIPC assessment is intended to be non-public. The amendment would be consistent with the present administrative practice of treating these reports as non-public.

Statutory Basis and Competitive Considerations

The Securities and Exchange Commission, acting pursuant to the Securities Exchange Act of 1934, and particularly Sections 3, 15(c)(3), 17(a) and 23 thereof (15 U.S.C. 78c, 78o, 78q(a) and 78(u), hereby proposes for public comment new Rule 3a40-1 (17 CFR 240.3a40-1 designating "financial responsibility rules" for purposes of customer protection under SIPA and amendments to Rule 17a-5(e)(4), (17 CFR 240.17a-5 (e)(4)), clarifying the non-public nature of the report on the SIPC assessment, all as set forth below.

It appears to the Commission that no burden will be imposed on competition by adoption of the above mentioned amendments. If there is any burden on competition, it is necessary and appropriate in furtherance of the purposes of the Act, particularly in furtherance of the Commission's obligation to adopt financial responsibility rules.

Text of Amendments

The following amendment and new rule are hereby proposed for public comment:

Attention

The text of the following amendments uses arrows [> <] to indicate additions.

1. 17 CFR 240 is amended by adding a new § 240.3a40.1 to read as follows:

§ 240.3a40-1 Designation of financial responsibility rules.

The term "financial responsibility rules" for purposes of the Securities Investor Protection Act of 1970 as amended in 1978 shall include:

(a) Any rule adopted by the Commission pursuant to Section 15(c)(3) of the Securities Exchange Act of 1934;

(b) Any rule adopted by the Commission pursuant to Section 17(a) of the Securities Exchange Act of 194;

(c) Any rule adopted by the Commission pursuant to Section 8 of the Securities Exchange Act of 1934;

(d) Any rule adopted by the Commission relating to hypothecation or lending of customer securities;

(e) Any rule adopted by the Commission pursuant to Section 17(e)(1)(A) of the Securities Exchange Act of 1934;

(f) Any rule adopted by any self-regulatory organization relating to capital or margin requirements, recordkeeping requirements, hypothecation requirements, lending requirements and any other rule relating to protection of funds or securities; and

(g) Any other rule adopted by the Commission relating to the protection of funds or securities.

2. 17 CFR 240 is amended by revising § 240.17a-5(e)(4) to read as follows:

§ 240.17a-5 Reports to be made by certain brokers and dealers.

* * * * *

(e) * * *

(4) The broker or dealer shall file with the report a supplemental report which shall be covered by an opinion of the independent public accountant on the status of the membership of the broker or dealer in the Securities Investor Protection Corporation ("SIPC") if, pursuant to paragraph (e)(1) of this section, a report of the broker or dealer is required to be covered by an opinion of a certified public accountant or a public accountant who is in fact independent. The supplemental report> (which shall be non public)< shall cover the SIPC annual general assessment reconciliation or exclusion from membership forms not previously reported on under this paragraph (4) which were required to be filed on or prior to the date of the report required by paragraph (d) of this section. The supplemental report, an original of which shall be submitted to the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, the principal office of the designated examining authority for such broker or dealer and the office of SIPC, shall be bound separately, be dated and be signed manually, and shall include the following:

* * * * *

By the Commission.

George A. Fitzsimmons,
Secretary.

January 2, 1979.

[FR Doc. 79-822 Filed 1-8-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 145]

[Docket No. 78N-0138]

CANNED FRUITS

Proposed Revision of Standard of Quality for Canned Pears

AGENCY: Food and Drug Administration.

ACTION: Reopening of Comment Period on Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period on a proposal to revise the standard of quality for canned pears. This action is based on two requests for additional time to respond to the proposal.

DATE: Comments by January 23, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

F. Leo Kauffman, Bureau of Foods (HFF-414), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 25, 1978 (43 FR 32143), FDA proposed to amend the standard of quality for canned pears (§ 145.175(b) (21 CFR 145.175(b))). Comments were to be filed by September 25, 1978.

The Commissioner of Food and Drugs later received requests from the Food Safety and Quality Committee (formerly the Standards Committee) of the Canners League of California (CLC), 1007 L Street, Sacramento, CA 95814 and the Processed Products Standards Committee of the Northwest Food Processors Assocation (NWFPA), 2828 SW. Corbett, Portland, OR 97201 for an extenstion of the comment period on the proposal. Both stated that additional time was needed to permit them to develop the information and data they consider necessary to enable them to respond properly to the proposed amendment.

The CLC stated in support of its request that the comment period coincides with the height of the packing season in California. The CLC further stated that work has started on developing information on several of the issues, that a study has commenced on the weight and diameter relationships for the uniformity of size requirement for canned pear halves and quarters styles, and that an additional 120 days will be needed for the generation of data during the packing season and later analysis and evaluation.

The NWFPA stated that the packing season in the Northwest will only have begun shortly before the original deadline for comments. In support of its request, the NWFPA later stated that the packing season would extend at least through December, and, depending on the harvest, that the canning season might extend into January 1979. It further stated that information needed on pears ripened in controlled atmospheric storage is not predictable and that this information, because it may be variable, should be collected during the entire canning season.

In the preamble to the proposal, the Commissioner stated that diameter may be a more meaningful basis than weight for determining uniformity of size as a factor of quality of canned pears, but that no data are available to show a direct relationship between diameter and uniformity of size (weight). The Commissioner repeats that any such change in the uniformity of size requirement should be the subject of a new proposal so that all interested persons may have an opportunity to comment.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), the comment period on the proposal to amend the standard of quality for canned pears is reopened and extended through the canning season in the Northwest to January 23, 1979.

Interested persons may, on or before January 23, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding the 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 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 3, 1979.

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

[FR Doc. 79-721 Filed 1-8-79; 8:45 am]

[4110-03-M]

[21 CFR Part 510]

[Docket No. 78N-0206]

NEW ANIMAL DRUGS

Records and Reports on New Animal Drugs and Antibiotics That Were Approved Before June 20, 1963

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to extend requirements for periodic reporting of drug experience for new animal drugs, including antibiotics and medicated feed premixes bearing or containing new animal drugs, approved before June 20, 1963. This information will provide a basis to require appropriate revisions for use of the products or revoke the authority for their use when necessary. This action will also facilitate a determination that the animal drugs subject to the proposed regulation are in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act.

DATE: Comments by March 12, 1979.

ADDRESS: Comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Andrew J. Beaulieu, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: This proposal concerns reporting requirements for new animal drugs, including antibiotics and medicated feed premixes bearing or containing new animal drugs, approved before June 20, 1963. The records and reports requirements for such products are presently set forth in § 510.310 of the new animal drug regulations (21 CFR 510.310).

Section 510.310 was originally published as § 135.35 in the FEDERAL REGISTER of September 14, 1971 (36 FR 18375). That regulation requires sponsors of new animal drugs approved before June 20, 1963 to submit one report within 90 days of the effective date of the regulation including identification of the dosage form of the new animal drug by its established and proprietary names, the formula, route of administration, and the new animal drug application number or other identification or application number. The regulation also requires submission of information as to whether the

product was ever marketed and whether marketed at the time of submission of the report. If the product was marketed and marketing had been discontinued, the date and reason for discontinuing marketing was required. No reports after the initial report were required.

Section 512(l) of the act (21 U.S.C. 360b(l)) requires the establishment and maintenance of records and reports of data relating to experience and other data or information received by a sponsor with respect to use of a drug or animal feeds bearing or containing animal drugs. This requirement facilitates a determination whether there are grounds for invoking section 512(e) or (m)(4) of the act. These sections provide for withdrawal of approval of applications for new animal drugs or animal feeds containing new animal drugs when experience or data indicate such action should be taken. The present single reporting requirement in 1971 for pre-June 20, 1963 drugs does not furnish adequate information to enable FDA to fully evaluate the status of approved new animal drugs.

The proposed revision of § 510.310 would modify the reporting system for pre-June 20, 1963 drugs, by establishing the following requirements:

1. Within 120 days from the effective date of a final regulation based on this proposal, or as specified, sponsors of new animal drugs, including antibiotics and medicated feed premixes bearing or containing new animal drugs, approved prior to June 20, 1963 on the basis of a new drug application, master file, antibiotic regulation, or food additive regulation, must submit information regarding marketing. If the product is still marketed, each sponsor must submit a copy of the label on the package of the drug and of the package insert or brochure bearing directions or information for use of the article. If the labeling is not identical in content to the labeling originally approved, data must be submitted supporting such changes if the data have not been previously submitted.

2. If clinical experience indicates a need for change in labeling, a supplemental application should be submitted.

3. If clinical or other experience indicates side effects or toxicity problems not previously reported, such information must be submitted.

4. Information must also be submitted with respect to distributed batches of drug products concerning any mixups or significant chemical, physical, or other changes or deterioration of the drug products, or other failure to meet specifications established in existing submissions to FDA.

5. Records must be maintained including full reports of information regarding safety and effectiveness of the product including unpublished reports conducted by the sponsor or reported to the sponsor, copies of mailing pieces and labeling, and distribution records. If the product is a prescription drug, advertising records must also be maintained.

6. After submission of the initial reports, reports must be submitted containing the information required by § 510.300 in the time frames specified in that regulation.

After the initial report as required by the proposed revision to § 510.310, the reporting requirements for all the new animal drugs subject to the proposed section will have the same reporting requirements as those approved beginning June 20, 1963. This will provide equitable treatment for all such drugs and furnish equal protection for persons using new animal drug products, whether they were approved for use before or after June 20, 1963.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs proposes to revise § 510.310 to read as follows:

§ 510.310 Records and reports for new animal drugs approved before June 20, 1963.

(a) This section applies to new animal drugs, including antibiotics and medicated feed premixes bearing or containing new animal drugs, approved before June 20, 1963 on the basis of a new drug application, master file, antibiotic regulation, or food additive regulation.

(b) Sponsors of new animal drugs identified in paragraph (a) of this section shall submit the following information, in duplicate, for each dosage form of each such drug by (insert date 120 days after date of publication of a final regulation based on this proposal):

(1) If the new animal drug is currently marketed:

(i) A copy of the label on the package of the drug and of the package insert or brochure bearing directions or information for use of the product.

(ii) If the label, brochure, or package insert is not identical in content to the one for the new animal drug as originaly approved, the sponsor shall also report what changes have been made (other than minor changes in arrangement or printing or changes of an editorial nature) and why they were made, and shall submit data supporting such changes if the data have not previously been submitted.

(iii) If clinical experience reported to or otherwise received by the sponsor indicates the need for change in claims for effectiveness or in side effects, warnings, or contraindictions in the labeling or advertising currently in use, the sponsor shall submit a supplemental application proposing such changes in the labeling and a showing that any advertising will be appropriately revised.

(iv) If the clinical or other experience reported to or otherwise obtained by the sponsor has revealed any information concerning any side effect, injury, toxicity, or sensitivity reaction, or any unexpected incidence or severity thereof, which by kind, or incidence or severity is not fully disclosed in the labeling, whether or not determined to be attributable to the drug, this information shall be submitted. Such information shall include full reports of all available information with respect to any deaths apparently related to drug administration whether or not determined to be attributable to the drug. Any such information previously submitted need not be resubmitted.

(v) If the clinical or other experience reported to or otherwise obtained by the sponsor within the past 2 years has revealed any information with respect to a distributed batch concerning any mixup in the drug or its labeling with another article; any bacteriological or any significant chemical, physical, or other change or deterioration of the drug; or any failure of one or more distributed batches to meet specifications established in the new animal drug application or in the antibiotic regulations, this information shall be submitted. Any unresolved experience of the kinds listed in this paragraph shall be reported even though it occurred before the 2-year period.

(2) If the new animal drug is no longer marketed, but it is the subject of an approval that is still in effect:

(i) Identification of the dosage form of the new animal drug or medicated feed premix by its established and proprietary names, if any;

(ii) The formula showing quantitatively each ingredient of the drug to the extent disclosed on the label (a copy of the label will ordinarily fulfill this requirement);

(iii) The route of administration;

(iv) The new animal drug or other identification or application number;

(v) The date and reason for discontinuing its marketing.

(c) Approval of applications covering products which are no longer marketed may be withdrawn under § 514.115 of this chapter on the basis of a request for its withdrawal submitted in writing by a person holding an approved application. Such withdrawal of approval will be made on the ground that the drug subject to such

application is no longer being marketed, provided information is furnished in support of this finding and provided certain other conditions exist as specified in that section. A written request for such withdrawal will be construed as a waiver of an opportunity for a hearing.

(d) Sponsors of new animal drugs identified in paragraph (a) of this section are exempt from the reporting requirements of this section if: (1) their product is no longer marketed and information has previously been submitted to the Food and Drug Administration regarding discontinuation of marketing including the date and reason for such action, and any existing approval for the product has been withdrawn; or (2) as a result of a supplemental approval granted beginning June 20, 1963, the sponsor is presently reporting under the requirements of § 510.300.

(e) After the submission of the initial reports required by paragraph (F) of this section, each sponsor shall maintain records and submit yearly reports of the kinds required by this section.

(f) All reports required by this section shall be addressed to the Division of Surveillance (HFV-210), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and shall be distinctly marked "New Animal Drug (or Antibiotic) Report" together with the applicable new animal drug application number, antibiotic account number, or other identification on the envelope.

Interested persons may, on or before March 12, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

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

DECEMBER 22, 1978.

[FR Doc. 79-720 Filed 1-8-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part T 1917]

[Docket No. FI-4405]

PROPOSED FLOOD ELEVATION DETERMINATIONS FOR THE TOWN OF NEWTOWN, FAIRFIELD COUNTY, CONN.

Correction

AGENCY: Federal Insurance Administrtion, HUD.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects a proposed rule on base (100-year) flood elevations that appeared on page 43 FR 38424 of the FEDERAL REGISTER of August 28, 1978.

EFFECTIVE DATE: August 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Wahington, D.C. 20410.

The following locations:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Deep Brook	Elm Drive	396
	Boggs Hill Road	449

Should be corrected to read:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Deep Brook	50 feet upstream of Elm Drive.	396
	35 feet upstream of Boggs Hill Road.	449

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and the Secretary's delegation of authority to Federal Insurance Administrator 43 FR 7719).

NOTE: In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Development Amendments of 1978, P.L. 95-557, 92 Stat. 2080, this proposed rule has been granted waiver of Congressional review requirements in order to permit publication at this time for public comment.

Issued: December 19, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-583 Filed 1-8-79; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1 and 7]

[LR-165-76]

HOMEOWNERS ASSOCIATIONS

Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to homeowners associations. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations would provide the public with the guidance necessary to determine whether a particular organization qualifies as a homeowners association under that Act. If an organization qualifies as a homeowners association, its tax liability may be reduced as a result of the new provision under the Act.

DATES: Written comments and request for a public hearing must be delivered or mailed by march 12, 1979. The amendments are proposed to be effective for taxable years beginning after December 31, 1973.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, LR-165-76, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

David Jacobson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., 20224 (Attention: CC:LR:T) (202-566-3923).

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regu-

lations (26 CFR Part 1) under section 528 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2101(a) of the Tax Reform Act of 1976 (90 Stat. 1897) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

EXPLANATION OF THE REGULATIONS

For taxable years beginning after December 31, 1973, homeowners associations described in section 528 of the Code may elect to be subject to the tax imposed by section 528 and to be otherwise exempt from Fedral income taxes. To be considered a homeowners association an organization must be either a condominium management association or a residential real estate management association and must meet a number of specific additional requirements. Cooperative housing corporations are not eligible to be treated as homeowners associations.

For an organization to qualify as a homeowners association it must be organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property. In addition, a homeowners association must meet both a source of income test, which generally requires that at least 60 percent of its gross income consist of membership dues, fees, or assessments from members of the association, and an expenditure test, which generally requires that at least 90% of its expenditures be in furtherance of its exempt purposes. If an association meets the required tests and makes the election under section 528, it will not be taxable on that portion of its income which consists of dues, fees and assessments from its members. To the extent that a homeowners association does have taxable income, it will be taxed (with certain modifications described in section 528 and these regulations) as a corporation taxable under section 11.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is David Jacobson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 and Part 7 are as follows:

PARAGRAPH 1. The following sections are added to read as follows:

HOMEOWNERS ASSOCIATIONS

§ 1.528-1 Homeowners associations.

(a) *In general.* Section 528 only applies to taxable years of homeowners associations beginning after December 31, 1973. To qualify as a homeowners association an organization must either be a condominum management association or a residential real estate management association. For the purposes of section 528 and the regulations under that section, the term "homeowners association" shall refer only to an organization described in section 528. Cooperative housing corporations and organizations based on a similar form of ownership are not eligible to be taxed as homeowners associations. As a general rule, membership in either a condominium management association or a residential real estate management association is confined to the developers and the owners of the units or lots. Furthermore, membership in either type of association is normally required as a condition of such ownership.

(b) *Condominium.* The term "condominium" refers to a plan of ownership under which persons directly own a portion of the building in which they reside and the land underneath it. It provides for the separate ownership of the units or apartments in the condominium development and for the common ownership of the underlying land and public or commonly used improvements.

(c) *Residential real estate management association.* Residential real estate management associations are normally composed of owners of single-family residential units located in a subdivision, development, or similar area. However, they may also include as members owners of multiple-family dwelling units located in such areas. They are commonly formed to administer and enforce covenants relating to the architecture and appearance of the real estate development as well as to perform certain maintenance duties relating to common areas.

§ 1.528-2 Organized and operated to provide for the acquisition, construction, management, maintenance and care of association property.

(a) *Organized and operated*—(1) *Organized.* To be treated as a homeowners association an organization must be organized and operated primarily for the purpose of carrying on one or more of the exempt functions of a homeowners association. For the purposes of section 528 and these regulations, the exempt functions of a homeowners association are the acquisition, construction, management, maintenance, and care of association property. In determining whether an organization is organized and operated primarily to carry on one or more exempt functions, all the facts and circumstances of each case shall be considered. For example, when an organization provides in its articles of organization that its sole purpose is to carry on one or more exempt functions, in the absence of other relevant factors it will be considered to have met the organizational test. (The term "articles of association" means the organization's corporate charter, trust instruments, articles of association or other instrument by which it is created.)

(2) *Operated.* An organization will be treated as being operated for the purpose of carrying on one or more of the exempt functions of a homeowners association if it meets the provisions of §§ 1.528-5 and 1.528-6.

(b) *Terms to be interpreted according to common meaning and usage.* As used in section 528 and these regulations, the terms acquisition, construction, management, maintenance, and care are to be interpreted according to their common meaning and usage. For example, maintenance of association property includes the painting and repairing of such property as well as the gardening and janitorial services associated with its upkeep. Similarly, the term "construction" of association property includes covenants or other rules for preserving the architectural and general appearance of the area. The term also includes regulations relating to the location, color and allowable building materials to be used in all structures. (For the definition of association property see § 1.528-3.)

§ 1.528-3 Association property.

(a) *Property owned by the organization.* "Association property" includes real and personal property owned by the organization or owned as tenants in common by the members of the organization. Such property must be available for the common benefit of all members of the organization and must be of a nature that tends to en-

hance the beneficial enjoyment of the private residences by their owners. Among the types of property that ordinarily will be considered association property are swimming pools and tennis courts. On the other hand, facilities or areas set aside for the use of nonmembers, or in fact used primarily by nonmembers, are not association property for the purposes of this section. For example, property owned by an organization for the purpose of leasing it to groups consisting primarily of nonmembers to be used as a meeting place or a retreat will not be considered association property.

(b) *Property normally owned by a governmental unit.* "Association property" also includes areas and facilities traditionally recognized and accepted as being of direct governmental concern in the exercise of the powers and duties entrusted to governments to regulate community health, safety and welfare. Such areas and facilities would normally include roadways, parklands, sidewalks, streetlights and firehouses. Property described in this paragraph will be considered association property regardless of whether it is owned by the organization itself, by its members as tenants in common or by a governmental unit and used for the benefit of the residents of such unit including the members of the organization.

(c) *Privately owned property.* "Association property" may also include property owned privately by members of the organization. However, to be so included the condition of such property must affect the overall appearance and structure of the residential units which make up the organization. Such property may include the exterior walls and roofs of privately owned residences as well as the lawn and shrubbery on privately owned land and any other privately owned property the appearance of which may directly affect the appearance of the entire organization. However, privately owned property will not be considered association property unless—

(1) There is a covenant relating to exterior appearance that applies on the same basis to all such property;

(2) There is a pro rata mandatory assessment (at least once a year) on all members of the association for maintaining such property; and

(3) Membership in the organization is a condition of ownership of such property.

§ 1.528–4 Substantially test.

(a) *In general.* In order for an organization to be considered a condominium management association or a residential real estate management association (and therefore in order for it to be considered a homeowners association), substantially all of its units, lots or buildings must be used by individuals for residences. For the purposes of applying paragraph (b) or (c) of this section, an organization which has attributes of both a condominium management association and a residential real estate management association which, based on all the facts and circumstances, it more closely resembles. In addition, those paragraphs shall be applied based on conditions existing on the last day of the organization's taxable year.

(b) *Condominium management associations.* Substantially all of the units of a condominium management association will be considered as used by individuals for residences if at least 85% of the total square footage of all units within the project is used by individuals for residential purposes. If a completed unit has never been occupied, it will nonetheless be considered as used for residential purposes if, based on all the facts and circumstances, it appears to have been constructed for use as a residence. Similarly, a unit which is not occupied but which has been in the past will be considered as used for residential purposes if, based on all the facts and circumstances, it appears that it was constructed for use as a residence, and the last individual to occupy it did in fact use it as a residence. Units which are used for purposes auxiliary to residential use (such as laundry areas, storage rooms and areas used by maintenance personnel) shall be considered used for residential purposes.

(c) *Residential real estate management associations.* Substantially all of the lots or buildings of a residential real estate management association (including unimproved lots) will be considered as used by individuals as residences if at least 85% of the lots are zoned for residential purposes. Lots shall be treated as zoned for residential purposes even if under such zoning lots may be used for parking spaces, swimming pools, tennis courts, schools, fire stations, libraries, churches and other similar purposes which are auxiliary to residential use. However, commercial shopping areas (and their auxiliary parking areas) are not lots zoned for residential purposes.

(d) *Exception.* Notwithstanding any other provision of this section, a unit, or building will not be considered used for residential purposes, if for more than one-half the days in the association's taxable year, such unit, or building is occupied by a person or series of persons, each of whom so occupies such unit, or building for less than 30 days.

§ 1.528–5 Source of income test.

An organization cannot qualify as a homeowners association under section 528 for a taxable year unless 60 percent or more of its gross income for such taxable year is exempt function income as defined in § 1.528–9. The determination of whether an organization meets the provisions of this section shall be made after the close of the organization's taxable year.

§ 1.528–6 Expenditure test.

(a) *In general.* An organization cannot qualify as a homeowners association under section 528 for a taxable year unless 90 percent or more of its expenditures for such taxable year are qualifying expenditures as defined in paragraphs (b) and (c) of this section. The determination of whether an organization meets the provisions of this section shall be made after the close of the organization's taxable year. Investments or transfers of funds to be held to meet future costs shall not be taken into account as expenditures. For example, transfers to a sinking fund account for the replacement of a roof would not be considered an expenditure for the purposes of this section even if the roof is association property. In addition, excess assessments which are either rebated to members or applied against the members' following year's assessments will not be considered an expenditure for the purposes of this section.

(b) *Qualifying expenditures.* Qualifying expenditures are expenditures by an organization for the acquisition, construction, management, maintenance, and care of the organization's association property. They include both current operating and capital expenditures on association property. Qualifying expenditures include expenditures on association property despite the fact that such property may produce income which is not exempt function income. Thus expenditures on a swimming pool are qualifying expenditures despite the fact that fees from guests of members using the pool are not exempt function income. Where expenditures by an organization are used both for association property as well as other property, an allocation shall be made between the two uses on a reasonable basis. Only that portion of the expenditures which is properly allocable to the acqusition, construction, management, maintenance or care of association property, shall constitute qualifying expenditures.

(c) *Examples of qualifying expenditures.* Qualifying expenditures may include expenditures for—

(1) Salaries of an association manager and secretary;

(2) Paving of streets;

(3) Street signs;

(4) Security personnel;

(5) Property tax assessed on association property;

(6) Upkeep of tennis courts;
(7) Swimming pools;
(8) Recreation rooms and halls;
(9) Replacement of common buildings, facilities, air conditioning, etc.;
(10) Improvement of private property to the extent it is association property; and
(11) Real estate and personal property taxes imposed on association property by a State or local government.

§ 1.528-7 Inurement.

An organization is not a homeowners association if any part of its net earnings inures (other than as a direct result of its engaging in one or more exempt functions) to the benefit of any private person. Thus, to the extent that members receive a benefit from the general maintenance, etc. of association property, this benefit generally would not constitute inurement. If an organization pays rebates from amounts other than exempt function income, such rebates will constitute inurement. In general, in determining whether an organization is in violation of this section, the principles used in making similar determinations under Section 501(c) will be applied.

§ 1.528-8 Election to be treated as a homeowners association.

(a) *General rule.* An organization wishing to be treated as a homeowners association under section 528 and this section for a taxable year must elect to be so treated. Except as otherwise provided in this section such election shall be made by the filing of a properly completed Form 1120-H (or such other form as the Secretary may prescribe). A separate election must be made for each taxable year.

(b) *Taxable years ending after December 30, 1976.* For taxable years ending after December 30, 1976, the election must be made not later than the time, including extensions, for filing an income tax return for the year in which the election is to apply.

(c) *Taxable years ending before December 31, 1976, for which a return was filed before January 31, 1977.* For taxable years ending before December 31, 1976, for which a return was filed before January 31, 1977, the election must be made not later than the time provided by law for filing a claim for credit or refund of overpayment of taxes for the year in which the election is to apply. Such an election shall be made by filing an amended return on Form 1120-H (or such other form as the Secretary may prescribe).

(d) *Taxable years ending before December 31, 1976, for which a return was not filed before January 31, 1977.* For taxable years ending before December 31, 1976, for which a return has not been filed before January 31, 1977, the election must be made by (insert date 6 months after the date this regulation is published as a Treasury decision in the FEDERAL REGISTER). Instead of making such an election in the manner described in paragraph (a) of this section, such an election may be made by a statement attached to the applicable income tax return or amended return for the year in which the election is made. The statement should identify the election being made, the period for which it applies and the taxpayer's basis for making the election.

(e) *Revocation of exempt status.* If an organization is notified after the close of a taxable year that its exemption for such taxable year under section 501(a) is being revoked retroactively, it may make a timely election under section 528 for such taxable year. Notwithstanding any other provisions of this section, such an election will be considered timely if it is made within 6 months after the date of revocation. The preceding sentence shall apply to revocations made after [insert date these regulations are published in the FEDERAL REGISTER as a Treasury decision]. If the revocation was made on or before [insert date these regulations are published in the FEDERAL REGISTER as a Treasury decision], the election will be considered timely if it is made before the expiration of the period for filing a claim for credit or refund for the taxable year for which it is to apply.

(f) *Effect of election*—(1) *Revocation.* An election to be treated as an organization described in section 528 is binding on the organization for the taxable year and may not be revoked without the consent of the Commissioner.

(2) *Exception.* Notwithstanding paragraph (f)(1) of this section, an election under this section may be revoked prior to [insert 91st day after these regulations are published in the FEDERAL REGISTER as a Treasury decision]. Such a revocation shall be made by filing a statement with the director of the Internal Revenue Service Center with whom the return of the organization for the year in which the revocation is to apply was filed. The statement shall include the following information.

(i) The name of the organization.
(ii) The fact that it is revoking an election made under section 528.
(iii) The taxable year for which the revocation is to apply.

§ 1.528-9 Exempt function income.

(a) *General rule.* For the purposes of section 528 exempt function income consists solely of income which is attributable to membership dues, fees, or assessments of owners of residential units or residential lots. It is not necessary that the source of income be labeled as membership dues, fees, or assessments. What is important is that such income be derived from owners of residential units or residential lots in their capacity as owner-members rather than in some other capacity such as customers for services. Generally, for the membership dues, fees, or assessments with respect to a residential unit or lot to be exempt function income, the unit must be used for (or the unit or lot must be expected to be used) for residential purposes. However, dues, fees, or assessments paid to an organization by a developer with respect to unfinished or finished but unsold units or lots shall be exempt function income even though the developer does not use the units or lots. If an assessment is more in the nature of a fee for the provision of services in the course of a trade or business than a fee for a common activity undertaken by a collective group of owners for the purpose of enhancing or maintaining the value of their residences, the assessment will not be considered exempt function income to the organization. Furthermore, income attributable to dues, fees, or assessments will not be considered exempt function income unless each member's liability for payment arises solely from membership in the association. Dues, fees, or assessments that are based on the extent, if any, to which a member avails him or herself of a facility or facilities are not exempt function income. For the purposes of section 528, dues, fees, or assessments which are based on the assessed value or size of property will be considered as arising solely as a result of membership in the organization. Regardless of the organization's method of accounting, excess assessments during a taxable year which are either rebated to the members or applied to their future assessments are not considered gross income and therefore will not be considered exempt function income for such taxable year. Similarly, assessments for capital improvements which are not treated as income but rather as capital contributions are not exempt function income.

(b) *Examples of exempt function income.* Assessments which are considered more in the nature of a fee for common activity than for the providing of services and which will therefore generally be considered exempt function income include assessments made for the purpose of—

(1) Paying the principal and interest on debts incurred for the acquisition of association property;
(2) Paying real estate taxes on association property;
(3) Maintaining association property;
(4) Removing snow from public areas; and
(5) Removing trash.

(c) *Examples of receipts which are not exempt function income.* Exempt function income does not include—

(1) Amounts which are not includible in the organization's gross income other than by reason of section 528 (for example, tax-exempt interest);

(2) Amounts received from persons who are not members of the association;

(3) Amounts received from members for special use of the organization's facilities, the use of which is not available to all members as a result of having paid the dues, fees or assessments required to be paid by all members;

(4) Interest earned on amounts set aside in a sinking fund;

(5) Amounts received for work done on privately owned property which is not association property; or

(6) Amounts received from members in return for their transportation to or from shopping areas, work location, etc.

(d) *Special Rule.* Notwithstanding paragraphs (a) and (c)(3) of this section, amounts received from members for special use of an association's facilities will be considered exempt function income if—

(1) The amounts paid by the members are not paid more than one in any 12 month period; and

(2) The privilege obtained from the payment of such amounts lasts for the entire 12 month period or portion thereof in which the facility is commonly in use.

Thus, amounts received as the result of payments by members of a yearly fee for use of tennis courts or a swimming pool shall be considered exempt function income. However, amounts received for the use of a building for an evening, weekend, week, etc. shall not be considered exempt function income.

§ 1.528-10 Special rules for computation of homeowners association taxable income and tax.

(a) *In general.* Homeowners association taxable income shall be determined according to the provisions of section 528(d) and the rules set forth in this section.

(b) *Limitation on capital losses.* If for any taxable year a homeowners association has a net capital loss, the rules of sections 1211(a) and 1212(a) shall apply.

(c) *Allowable deductions*—(1) *In general.* To be deductible in computing the unrelated business taxable income of a homeowners association, expenses, depreciation and similar items must not only qualify as items of deduction allowed by chapter 1 of the Code but must also be directly connected with the production of gross income (excluding exempt function income). To be "directly connected with" the production of gross income (excluding exempt function income), an item of deduction must have both proximate and primary relationship to the production of such income and have been incurred in the production of such income. Items of deduction attributable solely to items of gross income (excluding exempt function income) are proximately and primarily related to such income. Whether an item of deduction is incurred in the production of gross income (excluding exempt function income) is determined on the basis of all the facts and circumstances involved in each case.

(2) *Dual use of facilities or personnel.* Where facilities are used both for exempt functions of the organization and for the production of gross income (excluding exempt function income), expenses, depreciation and similar items attributable to such facilities (for example, items of overhead) shall be allocated between the two uses on a reasonable basis. Similarly where personnel are employed both for exempt functions and for the production of gross income (excluding exempt function income), expenses and similar items attributable to such personnel (for exemple, items of salary) shall be allocated between the two activities on a reasonable basis. The portion of any such item so allocated to the production of gross income (excluding exempt function income) is directly connected with such income and shall be allowable as a deduction in computing homeowners association taxable income to the extent that it qualifies as an item of deduction allowed by chapter 1 of the Code. Thus, for example, assume that X, a homeowners association, pays its manager a salary of $10,000 a year and that it derives gross income other than exempt function income. If 10 percent of the manager's time during the year is devoted to deriving X's gross income (other than exempt function income), a deduction of $1,000 (10 percent of $10,000) would generally be allowable for purposes of computing X's homeowners association taxable income.

(d) *Investment credit.* A homeowners association is not entitled to an investment credit.

(e) *Cross reference.* For the definition of exempt function income, see § 1.528-9.

§ 7.0 [Revoked]

PAR. 2. Section 7.0 of this chapter (26 CFR Part 7), promulgated by Treasury Decision 7459, is hereby revoked to the extent it applies to elections under section 528.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 79-699 Filed 1-8-79; 8:45 am]

[1505-01-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Chapter VII]

SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMANENT REGULATORY PROGRAM

Correction

In FR Doc 79-660 appearing at page 1355 in the issue for Thursday, January 4, 1979, the FR doc line at the end of the document should read as follows:

"[40 FR Doc. 79-660 Filed 1-3-79; 5:05 pm]"

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1035-6]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

New Mexico Air Quality Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of various revisions of the New Mexico Air Quality Control Act. The Act was submitted by the Governor as a general update since the submittal on May 9, 1972. The revised act reflects the most recent law under the State implements its air pollution abatement program.

DATES: Interested persons are invited to comment on this proposed rulemaking. Comments must be received on or before February 8, 1979, to be considered by EPA in making a final approval/disapproval decision.

ADDRESSES: Written comments should be submitted to the address below: Environmental Protection Agency, Region 6, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270. Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following address: Environmental Protection Agency, Public Information Reference

Unit, Room 2922, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Jerry Stubberfield, Environmental Protection Agency, Region 6, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270, (214-767-2742).

SUPPLEMENTARY INFORMATION: On November 6, 1975, after adequate notice and public hearing, the Governor of New Mexico submitted the State's Air Quality Control Act, as amended since its submittal in 1972. A detailed discussion of the various amendments is provided below.

SECTION 12-14-2 DEFINITIONS

The definition of "department" is changed to include the administrative agency of a municipal, county, or joint air quality control board within an A class county.

A definition for "director" is added as follows: "director" means the administrative head of the department.

The amendments to Section 12-14-2 are considered approvable.

SECTION 12-14-6 ADOPTION OF REGULATIONS NOTICE AND HEARING

In the currently approved Act, hearings on regulations of statewide application are required to be held in Santa Fe. The revised Section 12-14-6 states that hearings on regulations of statewide application may also be held in any area of the State substantially affected by such regulations. In addition, the revised section specifically requires that hearings on non-statewide regulations be held in any area substantially affected. Revised Section 12-14-6 is considered approvable.

SECTION 12-14-7 PERMITS

A new Subsection M is added to Section 12-14-7. The new subsection requires new or modified sources to obtain permits from the municipal, county, or joint air quality control board if the new or modified source is located within the jurisdiction of the board, and if the board has adopted a permit regulation. Subsection M is considered approvable.

SECTION 12-14-8 VARIANCES

The Air Quality Control Act, in Section 12-14-8, provides the Environmental Improvement Board with very broad powers for granting variances from requirements of the Act or the Board's regulations. The Board may grant a variance from a requirement when it "will result in an arbitrary and unreasonable taking of property or will impose an undue economic burden upon any lawful business, occupation or activity", if "the granting of the variance will not result in a condition injurious to health or safety." In most situations, the Board may grant variance for statutorily unlimited periods of time.

As a general rule, EPA may approve State variance procedures as a part of the SIP. However, for variances which extend beyond the attainment date, a demonstration must be provided which shows that such variance will not cause or contribute to a violation of standards. All variances, in accordance with 40 CFR 51.34, must be submitted to EPA for approval as a revision to the SIP. Approval of Section 12-14-8 by EPA does not imply that the State is relieved of this requirement.

SECTION 12-14-10 CONFIDENTIAL INFORMATION-LIMITATIONS ON REGULATIONS

On September 26, 1974 (40 FR 34537), EPA disapproved as a part of the SIP, Section 12-14-10 of the New Mexico Act, since it could, in some circumstances, prohibit the disclosure of emission data to the public. This deficiency has not been corrected. Therefore, Section 12-14-10 remains disapproved.

This notice of proposed rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: December 6, 1978.

EARL N. KARI,
Acting Regional Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart GG—New Mexico

1. In § 52.1620, paragraph (c) is revised to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) The Plan revisions listed below were submitted on the dates specified.

(1) The Environmental Improvement Agency submitted revisions of Air Quality Control Regulations, 506, 607, 604, 605, 606, 651, and 652 (adopted by the Board on January 10, 1972) on March 7, 1972.

(2) Additions of Sections 12-14-1 through 12-14-13 of the State's Air Quality Control Act, and Regulations 504, 602, and 603 were submitted by the Governor on May 9, 1972.

(3) Revisions of Regulations 702, 703, 704, and 705, as adopted by the Board on July 29, 1972, and revisions of Sections IV, V, VII, and VIII, were submitted by the Environmental Improvement Agency on July 31, 1972.

(4) State Attorney General's opinion on legal authority and confidentiality of source data was submitted on September 4, 1972. (Non-regulatory)

(5) Revisions of the New Source Review and Source Surveillance sections of the New Mexico Implementation Plan were submitted by the Environmental Improvement Agency on January 3, 1973. (Non-regulatory)

(6) Clarification of the State permit and source surveillance regulations was submitted by the Environmental Improvement Agency on January 18, 1973. (Non-regulatory)

(7) Regulation 705, Compliance Schedules, was submitted by the Governor on February 12, 1974.

(8) Revisions to Regulation 602, Coal Burning Equipment—Sulfur Dioxide, as adopted by the New Mexico Environmental Improvement Board on December 13, 1974, were submitted by the Governor on October 3, 1975 (see § 52.1624).

(9) Revisions to Regulation 100, Definitions, Regulation 705, Schedules of Compliance, and a new Regulation 706, Air Quality Maintenance Areas, were submitted by the Governor on November 6, 1975 (see § 52.1633).

(10) Revisions to sections 12-14-2, 12-14-6, and 12-14-7 of the New Mexico Air Quality Control Act were submitted by the Governor on November 6, 1975.

(11) Regulation 506, Non-ferrous Smelters—Particulate Matter, which was amended by the State on December 10, 1976, was submitted by the Governor on March 11, 1977 (see § 52.1625).

[FR Doc. 79-665 Filed 1-8-79; 8:45 am]

[6560-01-M]

[40 CFR Part 52]

[FRL 1035-5]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Proposed Approval of Chapter 7: Air Quality Surveillance—Oklahoma SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of Chapter 7: Air Quality Surveillance, of the Oklahoma State Implementation Plan (SIP). The revision to Chapter 7 was submitted by the Governor as a general update of Oklahoma's air quality surveillance network for each applicable pollutant. This revision reflects the latest information on the number of monitoring sites, their location, and their intended purpose.

DATES: Comments on this proposed rulemaking by interested persons must be received on or before February 8, 1979, in order to be considered by EPA in making a final approval/disapproval decision.

ADDRESSES: Comments on this proposed rulemaking should be submitted to the address below. Environmental Protection Agency, Region 6, Air Program Branch, 1201 Elm Street, Dallas, Texas 75270. Copies of the State's submittal are available for inspection during normal business hours at the address above and at the following address: Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Jerry Stubberfield, Environmental Protection Agency, Region 6, Air Program Branch, Dallas, Texas 75270, (214-767-2742).

SUPPLEMENTARY INFORMATION: A revision to Chapter 7, Air Quality Surveillance, after adequate notice and public hearing, was submitted by the Governor of Oklahoma on July 19, 1978. The revised Chapter 7 is a general update of Oklahoma's air quality surveillance network for particulate matter, sulfur dioxide, and photochemical oxidants.

NUMBER OF MONITORS REQUIRED

Appendix K-1 of Chapter 7 lists the minimum number of monitors required by 40 CFR 51.17 for each pollutant and the monitors currently operational in the network. These requirements are met or exceeded for each applicable pollutant. Particulate monitoring requirements (hi-vols) were prorated for the Fort Smith and Texarkana-Tyler-Shreveport Interstate Air Quality Control Regions (AQCRs).

MINIMUM REQUIREMENTS

Appendix K-4 lists the sites in each AQCR and the purpose. Sites for use during emergency episode periods are required for Priority I and II AQCRs. At least one site in each AQCR is required to be in a location of estimated maximum pollutant concentration. The basis for the design of the surveillance network is provided in the narrative of Chapter 7, pages 1-3. The location of sampler sites in UTM coordinates is provided in Appendix K-4. Sampling schedules and methods of sampling are also provided in Appendix K-4. The procedures for data handling and analysis are summarized in the narrative, pages 3 and 4. Proposed additional sites are listed in Appendix K-2, and proposed start dates are shown in Appendix K-4.

CURRENT ACTION

This action proposes approval of the revision to Chapter 7 as submitted by the Governor on July 19, 1978.

This notice of proposed rulemaking is issued under the authority of Section 110(a) of the Clean Air Act, as amended, 42 U.S.C. 7410-(a).

Dated: December 11, 1978.

EARL N. KARI,
Acting Regional Administrator.

It is proposed to amend Part 52 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart LL—Oklahoma

In § 52.1920, paragraph (c) is amended by adding a new paragraph (13) as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(13) A general update of Chapter 7, Air Quality Surveillance, was submitted by the Governor on July 19, 1978 (non-regulatory).

[FR Doc. 79-666 Filed 1-8-79; 8:45 pm]

[6560-01-]

[40 CFR Part 162]

[FRL 1004-2; OPP-30017B]

PESTICIDE USE RESTRICTIONS

AGENCY: Environmental Protection Agency, Office of Pesticide Programs.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends 40 CFR 162.31 by adding uses of additional active ingredients which the Agency proposes to classify for restricted use under the procedures of 40 CFR 162.30. This proposal was initiated by the Administrator. The purpose of this notice is to solicit comments from registrants, users, and other interested parties on these proposed use restrictions.

DATE: Comments must be received by March 12, 1979

ADDRESS COMMENTS TO: Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Comments should be filed in triplicate if possible and bear the identifying notation "OPP-30017B." All written comments will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Walter Waldrop (TS-770), Office of Pesticide Programs, Environmental Protection Agency, Room E507, 401 M Street, S.W., Washington, D.C. 20460, (202-755-7014).

SUPPLEMENTARY INFORMATION: On September 1, 1977, the Agency published final regulations establishing optional procedures for the classification of pesticide uses by regulation. At the same time, the Agency also published three related documents. One document proposed regulations establishing procedures for registrants to follow after a use is classified by regulation for restricted use. The second document was a proposed rule listing certain uses of 23 active ingredients to be classified by regulation for restricted use. The third document was an advance notice of proposed rulemaking listing 38 additional active ingredients the Agency planned to consider for purposes of classification by regulation in the immediate future. All four documents were published as a separate part in the FEDERAL REGISTER of September 1, 1977 (42 FR 44170, No. 170, Part IV).

On February 9, 1978 (43 FR 5782), the Agency published final regulations establishing procedures to be followed by registrants after a pesticide use is classified by regulation for restricted use and a final regulation classifying the uses of 23 active ingredients for restricted use.

This proposed rule lists uses of 14 of the 38 active ingredients identified in the September 1, 1977 advance notice of proposed rulemaking that the Agency now proposes to classify for restricted use pursuant to the optional procedures of 40 CFR 162.30 and to limit to use by or under the direct supervision of a certified applicator.

The optional procedures for classification of pesticide uses by regulation (40 CFR 162.30) provide that a use shall be classified for restricted use if the Administrator determines that the incremental risks of unrestricted use outweigh the incremental benefits of unrestricted use. In making this determination, the regulations direct the Administrator to apply the criteria for classification specified in 40 CFR 162.11(c) (1), (2), and (4). Those criteria, which were previously promulgated through rulemaking as part of the Agency's Registration, Reregistration and Classification Procedures (40 CFR Part 162; 40 FR 28242, July 3, 1975), establish both numerical and categorical standards for assessing the potential hazards of a pesticide in terms of its acute dermal, oral and inhalation toxicity; in terms of its subacute, chronic or delayed toxic effects on man or other nontarget organisims; or based upon such other evidence as human epidemiologic data, use history, accident data or monitoring data.

The Agency's toxicologists and environmental specialists examined available field and laboratory data relating

to the acute toxicity of each of the active ingredients and formulations subject to this proposal to determine whether they met the criteria for general use classification as specified in § 162.11. If they did not, the Agency proceeded, in accordance with § 162.11(c)(3), to review sample label and labeling in order to assess its adequacy to prevent unreasonable adverse effects on man or the environment without further regulatory restrictions (including classification for restricted use). If the label and labeling failed to meet the criteria for adequacy, the Agency concluded that a significant risk was associated with the use of the pesticide at issue and that it was a candidate for classification for restricted use.

Finally, the Agency determined whether or not that identified risk of use would be reduced by classification for restricted use and limitation to use by or under the direct supervision of certified applicators. If so, it further determined whether or not the benefits of use would also be reduced by such a restriction. The incremental reductions were then compared, and if the incremental risks of unrestricted use (i.e., those over and above the risks of restricted use) were determined to outweigh the incremental benefits from unrestricted use (i.e., those over and above the benefits of restricted use), the use was proposed to be classified for restricted use.

For each formulation and use pattern of each active ingredient covered by the proposed rule, the Agency has identified the classification criteria of § 162.11(c) which were exceeded so as to require classification for restricted use. The Agency has also, for each active ingredient, compiled a file containing the toxicological and environmental reviews of data, the reviews of label and labeling adequacy, and the incremental risk/benefit analyses which support the proposed classification decisions. These files are available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday; interested persons should contact Walter Waldrop at the above address and telephone number to arrange and coordinate such inspections.

It is important to note that this regulation only classification uses for restricted use. If a use is not classified for restricted use by this regulation, it does not mean that it is classified for general use under Section 3 of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA); it merely means that that use has not yet been classified for either general use or restricted use. The Agency is not classifying uses for general use by regulation primarily because such a decision requires an evaluation of chronic data. Review of chronic data has not been a part of classification by regulation since much of that data has yet to be generated and submitted to the Agency.

REGULATORY ANALYSIS: The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044.

EVALUATION PLAN: Section 2(d)(8) of Executive Order 12044 requires that each new significant regulation have a plan for evaluating its effectiveness. All restricted use classification decisions promulgated under final rulemaking will be reviewed by the Agency at the time of reregistration.

STATUTORY REVIEW: The U.S. Department of Agriculture has reviewed the proposed regulations in accordance with Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and concurs with its publication in the FEDERAL REGISTER. The FIFRA Scientific Advisory Panel reviewed the proposed regulations in accordance with Section 25(d) of FIFRA. The majority of the panel indicated that it believed the regulations are inconsistent in that they utilize criteria that distinguish between use situations, e.g., domestic versus nondomestic uses.

In response, the Agency notes that it bases classification decisions on criteria found in 40 CFR § 162.11 that establish different toxicity threshold levels for domestic and nondomestic uses. The Agency believes that this distinction in the Section 3 regulations is valid since the Agency must recognize and differentiate between the hazards associated with pesticide use in a domestic environment versus a nondomestic environment. The Agency believes that there must be a much larger margin of safety when pesticides are used in a domestic use situation since there is a greater chance of exposure to children and pets. A more detailed discussion of this philosophy is found in the preamble to the Section 3 regulations (July 3, 1975, 40 FR 28243).

The Panel agreed with the Agency's decision to withdraw most proposed classifications for granular formulations so that such products can be submitted as a unit. It also agreed with all of the Agency's recommendations for restriction but again noted what it considers "lack of consistency in use of triggers with several formulations." The Panel deferred action on all recommendations for unclassified status "pending receipt of detailed information on use patterns and basic data essential for proper characterization of hazards to health and the environment."

The agency will provide the Panel with information used to reach a decision to leave a particular formulation unclassified. However, as noted previously in the Supplementary Information Section if a use is not classified for restricted use by this regulation, it does not mean that it is thereby classified for general use under Section 3 of FIFRA; it merely means that the use has not yet been classified for either general use or restricted use and remains unclassified. Uses which are left unclassified will be further prioritized on the basis of potential hazard and will be classified in the future for either general or restricted use.

The Panel also recommended that a special review be held to discuss all aspects of the classification program with the primary thrust of the review aimed at development of a possible better approach to classification.

In May, the Deputy Assistant Administrator for Pesticide Programs met with the panel at a public meeting held at the University of Miami Medical School, Miami, Florida. The genesis of the Section 3 Regulations was discussed with special emphasis on how the use classification criteria in 40 CFR 162.11 were established. The Panel agreed that the Agency should continue with the classification program as it is now constituted with the understanding that when any review of the Section 3 regulations is undertaken, the classification criteria will be included. The Panel will have an opportunity to comment on any warranted changes as a result of this review.

The Scientific Advisory Panel Report is published in its entirety below.

STATUTORY AUTHORITY: Sections 3 and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*).

Dated: January 2, 1979.

DOUGLAS M. COSTLE,
Administrator.

It is proposed that 40 CFR 162.31 be amended by adding the following:

§ 162.31 *Pesticide Use Classification*

[The following uses of pesticide products containing the active ingredients specified below have been classified for restricted use and are limited to use by or under the direct supervision of a certified applicator]

Active Ingredient	Formulation	Use Pattern	Classification	Criteria Influencing Restriction
Carbofuran	All concentrate suspensions and wettable powders 40% and greater.	All uses	Restricted	Acute inhalation toxicity
	All granular formulations	Rice	Restricted	Effects on aquatic organisms
	All granular and fertilizer formulations	All uses except rice	Under evaluation	
Chlorfenvinphos	All concentrate solutions or emulsifiable concentrates 21% and greater.	All uses (domestic and non-domestic).	Restricted	Acute dermal toxicity
Clonitralid	All wettable powders 78% and greater	All uses	Restricted	Acute inhalation toxicity
	All granulars and wettable powders	Molluscide uses	Restricted	Effects on aquatic organisms
	Pressurized sprays 0.55% and less	Hospital antiseptics	Unclassified	
Dioxathion	All concentrate solutions or emulsifiable concentrates greater than 30%.	All uses	Restricted	Acute dermal toxicity
	Concentrate solutions or emulsifiable concentrates* 30% and less and wettable powders 25% and less.	Livestock and Agricultural uses (non-domestic uses only).	Unclassified	
	All solutions* 3% and greater*	Domestic uses	Restricted	Acute dermal toxicity
	2.5% solution* with toxaphene and malathion.	All uses	Under evaluation	
Disulfoton	All emulsifiable concentrates 65% and greater, all emulsifiable concentrates and concentrate solutions 21% and greater with fensulfothion 43% and greater, all emulsifiable concentrates 32% and greater in combination with 32% fensulfothion and greater.	All uses	Restricted	Acute dermal toxicity Acute inhalation toxicity
	Non-aqueous solution 95% and greater	Commercial seed treatment	Restricted	Acute dermal toxicity
	Granular formulations 10% and greater.	Indoor uses (greenhouse)	Restricted	Acute inhalation toxicity
	All granular and fertilizer formulations including cartridge injection.	All uses except indoor greenhouses.	Under evaluation	
Endosulfan	All emulsifiable concentrates wettable powders and dusts.	Aerial applications	Restricted	Effects on aquatic organisms
		Nondomestic outdoor applications to: orchards, citrus, nut crops, ornaments, corn, cotton, pineapples, grapes, blueberries, alfalfa 2.0 lbs./acre and greater.	Restricted	Residue effects on mammalian species
		All other uses	Unclassified	
	Emulsifiable concentrates 33% and greater.	All uses	Restricted	Acute dermal toxicity
	All formulations	Watercress	Restricted	Effects on aquatic organisms
	Emulsifiable concentrates 21% and greater, pressurized sprays 10% and greater, and smoke fumigants 15% and greater.	Indoor use (non-domestic)	Restricted	Acute dermal toxicity
	Antifouling paint 2% and less	Wooden boat surfaces	Unclassified	
	All formulations greater than 5% endosulfan.	Domestic use	Restricted	Acute dermal toxicity
	All formulations containing 5% or less endosulfan.	Domestic use	Unclassified	
	3% granular	Sugarcane	Under evaluation	
	2% granular	All uses	Under evaluation	
Ethoprop	Emulsifiable concentrates 40% and greater.	All uses	Restricted	Acute dermal toxicity
All granular and fertilizer formulations		All uses	Under evaluation	
Fenamiphos	Emulsifiable concentrates 35% and greater.	All uses	Restricted	Acute dermal toxicity
	Granular granular formulations	All uses	Underevaluation	
Fensulfothion	Concentrate solutions 63% and greater, all emulsifiable concentrates and concentrate solutions 43% and greater with disulfoton 21% and greater, all emulsifiable concentrates 32% and greater in combination with disulfoton 32% and greater.	All uses	Restricted	Acute dermal toxicity Acute inhalation toxicity
	Granular formulations 10% and greater.	Indoor uses (greenhouse)	Restricted	Acute inhalation toxicity
	All granular and fertilizer formulations	All uses except indoor greenhouses.	Under evaluation	
Fonofos	Emulsifiable concentrates 44% and greater.	All uses	Restricted	Acute dermal toxicity
	Emulsifiable concentrates 12.8% and less with pebulate 50.3% and less.	Tobacco	Unclassified	
	All granular and fertilizer formulations	All uses	Under evaluation	
Monocrotophos	Liquid formulations 19% and greater	All uses	Restricted	Residue effects on avian species Residue effects on mammalian species
	Liquid formulations 55% and greater	All uses	Restricted	Acute dermal toxicity Residue effects on avian species Residue effects on mammalian species

§ 162.31 *Pesticide Use Classification*—Continued

[The following uses of pesticide products containing the active ingredients specified below have been classified for restricted use and are limited to use by or under the direct supervision of a certified applicator]

Active Ingredient	Formulation	Use Pattern	Classification	Criteria Influencing Restriction
Phorate	Liquid formulations 65% and greater	All uses	Restricted	Acute dermal toxicity Residue effects on avian species (applies to foliar applications only) Residue effects on mammalian species (applies to foliar applications only)
	All granular formulations	Rice	Restricted	Effects on aquatic organisms
	All granular and fertilizer formulations	All uses except rice	Under evaluation	
Phosacetim	Baits 0.1% and greater	All uses	Restricted	Hazard to non-target species Residue effects on mammalian species Residue effects on avian species
Phosphamidon	Liquid formulations 75% and greater	All uses	Restricted	Acute dermal toxicity Residue effects on mammalian species Residue effects on avian species
	Dust formulations 1.5% and greater	All uses	Restricted	Residue effects on avian species Residue effects on mammalian species

*Percentages given are the total of dioxathion plus related compounds.

[FR Doc. 79-667 Filed 1-8-79; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 162]

BASIC SKILLS AND EDUCATIONAL PROFICIENCY PROGRAMS

Availability of Draft Proposed Regulations

AGENCY: Office of Education, HEW.

ACTION: General Notice of availability of preliminary draft proposed regulations.

SUMMARY: Notice is given that an initial draft of proposed regulations to implement programs regarding basic skills and educational proficiency (Title II and Part B of Title IX of the Elementary and Secondary Education Act, as amended by Public Law 95-561) is now available to the public for review. Title II and Part B of Title IX establish several programs of financial assistance relating to improving basic skills programs and to developing and improving educational proficiency standards and achievement testing. The proposed regulations are scheduled to be published in March, 1979. A public comment period will follow.

ADDRESS: Copies of these draft regulations may be obtained by writing to: Mr. Thomas Keyes, Right to Read Office, U.S. Office of Education, 400 Maryland Avenue, S.W., Donohoe Building—(Room 1150), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Mr. Thomas Keyes—Telephone (202) 245-2710.

(Catalog of Federal Domestic Assistance No. ——, Basic Skills and Educational Proficiency Program.)

Dated: January 4, 1979.

ERNEST L. BOYER,
U.S. Commissioner of Education.

[FR Doc. 79-811 Filed 1-8-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[49 CFR Ch. X]

[No. MC-C-10251]

INTERPRETATION OF COMMODITY DESCRIPTIONS

Motor Vehicle Descriptions

JANUARY 3, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Commodity Interpretation.

SUMMARY: The purpose of this proceeding is (1) to review the commodity descriptions: "automobiles", "motor homes", and other motor vehicle descriptions used in motor carrier certificates, such as "van conversions", "minibuses", "campers", "camper coaches", and "portable shelters", and (2) to determine (a) whether the public convenience and necessity requires the development and use of some more simplified commodity description and (b) whether any existing certificates should be reissued with modified commodity descriptions.

DATES: Comments must be received on or before February 23, 1979.

ADDRESSES: Send comments to: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423. All written submissions will be available for public inspection during regular business hours at the same address.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, (202) 275-7292.

SUPPLEMENTARY INFORMATION: A "van conversion" is the result of alterations made to the interior of a standard van. Typical items added are dinette seats convertible to beds, a table, a non-electric ice box, storage cabinets, and interior lights. Unlike more elaborate "motor homes," they do not contain kitchens, bathrooms, power converter electrical systems, or the means for hooking up to exterior electric and water supplies.

By order dated January 4, 1978, Appellate Division 1, in No. MC-109682 (Sub-No. 34), *Whiteford Transport, Inc., Extension-Van Conversions*, concluded that a "van conversion" was simply a fancy automobile. Moreover, it was determined that carriers possessing motor home authority were unauthorized to transport van conversions. Prior to this decision, motor home authority had been found to include van conversions. Today, the entire Commission has affirmed the Appellate Division's decision in the *Whiteford* case.

The change of policy announced in the *Whiteford* decision raises a number of issues of general import that will more properly be resolved in a general policy proceeding rather than in the application case itself. Accordingly, we are instituting this proceeding and seeking comments from interested members of the public.

In reaching our decision in *Whiteford*, it became apparent that the problem posed by the commodity interpretation is not limited to van conversions alone, but that the numerous commodity descriptions used in the authorities granted to motor carriers serving the motor vehicle industry have raised a number of questions which require resolution. Over the years, the use of a large number of individual commodity descriptions has developed, and many of the descriptions are highly restrictive. "Van conversions", "minibuses", "campers", "camper coaches", and "portable shelters" are all descriptions used to identify vehicles or vehicle components ranging between "automobiles" and "motor homes". Because there are so many commodity descriptions, and because definitions of these terms are imprecise, carriers have legitimate questions regarding what their paricular authorities encompass and, therefore, what they are authorized to transport.

This proceeding will involve a thorough examination of these numerous and sometimes confusing commodity descriptions. The Commission hopes to develop more precise and concise descriptions which will be utilized in the future. In reviewing this area of regulation, we will consider the type of vehicle used to transport the commodity and the method of transportation employed as well as the nature of the commodity itself.

We anticipate that there will be many questions at issue in this proceeding, including but not limited to the following:

(1) Should the Commission continue to use numerous commodity descriptions for this wide variety of products rather than one or a few comprehensive commodity groupings?

(2) Should the Commission, instead, establish one or a limited number of relatively broad commodity descriptions for the transportation of motor vehicles, and require that all future applications be framed in these terms?

(3) If the Commission decides to frame future grants only in terms of one or a few broad commodity descriptions, should it reissue outstanding certificates and permits in modified form upon the request of the holders?

(4) What impact would moving to broad commodity categories have on (a) the motor carriers serving this industry and (b) the quality and quantity of transportation services available to the shipping public?

Dated: December 5, 1978.

By the Commission, Chairman O'Neal, Vice Chairman Christian, Commissioners Brown, Stafford, Gresham, and Clapp.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-671 Filed 1-8-79; 8:45 am]

[7035-01-M]

[49 CFR Part 1201]

[Docket No. 36988]

ALTERNATIVE METHODS OF ACCOUNTING FOR RAILROAD TRACK STRUCTURES

Denial of Request to Extend Time for Comment

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time request denied.

SUMMARY: The Commission denies a request for an extension of time to file comments in the proceeding concerning alternative methods of accounting for railroad track structures (43 FR 50717, October 31, 1978).

FOR FURTHER INFORMATION CONTACT:

Bryan Brown, Jr., Chief, Section of Accounting, 202-275-7448.

The Association of American Railroads (AAR) has requested an extension of the due date for receiving public comments in this proceeding. They state that the extension is necessary in order to obtain concurrence and to incorporate suggestions from their member railroads in the AAR comments.

We do not believe the AAR has provided sufficient reasons to justify an extension of time. The response period in this proceeding was set at 60 days, longer than the normal response period, in order to ensure sufficient time for comments. Moreover, an extension at this late date will cause an undue Commission processing burden and will prevent timely notice to other respondents.

It is ordered:

The request for extension by the Association of American Railroads is denied.

Decided December 28, 1978.

By the Commission, Chairman O'Neal.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 79-755 Filed 1-8-79; 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.

[6050-01-M]

ACTION

SEMI-ANNUAL AGENDA OF SIGNIFICANT REGULATIONS

AGENCY: ACTION.

ACTION: Semi-annual Agenda of Significant Regulations.

SUMMARY: Section II. 4. of ACTION's Response to Executive Order 12044, Improving Government Regulations (43 Fed. Reg. 52506 (1978)), provided that ACTION would publish semi-annually an agenda of significant regulations under development or review. This agenda should help the public become aware of the agency's review of existing regulations and develoment of new regulations and allow it to more effectively contribute to that review and development.

DATES: Comments on regulations scheduled for review or development must be received before the target dates included in the agenda.

ADDRESSES: Send comments to the program office initiating the review or development of each regulation. The mailing address for each initiating office of ACTION is 806 Connecticut Avenue, N.W., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT:

For further general information about this agenda, contact: Randi J. Greenwald, Assistant General Counsel, or Harry N. MacLean, Room M-607, 806 Connecticut Avenue, N.W., Washington, DC 20525, 202-254-7974 and 254-3116. For more specific information about particular regulations listed in the agenda, contact the individual named in the agenda.

SUPPLEMENTARY INFORMATION: Explanation of Information on the Agenda.

The agenda is divided by initiating offices and sub-divided by existing regulations under review and new regulations under development.

The agenda includes the following information for each regulation: a brief description of the existing or proposed regulation; the need and/or legal basis for the action being taken; a target date for publication of a draft regulation in the FEDERAL REGISTER; the name and telephone number of an agency official familiar with the regulation.

The publication of this agenda does not impose any binding obligation on ACTION with respect to any specific item on the agenda.

Issued in Washington, DC, on January 8th, 1979.

SAM BROWN,
Director, ACTION.

ACTION SEMI-ANNUAL AGENDA OF SIGNIFICANT REGULATIONS

Regulation	Initiating Office and Need for Regulation	Target Date
Mini-Grant application guidelines.	Office of Voluntary Citizen Participation; Revision of ACTION Order 4805.5 to include new policies affecting for mini-grants [1].	03/79
Competitive National VISTA Grant Guidelines.	Office of Domestic and Anti-Poverty Operations; no comments were received on proposed guidelines published October 5, 1978 (43 Fed. Reg. 46153) [2].	[3]10/78

[1] For further information, contact: Barbara Sugarman, 202-254-7262.
[2] For further information, contact: Diana London, 202-254-5195.
[3] Target date for final guidelines: February 1979.

JOSEPH R. MANNO,
Acting ACTION Certifying Officer.

[FR Doc. 79-770 Filed 1-8-79; 8:45 am]

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

CHUGACH NATIONAL FOREST LAND MANAGEMENT PLAN, CHUGACH NATIONAL FOREST, ANCHORAGE, ALASKA

Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91-190), Department of Agriculture Policy as expressed in proposed CFR 36:219 and Forest Service Manual Section 1950, the Forest Service, Department of Agriculture will prepare an Environmental Statement for its Chugach National Forest Land Management Plan.

The Chugach National Forest is one of ten National Forests selected to develop a Forest Plan within proposed interim planning guidelines. This planning effort will test these guidelines and the results will be used in modifying and improving the guidelines for use on other Forests.

The Forest Land Management Plan developed from this process will replace the exiting Plan issued in 1974 (USDA-FS-FES(Adm)R10-74-01).

The initial work on this plan began in September 1978 with the development of a set of issues and management concerns. Since the Forest Service had recently completed an intensive public involvement process on the Southcentral Area Guide, that information was used to formulate the list of issues and concerns. Based on an analysis of those issues, a coordinated resource inventory is currently being conducted. After completion of the inventory, alternatives will be developed to address the identified issues and management concerns.

It is anticipated that the draft environmental statement for the Chugach Land Management Plan will be filed with EPA in Decmeber 1979. After a public evaluation period, the final environmental statement will be submitted in May 1980.

John A. Sandor, Regional Forester, Alaska Region, is the responsible official. Clay Beal, Forest Supervisor, will prepare the plan, and Duane Lyon, Forest Planning Program Manager, is the person directly in charge of the project.

Comments or questions on the Notice of Intent or the planning process should be addressed to: Clay Beal, Forest Supervisor, Chugach National Forest, Pouch 6606, Anchorage, Alaska 99502 (Phone 907-272-4485).

JOHN A. SANDOR,
Regional Forester.

DECEMBER 21, 1978.

[FR Doc. 79-692 Filed 1-8-79; 8:45 am]

[3410-11-M]

CLARKS FORK OF THE YELLOWSTONE WILD AND SCENIC RIVER STUDY, SHOSHONE NATIONAL FOREST, PARK COUNTY, WYO.

Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department

of Agriculture, will prepare an environmental statement on recommendations for future management of a 23 mile segment of the Clarks Fork of the Yellowstone River. The Wild and Scenic River Study of the Clarks Fork of the Yellowstone River is being conducted in response to Public Law 93-621, which is an amendment to the Wild and Scenic Rivers Act of 1968 (P.L. 90-542).

The need for an environmental statement is based on the following:

1. Within the study area are potential dam sites for hydroelectric power, flood control, and irrigation; habitat for the grizzly bear, a threatened species; opportunities for dispersed and developed recreation; some private lands; and pristine landscapes.

2. A recommendation for Wild and Scenic River classification would involve legislative action that could significantly affect the quality of the human environment.

3. The study and recommendations are of national significance.

John R. McGuire, Chief, Forest Service, is the responsible official, and Mark T. Story, Hydrologist, Shoshone National Forest, is the team leader for the environmental assessment and the environmental statement.

The study is being conducted at the present time. The draft environmental statement is scheduled for release in February 1979, followed by a 90-day review period. The final environmental statement will be issued in August 1979.

Comments on the Notice of Intent or the Clarks Fork of the Yellowstone Wild and Scenic River Study should be sent to Randall R. Hall, Forest Supervisor, Shoshone National Forest, P.O. Box 961, West Yellowstone Highway, Cody, Wyoming, 82414.

Dated: December 28, 1978.

ROBERT E. BUCKMAN,
Acting Chief, Forest Service.

[FR Doc. 79-695 Filed 1-8-79; 8:45 am]

[3410-11-M]

ELK WILD AND SCENIC RIVER, ROUTT NATIONAL FOREST, ROUTT COUNTY, COLO.

Intent To Prepare an Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and Sections 5 (a) and (b) of the Wild and Scenic Rivers Act, as amended in 1975, the Forest Service, Department of Agriculture will prepare an Environmental Statement for the possible inclusion of the Elk River in the National Wild and Scenic Rivers System. The portion of the Elk River under study includes the North, Middle, and South Forks plus the main stem downstream to the County Road 129 bridge near Clark, Colorado.

Public meetings were held in June 1977 and April 1978 in both Denver and the Steamboat Springs areas. Intent of the meetings was to inform the public and invite their comments about the study. Two major issues were identified: (1) the purchase of scenic and access easements along the main stem and (2) the Hinman Park Dam and Reservoir proposed by the Public Service Company of Colorado. Additional concerns expressed at the public meetings related to expectations of increased recreation use induced by river designations and probable consequences of the increases. Consequences identified include vandalism, trespass, and the creation of safety hazards, especially with regard to motor vehicle traffic.

The two major issues involve the segment of the Elk River from the confluence of the South Fork with the main stem downstream to the County Road 129 bridge. If the segment is designated, the Hinman Park Dam and Reservoir could not be constructed. Private landowners along the river may be impacted by a taking, with just compensation, of scenic and/or access easements for wild and scenic river purposes. If the segment is not designated, the dam and reservoir could be built. Some private landowners along the river would be impacted by a taking of property by the reservoir proponent, with just compensation, if the reservoir is built. No target date has been set by the Public Service Company of Colorado for completion of the reservoir, but diligence is being performed toward perfecting their conditional water rights.

John R. McGuire, Chief, is the responsible official. Michael Retzlaff, Assistant Planner, Routt National Forest, and James Daber, Water Resource Specialist, Colorado Water Conservation Board, are team co-leaders for the enviornmental statement.

The filing of a Draft Environmental Statement is expected in March 1979. The Final Environmental Statement is scheduled for filing in August 1979. Should any segment of the Elk River be designated by Congress, preparation of a river management plan would then be initiated.

Comments on the Notice of Intent or the study should be sent to:

Michael Retzlaff, Routt National Forest, Box 1198 Steamboat Springs, CO 80477, Phone: 303-879-1722.

James Daber, Colorado Water Conservation Board, 1313 Sherman Street, Denver, CO 80203, Phone: 303-839-3441.

Dated: December 28, 1978.

ROBERT E. BUCKMAN,
Acting Chief, Forest Service.

[FR Doc. 79-694 Filed 1-8-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 79-1-7; Dockets 33019, et al.]

CHICAGO-MIDWAY EXPANDED SERVICE INVESTIGATION

Applications

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 2nd day of January, 1979.

In the matter of applications of Allegheny Airlines, Inc., (Docket 33129), American Airlines, Inc. (33149), Braniff Airways, Inc. (33146), Continental Air Lines, Inc. (33138), Eastern Air Lines, Inc. (33140), Evergreen International Air Lines, Inc. (33157), Federal Express Corp. (33148), Frontier Airlines, Inc. (33118), Midway Airlines, Inc. (33123), Midway (Southwest) Airways Co. (33153), National Airlines, Inc. (33152), North Central Airlines, Inc. (33108), Northwest Airlines, Inc. (33135), Ozark Air Lines, Inc. (33117), Piedmont Aviation, Inc. (33154), Southern Airways, Inc. (33122), Texas International Airlines, Inc. (33147), Trans World Airlines, Inc. (33156), Western Air Lines, Inc. (33144), and Wien Air Alaska, Inc. (33178).

On October 6, 1978, the Board entered an Order on Reconsideration in the *Chicago-Midway Expanded Service Proceeding* ("Midway II") (Order 78-10-40). By that order we expanded the proceeding to include service from seven cities to Midway in addition to the 17 cities originally included (Order 78-7-41) and also to include one-stop as well as nonstop service between Midway and the other points at issue, subject to conditions. The conditions were (1) that all flights serve Midway Airport, (2) that only the 24 named points could be intermediates, and (3) that no one-stop could result in more than 50 percent mileage circuity. We also made a tentative determination to award permissive authority to all fit, willing and able applicants in each Midway market in which any need for additional service is shown. We afforded interested persons an opportunity to file comments on the tentative determination until October 27, 1978.[1]

Comments were filed by Midway (Southwest) Airway Co., Illinois Department of Transportation (Illinois

[1] In addition, our order consolidated applications in 21 dockets and dismissed those in another, delegated to the presiding administrative law judge authority to consolidate applications relating to the seven new cities added to the case, directed the applicants to file environmental evaluations for the seven cities, granted three motions for leave to file pleadings late, and, except to the extent granted by the above-described expansion of the proceeding, denied all petitions for reconsideration or clarification of Order 78-7-41.

DOT), Nashville Airport Authority (Nashville) and the Massachusetts Port Authority and the Greater Boston Chamber of Commerce (Boston parties). Also, the Bureau of Pricing and Domestic Aviation (BPDA) filed a petition for clarification of our order on reconsideration which was supported in an answer filed by Midway (Southwest) and opposed by the Houston parties.[2] Four carriers moved to dismiss or withdraw their applications, namely, Continental Air Lines (Docket 33138), Eastern Air Lines (Docket 33140), Frontier Airlines (Docket 33118), and National Airlines (Docket 33152). We shall dismiss these applications.[3]

Conclusions

We have carefully considered the comments on our order on reconsideration and have concluded that none of them requires that we alter the scope of the proceeding previously fixed or convinces us that our tentative conclusion—that awards of permissive authority to all fit, willing, and able applicants in each Midway market in which a need for service is shown—should not be made final. We shall discuss the various comments below. With respect to BPDA's petition for clarification, we shall grant it to the extent of once again explicating matters which we discussed in Order 78-10-40.

Comments on "Order on Reconsideration"

Midway (Southwest) urges the Board (1) to make final its tentative determination that permissive authority will be awarded to all qualified applicants in each Midway market in which a need for service is shown; (2) to specify that no evidence other than that described in the Board's earlier orders shall be required of any applicant and that the inclusion of one-step route authority issues does not enlarge upon those evidentiary requirements; and (3) to reiterate that carrier selection evidence will neither he required nor permitted. These requests accurately state our views and we endorse them. Our position, particularly on the first request, has been fully stated in the *Oakland Service Case*, Order 78-9-96, September 21, 1978, upon which we rely here. We note, moreover, that in adopting the Airline Deregulation Act of 1978, 92 Stat. 1705, the Congress, in the Conference Report, expressly approved "the multiple permissive authority program recently established by the Board" (H. Rep. 95-1779, p. 56, October 12, 1978). The limited extent of the evidentiary materials required in this case also has its genesis in the *Oakland Service Case* and we adhere to the views stated in that case and the earlier orders in this case. We wish to make it clear, however, that the presiding administrative law judge will contiune to control the flow of evidence in this case.[4]

In Order 78-10-40 we stated that we would give special attention to any showing that particular circumstances made a specific market at issue here unsuitable for multiple permissive awards. The Boston parties' comments seek to bring themselves within that offer of special attention because of the unique environmental problems affecting them. To the extent that the Boston argument rests on the view that we will not consider environmental and energy issues in accordance with our regulations it is incorrect. We reject Boston's suggestion in effect, that we make a comparative selection among carriers for service from Midway to Boston by weighing and balancing economic and environmental factors. Such a concept would be costly and time-consuming and would destroy the overriding benefits of multiple permissive awards. *Oakland Service Case*, Order 78-9-96. In the long run, the level of service between Midway and Boston will match the demand, and there will be no significant differences in environmental impact among various aircraft types because they all will have to meet uniform national standards.[5]

Nashville urges the Board to certificate at least one carrier in the Nashville-Midway market on a mandatory basis. It says that although permissive authority has been granted to a number of carriers in a number of Nashville markets, Nashville has not received any actual service as a result of such awards. First, under the Deregulation Act we no longer have power to grant mandatory awards. *Improved Authority to Witchita Case*, Order 78-12-106, December 14, 1978. Moreover, we do not view the short run result in Nashville as conclusive. If the Nashville-Midway market (either nonstop or as part of a one-stop service) generates enough traffic to support a single round trip daily, we believe that multiple permissive licensing is the best regulatory approach to bring forth that service. *Oakland Service Case, supra;* see also *Baltimore-Detroit Nonstop Proceedings*, Order 78-5-112, where we discussed such a situation and where one of the permissively authorized carriers, North Central Airlines, instituted service. We see nothing in the Nashville situation requiring a departure from our governing precedents.

Illinois DOT's comments ask us to depart from *Midway I* (Order 78-7-40) and from our tentative multiple permissive awards by awarding "at least the largest short-haul range Midway markets which offer the greatest potential for successful high frequency-low fare commuter service to carriers whose sole responsibility in the Chicago market is to provide for service for Midway Airport" and giving them a "limited period of protection from competition in those markets." The basis for the repetition of this request is the enactment of section 3(a) of the Airline Deregulation Act of 1978 in 1978, 94 Stat. 1706.[6] We are fully cognizant of the Act's amended declaration of policy and we are sensitive to the policies of 102(a)(6) (quoted in note 5) encouraging the development of satellite airports and carriers specializing in operations from them. In fact, these considerations were in the forefront of our deliberations when we decided *Midway I*, Order 78-7-40. Now, we have them embodied into the policy statement of the Act together with other policies seeking enhanced competition, and recognition of the valuable role of the Board's program of multiple permissive awards played in furthering competition.[7] Considering the present situation as a whole, We are not prepared at this time to depart from the detailed analysis and considerations given to the problems in *Midway I*.

Petition for Clarification

After issuance of Order 78-10-40, Judge Yoder, the presiding administrative law judge, entered an order describing the Board's order, discussing

[2] The City of Houston and the Houston Chamber of Commerce. They moved for leave to late file their opposition. While "good cause" for such late filing is not clear, acceptance of the filing will not harm another party. We shall grant the motion.

[3] The administrative law judge entered an initial decision on December 19, 1978, solely to dismiss these applications. We shall take discretionary review of that decision on our own initiative and vacate it. For the future, we shall amend our regulations to empower a presiding judge to dismiss such applications.

[4] The prehearing conference was held in this case on November 8, 1978, and a report thereon by Judge Yoder was served on November 21, 1978. The formulation of specific issues and evidence requests does not appear to have presented insurmountable problems.

[5] It may be noted that Boston's evidence requests on the environmental issue was granted. (Prehearing Conf. Tr. 93-101).

[6] Section 3(a) amends 102(a) of the Act, the Declaration of Policy, to provide in Sec. 102(a) "* * * the Board shall consider * * * as being in the public interest, and in accordance with the public convenience and necessity: * * * (6) The encouragement of air service at major urban areas through secondary or satellite airports * * * and * * * encouraging such service by air carriers whose sole responsibility to any specific market is to provide service exclusively at the secondary or satellite airport, and foresting an environment which reasonably enables such carriers to establish them selves and to develop their secondary or satellite airport services."

[7] H. Rep. 95-1779, p. 56, October 12, 1978.

and fixing certain procedural dates, supplying certain data, and directing the parties to submit statements of position and supporting briefs on a series of eight questions which he propounded relating to the method of proving various issues in the case, including the "fitness," "willingness," and "ability," of the applicants to perform the transportation for which certificates were requesed and the "need" for such service.[8] BPDA apparently felt that four of the judge's questions relating to "fitness" and "need" misinterpreted Order 78-10-40 and it therefore filed a petition for clarification asking the Board "what standards of need for service willingness and ability will be applied in this case and whether these issues must be determined separately for each of the 191 markets now included in this case."

We have decided to grant this petition to make it quite clear that the "fit, willing and able" requirement is not a roadblock to Congressional and Board policies favoring a maximum reliance on actual and potential competition to assure the sound development of air transportation. We intend to take up this issue at greater length in Board cases now before us on review. Our fundamental understanding of the "fit, willing and able" test has been articulated in a number of cases, most recently in *Chicago—Midway Low-Fare Route Proceeding*, Order 78-7-40, pp. 49-51. Recently a number of novel restrictive interpretations of this test have been advanced that are inconsistent with our expressed position in those cases and, in some respects, inconsistent also with the Board's treatment of this question throughout its forty year history. We shall not allow entirely new restrictions to be imported into the "fit, willing and able" standard precisely at a time when Congress and the Board have decided to reduce regulatory barriers to entry and when those restrictions have no basis in law, precedent or policy.

We will not require applicants to show a present intent actually to begin service within a specified period in cases where the Board has decided or may decide to make multiple permissive awards for the very purpose of letting the marketplace determine the optimal number of carriers and select those that actually operate. By its very nature, such an approach contemplates that more authority will be licensed than can be used at any given time and that airlines will have the freedom to enter and leave markets on the basis of their own assessment of the economic climate and their chances of success in the competitive battle (subject, of course, to the notice and "essential air transportation" provisions of sections 401(j) and 419 of the Act). Congress, which expressly ratified the multiple permissive awards program, clearly did not intend for it to be scuttled by the reintroduction of discarded route considerations through the back door of the "fit, willing and able" test.

Even in the past, the Board never interpreted that test to require a carrier to prove an intent actually to operate newly authorized service when the new authority was discretionary, as, for example, in restriction removal or realignment cases. *Reopened Southern Route Realignment*, Order 73-2-90. As for the statutory language, an applicant must be willing to perform properly the transportation covered by its application and to conform to the Act and Board regulations. This means that it must show its compliance disposition and its willingness to perform properly under the terms of its certificate. Where the authority is (or, rather, was) mandatory, actual intent to serve may be required; but where the authority is permissive no such requirement exists because the certificate itself contemplates that the carrier will have the discretion to operate or not, reflecting the law's recognition that even potential entry serves a valuable public purpose. It also means that an applicant must be willing, whenever it chooses to exercise its permissive authority, properly to perform its obligation as a common carrier and to operate suitable and safe aircraft.[9]

Next, once a carrier has shown that it is "fit, willing and able" to perform service of a certain basic scope and character, it need not present additional evidence of its ability to operate within the scope of service in other markets.[10] (We do not refer here to the applicants' obligation to provide illustrative service proposals as part of a public convenience and necessity showing.) We view fitness, willingness and ability essentially as a measure of a carrier's qualification to provide a certain broad category of service; it does not require the Board to assess the likelihood or the circumstances in which an applicant will actually choose to exercise permissive authority in a particular market. The Board has already made it clear that it does not expect a restrictive "fit, willing and able" criterion to be applied in this case. Order 78-10-40.

Turning to the remaining questions raised by the petition, we repeat that we shall award permissive authority to all qualified applicants in each Midway market at issue that can support *some* nonstop service (or some one-stop service when the intermediate stop is one of the other points in issue and the flight involves a circuity of 50 percent or less). Whether a market can support any service will be determined on the basis of the record. This was done in the *Oakland Service Case* and reference was made to it in Order 78-7-41 instituting this case. (See pages 2-3 and Appendix A; see also Appendix B of Judge Yoder's Order of Octobver 13, 1978). No further guidance is required. An illustrative service proposal for each one-stop routing is required only if no illustrative proposal has been made for nonstop service between the same point and Midway.

Motions to Consolidate

On December 4, 1978, Judge Yoder served an Order on Motion to Consolidate Applications. Acting to the limits of the power delegated to him by the Board in Order 78-10-40, he granted the motions to consolidate the amended applications of 15 named carriers "to the extent that they conform to the scope of the investigation specified in Order 78-10-40 and they relate to the seven additional cities added by that order."[11] However, the judge pointed out that there were other amendments to applications or portions of amended applications which were within the scope of the proceeding, covered by motions to consolidate, and whose consolidation would be in the public interest, conducive to the proper dispatch of the Board's business and the ends of justice, and would not unduly delay the proceeding, but that, since he was not empowered to act upon them, they would be left for determination by the Board. We adopt Judge Yoder's findings and shall grant the motions to consolidate and consolidate the applications.

Accordingly, 1. We determine finally that as a matter of policy the public

[8] Some 25 responses representing 28 parties were filed, including a response from BPDA.

[9] Although we have considered "willingness" separately here in response to a specific question in BPDA's petition, as a general matter we will not attempt to give separate definition to each element of the "fit, willing and able" criterion, which the Board has traditionally considered a single interrelated standard. Attempts to break this standard up into three separate pieces makes little more sense than would separate definitions of public convenience and necessity. In fact, the Act (in section 102) accords a single definition not only to public convenience and necessity but to public interest as well and makes no attempt to give separate meaning to the different language. When we have used the term "fitness" in our orders over the past year, we have intended the term to encompass the entire "fit, willing and able" criterion.

[10] If, for example, a carrier were authorized to operate a very limited service in one or two short-haul markets that fact alone might not demonstrate its fitness, willingness and ability to perform transcontinental or transatlantic service.

[11] He denied Frontier's motion to consolidate because Frontier had later moved to withdraw its application.

convenience and necessity require permissive certification of all fit, willing, and able applicants in each Midway market at issue in this proceeding in which a need for additional authority is found.

2. We acknowledge the comments filed by Midway (Southwest), the Boston Parties, Nashville, and Illinois DOT and accept or reject them to the extent and in the manner indicated herein.

3. We grant the petition of BPDA to the extent indicated herein and otherwise deny it.

4. We dismiss the applications of Continental Air Lines in Docket 33138, Eastern Air Lines in Docket 33140, Frontier Airlines in Docket 33118, and National Airlines in Docket 33152.

5. We grant the motions to consolidate and consolidate into Docket 33019 the following amendments to applications or amended applications to the extent that they fall within the scope of this proceeding as fixed by Orders 78-7-41 and 78-10-40: Allegheny Airlines, Inc. in Docket 33129, American Airlines, Inc., 33149, Braniff Airways, Inc., in Docket 33146, Evergreen International Airlines, Inc., in Docket 33157, Federal Express Corp. in Docket 33148, Midway Airlines, Inc., in Docket 33123, Midway (Southwest) Airways Co. in Docket 33153, North Central Airlines, Inc., in Docket 33108, Northwest Airlines, Inc., in Docket 33135, Ozark Air Lines, Inc., in Docket 33117, Piedmont Aviation, Inc., in Docket 33154, Southern Airways, Inc., in Docket 33122, Texas International Airlines, Inc., in Docket 33147, Trans World Airlines, Inc., in Docket 33156, Western Air Lines, Inc., in Docket 33144, and Wien Air Alaska, Inc., in Docket 33178.

6. We grant the motion of Houston for leave to file its comments on Order 78-10-40 late.

7. We deny all other requests in this proceeding addressed to the Board.

8. We take discretionary review of the initial decision of December 19, 1978, and vacate it.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board: [12]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-752 Filed 1-8-79; 8:45 am]

[12] All Members concurred, and Member O'Melia filed a concurrence, as a part of the original document.

[6320-01-M]

[Docket 34365; Order 79-1-6]

PAN AMERICAN WORLD AIRWAYS, INC.

Increased Excess Baggage Charges in Domestic and Overseas Transportation; Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 2nd day of January, 1979.

By tariff revisions [1] marked to become effective February 1, 1979, Pan American World Airways, Inc. (Pan American) proposes to modify and increase excess baggage charges in domestic and overseas markets for (1) personal passenger baggage and (2) courier-accompanied baggage. Currently, excess baggage charges are not differentiated on the basis of the character of the accompanying passenger.

Pan American proposes, for personal baggage, to (1) limit excess pieces acceptable at currently effective charges to four pieces, over and above the two checked pieces carried free and, (2) increase the charges for more than six checked pieces to four times the otherwise applicable charge. For courier-accompanied baggage it proposes to charge, typically, 130 percent of the applicable general commodity freight rates.

In support of its proposals the carrier asserts that: Since its previous excess baggage proposal was suspended, its baggage problems have become more severe; it has recently completed a comprehensive systemwide survey designed to measure the impact piece count baggage rules are having on standard baggage weights and, as a result, it has established new standards of 15 kilograms per bag and as much as 20 kilograms per bag in selected markets; it is experiencing greater passenger loads per flight stemming form the use of higher density seating and increased load factors; higher baggage loads have been inevitable as a result of greater loads; aggravating the problem is an airworthiness directive, published by the FAA, which instructs the carrier to reduce the baggage capacity on B-747 aircraft; the combination of increased amounts of baggage per flight and reduced belly capacity is inconveniencing both passengers and freight shippers; the revisions proposed are on a systemwide basis in the interest of efficiency and to deter any incipient baggage problem; rating of commercial shipments transported by couriers under the current baggage system serves to disadvantage those shippers who ship similar items on an unaccompanied basis as freight, rated under the freight tariffs; it intends to continue to permit courier shipments to be treated as part of the courier's baggage but assessed rates which reflect the nature of the material being shipped and the priority service being accorded the traffic; in the absence of contrary decisions from the Board, Pan American is entitled to assume that the general commodity rate approved or permitted to become effective is a reasonable predicate for other rates; it would be impractical and inconsistent with the nature of the courier business to attempt to cost-justify the proposed rates; this filing either matches or is patterned after United Air Lines, Inc's (United) current domestic baggage rule which the Board has found acceptable; and the implementation of the proposal will remove the unintended incentive currently available on many routes for passengers to check, as baggage, items which are essentially air freight.

A complaint requesting suspension pending investigation or rejection of these proposals has been filed by the DHL Corporation (DHL) an air courier service. The complainant states, among other things, that: in interstate markets, the current propsal of $24 is reasonably related to cost, but in overseas and foreign markets the excess baggage rates must be justified by costs, as the Board decided in the *Baggage Allowance Tariff Rules in Overseas and Foreign Air Transportation* case *Excess Baggage Case;* the proposed courier baggage proposal violates the principle of *res judicata* in that it contradicts previous Board precedents: Pan Amercian has again failed to demonstrate a system wide need for the proposal and, if certain markets have problems, it should establish special rates for those markets; the proposed surcharge is unreasonably high—the fact that there is a shortage of air service which is restricted by the government should not justify the supplier's making extraordinary profits; customers use the baggage service rather than the only alternative, air freight, because it is the only way one can be assured of timely receipt of many items; excess baggage charges at the current rates generally exceed average freight revenues; most current excess baggage rates are cost related and international excess baggage rates are related to cost factors established in the *Excess Baggage Case;* baggage rates should not be tied to any freight rates unless the freight rate has been shown to be cost-justified and the costs of handling baggage are the same as handling freight; Pan American's justification provides no economic rationale for its deviation from the piece system and provides no justification for limiting couriers to the 300-kilogram weight break and not the lower yields of the higher weight

[1] Revisions to Air Tariffs Corporation, Agent, Tariff C.A.B. 55 and to Airline Tariff Publishing Company, Agent, C.A.B. 142.

breaks for larger shipments; and these proposed increases exceed the zone of reasonableness authorized for interstate rates in Public Law 95-504 and by the Board.

In its answer to the complaint, Pan American asserts, among other things, that the rejection notices and Board orders are not precedents precluding the effectiveness of the proposed tariffs under the principle of *res judicata*, as alleged by the complaint; the complaint presents no factual support of its allegation that the proposals would yield excess profits to Pan American; the carrier desires to accomodate courier traffic, but not with preferential treatment; and courier material is not passenger baggage, but cargo, both in fact and in law.

This is the second recent filing [2] in which Pan American proposed higher domestic surcharges for excess baggage. The first proposal was suspended by the Board chiefly on the ground that Pan American had submitted no evidence that the charges were cost-related, should be applied systemwide and the problem could not be localized, Order 78-2-70, February 13, 1978. The Board gave the carrier an opportunity to submit further justification of its proposal but found that the justification submitted was not persuasive and ordered the higher surcharges canceled, Orders 78-3-149 and 78-5-72, March 30 and May 12, 1978. Pan American's current proposal differs from its first one chiefly because it contains two levels of surcharges, one for couriers and one for other passengers apparently to meet one of the Board's objections to its first filing.

For personal baggage, as stated above, Pan American proposes a charge of $24 domestically and four times the current rates in overseas markets. The $24 charge is equal to that permitted by the Board in domestic transportation for other carriers, and we will permit it to become effective. The overseas charges are subject to the Board's decision in the *Excess Baggage Case*. There we found that an excess baggage charge of seven-tenths of one percent of the economy fare per kilogram bears a reasonable relationship to cost and that carrier proposals of higher rates must be supported by a thorough economic justification. Since Pan American's proposed levels for overseas personal baggage are in most cases less, we will permit these proposed charges to become effective as well. For courier-accompanied baggage, Pan American justified its proposed rates of 130 percent of the general commodity level on the ground that that service is similar to priority freight and the rates are equal to priority freight rates. While we do not find that argument persuasive, we nevertheless have concluded that the proposed charges for its domestic markets should be permitted. We are aware that this decision is seemingly at odds with our earlier actions dealing with excess baggage charges proposed by Pan American.[3] But the recently enacted amendment to the Federal Aviation Act (Airline Deregulation Act, Public Law 95-504) mandates that we place greater reliance on the market place where possible.[4] The west coast-Hawaii market (Pan American's principal domestic market) clearly is highly competitive. We, therefore, conclude that we should not continue to insist on strict cost justification as we have in the past, but should allow the competitive market place to determine if the charges are too high. Nevertheless, we shall monitor the situation for a reasonable period to assure ourselves that competition does in fact work effectively in this area.

In overseas markets, however, excess baggage charges are governed by the *Excess Baggage Case* and Pan American's courier-accompanied proposal significantly exceeds the Board's formula, based upon the average sized bag for all traffic. Accordingly, we find that its proposed charges for courier-accompanied traffic in overseas markets may be unlawful and should be investigated. We further conclude that these charges should be suspended pending investigation.

We are, however, sympathetic to the carrier's contention that the increased costs apparently caused by the typically heavier weight courier bags must be offset. Therefore the Board will be receptive to a filing of charges for courier-accompanied baggage based on the *Excess Baggage Case* formula of .7 of 1 percent of the economy fare per kilogram applied to the average weight of courier traffic.

Accordingly, pursuant to Sections 102, 204(a), 403, 404, 801, and 1002 of the Federal Aviation Act of 1958;

It is ordered that: 1. An investigation be instituted to determine whether the provisions set forth in Appendix A [5], and rules, regulations, and practices affecting such provisions are or will be unjust; unreasonable, unjustly discriminatory, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions and rules, regulations, or practices affecting such provisions;

2. Pending hearing and decision by the Board, the provisions specified in Appendix A are suspended and their use deferred to and including May 1, 1979 unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, we dismiss the complaint of DHL Corporation in Docket 34197; and

4. Copies of this order will be filed with the tariffs and served on Pan American World Airways, Inc., and DHL Corporation, which are made parties to the proceeding ordered above.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:[6]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-753 Filed 1-8-79; 8:45 am]

[2] Pan American also filed a third proposal, which was rejected as technically deficient.

[3] Orders 78-2-70, 78-3-149 and 78-5-72.

[4] Freight rates are already deregulated (as to reasonableness) in domestic markets (P. L. 95-163).

[5] Appendix A filed with the original document.

[6] All Members concurred.

[6320-01-M]

[Docket 33217]

ST. LOUIS-LITTLE ROCK-NEW ORLEANS SERVICE INVESTIGATION

Hearing

A hearing in this proceeding will be held on January 9, 1979, at 9:30 a.m. (e.s.t.) in Room 1003, Hearing Room C, 1875 Connecticut Avenue, NW., Washington, D.C., before Administrative Law Judge Stephen J. Gross.

The issues in this proceeding are as discussed in Order 78-8-95, modified, however, by the Airline Deregulation Act of 1978, PL 95-504: see Board Notice of Applicability of Airline Deregulation Act of 1978, adopted November 16, 1978.

Dated at Washington, D.C., January 2, 1979.

STEPHEN J. GROSS,
Administrative Law Judge.

[FR Doc. 79-754 Filed 1-8-79; 8:45 am]

[6335-01-M]

CIVIL RIGHTS COMMISSION

DELAWARE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Delaware Advisory Committee (SAC) of the Commission will convene at 1:00 a.m. and will end at 5:00 p.m. on January 23, 1979, Department of Transportation Administrative Center Conference Room, Dover, Delaware.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission,

2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 5, 1979.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 79-823 Filed 1-8-79; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

SPECIAL CENSUSES

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the *Current Population Reports*—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The data shown in the following table are the results of special censuses conducted since December 31, 1977, for which tabulations were completed between December 1, 1978 and December 31, 1978.

Dated: January 4, 1979.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

State/Place or Special Area	County	Date of Census	Population
Illinois:			
Lisle village	DuPage	September 14	11,698
Prospect Heights city	Cook	September 13	11,344
Iowa:			
Donnellson city	Lee	October 23	962
Mississippi:			
Ashland town	Benton	October 2	511
North Dakota:			
Horace city	Cass	September 20	462
Wisconsin:			
Grafton town	Ozaukee	September 19	3,377

[FR Doc. 79-687 Filed 1-8-79; 8:45 am] 06

[3510-25-M]

Industry and Trade Administration

[Case No. 575]

RONAIR, INC.

Order

In the matter of Ronair, Inc., 4 East 39th Street, New York, N.Y., 10016 (Respondent).

In a letter of September 11, 1978, the Compliance Division charged that Ronair, Inc. violated the Export Administration regulations. It alleged that the respondent had exported airplanes to Iran, Equador and Uganda without the requisite validated licenses.

Ronair, a company organized in 1975, admitted the charges for purposes of this proceeding. It averred its belief that until late 1977 foreign sales required export licenses but that licenses were not required where export was for lease purposes, ownership was maintained in the Unites States, and all Federal Aviation Administration regulations were complied with. The F.A.A., minimally, requires maintenance of domestic airplanes at specified intervals in accordance with published standards. Ronair complied with all F.A.A. requirements. It showed that the lease-sales agreement of airplanes for Iran and Equador were regularized by the issuance of validated export licenses.

The Hearing Commissioner reports that although a license to Uganda, upon proper application when the contract was negotiated, probably would have issued; however, he noted our changing policies, culminating in legislative restrictions in trade with Uganda resulting from the consistent pattern of gross violation of human rights, now bars approval of airplane export. See 15 CFR Part 385. He stated that when apprised of present federal policy, Ronair expended substantial time and monies to recover the airplane and to abrogate its lease-sale agreement. Noting that the governmental policies were not thwarted because of Ronair's success and cooperation in rectifying and regularizing its operations, he recommended acceptance of the consent as outlined below.

Based on the foregoing and the recommendations of the Hearing Commissioner, I find that respondent violated the Export Administration Regulations as alleged in the charging letter. In view of respondent's cooperation in accepting full responsibility and in taking corrective measures to regularize its export activities in conformity with law and policy, and national security not being involved, I find that the agreed penalty is fair, reasonable, consistent with penalties imposed in similar cases, and designed to achieve the purpose of the law and regulations.

Therefore, pursuant to the authority delegated to me, 15 CFR 187.1, it is

ORDERED

A period of probation ending December 31, 1980 is imposed upon respondent. The terms of probation are that respondent shall fully comply with all requirements of the Export Administration Act of 1969, as amended, and all regulations and orders issued thereunder.

Upon a finding by the Director, Office of Export Administration or such other official as may be exercising the duties now exercised by him, that the respondent has knowingly failed to comply with the requirements and conditions of the order or with any of the conditions of probation said official without notice when national security or foreign policy considerations are involved, or with notice if such considerations are not involved, by supplemental order may revoke the probation of the respondent, revoke all outstanding validated export licenses to which said respondent may be a party and deny to said respondent all export privileges for the period of the order. Such supplemental order shall not preclude the Bureau of Trade Regulation from taking such further action for any violations as it shall deem warranted. On the entry of a supplemental order revoking respondent's probation without notice, it may file objections and request for an oral hearing as provided in Section 388.16 of the United States Export Administration Regulations, but pending such further proceedings the order of revocation shall remain in effect.

This order is effective immediately.

Dated January 2, 1979.

RAUER H. MEYER,
Director, Office of Export Administration.

[FR Doc. 79-733 Filed 1-8-79; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN TEXTILE PRODUCTS IMPORTED FROM INDIA

Further Amending the Visa Mechanism

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Providing for the interim use of the circular visa and elephant-shaped certification on textile products of wool and man-made fiber, exported from India on and after January 1, 1979.

SUMMARY: On December 28, 1978, the Governments of the United States and India exchanged letters amending the existing visa and certification mechanism to provide for the interim use of the circular visa and elephant-shaped certification for certain wool and man-made fiber textile products, exported from India on and after January 1, 1979, pending establishment of a new multifiber visa and certification mechanism. Representatives of the two governments will be meeting for this purpose within the next several months.

EFFECTIVE DATE: January 10, 1979.

SUPPLEMENTARY INFORMATION: On May 20, 1975, a letter was published in the FEDERAL REGISTER (40 FR 22025) announcing establishment of an export visa requirement (circular visa), intended to preclude circumvention of the licensing system for exports to the United States of certain cotton textiles and cotton textile products, produced or manufactured in India. It also established a certification procedure to exempt certain traditional and folklore textile products from the levels of restraint of the bilateral cotton textile agreement of August 6, 1974, as amended, between the Governments of the United States and India. A further letter, published in the FEDERAL REGISTER on March 22, 1976 (41 FR 11867), amended the exempt certification procedure to establish, among other things, an elephant-shaped certification for apparel products of cotton textiles, made from handloomed fabrics of the cottage industry, but not wholly by hand. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, effective on January 10, 1979, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool and man-made fiber textile products that have not been visaed with the circular visa or the elephant-shaped certification. A further letter, also published below, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directs that such merchandise is to be charged to the appropriate levels of restraint established for these products during the twelve-month period which began on January 1, 1979, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India.

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

JANUARY 5, 1979.

COMMISSIONER OF CUSTOMS,
DEPARTMENT OF THE TREASURY,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to your on May 13, 1975 by the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton textiles and cotton textile products, produced or manufactured in India, for which the Government of India had not issued an export visa. It also amends, but does not cancel, the directive of March 16, 1976, which concerned, among other things, the use of an elephant-shaped certification for cotton apparel products made from handloomed fabrics of the cottage industry of Inda, but not wholly by hand.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on January 10, 1979, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products of wool and man-made fibers in Categories 400-469 and 600-669, produced or manufactured in India and exported to the United States after December 31, 1978, which are not accompanied by the circular export visa or by the elephant-shaped certification in acordance with procedures established in the directives of May 13, 1975 and March 16, 1976, as amended.

The actions taken with respect to the Government of India and with respect to imports of wool and man-made fiber textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

JANUARY 5, 1979.

COMMISSIONER OF CUSTOMS,
DEPARTMENT OF THE TREASURY,
Washington, D.C. 20229.

DEAR MR. COMMISSIONER: This directive cancels and supersedes the directive issued to you on December 29, 1978 by the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in India and exported during the twelve-month period that began on January 1, 1979.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in India, in excess of the indicated levels of restraint:

Category	Twelve-Month Level of Restraint
330-369, 431-469 and 630-669	37,881,210 square yards equivalent
335	16,949 dozen
342	39,326 dozen
359	152,174 pounds
666	256,410 pounds

However, effective on January 10, 1979, apparel products in Categories 330-359, as well as Categories 431-459 and 630-659, which are accompanied by an elephant-shaped certification, shall be permitted entry up to a level of 3 million dozen for the twelve-month period beginning on January 1, 1979 and extending through December 31,

1979, and shall not be charged to the foregoing levels.

You are further directed to prohibit, effective on January 1, 1979 and for the twelve-month period extending through December 31, 1979, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 336, 338/339/340, 341, and 347/348, produced or manufactured in India, in excess of the following levels of restraint:

Category	Twelve-Month Level of Restraint
336	179,963 dozen
338/339/340	946,932 dozen
341	1,951,754 dozen
347/348	105,086 dozen

Cotton textile products in Categories 336, 338/339/340, 341 and 347/348 are also chargeable to the level of restraint established for Categories 330-369, 431-469 and 630-669, as a group, unless accompanied by an elephant-shaped certification in which case they shall be chargeable to the level of 3 million dozen established for apparel products in Categories 330-359, 431-459 and 630-659.

In carrying out this directive, entries of cotton, wool and man-made fiber textile products in Categories 330-369, 431-469 and 630-669, as a group, and individual Categories 335, 336, 338/339/340, 341, 342, 347/348, 359 and 666, including products accompanied by the elephant-shaped certification, produced or manufactured in India and exported to the United States prior to January 1, 1979, shall, to the extent of any unfilled balances, be charged against the levels of restaint established for such goods during the twelve-month period beginning on January 1, 1978 and extending through December 31, 1978. In the event that the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

With the exception of apparel products in Categories 330-359, 431-459 and 630-659, which are accompanied by the elephant-shaped certification, the levels of restraint set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 30, 1977, as amended, between the Governments of the United States and India which provide, in part, that: (1) within the aggregate, group limits may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers and factors for converting units into equivalent square yards was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773) and September 5, 1978 (43 FR 39408).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of India and with respect to imports of cotton, wool and man-made fiber textile products from India have been determined by the Committee for ther Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 79-819 Filed 1-8-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE ADVISORY COMMITTEE ON WOMEN IN THE SERVICES (DACOWITS)

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS) is scheduled to be held from 9 a.m. to 4 p.m., January 16, 1979, at the Pentagon, OSD Conference Room, 1E801 No. 4. Meeting sessions will be open to the public.

This special Executive Committee Meeting has been called by the new Chairperson (appointed Jan. 1, 1979) without the normal 30 day prior notification requirement to discuss long range objectives for DACOWITS. It will not negate the normal Executive Committee Meeting held during February or March preparatory to the formal DACOWITS Spring Meeting.

Persons desiring to make oral presentations or submit written statements for consideration at the Executive Committee Meeting must contact Lt. Col. Barbara J. Roy, Executive Secretary, DACOWITS, OASD (Manpower, Reserve Affairs and Logistics), Room 3D322, the Pentagon, Washington, D.C. 20301, telephone 202-697-5655 no later than January 15, 1979.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

JANUARY 3, 1979.

[FR Doc. 79-696 Filed 1-8-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

VOLUNTARY AGREEMENT AND PLAN OF ACTION TO IMPLEMENT THE INTERNATIONAL ENERGY PROGRAM

Meeting

In accordance with Section 252 (c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94-163), notice is hereby provided of the following meeting:

A meeting of the Industry Supply Advisory Group (ISAG) of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on January 17, 18, and 19, 1979, at the offices of Standard Oil Company of California, 575 Market Street, San Francisco, California, beginning at 9:30 a.m. on January 17. The agenda is as follows:

1. Opening remarks.
2. Discuss draft of ISAG/Secretariat Operations Manuals.
3. Discuss ISAG staff, procedures and operations and change of ISAG Manager.
4. Future work schedule.
5. Closing remarks.

As provided in section 252 (c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., January 3, 1979.

ROBERT C. GOODWIN, Jr.,
Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 79-726 Filed 1-8-79; 8:45 am]

[6450-01-M]

Economic Regulatory Administration

IMPLEMENTATION OF POWERPLANT AND INDUSTRIAL FUEL USE ACT

Draft Environmental Impact Statement, Public Hearings and Extension of Comment Period

AGENCY: Department of Energy.

ACTION: Notice of draft environmental impact statement public hearings and extension of comment period.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) will hold public hearings on the draft programmatic environmental impact statement, which analyzes the impacts associated with the implementation of the Powerplant and Industrial Fuel Use Act of 1978 (FUA). FUA will prohibit the use of petroleum and natural gas by certain electric powerplants and industrial major fuel burning installations. FUA will become effective on May 8, 1979.

ERA invites the public to submit comments on the draft programmatic environmental impact statement and to participate in the public hearings.

DRAFT PROGRAMMATIC EIS COMMENT DATE, HEARING DATES AND LOCATIONS

DATE: Written comments for Draft Programmatic EIS to be submitted by February 9, 1979, 4:30 p.m. This is an extension of the previous notice date of January 26, 1979.

ADDRESS: Written comments to Office of Public Hearing Management, Box WA, Department of Energy, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

Charleston, West Virginia hearing: January 29 and 30, 1979, 9:00 a.m. to 5:00 p.m., Capital Complex Conference Rooms D and E, Building 7, Charleston, West Virginia. Requests to speak should be addressed to Region III, Department of Energy, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, Attn: Maria Marks, by January 25, 1979. If scheduled to speak, you will be notified by January 26, 1979. Speakers should endeavor to bring seven copies of their statements to the hearing room on the day of the hearing.

Fort Worth, Texas hearing: February 1, and 2, 1979, 9:00 a.m. to 5:00 p.m.; 7:00 p.m. to 9:00 p.m., Ramada Inn Central, 2000 Beach St., Fort Worth, Texas. Requests to speak should be addressed to Region VI, Department of Energy, 2626 W. Mockingbird Lane, Dallas, Texas 75235, Attn: Mac Lacefield, by January 25, 1979. If scheduled to speak, you will be notified by January 26, 1979. Speakers should endeavor to bring seven copies of their statements to the hearing room on the day of the hearing.

FOR FURTHER INFORMATION OR COPIES OF THE EIS CONTACT:

Steven A. Frank, Division of Coal Utilization, Department of Energy, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461, 202-254-6246;

Robert Stern, Division of NEPA Affairs/Environment, Department of Energy, Room 7121, 12th and Pennsylvania Avenue, N.W., Washington, D.C. 20461, 202-633-9760;

Janine Landow-Esser, Office of General Counsel, Department of Energy, Room 8217, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, 202-376-4266.

SUPPLEMENTARY INFORMATION:

I. WRITTEN COMMENTS

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted (one copy only) in accordance with the procedures set forth at 10 C.F.R. 205.9(f). Any material not filed in accordance with such procedures will be considered to be non-confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to that determination.

II. PUBLIC HEARINGS

The time and place for the hearings are indicated in the dates section of this notice. If necessary to present all testimony, hearings will be continued starting at 9:00 a.m. of the next business day following the scheduled date of the hearing.

If you have an interest in this matter or represent a group or class of persons who has an interest in this matter, you may write to request an opportunity to speak. Because of the time limitations involved in setting up the hearings, requests to speak may be telephoned until the day set forth in the dates section of this notice. Please provide a phone number where you may be contacted through the day before the hearing.

DOE reserves the right to select the persons to be heard at these hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will preside at each hearing. The hearings will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination. Each speaker will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statement will follow the conclusion of all initial statements, given in the order in which the initial statements were made, and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at a hearing to the appropriate Regional Office at the address indicated above before 4:30 p.m., one day prior to the hearing. A tentative list of speakers will be available from the appropriate Regional office. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for answer. The presiding officer will announce any further procedural rules needed for the proper conduct of each hearing.

Transcripts of the hearings will be made and the entire record of the hearings, including the transcripts, will be retained by the ERA and made available for inspection at the Freedom of Information Reading Room, Forrestal Building, Room GA-152, 1000 Independence Avenue NW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may buy a copy of a transcript from the appropriate reporter at the hearing room on the day of the hearing.

After all testimony and comments have been received and analyzed, a final environmental impact statement will be prepared and issued.

Issued in Washington, D.C., January 2, 1979.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

[FR Doc. 79-714 Filed 1-4-79; 1:54 pm]

[6450-01]

Energy Information Administration

DETERMINATION OF ALTERNATE FUEL COST

Reporting Requirement

AGENCY: Department of Energy, Energy Information Administration.

ACTION: Notice of request for publication and submission by interested parties of FORM EIA-134, Incremental Pricing Public Comment Survey.

SUMMARY: To implement Section 204(e) of the Natural Gas Policy Act of 1978 (NGPA), the Energy Information Administration has developed Form EIA-134, Incremental Pricing Public Comment Survey. Responses to the Survey will be used by the Federal Energy Regulatory Commission to develop a Notice of Proposed Rulemaking to implement the Commission's Statutory obligations under Title II of the NGPA. Submission of Form EIA-134 is voluntary; however all interstate natural gas piplelines, natural gas companies who complete EIA Form 50, state governors' offices, state public utility commissions, state energy offices of the 48 contiguous states, Alaska, Hawaii and the District of Columbia, and consumer interest groups, are encouraged to respond to ensure that all affected groups are represented.

EFFECTIVE DATE: The form EIA-134 must be completed and returned to the mail code specified not later than January 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. James Tobin, Department of Energy, Energy Information Administration, Office of Energy Data, Room 4324, 12th & Pennsylvania Avenue NW., Washington, D.C. 20461 (202) 633-9029.

Upon completion, Form EIA-134 should be sent to the following address:

Department of Energy, Code 2913, Washington, D.C. 20461.

SUPPLEMENTARY INFORMATION:

I. Availability of Form. A copy of form EIA-134 is appended to this notice. You may submit the copy provided or you may request a copy of the form from Mr. James Tobin, by calling (202) 633-9029.

II. Background. The Natural Gas Policy Act of 1978 (NGPA) requires the Federal Energy Regulatory Commission (Commission) to determine the appropriate alternate fuel costs to be used in a region as the pricing ceiling for certain categories of industrial boiler fuel sales of natural gas.

Specifically, Section 204(e) provides:

(e) DETERMINATION OF ALTERNATIVE FUEL COST.—

(1) In General—Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designated by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel.

(2) Reduction of Appropriate Alternative Fuel Cost Allowed—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—

(A) for any category of incrementally priced industrial facilities, subject to the rule required under Section 201 (including any amendment under Section 202 to such rule) located within any region and served by the same interstate pipeline; or

(B) for any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;

to an amount not lower than the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residential, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropriate alternative fuel costs were not so reduced.

III. Confidential Information. Any person which believes (1) that any information provided to DOE in a response is a trade secret or commercial or financial information that is privileged or confidential within the meaning of the Freedom of Information Act (FOIA) exemption in 5 U.S.C. 552(b)(4), and (2) that disclosure of this information would cause significant competitive damage to it must so inform DOE. Each person making such a claim should submit with its report a detailed item-by-item explanation of whether the information is customarily treated as confidential by the person and industry (if applicable) and a detailed explanation of the anticipated competitive damage which would result from public disclosure. Such a detailed statement, rather than a general statement that an item is confidential, is needed by DOE to determine whether the item may be exempt from release under the FOIA. DOE retains the right to make its own determination regarding any claim of confidentiality. Prior to disclosing any information contained in a response for which confidential treatment was claimed, but which the DOE determines is not information described in 5 U.S.C. 552(b)(4), DOE will notify the person who submitted the response of its determination to release such information, at least five days prior to the proposed release of the information.

Issued at Washington, D.C., January 5, 1979.

LINCOLN E. MOSES,
Administrator, Energy Information Administration.

[6450-01-C]

EIA 134

Form Approved
OMB No. 38-S78036

U.S. DEPARTMENT OF ENERGY
Energy Information Administration
Washington, D.C. 20461

DEC 21 15 2

INCREMENTAL PRICING
PUBLIC COMMENT SURVEY

This data is collected by the Energy Information Administration for the Federal Energy Regulatory Commission under PL 93-275

Participation is voluntary.

In accordance with Sec. 14 of the FEA Act in responding to specific requests received from members of the public, data will be held confidential only to the extent that they are determined by DOE to be within the exemption for trade secrets and confidential commercial information as specified in the Freedom of Information Act [5 USC Sec. 552 (b) (4)].

PLEASE READ BEFORE COMPLETING THIS FORM

General Instructions:

The Natural Gas Policy Act of 1978 (NGPA) requires the Federal Energy Regulatory Commission (Commission) to determine the appropriate alternate fuel costs to be used in a region as the pricing ceiling for certain categories of industrial boiler fuel sales of natural gas. In order to assist the Commission in determining the ceiling prices and the regions to which they apply, we are inviting interested parties to provide information upon which preliminary recommendations can be made.

Complete this form if you are an industrial gas user, or other interested party, and wish to provide such assistance to the Federal Energy Regulatory Commission during the initial phase of incremental price rulemaking according to Title II of the NGPA of 1978. Definitions which may be helpful in completing this form are provided below. If you have any additional remarks, please enter them in the space provided on page 4. Also enter on page 4 the name and telephone number of the person completing this form, and submit the completed form before January 30, 1979 to:

Department of Energy
Code 2913
Washington, D.C. 20461

If you have questions concerning this form, please contact Mr. James Tobin at (202) 633-9029.

Definitions for use in completing this form:

(1) Industrial fuel burning facility. A facility in which fuel is consumed in a process which creates or changes raw or unfinished materials into another form or product.

(2) Electric generation utility: Fuel consumed for the generation of electric energy, regardless of the technology employed, when such electric energy is for sale.

(3) Transportation use: Fuel consumed in providing transportation, vessel bunkering, railroad locomotive fuel, truck fuel, aviation fuel, pipeline pumping, etc.

(4) Industrial process heat: Fuel consumed for heat input to an industrial process, not including steam or hot water input or space heating of an industrial facility.

(5) Industrial process steam: Fuel consumed in an industrial boiler for the purpose of raising steam or hot water, not including space heating.

(6) Chemical use: Fuel consumption in which the fuel is used as a feedstock to a chemical reaction, or in which the fuel is used for non energy purposes.

(7) Mechanical drive: Fuel consumed in a prime mover for provision of mechanical energy—does not include boiler fuel use for eventual input to steam-driven engines, or transportation use.

(8) Direct fired makeup air heater: Fuel consumed for heating air, drawn wholly or partially from the outside and delivered into an industrial facility, for which the products of combustion are mingled with the makeup air stream.

EIA-*34

EIA USE ONLY:	Control Number	County Code	City Code	State Code

1.0 What is the name of this organization?

_____

2.0 Do you presently own or operate an industrial fuel burning facility?

(a) ☐ Yes . . . . . skip to the instruction box after 3.0

(b) ☐ No . . . . . answer question 3.0

3.0 Check the category which best describes your organization.

(a) ☐ Government

(b) ☐ Academic

(c) ☐ Industry/Trade Assoc.

(d) ☐ Professional Assoc.

(e) ☐ Consumer/Public Interest

(f) ☐ Other--specify

_____

_____

_____

Instructions:

(1) If you answered yes to question 2.0, give the address of the facility in question 4.0 below.

(2) If you answered no to question 2.0, give the address of the business organization in question 4.0 below. Then skip to 12.1.

4.0 What is the address of this facility or business organization?

_____
Street

_____
City

_____ _____
State Zip Code

5.0 What is your facility's maximum fuel consumption rate per day?

_____ MMBTU/Day

6.0 Check all fuels your facility is equipped to consume.

(a) ☐ Natural Gas

(b) ☐ Propane or L.P. Gas

(c) ☐ Kerosene/# 1 Heating Oil

(d) ☐ # 2 Fuel Oil

(e) ☐ # 4 Fuel Oil

(f) ☐ # 5 Residual Fuel Oil

(g) ☐ # 6 Residual Fuel Oil

(h) ☐ Other Heavy Oils (Bunker C, Crude; etc.)

(i) ☐ Coal

(j) ☐ Electricity (Purchased)

(k) ☐ Other--specify

_____

_____

_____

EIA-134

7.0 Enter the letters corresponding to the three major fuels actually consumed by your facility in the last two years in order of highest to lowest consumption. Use the codes from question 6.0 above.

_____ Code

_____ Code

_____ Code

8.0 For what purposes are these fuels used? (Check all that apply.)

(a) ☐ Electric Generation Utility

(b) ☐ Transportation Uses

(c) ☐ Industrial Process--Heat (Direct or Indirect)

(d) ☐ Industrial Process--Steam (Boiler Use)

(e) ☐ Chemical Use (Feedstock)

(f) ☐ Mechanical Drive

(g) ☐ Direct Fired Make Up Air Heaters

(h) ☐ Space Heating

(i) ☐ Other--not listed above--specify

_____

_____

_____

9.1 Does this facility currently consume any fuel oil?

(a) ☐ Yes . . . . . answer 9.2

(b) ☐ No . . . . . skip to 10.1

9.2 What is the name and address of each supplier? (If more than 2, list on a separate sheet and attach to this form.)

(a) EIA USE

_____ Name

_____ Street

_____ City/Town

_____ State _____ Zip Code

(b) EIA USE

_____ Name

_____ Street

_____ City/Town

_____ State _____ Zip Code

10.1 Is this facility currently an industrial natural gas consumer?

(a) ☐ Yes . . . . . answer 10.2

(b) ☐ No . . . . . skip to 11.1

EIA 134

10.2 If you were to substitute an alternate fuel for this facility's gas requirements, which fuel(s) would you substitute? (Check all that apply.)

- (a) ☐ # 2 Fuel Oil
- (b) ☐ # 4 Fuel Oil
- (c) ☐ # 5 Residual Fuel Oil
- (d) ☐ # 6 Residual Fuel Oil
- (e) ☐ Other Heavy Oils
- (f) ☐ Coal
- (g) ☐ Electricity (Purchased)
- (h) ☐ Other--specify _____

11.1 Are there any restrictions on the sulfur content of fuel oils which may be burned in the area in which your facility is located?

- (a) ☐ Yes . . . . . answer 11.2
- (b) ☐ No . . . . . skip to 12.1
- (c) ☐ Don't Know . . . . . skip to 12.1

11.2 What are the restrictions?

- (a) ☐ .3% or less Sulfur Required
- (b) ☐ .31% -- 1.0% Sulfur Required
- (c) ☐ 1.01% or greater Sulfur Required
- (d) ☐ Don't Know Specifics

12.1 The NGPA authorizes the FERC to determine whether the price of Number 2 or Number 6 fuel oil is "the appropriate alternate fuel cost for any region." In your opinion, which fuel should the FERC select?

- (a) ☐ Number 2 Fuel Oil
- (b) ☐ Number 6 Fuel Oil
- (c) ☐ No Opinion

12.2 Give the SMSA, city, county, state, etc. of the region for which you believe the alternate fuel price should be applicable. We welcome any additional remarks you may have.

EIA USE

Enter any additional remarks concerning these determinations in this space:

Name of Person Completing This Form _____ Title _____ ( ) – Phone Number _____

[FR Doc. 79-937 Filed 1-8-79; 10:14 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1035-2]

COMMENTS ON ENVIRONMENTAL IMPACT STATEMENTS AND OTHER ACTIONS IMPACTING THE ENVIRONMENT

Pursuant to the requirements of section 102(2)(C) of the National Environmenal Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of December 1, 1977 and December 31, 1977.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. This listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in the Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listed in Appendices I, III, IV, and V.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW, Washington, D.C. 20460, telephone 202/755-2808. Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: December 20, 1978.

PETER L. COOK,
Acting Director,
Office of Federal Activities.

APPENDIX I.—*Draft Environmental Impact Statements for Which Comments Were Issued Between December 1, 1977 and December 31, 1977*

Identifying number	Title	General nature of comments	Source for copies of comments
	CORPS OF ENGINEERS		
D-COE-B36015-00	Dickey-Lincoln School Lakes, Atoostook County, Maine and Quebec, Canada	ER2	B
D-COE-C35005-VI	West Indian Company, Fill Permit, St. Thomas, Virgin Islands	3	C
D-COE-F35020-MI	St. Joseph Harbor, Confined Disposal Facility Dredging and Maintenance Operation, Michigan.	LO2	F
D-COE-F35021-MI	Frankfort Harbor, Confined Disposal Facility, Dredging Structure, Repairs and Operations, Bennie County, Michigan.	LO2	F
D-COE-J36010-ND	Flood Control, Burlington Dam, Souris River, North Dakota	ER2	I
	DEPARTMENT OF AGRICULTURE		
D-AFS-A82099-00	The Use of Herbicides in the Eastern Region	ER2	A
D-AFS-K65021-CA	Southern California Timber Management Plan, San Bernadino National Forest, California.	LO2	J
D-AFS-L65034-00	Timber Management Plan, Rogue River National Forest, Douglas, Jackson, Josephine and Klamath Counties, Oregon and Siskiyou County, California (USDA-FS-R6-DES (ADM) 77-14)..	LO2	K
D-REA-J07006-ND	Antelope Valley Station, Two 455 MW Units and Related Transmission Facilities, North Dakota.	ER2	I
D-SCS-E36048-KY	Stewart Creek Watershed Project, Hopkins County, Kentucky (USDA-SCS-EIS-WS (ADM)-77-D-KY).	LO1	E
D-SCS-G36058-TX	Sabanna River Watershed, Callahan, Commanche, and Eastland Counties, Texas.	LO2	G
	DEPARTMENT OF COMMERCE		
D-NOA-A99141-00	State of Wisconsin Coastal Management Program	ER2	A
D-NOA-B90000-MA	Massachusetts Coastal Zone Management Plan	LO1	B
D-NOA-B91007-00	Fishery Management Plan, Atlantic Mackerel Fishery	LO1	B
D-NOA-B91008-00	Fishery Management Plan, Squid Fishery of the Northwestern Atlantic Ocean	LO1	B
D-NOA-L90013-00	Fishery Management Plan, Commercial and Recreational Salmon Fisheries, Washington, Oregon and California, 1978.	LO1	K
	DEPARTMENT OF INTERIOR		
D-BOR-D61006-MD	Seneca State Park, Land Acquisition, Montgomery County, Maryland	LO1	D
D-IBR-K08004-CA	New Melones 230 KV Electrical Transmission Line, Central Valley Project, California.	LO2	J
D-NPS-E61022-00	Proposed Master Plan for Cumberland Gap National Historical Park, Kentucky, Tennessee and Virginia (DES 77-26).	LO1	E

APPENDIX I.—*Draft Environmental Impact Statements for Which Comments Were Issued Between December 1, 1977 and December 31, 1977*—Continued

Identifying number	Title	General nature of comments	Source for copies of comments
	DEPARTMENT OF TRANSPORTATION		
D-FHW-D40057-MD	MD-404, Denton Bypass, Caroline County, Maryland	ER2	D
D-FHW-F40124-OH	OH-2, Relocation, South of Huron, Erie County, Ohio	EU2	F
D-FHW-L40057-WA	WA-3, Clear Creek Road to Poulsbo, Kitsap County, Washington (FHWA-WA-EIS-77-05-D).	ER2	K
DS-UMT-A54019-NY	East 63rd Street Line, Boroughs of Manhattan and Queens, New York (NYCTA-NY-030045).	3	C
	FEDERAL ENERGY ADMINISTRATION		
DS-FEA-A03064-00	Strategic Petroleum Reserve (FES 76-2)	ER2	A
	GENERAL SERVICES ADMINISTRATION		
D-GSA-B81003-ME	Fort Kent Border Station, Fort Kent, Aroostook County, Maine (EME78001)	LO1	B
D-GSA-D81007-DC	Restoration of Oil Post Office, Washington, DC	LO1	D
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
D-HUD-C85018-PR	Venus Gardens Development, Rio Piedras, Puerto, Rico	ER2	C
D-HUD-D24001-VA	Lincoln, Lewis and Vannoy Sewerage Facilities, Fairfax County, Virginia	LO2	D
D-HUD-F85027-MN	Jonathan New Community, Chaska, Carver County, Minnesota	ER2	F
D-HUD-F85028-IL	The Knolls Development, DuPage County, Illinois	LO1	F
D-HUD-G85072-OK	Westbury Development, Oklahoma City, Canadian County, Oklahoma	LO1	G
D-HUD-G85073-TX	Meadowdale Subdivision, Dallas County, Texas	ER2	G
D-HUD-G85074-TX	Tara Subdivision, Fort Bend County, Texas	LO1	G
D-HUD-G85076-TX	Heritage Park Subdivision, Harris County, Texas	LO1	G
D-HUD-G85077-TX	Hunterwood Forest Subdivision, Harris County, Texas	LO1	G
D-HUD-G85079-TX	Glen Meadows Subdivision, Harris County, Texas	LO1	G
D-HUD-L85003-WA	Kennewick Park Community, Benton County, Washington (HUD-RIO-EIS-77-2D).	ER2	K

APPENDIX II

DEFINITIONS OF CODES FOR THE GENERAL NATURE OF EPA COMMENTS

Environmental Impact of the Action

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmentally Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

Adequacy of the Impact Statement

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

APPENDIX III.—*Final Environmental Impact Statements for Which Comments Were Issued Between December 1, 1977 and December 31, 1977*

Identifying number	Title	General nature of comments	Source for copies of comments
	CORPS OF ENGINEERS		
FS-COE-D35003-00	Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, Maintenance Dredging, Virginia and North Carolina.	Because of environmental concerns, EPA believes the feasibility of delaying project implementation until an acceptable upland disposal site can be utilized should be determined.	D
FS-COE-D90000-VA	Proposed Portsmouth Refinery and Terminal Hampton Roads Energy Company, Virginia.	EPA believes that the construction and operation of the crude oil refinery will significantly impact the air and water quality in the Hampton Roads area. EPA therefore recommends that the construction of the refinery complex in Portsmouth, Virginia be abandoned.	D

APPENDIX III.—*Final Environmental Impact Statements for Which Comments Were Issued Between December 1, 1977 and December 31, 1977*—Continued

Identifying number	Title	General nature of comments	Source for copies of comments
	CORPS OF ENGINEERS—Continued		
F-COE-F07004-OH	Killen Electric Generation Station, Unitl 1 and 2, Adams County, Ohio.	EPA feels that the discussion in the final EIS regarding mixing zone criteria for evaluations chlorine and other toxic pollutants ignores certain requirements in water quality standards for the Ohio River. EPA also feels that the current revised water plan does not optimize the use of water.	F
F-COE-F34002-MN	Flood Control, Twin Valley Lake, Wild Rice River, Minnesota.	This final EIS is unresponsive. Since water quality studies for this project have not yet been completed EPA is not in a position to review and comment on the final EIS. EPA has requested that the final EIS be withdrawn and a new final EIS be prepared or a supplement to the final EIS be written, when the water quality studies are completed.	F
F-COE-F36028-MN	Roseau River Flood Control Project, Roseau and Kittson Counties, Minnesota.	EPA's concerns over the future water quality of the Roseau River remain. Since the final EIS was written there have been major enhances in the project design. EPA will refrain from making comments until all additional information is provided to fully assess the impacts upon the environment.	F
	DEPARTMENT OF DEFENSE		
F-UAF-B11002-ME	Proposed Reduction of Loring Air Force Base, Limestone, Aroostock County, Maine.	EPA's comments were adequately addressed in the final EIS. However, EPA is aware of the grave impacts of reduction will have on the economic and social structures of the limestone presave area.	B
F-UAF-J11000-UT	F-16 Beddown at Hill Air Force Base, Utah	EPA's concerns were adequately addressed in the final EIS	I
	DEPARTMENT OF INTERIOR		
F-BLM-A02114-00	1978 Outer Continental Shelf (OCS) Oil and Gas Lease Sale No. 45, Offshore Gulf of Mexico.	EPA has determined that the final EIS is unresponsive to concerns raised in its review of the draft EIS regarding protection of the East Flower Garden Reef. The portion of the proposed lease tract overlaying the reef has been insufficiently described to assure the validity of measures proposed to protect the reef. Absent this information EPA believes the tract should not be leased.	A
F-NPS-C61001-NY	Fire Island National Seashore, Suffolk County, New York.	EPA's concerns were adequately addressed in the final EIS	C
	DEPARTMENT OF TRANSPORATION		
F-DoT-A41411-IA	Freeway 518 North to IA-3, Black Hawk and Bremer Counties, Iowa (FHWA-Iowa-EIS-72-04-F).	EPA's concerns were adequately addressed in the final EIS. However, EPA expressed concern that the relocation of Dry Run Creek to accommodate the freeway could change flood patterns within the Cedar Falls Waterloo, Iowa area.	H
F-FAA-C51004-NY	Steward Airport, Runway Extension, Newburgh, Orange County, New York.	EPA's concerns were adequately addressed in the final EIS	C
F-FAA-F51010-IN	Proposed Development, Shelbyville Municipal Airport, Shelby County, Indiana.	EPA's concerns were adequately addressed in the final EIS	F
F-FAA-J51000-ND	20-year Development Program, Bismarck Municipal Airport, Bismarck, Burleigh County, North Dakota.	EPA's concerns were adequately addressed in the final EIS	I
F-FHW-D40008-MD	City Boulevard, Eutaw to Russell Street and I-395, Ostend to Russell and Conway Streets, Baltimore City, Maryland.	EPA's concerns were adequately addressed in the final EIS. EPA did, however, have recommendations concerning the mitigation of noise impacts during ongoing project development.	D
F-FHW-D40009-MD	City Boulevard, Eutaw to Russell Street, and I-395, Ostend to Russell and Conway Streets, Baltimore City, Maryland.	EPA's concerns were adequately addressed in the final EIS. EPA did, however, have recommendations concerning the mitigation of noise impacts during ongoing project development.	D
F-FHW-F40038-IL	I-270, IL-3 to I-55 and I-70, Madison, Monroe and St. Clair Counties, Illinois.	EPA's concerns were adequately addressed in the final EIS	F
F-FHW-F40072-OH	I-480 and OH-252, Ohio Turnpike to OH-176, Lorain and Cuyahoga County, Ohio.	EPA's concerns were adequately addressed in the final EIS. However, EPA recommends that mitigation measures for carbon monoxide be taken in the project corridor.	F
F-FHW-F40092-OH	ADHS Corridor D, Clermont, Brown, Highland and Adams Counties, Ohio.	Although EPA believes that final EIS addressed its comments on the draft EIS, the final EIS requires additional clarifcation of four items: (1) Slope erosion, (2) sediment loading in affected receiving streams, (3) waste load allocation, and (4) flood-flow channel at Flat Run.	
	FEDERAL ENERGY ADMINISTRATION		
F-FEA-F01001-OH	Strategic Petroleum Reserve, Ironton Mine, Lawrence County, Ohio.	EPA's concerns were adequately addressed in the final EIS. However, it is extremely important that the proposed 13-mile Pipeline be designed as fail-safe as possible.	F
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT		
F-HUD-D85008-PA	Wimmerton Planned Unit Development, Westmoreland County, Pennsylvania.	EPA concerns were adequately addressed in the final EIS. However, EPA did note an inaccuracy in the air quality assessment methodology.	D
F-HUD-F38002-IL	Drainways and Greenways Demonstration Project, Carbondale, Jackson County, Illinois.	EPA's concerns were adequately addressed in the final EIS	F
F-HUD-F85017-MN	Shepard Park Development, St. Paul Ramsey County, Minnesota.	EPA's concerns were adequately addressed in the final EIS. EPA recommended that structural measures first be developed to minimize noise levels..	F
F-HUD-J24003-UT	Tooele City West Sewer Trunk Line, Tooele County, Utah.	EPA reiterated its assertion that the potential for ground water contamination as a justification for the project is not adequately documented.	I

APPENDIX III.—*Final Environmental Impact Statements for Which Comments Were Issued Between December 1, 1977 and December 31, 1977*

Identifying number	Title	General nature of comments	Source for copies of comments
	NATIONAL CAPITAL PLANNING COMMISSION		
F-NCP-D61005-DC	Washington Civic Center, Washington, DC. Modifications.	EPA's concerns were adequately addressed in the final EIS	D
	NUCLEAR REGULATORY COMMISSION		
F-NRC-F06005-OH	William H. Zimmer Nuclear Power Station, Cincinnati Gas and Electric, Columbus and Southern Ohio Electric, Dayton Power and Light.	EPA's concerns were adequately addressed in the final EIS.	F

SPECIAL NOTICE

On December 1, 1978 the Environmental Protection Agency commented on the following Final EIS.

F-FHW-L40030-WA: SR 90 Junction SR 5 to Vicinity Junction SR 405 (FHWA-WN-EIS-75-05-F)

COMMENTS

EPA's review indicated that the proposed plan (3-2TMP-3) and the alternatives designated as, 2-2T-2, rail, and no-build with safety improvements are consistent with the Washington State Implementation Plan (WSIP). The consistency finding was based on the supplemental air quality study produced by the Washington State Department of Highways which represents the current state-of-the-art in air quality impact analysis. It is EPA's position that changes in the planned lane use (such as allowing low occupancy vehicles access to the high occupancy vehicle lanes) and changes in lane speeds would require a new consistency finding relative to the WSIP, based upon new environmental impact analyses. This constitutes final agency action pursuant to the requirements of section 309 of the Clean Air Act, as amended.

APPENDIX IV.—*Final Environmental Impact Statements Which Were Reviewed and Not Commented on Between December 1, 1977 and December 31, 1977*

Identifying number	Title	Source of review
	CORPS OF ENGINEERS	
F-COE-G36033-OK	Arcadia Lake, Deep Fork River, Oklahoma	G
	DEPARTMENT OF AGRICULTURE	
F-AFS-E65016-MS	Timber Management Plan, Holly Springs and Tombigee National Forests, Mississippi	E
FS-AFS-J65011-CO	Timber Management Plan, Rio Grande National Forest, Colorado	I
F-SCS-D36023-PA	East Branch Brandywine Creek, Watershed Project, Pennsylvania	D
F-SCS-H36061-KS	Middle Creek Watershed Project, Linn and Miami Counties, Kansas	H
	DEPARTMENT OF COMMERCE	
FA-NOA-B91001-00	Preliminary Management Plan for Atlantic Herring	B
FA-NOA-B91002-00	Other Finfish, Preliminary Management Plan	B
FA-NOA-B91003-00	Squid, Preliminary Management Plan	B
FA-NOA-B91004-00	Mackerel, Preliminary Management Plan	B
FA-NOA-B91005-00	Hake, Preliminary Management Plan	B
	DEPARTMENT OF DEFENSE	
F-USA-J20006-UT	Operation of Chemical Agent Munitions Disposal System, Tooele Army Depot, Utah	I
	DEPARTMENT OF TRANSPORTATION	
F-CGD-E50003-KY	Johns Creek Railway Line, Big Sandy River, Mile 83.0, Pike County, Kentucky	E
F-FHW-A42004-KY	Jefferson Freeway, KY-841, Section 9, Jefferson County, Kentucky (FHWA-KY-EIS-73-4-F)	E
F-FHW-A42246-IA	Freeway 520, Hardin and Grundy Counties, Iowa	H
F-FHW-H40003-IA	Freeway 520, Hamilton and Hardin Counties, Iowa	H
F-FHW-H40042-IA	Freeway 518, and IA-92 Relocations, Washington and Johnson Counties, Iowa	H
F-FHW-H40062-KS	U.S. 81 to KS-93, Junction to U.S. 36, Location Study, Ottawa, Cloud and Republic Counties, Kansas	H
F-FHW-H40072-MO	Lee's Summit Road, Independence, Jackson County, Missouri	H
F-FHW-L40017-WA	WA-525 Swamp Creek Interchange to WA-99, Snohomish County, Washington (FHWA-WN-EIS-75-01-F)	K
	DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
F-HUD-G24005-TX	Tarrant County Water Project, Texas	G
F-HUD-G85024-TX	Settlers Village Subdivision, Harris County, Texas	G
F-HUD-G85025-TX	Atascocita Forest Subdivision, Harris County, Texas	G
F-HUD-G85030-TX	Colony Park Subdivision, Travis County, Texas	G
F-HUD-G85036-TX	Sterling Green Subdivision, Harris County, Texas	G
F-HUD-G85041-TX	Wingate Subdivision, Harris County, Texas	G
F-HUD-G85047-LA	Beaver Bayou Storm Drainage Improvement Program, East Baton Rouge Parish, Louisiana	G
F-HUD-G85050-TX	Ranch Country Subdivision, Harris County, Texas	G
F-HUD-G85061-NM	Taylor Ranch Planned Community, Bernalillo County, New Mexico	G
F-HUD-H85000-NB	The Highlands North Subdivision in Lincoln, Lancaster County, Nebraska	H
F-HUD-L28001-WA	Proposed Water Facilities Improvements, Bremerton, North Perry and Silverdale, Kitsap County, Washington	K

APPENDIX V.—*Regulations, Legislation and other Federal Agency Actions for Which Comments Were Issued Between December 1, 1977 and December 31, 1977*

Identifying number	Title	General nature of comments	Source for copies of comments
None			

APPENDIX VI.—*Source for Copies of EPA Comments*

A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall, SW., Washington, D.C. 20460.

B. Director of Public Affairs, Region 1, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

C. Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region 3, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30308.

F. Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

G. Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.

H. Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.

J. Office of External Affairs, Region 9, Environmental Protection Agency, 213 Fremont Street, San Francisco, California 94108.

K. Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc. 79-526 Filed 1-8-79; 8:45 am]

[6560-01-M]

[FRL 1035-4]

Science Advisory Board

CLEAN AIR SCIENTIFIC ADVISORY COMMITTEE

Open Meeting

As required by Pub. L. 92-463, notice is hereby given that a meeting of the Clean Air Scientific Advisory Committee of the Science Advisory Board will be held beginning at 9:00 a.m., January 29, 30 and 31, 1979 in Room 1112-A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202. This is the second meeting of the Clean Air Scientific Advisory Committee. The agenda includes a review of the air quality criteria document for oxides of nitrogen, and a review of the air quality criteria document for carbon monoxide. The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain information should contact Mr. Terry F. Yosie, or Mrs. Linda Thomson, Clean Air Scientific Advisory Committee, at (703) 557-7720 by close of business January 22, 1979.

Dated: January 5, 1979.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

[FR Doc. 79-664 Filed 1-8-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

R. Frederic Fisher

Temporary Exemption and Interim Approval of Agreement No. LM-26, as Supplemented

Notice is hereby given that on December 22, 1978, the Commission determined section 55 of Agreement No. LM-26 to be approved on an interim basis,and determined the balance of the agreement to be temporarily exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814), pending FEDERAL REGISTER notice, opportunity for comment, and subsequent determination by the Commission that the agreement (or any specific provision thereof) should be permanently exempt from the filing and approval requirements of section 15, Shipping Act, 1916, or should be approved, disapproved or modified under that section. This action was taken in accordance with our *Interim Policy Statement—Collective Bargaining Agreements*, served June 12, 1978. This temporary exemption is effective until April 1, 1979.

Interested parties may inspect the agreements at the Washington Office of the Federal Maritime Commission, 1100 L Street N.W., Room 10423; or at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Comments on the agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 31, 1979. Comments should include facts and arguments concerning the exemption, approval, modification or disapproval of the proposed agreements. Comments shall discuss with particularity allegations that the agreements are unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operate to the detriment of the commerce of the United States, or are contrary to the public interest, or are 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.: LM-26, as supplemented, between the Marine Staff Officers-SIUNA, Pacific District and the Pacific Maritime Association.

FILING PARTY: R. Frederic Fisher, Lillick, McHose and Charles, Two Embarcadero Center, San Francisco, California 94111.

SUMMARY: The following agreements constitute the 1978-1981 collective bargain-

ing agreement between the Marine Staff Officers-SIUNA, Pacific District (MSO) and the Pacific Maritime Association (PMA):

LM-26: 1978-1981 MSO—PMA collective bargaining agreement;

LM-26-A: MSO—PMA Welfare Plan Agreement;

LM-26-B: MSO—PMA Welfare Fund-Declaration of Trust;

LM-26-C: Form Agreement for nonmember participation in MSO—PMA Welfare Plan;

LM-26-D: MSO—PMA Vacation Plan Agreement; and

LM-26-E: MSO—PMA Vacation Plan-Declaration of Trust.

By Order of the Federal Maritime Commission.

Dated: January 4, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-756 Filed 1-8-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

FIRST WOMEN'S BANCORPORATION OF UTAH

Formation of Bank Holding Company

First Women's Bancorporation of Utah, Salt Lake City, Utah, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of Western Home Bank, Salt Lake City, Utah. The factors that are considered in acting on the application are set forth in § 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 San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 23, 1979. Any comment on an application that requests a hearing 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, January 2, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-715 Filed 1-8-79; 8:45 am]

[6210-01-M]

PLANTERS & MERCHANTS BANCSHARES, INC.

Formation of Bank Holding Company

Planters & Merchants Bancshares, Inc., Hearne, Texas, has applied for the Board's approval under § 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 Planters & Merchants State Bank of Hearne, Hearne, Texas. The factors that are considered in acting on the application are set forth in § 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 Reserve Bank, to be received not later than January 25, 1979. Any comment on an application that requests a hearing 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, January 2, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-716 Filed 1-8-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78N-0183]

CHLORTETRACYCLINE-NEOMYCIN OBLONG TABLETS

Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document withdraws approval of a new animal drug application (NADA) for use of chlortetracycline-neomycin oblong tablets. This action is being taken because the sponsor of the NADA did not request a hearing in response to a notice of opportunity for hearing on a proposal to withdraw approval of the application.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of July 18, 1978 (43 FR 30895), the Food and Drug Administration published a notice of opportunity for hearing on a proposal to withdraw approval of NADA 55-055V for Calf Scour Oblets held by American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. Each tablet contains 125 milligrams (mg) chlortetracycline in combination with 125 mg neomycin base (present as the sulfate) and vitamins A, D, and niacin. The product is recommended for oral administration in treating bacterial scours in calves. Grounds for the proposed withdrawal were that new information about the product, evaluated together with the evidence available at the time of its approval, showed a lack of substantial evidence that it was effective at the dosage level recommended or as a fixed combination.

The American Cyanamid Co. failed to file a timely request for hearing within the 30-day period provided in response to the notice of an opportunity for hearing according to § 514.200 *Contents of notice of opportunity for a hearing* (21 CFR 514.200). Such failure is construed as a decision by the firm not to avail itself of the opportunity for hearing and is grounds for entering a final order without further notice.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterainary 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 55-055V and all supplements thereto is hereby withdrawn, effective January 9, 1979.

A final rule revoking § 546.110f *Chlortetracycline hydrochloride-neomycin tablets*, which provided for the use of chlortetracycline-neomycin oblong tablets, is issued elsewhere in this issue of the FEDERAL REGISTER.

Dated: December 28, 1978.

TERENCE HARVEY,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 79-685 Filed 1-8-79; 8:45 am]

[4110-03-M]

[Docket No. 75N-0187; DESI 10837]

PROCHLORPERAZINE MALEATE WITH ISOPROPAMIDE IODIDE

Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Application; Correction

AGENCY: Food and Drug Administration.

ACTION: Correction.

SUMMARY: This document corrects a notice that was published in the FED-

ERAL REGISTER of Friday, September 15, 1978.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

Nathan J. Treinish, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-25812 appearing at page 41278 in the FEDERAL REGISTER of Friday, September 15, 1978 on page 41280, column 2, the next to last paragraph is corrected by deleting in the second line "and sustained," adding "multiple doses of the" before "immediate" and "administered at appropriate time intervals" between "entity" and "in." The correct paragraph should read "The Combid Spansule should be compared to multiple doses of the immediate release forms of each single entity administered at appropriate time intervals in a crossover design."

Dated: December 22, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 79-683 Filed 1-8-79; 8:45 am]

[4110-03-M]

[Docket No. 78N-0407; DESI 7358]

TRICOFURON VAGINAL POWDER AND SUPPOSITORIES

Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice withdraws approval of the new drug application (NDA 11-065) for Tricofuron Vaginal Powder and Suppositories, containing furazolidone and nifuroxime. The basis of the withdrawal is that the drugs lack substantial evidence of effectiveness and are not shown to be safe for their labeled indications. The drug products, which have been used to treat various infections, are no longer marketed.

EFFECTIVE DATE: January 19, 1917.

ADDRESS: Requests for the opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 7358 and directed to the Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing (DESI 7358, Docket No. FDC-D-520; now Docket No. 78N-0407)) published in the FEDERAL REGISTER of March 29, 1973 (38 FR 8186), the Commissioner of Food and Drugs proposed to issue an order withdrawing approval of certain nitrofuran drug products. Among them was Tricofuron Vaginal Powder and Suppositories containing furazolidone and nifuroxime (NDA 11-065. The basis of the proposed order was that the drugs lack substantial evidence of effectiveness and are not shown to be safe for their labeled indications. Another notice was published in the FEDERAL REGISTER of May 30, 1975 (40 FR 23501), giving Norwich Pharmacal Co. an opportunity to submit additional data meeting the requirements for fixed combination drugs for humans (21 CFR 300.50). In response to the March 29, 1973 notice, Norwich Pharmacal Co. requested a hearing for Tricofuron Vaginal Powder and Suppositories but later withdrew the request, stating that marketing of the products had been discontinued. Approval of the following new drug application is now being withdrawn.

NDA 11-065; Tricofuron Vaginal Powder and Suppositories containing furazolidone and nifuroxime; Norwich Pharmacal Co., Division of Norwich Products, Inc., 13-27 Eaton Ave., Norwich, NY 13815.

The other new drug applications included in the March 29, 1973 and May 30, 1975 notices have been the subject of subsequent FEDERAL REGISTER notices and are not affected by this notice.

Any drug product that is identical, related, or similar to Tricofuron Vaginal Powder or Suppositories and is not the subject of an approved new drug application is covered by the new drug application reviewed (NDA 11-065) and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address given above).

The Director of the Bureau of Drugs, under the Federal Food, Drug and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling and the drug products are not shown to be safe for use under the conditions of use on the basis of which the application was approved.

Therefore, pursuant to the foregoing finding, approval of new drug application 11-065, and all amendments and supplements applying thereto, is withdrawn effective January 19, 1979. Shipment in interstate commerce of the above products or of any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: December 29, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 79-686 Filed 1-8-79; 8:45 am]

[4110-03-M]

[Docket No. 78N-0227; DESI 11853]

TRIMETHOBENZAMIDE HYDROCHLORIDE INJECTION AND CAPSULES

Drugs for Human Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice (1) reclassifies trimethobenzamide hydrochloride injection and capsules to effective for certain indications and to lacking substantial evidence of effectiveness for their other less-than-effective indications, (2) sets forth the marketing and labeling conditions for the drug products for the effective indications, (3) states that to obtain effective plasma levels for these drug products, a dosage of 200 milligrams intramuscularly or 400 milligrams orally is required, and that as part of the marketing conditions for the capsule dosage form, the capsules, now containing 100 milligrams or 250 milligrams must be reformulated to 200 milligrams or 400 milligrams respectively, and (4) offers an opportunity for a hearing concerning the indications lacking substantial evidence of effectiveness.

DATES: Hearing requests due on or before February 8, 1979; bioavailability supplements to approved new drug applications due on or before July 9, 1979; other supplements and data in support of hearing requests due on or before March 12, 1979.

ADDRESSES: Communications forwarded in response to this notice should be identified with reference number DESI 11853, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-34, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for Hearing (identify with Docket number appearing in the heading of this notice): Hearing Clerk, Food and Drug Administration (HFA-305), Rm. 4-65.

Requests for guidelines or information on conducting bioavailability tests: Division of Biopharmaceutics (HFD-520), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT:

Herbert Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (DESI 11853) published in the FEDERAL REGISTER of February 24, 1971 (36 FR 3435), the Food and Drug Administration announced its conclusion that the drug products described below are (1) probably effective for nausea and vomiting due to radiation therapy or travel sickness and for emesis associated with operative procedures, labyrinthitis, or Meniere's syndrome; (2) lacking substantial evidence of effectiveness for the treatment of nausea and vomiting due to infections, underlying disease processes or drug administration; and (3) possibly effective for all their other labeled indications.

NDA 11-853; Tigan Injection; and

NDA 11-854; Tigan Capsules containing trimethobenzamide hydrochloride; Roche Laboratories, Division of Hoffmann-LaRoche Inc., Roche Park, Nutley, NJ 07110.

The following new drug applications were not included in the initial notice, but are affected by this notice:

NDA 17-530; Tigan Injection; and

NDA 17-531; Tigan Capsules containing trimethobenzamide hydrochloride, Beecham Laboratories; 501 Fifth St., Bristol, TN 37620.

Roche submitted clinical studies to demonstrate the effectiveness of the drug products for the following indications:

NAUSEA SECONDARY TO GASTROENTERITIS

For this indication, the sponsor submitted studies by Weiner, Gold, and Taylor and a multicenter study made up of seven studies by Hargleroad, Manzano, MacHaffie, McCleahan, and Merikanges. All the above studies except the Gold and Taylor studies provided evidence of effectiveness for the injectable form of the drug.

The Gold study, a placebo-controlled, double-blind crossover study using 200 milligrams Tigan intramuscularly in five patients, cannot be considered an adequate and well-controlled study as it did not demonstrate comparability in drug and control groups for pertinent variables such as severity and duration of symptoms (21 CFR 314.111(a)(5)(ii)(*a*)(*2*)(*iii*)).

The Taylor study was an open study without a concurrent control group, (21 CFR 314.111(a)(5)(ii)(*a*)(*4*)). In addition, details regarding methods of observation and recording of results are not provided, (21 CFR 314.111(a)(5)(ii)(*a*)(*3*)), and methods of analysis and evaluation of data are not described and do not appear to provide for separate analyses of the two dosage forms used. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

VOMITING SECONDARY TO GASTROENTERITIS

For this indication, the Weiner and the multicenter studies were submitted. The Weiner study was a well-controlled study providing evidence of effectiveness, but in the multicenter study (made up of seven studies), only one, by Manzano, showed even a strong trend favoring Tigan. The other six did not provide any evidence of effectiveness. The sponsor agrees with this analysis and claims no significant difference between Tigan and placebo for vomiting secondary to gastroenteritis for the multicenter study. As there is only one study supporting the effectiveness of Tigan in vomiting, and this study is not supported by other well-designed studies, the indication "vomiting secondary to gastroenteritis" is reclassified to lacking substantial evidence of effectiveness.

NAUSEA AND VOMITING POSTOPERATIVELY

Six studies (by Zauder, Kinyon, Lorhan, Snow, Lynch, and Milowsky) were submitted. The Milowsky study was the only one that was not adequate and well controlled. It was deficient in that information on dosage was not given. 21 CFR 314.111(a)(5)(ii)(*a*)(*3*). In any case, the sponsor did not claim any significant difference between Tigan and placebo for this study.

Of the five adequate and well-controlled studies, those by Zauder and Kinyon provide evidence of effectiveness for nausea postoperatively, while the Zauder, Snow, and Lorhan studies provide evidence of effectiveness for vomiting postoperatively. Therefore, as there are at least two adequate and well-controlled studies providing evidence of effectiveness for Tigan, the indication "nausea and vomiting postoperatively" is reclassified to effective.

NAUSEA AND VOMITING ASSOCIATED WITH RADIOTHERAPY

Two studies, both by Marty, were submitted.

The first Marty study is an adequate and well-controlled, double-blind, parallel, placebo-controlled study in 45 patients who had nausea and vomiting associated with radiation therapy of neoplasms above the diaphragm, excluding the brain. The dosage regime was a single 200-milligram intramuscular dose of Tigan, followed 2 hours later by a 250 milligram Tigan capsule daily for 3 days. All patients had a nausea rating of severe at baseline. Three patients were excluded from analysis. Results of the initial intramuscular and subsequent oral dosages were analyzed separately. The sponsor concluded that there were no significant differences between the Tigan products, injectable and capsule, and placebo for nausea or vomiting in the patient population tested.

The second Marty study is an adequate and well-controlled, randomized, double-blind, parallel, placebo-controlled study in 60 patients who had nausea and vomiting during a course of radiation therapy for neoplasm (31 patients had intra-abdominal neoplasms and 29 had extra-abdominal neoplasms). The dosage regime was 200 milligrams Tigan intramuscularly at the first episode of vomiting, followed by 250-milligram Tigan capsules four times a day for 7 days on an outpatient basis. Daily nausea and vomiting scores were obtained, and an overall 7-day average was computed separately for nausea and vomiting. The sponsor claims a significant difference between the drug and placebo ($p \leq 0.05$) for this study, and FDA agrees that it provides some evidence of effectiveness for Tigan. But as only on of the two studies provides evidence of effectiveness and there are no other studies to corroborate the findings of the second Marty study, there is a lack of substantial evidence supporting the indication "nausea and vomiting asso-

ciated with radiotherapy" and the indication is therefore reclassified to lacking substantial evidence of effectiveness.

No data were submitted for any of the other probably effective or possibly effective indications and they are reclassified to lacking substantial evidence of effectiveness. No data have been submitted for the indications previously classified as lacking substantial evidence of effectiveness.

On March 9, 1977, April 15, 1977, and January 3, 1978, Beecham laboratories submitted bioavailability studies. The first study submitted March 9, 1977, compared blood levels following administration of a 200-milligram intramuscular dose, a 250-milligram oral capsule, and a 200-milligram rectal suppository. The second study submitted on January 3, 1978 compared blood levels of the drug in normal fasting human subjects following the administration of Tigan, 200-milligrams intramuscularly, two 250-milligram capsules orally, and two 200-milligram suppositories. The object of the study was to determine if the different dosage forms are bioequivalent. The relative bioavailability or extent of absorption of the capsule in the two studies was 56-62 percent of that of the intramuscular injection. As the oral route of administration produced blood levels which were approximately half of the levels produced by the intramuscular route, the oral dose *should* be approximately two times the intramuscular dose.

On May 2, 1978, Beecham supplemented its new drug application to reformulate the capsule dosage form from 100 milligrams and 250 milligrams to 200 milligrams and 400 milligrams respectively. These reformulated products are being handled through the normal supplemental new drug application procedures.

Accordingly, the February 24, 1971 notice is amended to read as follows as it pertains to trimethobenzamide hydrochloride injection and capsules. The drug in suppository dosage form is the subject of a separate notice appearing elsewhere in this issue of the FEDERAL REGISTER.

Such drugs are regarded as new drugs (21 U.S.C 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application is a requirement for marketing such drug products.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

As stated in the FEDERAL REGISTER of August 23, 1977 (42 FR 42311), the provision of 21 CFR 320.22(c) waiving bioavailability data for certain drugs does not necessarily apply to any product first announced as effective in a DESI notice published after January 7, 1977. As this is the first notice announcing that trimethobenzamide hydrochloride is effective, the oral and injectable products have also been reviewed for actual or potential bioequivalence problems. It has been determined that trimethobenzamide capsules should be added to the list of drugs for which bioavailability data are not waived.

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug is effective for the indications listed in the labeling conditions below. The drug lacks substantial evidence of effectiveness for its other labeled indications.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* The drug product is in sterile aqueous solution form suitable for intramuscular administration or in capsule form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The Indications are as follows:

For the treatment of postoperative nausea and vomiting and for nausea associated with gastroenteritis.

c. The following statement, or an equivalent statement, is added to the Action section:

ORAL AND PARENTERAL TRIMETHOBENZAMIDE ARE NOT BIOEQUIVALENT. AN ORAL DOSE OF 400 MILLIGRAMS OF TRIMETHOBENZAMIDE YIELDS PLASMA LEVELS APPROXIMATELY EQUIVALENT TO A 200-MILLIGRAM INTRAMUSCULAR DOSE. The systemic bioavailability of orally administered trimethobenzamide is about 60 percent of the bioavailability of intramuscularly administered drug, possibly because of slow absorption and rapid liver metabolism (first pass effect). This difference is manifested as diminished peak blood levels and a diminished area under the plasma concentration curve following oral, as compared to parenteral administration.

d. The Dosage and Administration section reads as follows:

a. For the treatment of nausea secondary to gastroenteritis: 200 mg intramuscularly or 400 mg orally.

b. For the treatment of nausea and vomiting postoperatively: 200-mg intramuscular injection, followed in 1 hour by a second 200-mg intramuscualr injection, or 400 orally.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before March 12, 1979 the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)).

In addition, for the capsule dosage form, on or before July 9, 1979, each holder of an application is required to submit evidence demonstrating the vivo bioavailability of the drug product by comparing the oral capsule product with Beecham's intramuscular injection, and with an oral solution.

This requirement is being imposed in order to determine whether the greatly diminished bioavailability of the oral dosage form as compared with the intramuscular dosage form is due to a "first pass" effect or to a nonoptimum formulation.

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such products. The bioavailability regulations (21 CFR 320.21) published in the FEDERAL REGISTER of January 7, 1977, require any person submitting an abbreviated new drug application after July 7, 1977, to include evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. No waiver will be granted for trimethobenzamide hydrochloride capsules. However, the bioavailability requirement will be regarded as satisfied for the capsules by supplying the following information: (1) Evidence from in vivo studies demonstrating the bioavailability of the capsule relative to the bioavailability of a solution containing the same

amount of drug as the capsule and to Beecham's Tigan intramuscualr 200-milligram injection. When the agency has acquired sufficient pharmacokinetic information characterize the oral dosage form to provide for appropriate labeling for the 200- and 400-milligram dosage form, this notice will be amended to remove the requirement for the oral solution. (2) Dissolution data on three consecutive lots of the product, including the lot employed in bioavailability studies, shall be collected in accordance with the methods provided for in the guidelines on conducting dissolution tests, which are available for the Division of Biopharmaceutics.

For the intramuscular dosage form the following is required: For drug products identical to Beecham's Tigan intramuscular injection in concentration of both active ingredient and inactive ingredient: provide either evidence demonstrating that the drug product is identical in both active and inactive ingredient formulation, or evidence demonstrating the in vivo bioavailability of the drug product as compared to Beecham's Tigan intramuscular injection.

For the drug products differing in concentration of active ingredient or differing in inactive ingredient formulation: provide evidence form in vivo studies demonstrating the bioavailability of the drug product as compared to an equivalent dose of Beecham's Tigan intramuscular injection.

Marketing prior to approval of a new drug application will subject such products, and the persons who caused the products to be marketed, to regulatory action.

C. *Notice of opportunity for hearing.* On the basis of all the data and information available to him, the Director of the Bureau of Drugs is aware of only one adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drugs for each of the following two indications: vomiting secondary to gastroenteritis; nausea and vomiting associated with radiotherapy. For each of these two indications a second study should have been submitted to determine whether the results of the first are replicable. The Director is unaware of any such adequate and well-controlled clinical investigations demonstrating effectiveness of the drugs for the other indications lacking substantial evidence of effectiveness referred to in paragraph A of this notice.

Notice is given to the holders of the new drug applications, and to all other interested persons, that the Director of the Bureau of Drugs proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto providing for the indications lacking substantial evidence of effectiveness referred to in paragraph A of this notice on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the applications, shows there is a lack of substantial evidence that the drug products will have all the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling. An order withdrawing approval will not issue with respect to any applications supplemented, in accord with this notice, to delete the claims lacking substantial evidence of effectiveness.

In addition to the ground for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicants and all other persons who manufacture or distribute a drug product which is identical, related, or similar to a drug product named above (21 CFR 310.6), are hereby given an opportunity for a hearing to show why approval of the new drug applications providing for the claims involved should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and all identical, related, or similar drug products.

An applicant or any person subject to this notice pursuant to 21 CFR 310.6 who decides to seek a hearing shall file (1) on or before February 8, 1979, a written notice of appearance and request for hearing, and (2) on or before March 12, 1979, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by such person not to make use of the opportunity for a hearing concerning the action proposed with respect to such drug product and a waiver of any contentions concerning the legal status of such drug product. Any such drug product labeled for the indications lacking substantial evidence of effectiveness referred to in paragraph A. of this notice may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requries a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice of opportunity for hearing shall be filed in quintuplicate. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: December 22, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 79-681 Filed 1-8-79; 8:45 am]

[4110-03-M]

[Docket No. 78N-0224; DESI 11853]

TRIMETHOBENZAMIDE HYDROCHLORIDE SUPPOSITORIES

Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice reclassifies trimethobenzamide hydrochloride suppositories to lacking substantial evidence of effectiveness, proposes to withdraw approval of the new drug applications, and offers an opportunity for a hearing on the proposal.

DATE: Hearing requests due on or before February 8, 1979.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 11853 and the Docket number appearing in the heading of this notice, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for Hearing: Hearing Clerk, Food and Drug Administration (HFC-20), Rm. 4-65.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs, Food and Drug Administration.

FOR FURTHER INFORMATION CONTACT:

Herber Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 9301-443-3650).

SUPPLEMENTARY INFORMATION: In a notice (DESI 11853) published in the FEDERAL REGISTER of February 24, 1971 (36 FR 3435), the Food and Drug Administration announced its conclusion that the drug product described below is (1) probably effective for nausea and vomiting due to radiation therapy or travel sickness and for emesis associated with operative procedures, labyrinthitis, or Meniere's syndrome; (20 lacking substantial evidence of effectiveness for the treatment of nausea and vomiting due to infections, underlying disease processes or drug administration; and (3) possibly effective for all its other labeled indications.

NDA 11-855; Tigan Suppositories containing trimethobenzamide hydrochloride; Roche Laboratories, Division of Hoffmann-LaRoche Inc., Roche Park, Nutley, NJ 07110.

The following new drug application was not included in the initial notice, but is affected by this notice.

NDA 17-529; Tigan Suppositories; containing trimethobenzamide hydrochloride; Beecham Laboratories; 501 Fifth St., Bristol, TN 37620.

Tigan Injection and Capsules, included in the notice of February 24, 1971, are the subject of a separate notice appearing elsewhere in this issue of the FEDERAL REGISTER.

Hoffmann-LaRoche submitted three studies (Burnett, Robinson, and Taylor) concerning the suppository dosage form. The Burnette and Robinson studies were double-blind, placebo controlled studies in 20 patients who were being treated for nausea and vomiting associated with acute nonspecific gastritis and/or gastroenteritis using Tigan 200-milligram suppositories. Each patient had had at least one episode of vomiting before being admitted to the study. Baseline degree of nausea and number of emeses were recorded, and patients given one dose of Tigan 200-milligram suppository or placebo. Nausea and vomiting were rated by the observer at 15-minute intervals for the first hour, and at 30-minute intervals for the next 3 hours. Nausea was rated as none, mild, moderate, or severe, and vomiting was rated according to how many times a patient vomited during a 15-minute or 30-minute period. A global evaluation was made at the end of the observation period. The sponsor concluded that these studies did not show any significant differences between the drug and placebo.

The Taylor study was an open study of 10 patients who were being treated for nausea and vomiting associated with acute gastritis and gastroenteritis, using Tigan 200-milligram injection plus Tigan 200-milligram suppositories. The exact details of the study were not submitted and no conclusions could be reached.

The Taylor study is not considered adequate an well-controlled for the following reasons:

1. It is an open study in which patients served as their own control. This is an inappropriate control, as acute gastritis and gastroenteritis tend to resolve spontaneously. Without a concurrent control there is no way to distinguish drug effect from spontaneous improvement. 21 CFR 314.111 (a)(5)(ii)(*a*)(*4*).

2. Details regarding methods of observation and recording of results are not provided. 21 CFR 314.111(a) (5)(ii)(*a*)(*3*).

3. Methods of analysis and evaluation of data are not described and do not appear to provide for separate analyses of the two dosage forms used. 21 CFR 314.111(a)(5)(ii)(*a*)(*5*).

On March 9, 1977, April 15, 1977, and January 3, 1978, Beecham Laboratories submitted bioavailability studies, comparing blood levels of the drug in normal fasting human subjects following the administration of 200 milligrams Tigan intramuscularly, two 250-milligram capsules orally, and two 200-milligram suppositories rectally. The object of the study was to determine if the different dosage forms are bioequivalent. The study showed that the injectable form gave very reproducible results from subject to subject in terms of blood levels and pertinent pharmacokinetic parameters which the suppository form gave extremely poor results. The relative bioavailability or extent of absorption of the suppository was 32 percent of that of the intramuscular injection. The peak time of onset of drug action was also significantly later with the suppository. Therefore, as now formulated, the suppository dosage form is bioinequivalent to the injectable dosage form. The drug is not adequately released from the suppository dosage form, and therefore adequate blood levels of the drug are not obtained.

Therefore, as the studies submitted do not provide substantial evidence of effectiveness for the suppository dosage form and because of the inadequate blood levels obtained, the suppository dosage form is reclassified to lacking substantial evidence of effectiveness.

On the basis of all of the data and information available to him, the Director of the Bureau of Drugs is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5), demonstrating the effectiveness of the drug.

Therefore, notice is given to the holders of the new drug applications and to all other interested persons that the Director of the Bureau of Drugs proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of the new drug applications and all amendments and supplements thereto on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the applications, shows there is a lack of substantial evidence that the drug products will have the effect they purport or are represented

to have under the conditions of use prescribed, recommended, or suggested in the labeling.

In addition to the holders of the new drug applications specifically named above, this notice of opportunity for hearing applies to all persons who manufacture or distribute a drug product that is identical, related, or similar to a drug product named above, as defined in 21 CFR 310.6. It is the responsibility of every drug manufacturer or distributor to review this notice of opportunity for hearing to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

In addition to the grounds for the proposed withdrawal of approval stated above, this notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6) e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act pursuant to the exemption for products marketed prior to June 25, 1938, contained in section 201(p) of the act, or pursuant to section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with the provisions of section 505 of the act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Parts 310, 314), the applicants and all other persons subject to this notice pursuant to 21 CFR 310.6 are hereby given an opportunity for a hearing to show why approval of the new drug applications should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of a drug product named above and of all identical, related, or similar drug products.

An applicant or any other person subject to this notice pursuant to 21 CFR 310.6 who decides to seek a hearing, shall file (1) on or before February 8, 1979, a written notice of appearance and request for hearing, and (2) on or before March 12, 1979, the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a grant or denial of hearing, are contained in 21 CFR 314.200.

The failure of an applicant or any other person subject to this notice pursuant to 21 CFR 310.6 to file timely written appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed with respect to the product and constitutes a waiver of any contentions concerning the legal status of any such drug product. Any such drug product may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such drug products from the market. Any new drug product marketed without an approved NDA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, denying a hearing.

All submissions pursuant to this notice shall be filed in quintuplicate. Such submissions except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053, as amended (21 U.S.C. 355)), and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: November 30, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 79-682 Filed 1-8-79; 8:45 am]

[4110-84-M]

Health Services Administration

RECHARTERING AND CHANGE OF NAME OF STATUTORILY ESTABLISHED COUNCIL

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, (5 U.S.C. Appendix I), the Health Services Administration announces the rechartering and change of name by the Secretary, HEW, on December 7, 1978, of the National Advisory Council on Health Manpower Shortage Areas to the National Advisory Council on the National Health Service Corps.

Dated: December 28, 1978.

WILLIAM H. ASPDEN, Jr.,
Associate Administrator for Management.

[FR Doc. 79-734 Filed 1-8-79; 8:45 am]

[4110-08-M]

National Institutes of Health

GENERAL CLINICAL RESEARCH CENTERS COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers Committee, Division of Research Resources, on February 22-23, 1979, in the Terrace Room, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20014.

The meeting will be open to the public on February 22, 1979, from 9:00 a.m. to 11:00 a.m., to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public February 22 from 11:00 a.m. to 5:00 p.m., and on February 23 from 9:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Room 5B13, Building 31, Bethesda, Maryland, 20014, telephone (301) 496-5545, will provide summaries of the meeting and rosters of the Committee members. Dr. Ephraim Y. Levin, Ex-

ecutive Secretary of the General Clinical Research Centers Committee, Room 5B51, Building 31, National Institutes of Health, Bethesda, Maryland 20014, telephone (301) 496-6595, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs No. 13.333, National Institutes of Health.)

Dated: December 28, 1978.

SUZANNE L. FREMEAU,
NIH Committee Management Officer.

[FR Doc. 79-544 Filed 1-8-79; 8:45 am]

[4110-08-M]

DIVISION OF RESEARCH GRANTS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for February and March 1979 and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to Study Section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Richard Turlington, Chief, Grants Inquiries Office of the Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20014, telephone area code 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each Executive Secretary whose name, room number, and telephone number are listed below each study section. Anyone planning to attend a meeting should contact the Executive Secretary to confirm the exact meeting time. All times are A.M. unless otherwise specified.

Study Section	February-March 1979 Meetings	Time	Location
Allergy & Immunology: Dr. Morton Reitman, Rm. 320, Tel. 301-496-7380	Feb. 16-18	8:45	Royal Inn, La Jolla, CA
Applied Physiology & Orthopedics: Ms. Ileen E. Stewart, Rm. 350, Tel. 301-496-7581	Feb. 16-19	8:30	Sheraton-Palace Hotel, San Francisco, CA
Bacteriology & Mycology: Dr. Milton Gordon, Rm. 218, Tel. 301-496-7340	Feb. 22-24	8:30	Holiday Inn, Bethesda, MD
Bioanalytical & Metallobiochemistry: Mr. Richard P. Bratzel, Rm. 310, Tel. 301-496-7733	Mar. 8-10	8:30	Embassy Row Hotel, Washington, DC
Biochemistry: Dr. Adolphus P. Toliver, Rm. 318, Tel. 301-496-7516	Feb. 21-24	9:00	Ramada Inn, Arlington, VA
Biophysics & Biophysical Chemistry A: Dr. Asher Hyatt, Rm. 236, Tel. 301-496-7060	Mar. 2-4	9:00	Mayflower Hotel, Washington, DC
Biophysics & Biophysical Chemistry B: Dr. John B. Wolff, Rm. 236, Tel. 301-496-7070	Mar. 1-3	8:30	Rm. 6, Bldg. 31C, Bethesda, MD
Bio-Phychology: Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7058	Feb. 13-16	9:00	Shoreham Americana, Washington, DC
Cardiovascular & Pulmonary: Dr. Vincent J. Cairoli, Rm. 339, Tel. 301-496-7901	Mar. 6-10	8:00	Holiday Inn, Bethesda, MD
Cardiovascular & Renal: Dr. Rosemary S. Morris, Rm. 339, Tel. 301-496-7901	Feb. 21-24	8:00	Holiday Inn, Bethesda, MD
Cell Biology: Dr. Gerald Greenhouse, Rm. 2A-04, Tel. 301-496-7020	Feb. 16-18	8:30	Handlery Master Hosts Inn, San Diego, CA
Communicative Sciences: Dr. Michael Halasz, Rm. 321, Tel. 301-496-7550	Mar. 14-16	8:30	Room 7, Bldg. 31C, Bethesda, MD
Endocrinology: Mr. Morris M. Graff, Rm. 333, Tel. 301-496-7346	Feb. 5-8	7:00 p.m.	Mar Monte Hotel, Santa Barbara, CA
Epidemiology & Disease Control: Dr. Ann Schluederberg, Rm. 234, Tel. 301-496-7246	Feb. 21-23	8:30	Room 6, Bldg. 31C, Bethesda, MD
Experimental Therapeutics: Dr. Anne R. Bourke, Rm. 319, Tel. 301-496-7839	Feb. 28-Mar. 3	1:00 p.m.	Kenwood Country Club, Bethsda, MD
Experimental virology: Dr. Eugene Zebovitz, Rm. 206, Tel. 301-496-7474	Feb. 25-28	2:00 p.m.	Room 8, Bldg. 31C, Bethesda, MD
General Medicine A: Dr. Harold M. Davidson, Rm. 354, Tel. 301-496-7797	Feb. 25-28	1:00	Room 8, Bldg. 31C
General Medicine B: Dr. William F. Davis, Jr., Rm. 322, Tel. 301-496-7730	Mar. 7-10	8:30	Embassy Row Hotel, Washington, DC
Genetics: Dr. David J. Remondini, Rm. 349, Tel. 301-496-7271	Mar. 9-12	3:00 p.m.	Keystone Conference Ctr., Keystone, CO
Hematology: Dr. Clark K. Lum, Rm. 355, Tel. 301-496-7508	Feb. 22-24	8:30	Holiday Inn, Georgetown, DC
Human Development: Dr. Miriam F. Kelty, Rm. 232, Tel. 301-496-7025	Feb. 27-Mar. 2	9:00	Holiday Inn, Bethesda, MD
Human Embryology & Development: Dr. Arthur Hoversland, Rm. 221, Tel. 301-496-7597	Mar. 14-17	8:30	Room 9, Bldg. 31C, Bethesda, MD
Immunobiology: Dr. James H. Turner, Rm. 233, Tel. 301-496-7780	Feb. 28-Mar. 2	8:30	Embassy Row Hotel, Washington, DC
Immunological Sciences: Dr. Lottie Kornfeld, Rm. 233, Tel. 301-496-7179	Mar. 7-9	8:30	Linden Hill Hotel, Bethesda, MD
Medicinal Chemistry A: Dr. Ronald J. Dubois, Rm. 425, Tel. 301-496-7286	Feb. 22-25	9:00	Holiday Inn, Chevy Chase, MD
Metabolism: Dr. Robert M. Leonard, Rm. 334, Tel. 301-496-7091	Mar. 1-3	8:30	Room 10, Bldg. 31C, Bethesda, MD
Microbial Chemistry: Dr. Eileen Raizen, Rm. 357, Tel. 301-496-7130	Feb. 21-23	9:00	Room 9, Bldg. 31C, Bethesda, MD
Molecular Biology: Dr. Donald T. Disque, Rm. 328, Tel. 301-496-7830	Feb. 21-24	8:30	Holiday Inn, Bethesda, MD
Molecular Cytology: Dr. Ramesh Nayak, Rm. 222, 301-496-7149	Mar. 1-3	8:30	Room 9, Bldg. 31C, Bethesda, MD
Neurological Sciences: Dr. Edwin M. Bartos, Rm. 207, Tel. 301-496-7000	Mar. 1-3	8:30	Ramada Inn, Arlington, VA
Neurology A: Dr. William E. Morris, Rm. 326, Tel. 301-496-7095	Feb. 28-Mar. 3	9:00	Holiday Inn, Georgetown, DC

Study Section	February–March 1979 Meetings	Time	Location
Neurology B:			
Dr. Willard L. McFarland, Rm. A-23, Tel. 301-496-7422	Feb. 21-24	8:30	Shoreham Americana, Washington, DC
Nutrition:			
Dr. John R. Schubert, Rm. 204, Tel. 301-496-7178	Feb. 28-Mar. 2	8:30	Room 7, Bldg. 31C, Bethesda, MD
Oral Biology & Medicine:			
Dr. Thomas M. Tarpley, Jr., Rm. 325, Tel. 301-496-7818	Feb. 20-23	8:00	Linden Hill Hotel, Bethesda, MD
Pathobiological Chemistry:			
Dr. Ellen G. Archer, Rm. 433, Tel. 301-496-7432	Mar. 14-17	8:30	Room 8, Bldg. 31C, Bethesda, MD
Pathology A:			
Dr. Harold Waters, Rm. 337, Tel. 301-496-7305	Feb. 27-Mar. 2	8:00	Shoreham Americana, Washington, DC
Pathology B:			
Dr. Mischa Friedman, Rm. 352, Tel. 301-496-7244	Feb. 21-23	8:30	Holiday Inn, Bethesda, MD
Pharmacology:			
Dr. Joseph A. Kaiser, Rm. 206, Tel. 301-496-7408	Feb. 27-Mar. 1	8:30	Holiday Inn, Bethesda, MD
Physiological Chemistry:			
Dr. Harry Brodie, Rm. 338, Tel. 301-496-7837	Feb. 22-24	9:00	Holiday Inn, Bethesda, MD
Physiology:			
Dr. Martin Frank, Rm. 209, Tel. 301-496-7878	Feb. 22-24	9:00	Room 4, Bldg. 31A, Bethesda, MD
Radiation:			
Dr. Robert L. Straube, Rm. 219, Tel. 301-496-7073	Mar. 5-7	9:00	Holiday Inn, Bethesda, MD
Reproductive Biology:			
Dr. Dharam S. Shindsa, Rm. 307, Tel. 301-796-7318	Feb. 20-23	8:30	Holiday Inn, Chevy Chase, MD
Social Sciences & Population:			
Miss Carol A. Campbell, Rm. 210, Tel. 301-496-7140	Mar. 1-4	9:00	Shoreham Americana, Washington, DC
Surgery, Anesthesiology & Trauma:			
Dr. Keith Kraner, Rm. 336, Tel. 301-496-7771	Feb. 22-23	8:30	Holiday Inn, Arlington, VA
Surgery & Bioengineering:			
Dr. Joe W. Atkinson, Rm. 348, Tel. 301-496-7506	Mar. 1-2	8:30	Holiday Inn, Arlington, VA
Toxicology:			
Dr. Raymond Bahor, Rm. 226, Tel. 301-496-7570	Mar. 9-11	8:30	Marriott Hotel, New Orleans, LA
Tropical Medicine & Parasitology:			
Dr. Betty June Myers, Rm. 319, Tel. 301-496-7494	Mar. 1-3	8:30	Holiday Inn, Chevy Chase, MD
Virology:			
Dr. Claire H. Winestock, Rm. 138, Tel. 301-496-7128	Mar. 8-10	8:30	Room 6, Bldg. 31C, Bethesda, MD
Visual Sciences A:			
Dr. Orvil E. A. Bolduan, Rm. 437, Tel. 301-496-7180	Mar. 7-9	9:00	Holiday Inn, Silver Spring, MD
Visual Sciences B:			
Dr. Luigi Giacometti, Rm. 325, Tel. 301-496-7251	Feb. 28-Mar. 3	9:00	Sheraton Inn, Silver Spring, MD

(Catalog of Federal Domestic Assistance Program Nos. 13.333, 13.337, 13.349, 13.393-13.396, 13.386-13.844, 13.846-13.871, 13.876, National Institutes of Health, HEW)

Dated: December 28, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 79-545 Filed 1-8-79; 8:45 am]

[4110-08-M]

NATIONAL ADVISORY RESEARCH RESOURCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Research Resources Council, Division of Research Resources (DRR), February 1-2, 1979, Conference Room No. 10, Bldg. 31-C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

The meeting will be open to the public from 9:00 a.m. to recess of February 1 for: The conduct of Council business, including a report by the Director, DRR; a report by the Deputy Director, DRR; a report by the Primate Research Centers Evaluation Panel; a review of the Biomedical Research Support Program and discussion of the Biomedical Research Support Program Revised Guidelines; a Program Data Report; and a general discussion by the members of the Council. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6) under Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 2, from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Room 5B13, Bldg. 31, Bethesda, Maryland 20014, (301) 496-5545, will provide summaries of the meeting and rosters of the Council members. Dr. James F. O'Donnell, Deputy Director, Division of Research Resources, National Institutes of Health, Room 5B03, Bldg. 31, Bethesda, Maryland 20014, (301) 496-6023, will furnish substantive program information and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program Nos. 13.306; 13.333; 13.337; 13.371; 13.375; National Institutes of Health.)

Dated: December 28, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 79-546 Filed 1-8-79; 8:45 am]

[4110-08-M]

NATIONAL CANCER INSTITUTE

Advisory Committees Open Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be entirely open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will furnish summaries of the meetings and rosters of committee members upon request.

Other information pertaining to the meeting can be obtained from the Executive Secretary indicated.

Name of Committee: Breast Cancer Task Force Committee.
Dates: February 7, 1979; 8:45 a.m. to adjournment.
Place: Building 31C, Conference Room 10, National Institutes of Health.
Times: Open for the entire meeting.
Agenda: Program review.
Executive Secretary: Dr. D. Jane Taylor. Address: Landow Building, Room 4A22, National Institutes of Health. Phone: 301/496-6718.

Name of Committee: Cancer Control and Rehabilitation Advisory Committee.
Dates: February 8-9, 1979; 9:00 a.m. to adjournment.
Place: Building 31C, Conference Room 7, National Institutes of Health.
Times: Open for the entire meeting.
Agenda: To discuss current projected programs of the Division of Cancer Control and Rehabilitation.
Executive Secretary: Mr. H. C. Noyes. Address: Blair Building, Room 720, National Institutes of Health. Phone: 301/427-8053.

Dated: December 28, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, NIH.

[FR Doc. 79-547 Filed 1-8-79; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF P-PHENYLENEDIAMINE DIHYDROCHLORIDE FOR POSSIBLE CARCINOGENICITY

Availability

p-Phenylenediamine dihydrochloride (CAS 624-18-0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of p-phenylene- diamine dihydrochloride for possible carcinogenicity was conducted using Fischer 344 rats and B6C3F1 mice. The chemical is a salt of p-phenylenediamine, which has applications including use as an ingredient of hair dyes. p-Phenylenediamine dihydrochloride was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, there was no convincing evidence that dietary administration of p-phenylenediamine dihydrochloride was carcinogenic in Fischer 344 rats or B6C3F1 mice.

Single copies of the report, Bioassay of p-Phenylenediamine Dihydrochloride for Possible Carcinogenicity (T.R. 174), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: January 2, 1979.

DONALD S. FREDRICKSON, M.D.,
Director, National Institutes of Health.

[FR Doc. 79-540 Filed 1-8-79; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF CARBROMAL FOR POSSIBLE CARCINOGENICITY

Availability

Carbromal (CAS 77-65-6) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of carbromal was conducting using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as a sedative drug. Carbromal was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species with the exception of 49 low dose male mice and high dose female mice.

Under the conditions of this bioassay, dietary administration of carbromal was not carcinogenic in Fischer 344 rats or B6C3F1 mice.

Single copies of the report, Bioassay of Carbromal for Possible Carcinogenicity (T.R. 173), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: January 2, 1979.

DONALD S. FREDERICKSON, M.D.,
Director, National Institutes of Health.

[FR Doc. 79-541 Filed 1-8-79; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF 2-NITRO-P-PHENYLENEDIAMINE FOR POSSIBLE CARCINOGENICITY

Availability

2-Nitro-p-phenylenediamine (CAS 5307-14-2) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of 2-Nitro-p-phenylenediamine was conducted using

Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use in hair dyes. 2-Nitro-p-phenylenediamine was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, dietary administration of 2-Nitro-p-phenylenediamine was carcinogenic to female B6C3F1 mice, causing an increased incidence of hepatocellular neoplasms, primarily hepatocellular adenomas. There was no convincing evidence for the carcinogenicity of the compound in Fischer 344 rats or in male B6C3F1 mice.

Single copies of the report, Bioassay of 2-Nitro-p-phenylenediamine for Possible Carcinogenicity (T.R. 169), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: January 2, 1979.

DONALD S. FREDRICKSON, M.D.,
Director,
National Institutes of Health.

[FR Doc. 79-542 Filed 1-8-79; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF 3,3'-DIMETHOXYBENZIDINE-4,4'-DIISOCYANATE FOR POSSIBLE CARCINOGENICITY

Availability

3,3' - Dimethoxybenzidine - 4,4' - diisocyanate (CAS 91-93-0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for the possible carcinogenicity of 3,3'-dimethoxybenzidine-4,4'-diisocyanate was conducted using Fisher 344 rats and B6C3F1 mice. The chemical is an experimental compound, with potential uses that include the manufacture of coatings, gaskets and shock absorbers. 3,3' - Dimethoxybenzidine - 4,4' - diisocyanate was administered, at either of two concentrations, to groups of 50 male and 50 female animals of each species, with the exception of 49 high dose female rats. The compound was administered in the feed with the exception of the first 22 weeks of the rat bioassay, when it was administered by gavage.

Under the conditions of this bioassay, administration of 3,3'-dimethoxybenzidine-4,4'-diisocyanate was carcinogenic to Fisher 344 rats, causing neoplasms of the skin (excluding skin of the ear) in males, endometrial stromal polyps in females, and leukemia and malignant lymphoma in both sexes. The compound was also associated with the development of a combination of squamous-cell carcinomas and sebaceous adenocarcinomas of the Zymbal's gland and skin of the ear in rats of both sexes. There was no evidence for the carcinogenicity of the compound in B6C3F1 mice.

Single copies of the report, Bioassay of 3,3'-Dimethoxybenzidine-4,4'-diisocyanate for Possible Carcinogenicity (T.R. 128), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: January 2, 1979.

DONALD S. FREDRICKSON, M.D.,
Director,
National Institute of Health.

[FR Doc. 79-543 Filed 1-8-79; 8:45 am]

[4110-89-M]

Office of the Secretary

ADVISORY COUNCIL ON EDUCATION STATISTICS

Meeting

Notice is hereby given, pursuant to Section 10, Pub. L. 92-463, that a meeting of the Advisory Council on Education Statistics will be held on February 1, 1979, from 9:00 a.m. to 5:00 p.m., in Room 3000, FOB No. 6, 400 Maryland Avenue SW., Washington, D.C. 20202. The meeting will be continued on February 2, 1979, from 9:00 a.m. to 12:30 p.m., at the same location.

The Advisory Council on Education Statistics is mandated by Section 406(c) of the General Education Provisions Act as added by Section 501(a) of the Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1221e-1(c)), to advise the Secretary of the Department of Health, Education, and Welfare and the Assistant Secretary for Education and the National Center for Education Statistics (NCES); and shall review general policies for the operation of the Center and shall be responsible for establishing standards to ensure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting agenda will include an Administrator's Report summarizing recent developments regarding budget, staff and major projects of the National Center for Education Statistics.

Other major topics will include a discussion of a review of the Center's management and the content of the Council's next annual report.

The meeting is open to the public; however, because of limited accommodations, those members of the public wishing to attend should make reservations by writing, no later than January 25, 1979 to: Executive Director, Advisory Council on Education Statistics, Room 3153-E, FOB No. 6, 400 Maryland Avenue SW., Washington, D.C. 20202.

Records shall be kept of all Council proceedings and shall be available for public inspection in the Office of the Administrator, National Center for Education Statistics, located at 400 Maryland Avenue SW., Washington, D.C. 20202.

Signed at Washington, D.C. on January 2, 1979.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

[FR Doc. 79-728 Filed 1-8-79; 8:45 am]

[4110-07-M]

Social Security Administration

ADVISORY COUNCIL ON SOCIAL SECURITY

Public Meetings

AGENCY: Advisory Council on Social Security, HEW.

ACTION: Notice is hereby given, pursuant to Pub. L. 92-463, that the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Friday, February 2, 1979, and Saturday, February 3, 1979, from 9 a.m. to 5 p.m. at the Holiday Inn, 2101 Wisconsin Avenue, N.W., Washington, D.C. 20007.

There will be a meeting of the Advisory Council's panel of actuaries and economists on Wednesday, February 7, 1979, from 9 a.m. to 12 p.m. in Room 507A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. The panel will continue its review of the economic and actuarial assumptions used in social security cost projections.

These meetings are open to the public.

Individuals and groups who wish to have their interest in the social security program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

FOR FURTHER INFORMATION CONTACT:

Mr. Lawrence H. Thompson, Executive Director of the Advisory Council on Social Security, P.O. Box 17054, Baltimore, Maryland 21235. Tele-

phone inquiries should be directed to Mr. Edward F. Moore, telephone number 301-594-3171.

(Catalog of Federal Domestic Assistance Program Numbers 13,800-13,807 Social Security Program.)

Dated: January 3, 1979.

LAWRENCE H. THOMPSON,
Executive Director, Advisory Council on Social Security.

[FR Doc. 79-727 Filed 1-8-79; 8:45 am]

[4310-09-M]

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT DES 79-1]

SALT-GILA AQUEDUCT, CENTRAL ARIZONA PROJECT

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental statement for the Salt-Gila Aqueduct feature of the Central Arizona Project, Arizona-New Mexico.

This statement describes the environmental impacts resulting from the construction and operation of the Salt-Gila Aqueduct and associated electrical transmission system. The aqueduct will convey Colorado River water from the terminus of the Granite Reef Aqueduct in south-eastern Maricopa County to the beginning of the authorized Tucson Aqueduct in south-central Pinal County, Arizona. Construction of the feature is scheduled to begin in mid-1980, with project completion scheduled for 1985. Written comments may be submitted to the Regional Director with a copy to Director, Office of Environmental Affairs, (addresses below) on or before February 23, 1979.

Copies are available for inspection at the following locations:

Office of Environmental Affairs, Room 7622, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone (202) 343-4991.

Division of Management Support, General Services, Library Section, Code 950, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, telephone 303-234-3019.

Office of the Regional Director, Administration Building, Bureau of Reclamation, Boulder City, NV 89005, telephone (702) 293-8464.

Arizona Projects Office, Bureau of Reclamation, Suite 2200, Valley Center, 201 North Central Avenue, Phoenix, AZ 85073, telephone (602) 261-3577.

Single copies of the draft statement may be obtained upon request to the Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: January 4, 1979.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 79-688 Filed 1-8-79; 8:45 am]

[4310-55-M]

Fish and Wildlife Service

MARINE MAMMALS

Issuance of Permit

On September 22, 1978, a Notice was published in the FEDERAL REGISTER (Vol 43, No. 159), that an application had been filed with the Fish and Wildlife Service by John L. Bergston, Department of Ecology and Behavioral Biology, University of Minnesota, for a permit to authorize the taking, tagging with radio transmitters and release of 15 West Indian manatees (*Trichechus manatus*) for scientific research.

Notice is hereby given that on December 19, 1978, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Endangered Species Act of 1972 (16 USC 1539), the Fish and Wildlife Service issued a permit, PRT 2-3167, to John L. Bengston subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Room 601, 1000 N. Glebe Road, Arlington, Virginia.

Dated: December 29, 1978.

FRED L. BOLWAHNN,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-722 Filed 1-8-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: Val Clear, Exotic Cagebirds, Anderson, Indiana 46012.

The applicant requests a permit to purchase in interstate commerce two (2) male and two (2) female captive-bred scarlet-chested parakeets (*Neophema splendida*) for enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3553. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before February 8, 1979. Please refer to the file number when submitting comments.

Dated: January 4, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-723 Filed 1-8-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: University of Michigan, Museum of Zoology, Ann Arbor, Michigan 48109.

The applicant requests a permit to import, export, re-export in an unlimited number of transactions preserved, dried, or embedded endangered or threatened species museum specimens held at the University of Michigan's Museum of Zoology as a non-commercial loan, donation, or exchange between scientists or scientific institutions. The applicant also wishes to take (salvage) dead specimens of listed species for accession into their collection.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3576. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address on or before February 8, 1979. Please refer to the file number when submitting comments.

Dated: December 28, 1978.

FRED L. BOLWAHNN,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-724 Filed 1-8-79; 8:45 am]

[4310-55-M]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: Gladys Porter Zoo, Brownsville, Texas 78520.

The applicant requests a permit to purchase and receive in interstate

commerce two (2) male and two (2) female cheetas (*Acinonyx jubatus jubatus*) from Cheetas Unlimited, Phoenix, Arizona for enhancement of propagation.

The cheetas addressed are at the Gladys Porter Zoo on breeding loan from Cheetas Unlimited.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-3609. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address by February 8, 1979. Please refer to the file number when submitting comments.

Dated: January 4, 1979.

DONALD G. DONAHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-725 Filed 1-8-79; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

The list of Pending Nominations received during the week of December 25, 1978, which would normally be published on this date, will appear in the listing on January 16, 1979.

WILLIAM J. MURTAGH,
Keeper of the National Register.

[FR Doc. 79-408 Filed 1-8-79; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[332-102]

INTEGRATED CIRCUITS AND THEIR USE IN COMPUTERS

AGENCY: U.S. International Trade Commission.

ACTION: Correction of date for submission of written statements.

The date for the submission of written statements in this investigation, as published in the FEDERAL REGISTER of December 20, 1978 (43 FR 59447), was incorrectly set forth as July 2, 1977. The correct date is July 2, 1979.

Issued: January 4, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-767 Filed 1-8-79; 8:45 am]

[7020-02-M]

[TA-203-5]

STAINLESS STEEL AND ALLOY TOOL STEEL

Change of Time of Prehearing Conference

Notice is hereby given that the prehearing conference in this investigation previously scheduled for February 12, 1979, will be held on Tuesday, February 13, 1979. The conference will be held in Room 117 of the U.S. International Trade Commission Building, as previously announced.

Notice of the investigation and hearing was published in the FEDERAL REGISTER of December 22, 1978 (43 FR 59914).

By order of the Commission.

Issued: January 4, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-768 Filed 1-8-79; 8:45 am]

[4410-18-M]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

D'YOUVILLE COLLEGE, N.Y.

Public Hearing

AGENCY: LEAA, Department of Justice.

ACTION: Notice of public hearing.

NOTICE: This is to give notice that the Law Enforcement Assistance Administration will conduct a public hearing in the matter of the appeal of the D'Youville College, Buffalo, New York from the denial of their Law Enforcement Education Program (LEEP) Grant Application No. 77-LP-02-0900.

DATE AND ADDRESS: The hearing will be held at 10:00 a.m. on Wednesday, January 10, 1979, at the following location: Law Enforcement Assistance Administration, 13th Floor—Small Conference Room, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT:

Robert Gorman, Attorney-Advisor, Law Enforcement Assistance Administration, 633 Indiana Avenue, N.W., Washington, D.C. 20531, Telephone: 202-376-3692.

CHARLES A. LAUER,
Deputy General Counsel, Office of General Counsel, Law Enforcement Assistance Administration.

[FR Doc. 79-750 Filed 1-8-79; 8:45 am]

[4410-18-M]

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Arson Research Grants; Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive research grant to study arson and antiarson efforts in a selected sample of jurisdictions in the United States. The goal is to learn how arson is defined and fought in a cross section of jurisdictions so that a start may be made in the direction of improved control.

The solicitation asks for the submission of full proposals. In order to be considered, all proposals must be postmarked no later than February 16 1979. The project is scheduled to run for twenty-one (21) months and the funding level will not be greater than $25,000.

Copies of the solicitation and additional information can be obtained by contacting: Sidney Epstein, Community Crime Prevention Division, National Institute of Law Enforcement and Criminal Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (301) 492-9122.

Dated: December 29, 1978.

BLAIR G. EWING,
Acting Director, National Institute of Law Enforcement and Criminal Justice.

[FR Doc. 79-748 Filed 1-8-79; 8:45 am]

[4410-18-M]

NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

White Collar Crime Research Grants; Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive grant program on white collar crime research.

The request for preliminary proposals reviews the current NILECJ research projects in white collar crime and solicits research proposals on a variety of issues relevant to white collar crime. Qualified researchers are encouraged to respond.

A total of $200,000 is planned to be awarded through the funding of two separate efforts of no more than $100,000 each. The duration of each

project is expected to be from 15–21 months.

A copy of the request for preliminary proposals can be obtained by sending a self addressed mailing label to: WCC Research, CCP Division, NILECJ, 633 Indiana Avenue NW., Washington, D.C. 20531.

BLAIR G. EWING,
Acting Director, National Institute of Law Enforcement and Criminal Justice.

[FR Doc. 79-749 Filed 1-8-79; 8:45 am]

[4510-28-M]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-3461]

ALLEGHENY LUDLUM STEEL CORP., WALLINGFORD, CONN.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistant

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3461: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 4, 1978 in response to a worker petition received on March 24, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing cold rolled stainless steel strip and welded tubing at the Wallingford, Connecticut plant of Allegheny Ludlum Steel Corporation.

Workers at the Wallingford plant were previously certified eligible for adjustment assistance on May 13, 1976; that certification expired on May 13, 1978 (see TA-W-668).

The Notice of Investigation was published in the FEDERAL REGISTER on April 28, 1978 (43 FR 18360). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Allegheny Ludlum Steel Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

The Wallingford plant produces stainless tubing and cold rolled stainless steel strip. Sales and production of stainless tubing produced at the Wallingford plant increased in the first nine months of 1978 compared to the first nine months of 1977.

Sales of cold rolled stainless steel strip produced by the flat Rolled Products Division of Allegheny Ludlum Steel Corporation increased in the first nine months of 1978 compared to the first nine months of 1977. The Wallingford plant rolls about 25 percent of the strip produced by the Division.

CONCLUSION

After careful review, I determine that all workers of the Wallingford, Connecticut plant of Allegheny Ludlum Steel Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-776 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-3474]

ALLEGHENY LUDLUM STEEL CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3474: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 6, 1978 in response to a worker petition received on March 27, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing stainless steel strip and coil, tool steel and selectron steel at the W. Leechburg, Pennsylvania plant of Allegheny Ludlum Steel Corporation. The investigation revealed that the plant primarily produces stainless steel strip and silicon steel.

Workers at the West Leechburg plant were previously certified eligible for adjustment assistance on May 24, 1976; that certification expired on May 24, 1978 (see TA-W-756).

The Notice of Investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17550). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Allegheny Ludlum Steel Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustments assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The average number of production workers at the West Leechburg plant increased in the first nine months of 1978 compared to the first nine months of 1977. Average quarterly employment increased in each of the first three quarters of 1978 when compared to the like quarter in 1977. Average weekly hours worked per employee also increased during this period. There is no immediate threat of worker separations at this plant.

CONCLUSION

After careful review, I determine that all workers of the West Leechburg, Pennsylvania plant of Allegheny Ludlum Steel Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-777 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4021, 4022, 4230-6]

AMIGO SMOKELESS COAL CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4021, 4230-6: investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigations were initiated on August 2, 1978 and October 4, 1978 in response to worker petitions received on July 27, 1978 and October 3, 1978 which were filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Jackpot #1 mine (TA-W-

4021), the Wyco #236 mine (TA-W-4022) and the Jackpot #4 mine (TA-W-4230), Wyco, West Virginia, at the Amigo #2 mine (TA-W-4231) and the Amigo #3 mine (TA-W-4232), Amigo, West Virginia, cleaning coal at the Tralee Preparation Plant (TA-W-4233), Tralee, West Virginia, loading coal at the Wyco Tipple (TA-W-4234) Wyco, West Virginia and the Amigo Tipple (TA-W-4235), Amigo, West Virginia, and maintaining mining equipment at the Central Shop (TA-W-4236), Tralee, West Virginia of Amigo Smokeless Coal Company, Beckley, West Virginia, a subsidiary of The Pittston Company.

The Notices of Investigation were published in the FEDERAL REGISTER on August 11, 1978 (43 FR 35759-60) and October 20, 1978 (43 FR 49060-61). No Public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Amigo Smokeless Coal Company, The Pittston Company, their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

All the facilities at Amigo Smokeless Coal Company, consisting of 5 mines, 2 tipples or loading stations, a coal preparation plant and a central maintenance shop, perform operations which are stages in an integrated production process. The end product of this process is cleaned low-volatile metallurgical coal, which is sold by the parent company, The Pittston Company.

Metallurgical coal mined by Amigo Smokeless Coal Company was sold by The Pittston Company. Although one important customer decreased purchases from The Pittston Company from 1976 to 1977 and increased purchases of imported coke or metallurgical coal, the imported product had different characteristics from the coal mined at Amigo Smokeless Coal Company.

None of the customers decreased purchases from the Pittston Company and increased purchases of imported coke in the first 6 to 9 months of 1978 compared to the same periods of 1977. The only railway line which hauls Amigo Smokeless Coal Company coal was on strike from July through September, 1978. Declines in sales, production and employment at Amigo Smokeless Coal Company from July through September, 1978 resulted from this strike. Any increase in purchases of imported coke by customers during this period would not be relevant to the investigation.

CONCLUSION

After careful review, I determine that all workers of the Jackpot #1, Wyco #236 and Jackpot #4 mines, Wyco, West Virginia, the Amigo #2 and Amigo #3 mines, Amigo, West Virginia, the Tralee Preparation Plant, Tralee, West Virginia, the Wyco Tipple, Wyco, West Virginia, the Amigo Tipple, Amigo, West Virginia and the Central Shop, Tralee, West Virgina of the Amigo Smokeless Coal Company are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 2nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-778 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4136]

ASARCO, INC., CENTRAL RESEARCH DEPARTMENT

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4136: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 6, 1978 in response to a worker petition received on September 5, 1978 which was filed on behalf of workers and former workers engaged in employment related to nonferrous and metallurgical research at the South Plainfield, New Jersey Central Research Department of ASARCO, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on September 29, 1978 (43 FR 44935). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of ASARCO, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

The Research Department performs services which are integral to the production of all metal products produced by ASARCO, Incorporated. The major proportion of the work of the Central Research Department consists of trouble shooting for products with which ASARCO and its customers have experienced difficulties.

Sales of copper, lead and zinc by ASARCO constituted a substantial proportion of total company sales in 1977. Employees at various company manufacturing facilities engaged in employment related to a significant percentage of the company's total domestic production of copper, lead and zinc who became totally or partially separated from employment have previously been certified eligible by the Department for trade adjustment assistance benefits. See Department determinations for TA-W-2410, 2411, 2490, 2894, 3484, 3517, 3518, 3705 and 4023.

Depressed prices for copper, lead and zinc attributable to import competition have negatively affected ASARCO's level of profits, prompting the company to cut spending for research and development. Reductions in the rate of discretionary spending for research and development resulted in layofffs at ASARCO's Central Research Department.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articls like or directly competitive with copper, lead and zinc produced by ASARCO, Incorporated contributed importantly to the total or partial separation of workers engaged in research related to the production of copper, lead and zinc at ASARCO's Central Research facility in South Plainfield, New Jersey. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in research and development activities related to a the production of copper, lead and zinc at ASARCO, Incorporated's Central Research Department in South Plainfield, New Jersey who became totally or partially separated from employment on or after January 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 79-779 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4418]

BINGHAMTON STEEL & FABRICATING CO., INC.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 27, 1978 in response to a worker petition received on November 17, 1978 which was filed on behalf of workers and former workers producing fabricated structural steel at Binghamton Steel and Fabricating Company, Incorporated, Binghamton, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56952). No public hearing was requested and none was held.

In a letter dated December 6, 1978 the petitioner requested withdrawal of petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C. this 3rd day of January 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-780 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-3848]

CODI CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3848: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on June 15, 1978 in response to a worker petition received on June 9, 1978 which was filed on behalf of workers and former workers producing semicomponent products at Codi Corporation, Fairlawn, New Jersey. The investigation revealed that the product was diodes and that the intent of the petition was to cover only Codi Semiconductor Division, Fairlawn, New Jersey.

The Notice of Investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27922). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Codi Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation indicated that the separation of workers producing diodes at the Semiconductor Division of the Fairlawn, New Jersey plant of Codi Corporation occurred as a result of a shift in diode production to the firm's Linden, New Jersey facility.

Production of diodes at the Fairlawn plant increased from 1976 to 1977 and in the first half of 1978 compared to the first half of 1977. The shift in diode production from Fairlawn to Linden began in May 1978 and was completed by the beginning of August 1978. Total company production of diodes increased in 1977 compared to 1976 and in 1978 compared to 1977.

Codi Corporation's decision to transfer diode production from Fairlawn to Linden was based primarily on the capability of the larger Linden facility to produce a greater output of diodes and the necessity to free additional space at Fairlawn to permit expansion of two other Codi subsidiaries also located at that plant.

CONCLUSION

After careful review, I determine that all workers of the Semiconductor Division of the Fairlawn, New Jersey plant of Codi Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc 79-781 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4502]

DOWNEN ZIER KNITS, INC., ROCKVILLE CENTER

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 12, 1978, in response to a worker petition received on December 7, 1978, which was filed on behalf of workers and former workers producing double-knit fabrics at the Rockville Center, Long Island, New York, plant of Downen Zier Knits, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59180-1). No public hearing was requested and none was held.

On November 6, 1978, a petition was filed on behalf of the same group of workers (TA-W-4368).

Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012-13). No public hearing was requested and none was held.

Since the identical group of workers is the subject of the ongoing investigation TA-W-4368, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 3rd day of January 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-782 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4503]

DOWNEN ZIER KNITS, INC.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 12, 1978 in response to a worker petition received on December 7, 1978 which was filed on behalf of workers and former workers producing double-knit fabrics at the Elmont, New York plant of Downen Zier Knits, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59180-1). No public hearing was requested and none was held.

On November 6, 1978, a petition was filed on behalf of the same group of workers (TA-W-4368).

Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012-13). No public hearing was requested and none was held.

Since the identical group of workers is the subject of the ongoing investigation TA-W-4368, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 3rd day of January 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-783 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4251]

F/V LINDA B, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4251: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 10, 1978 in response to a worker petition received on October 4, 1978 which was filed on behalf of workers and former workers catching groundfish for F/V Linda B, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49061). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of F/V Linda B, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Imports of groundfish decreased from 755,538 thousand pounds in 1976 to 736,302 thousand pounds in 1977 and from 349,115 thousand pounds in the first half of 1977 to 346,559 thousand pounds in the same period of 1978.

The F/V Linda B normally has a crew of 4; employment averaged 4 persons each quarter of 1977 and the first 3 quarters of 1978. Average weekly earnings increased from 1976 to 1977 and in the first 10 months of 1978 compared with the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of F/V Linda B, Inc., Gloucester, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 79-784 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4144]

FORBES STEEL AND WIRE CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4144: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 13, 1978 in response to a worker petition received on September 11, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing fabricated welded wire products at Forbes Steel and Wire Corporation, Wilmington, Delaware.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43588). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Forbes Steel and Wire Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The labor force at the Wilmington plant is being reduced as a consequence of the introduction of automated machinery.

The Department conducted a survey of some customers of Forbes Steel and Wire. The survey revealed that respondents, in general, did not purchase imported welded wire fabric and barbed wire. Customers which increased purchases of imports represented an insignificant proportion of Forbes Steel and Wire's total sales.

CONCLUSION

After careful review, I determine that all workers of Forbes Steel and Wire Corporation, Wilmington, Delaware are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 2d day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management Administration and Panning.

[FR Doc. 79-785 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4303]

J. P. STEVENS & CO., INC., ROCK HILL INDUSTRIAL PLANT

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4303: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 26, 1978 in response to a worker petition received on October 25, 1978 which was filed on behalf of workers and former workers producing denim fabric at the Rock Hill Industrial plant of J. P. Stevens and Company, Incorporated, Rock Hill, South Carolina. The investigation revealed that some white fabric production began in July 1978.

The Notice of Investigation was published in the FEDERAL REGISTER on November 3, 1978 (43 FR 51475-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of J. P. Stevens and Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey indicated that the respondents, in general, did not increase purchases of imported denim fabric from 1976 to 1977 and in the first three quarters of 1978 compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of the Rock Hill Industrial plant of J. P. Stevens and Company, Incorporated, Rock Hill, South Carolina are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-786 Filed 1-8-79; 8:45 am]

[4510-20-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 22, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 22, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 2nd day of January 1079.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition number	Articles produced
Aileen, Incorporated, (workers)	Buckingham, Virginia	12/20/78	12/14/78	TA-W-4,564	knit spectator outer wear for ladies' & children
A.S.G. Industries (United Glass & Ceramic Workers of North America).	Jeannette, Pa	12/27/78	12/20/78	TA-W-4,565	flatt glass, known window glass—all strengths
Wiss Division of Cooper Industries (company).	Newark, New Jersey	12/27/78	12/22/78	TA-W-4,566	Newark Plant Office Administrative functions
Custom Stuffed Toys Company (workers).	New York, New York	12/20/78	12/16/78	TA-W-4,567	stuffed toys
Dickman Lumber Company (company).	Tacoma, Washington	12/27/78	12/21/78	TA-W-4,568	cutting logs into lumber for flooring railroad ties, door stock, etc.
The Youngstown Steel Products Co. (workers).	Youngstown, Ohio	12/28/78	12/24/78	TA-W-4,569	sales office
U & I, Incorporated (company)	West Jordan, Utah	12/27/78	12/15/78	TA-W-4,570	distribution & production of sugar
U & I, Incorporated (company)	Idaho Falls, ID	12/27/78	12/15/78	TA-W-4,571	refining of sugar
U & I, Incorporated (company)	Toppenish, Washington	12/27/78	12/15/78	TA-W-4,572	refining of sugar
U & I, Incorporated (company)	Moses Lake, Washington	12/27/78	12/15/78	TA-W-4,573	refining of sugar
U & I, Incorporated General Office (company).	Salt Lake City, Utah	12/27/78	12/15/78	TA-W-4,574	general office
U & I, Incorporated Research & General Lab (company).	Moses Lake, Washington	12/27/78	12/15/78	TA-W-4,575	research & general lab work of sugar uses
U & I, Incorporated (company)	Omaha, NE	12/27/78	12/15/78	TA-W-4,576	distribution of finished product to customers
U & I, Incorporated (company)	Kansas City, MO	12/27/78	12/15/78	TA-W-4,577	distribution of finished product to customers
U & I, Incorporated (company)	Seattle, Washington	12/27/78	12/15/78	TA-W-4,578	distribution of finished product to customers
U & I, Incorporated (company)	Portland, OR	12/27/78	12/15/78	TA-W-4,579	sales office
V.T.M. Dyeing & Finisheding Corporation (workers).	Paterson, New Jersey	12/26/78	12/22/78	TA-W-4,580	dyeing & finishing of fabrics

[FR Doc. 79-805 Filed 1-8-79; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdi-

vision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 22, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 22, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 21st day of December 1978.

HAROLD A. BRATT,
Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition number	Articles produced
Capehart Corporation (workers)	City of Industry, Calif	12/20/78	12/6/78	TA-W-4,545	A.M. and F.M. stereo chassis
Cooper Sportswear (ACTWU)	Newark, New Jersey	12/14/78	12/12/78	TA-W-4,546	leather & cloth outerwear for men & boys
Copper Range Company, Coratex Division (USWA).	Painesdale, Michigan	12/18/78	12/15/78	TA-W-4,547	fabricate mining equipment, repair mining equipment & assemble underground mining equipment
Goodyear Tire & Rubber Company (URW).	North Chicago, Ill	12/18/78	12/14/78	TA-W-4,548	textile hose, wire & automotive hose
Harbison Walker Refractories, Mt. Union Plant (USWA).	Mt. Union, Pa	12/18/78	11/20/78	TA-W-4,549	silica fire brick & refractory specialty brick
Juliet Footwear, Inc. (ACTWU)	Elmwood Park, New Jersey.	12/18/78	12/14/78	TA-W-4,550	men's working, casual golf shoes
North American Refractories Co. (USWA).	Womelsdorf, Pa	12/18/78	11/20/78	TA-W-4,551	refractory bricks
S & M Leather Coat Company (ACTWU).	Trenton, New Jersey	12/14/78	12/12/78	TA-W-4,552	contractor of men's leather garments

[FR Doc 79-806 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-3968]

KEYSTONE CAMERA CORP.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3968: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 13, 1978 in response to a worker petition received on July 10, 1978 which was filed on behalf of workers and former workers producing pocket instamatic cameras at Berkey Keystone, Division of Berkey Photo Incorporated, Clifton, New Jersey. The investigation revealed that the plant also produced instant cameras, movie cameras, movie projectors, and slide projectors and that the company is currently known as the Keystone Camera Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885-86). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Keystone Camera Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of 8mm movie cameras increased from 264.7 thousands of units in 1976 to 408.5 thousands of units in 1977. Imports increased from 152.6 thousands of units in the first half of 1977 to 235.5 thousands of units in the first half of 1978. The ratio of imports to domestic production increased from 81.7 percent in 1976 to 124.2 percent in 1977.

U.S. imports of Cameras (still, fixed focus, under $50 each) increased from 3,076 thousands of units in 1976 to 4,942 thousands of units in 1977. Imports increased from 2,157 thousands of units in the first half of 1977 to 2,164 thousands of units in the first half of 1978. The ratio of imports to domestic production increased from 71.8 percent in 1976 to 172.9 percent in 1977.

U.S. imports of 8mm Movie Projectors increased from 135.1 thousands of units in 1976 to 188.7 thousands of units in 1977. Imports declined from 94.7 thousands of units in the first half of 1977 to 67.9 thousands of units in the first half of 1978. The ratio of imports to domestic production increased from 29.6 percent in 1976 to 43.8 percent in 1977.

The Department conducted a survey of the principal customers whom Keystone supplied in 1977 and 1978. Customers that accounted for a significant portion of movie camera and projector sales in 1976 reduced purchases from Keystone in 1977 compared to 1976 and increased purchases of imported movie cameras and projectors. Customers that accounted for a significant portion of Instamatic Cameras (110) sales in 1977 and 1978 re-

duces purchases from Keystone in 1977 compared to 1976 and in the first six months of 1978 compared to the like period in 1977 and increased purchases of imported Instamatic Cameras (110) during the same time periods detailed above.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the movie cameras, movie projectors and Instamatic Cameras (110) produced at Keystone Camera Corporation, Clifton, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Keystone Camera Corporation, formerly Berkey-Keystone, Division of Berkey Photo, Inc., Clifton, New Jersey, engaged in employment related to the production of movie cameras, movie projectors and instamatic cameras who became totally or partially separated from employment on or after October 1, 1977, and before July 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-787 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4117]

L & R SPORTSWEAR CO.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4117: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 28, 1978 in response to a worker petition received on August 24, 1978 which was filed on behalf of workers and former workers producing boy's and girl's pants at L and R Sportswear Company, Inc., Paterson, New Jersey. The investigation revealed that the plant primarily produces ladies' pants, skirts, jackets, shorts and children's pants.

The Notice of Investigation was published in the FEDERAL REGISTER on September 8, 1978 (43 FR 40070). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of L and R Sportswear Company, Incorporated, its customers, (manufacturers), customers of the manufacturers, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of women's, misses', and children's slacks and shorts increased both absolutely and relative to domestic production in 1977 compared to 1976. Imports increased absolutely in the first half of 1978 compared to the like period of 1977.

U.S. imports of women's, misses', and children's skirts decreased absolutely and relative to domestic production in 1977 compared to 1976. Imports have increased absolutely in the first half of 1978 compared to the same period of 1977.

Imports of women's, misses', and children's coats and jackets increased both absolutely and relative to domestic production in 1977 compared to 1976.

The Department conducted a survey of the principal manufacturer for which L and R Sportswear worked in 1976 and 1977. This manufacturer went out of business in late 1978. A survey of this manufacturer's customers revealed that some customers reduced purchases from this manufacturer and increased purchases of imports of junior's and misses' sportswear.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the ladies' sportswear and children's pants produced at L and R Sportswear Company, Incorporated, Paterson, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of L and R Sportswear Company, Incorporated, Paterson, New Jersey engaged in employment related to the production of ladies' sportswear and children's pants who became totally or partially separated from employment on or after October 15, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-788 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4011]

LIDO INTERNATIONAL, INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4011: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 31, 1978 in response to a worker petition received on July 10, 1978 which was filed by the Corset and Brassiere Workers Union on behalf of workers and former workers producing bras and girdles at Mired Foundations, Inc., New York, New York. The investigation revealed that the correct name of the company was Lido International, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Lido International, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of brassieres, bralettes and bandeaux increased from 8.8 million dozen in 1976 to 9.5 million dozen in 1977 and increased in the first half of 1978 to 5.1 million dozen compared to 4.7 million dozen in the same period in 1977. Imports of corsets and girdles also increased from 231 thousand dozen in 1976 to 269 thousand dozen in 1977 and from 122 thousand dozen in the first half of 1977 to 188 thousand dozen in the same period in 1978. In 1977, imports of brassieres increased to a level equalling 47 percent of domestic consumption.

Results of a Department of Labor survey indicated that an important customer of Lido International, Inc., increased its reliance on imported brassieres and girdles in the first six months of 1978 as compared to the

same period in 1977 while reducing its purchases from the subject firm.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the bras and girdles produced at Lido International, Inc., New York, New York, contributed importantly to the total or partial separation of the workers. In accordance with the provisions of the Act, I make the following certification:

All workers of Lido International, Inc., New York, New York, who became totally or partially separated from employment on or after February 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-789 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4410]

LOUISVILLE PANT CORP.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 21, 1978 in response to a worker petition received on November 16, 1978 which was filed on behalf of workers and former workers producing men's and boys' dress pants at the Louisville Pant Corporation, Louisville, Mississippi.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56951-56952). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of Louisville Pant Corporation were separated from employment by November 2, 1977. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is November 7, 1978 and, thus, workers terminated prior to November 7, 1977 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation is therefore terminated.

Signed at Washington, D.C. this 29th day of December 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-790 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4446]

MAYFLOWER KNITTING MILLS, INC.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 29, 1978 in response to a worker petition received on November 27, 1978 which was filed on behalf of workers and former workers producing sweaters and knit dresses at the Mayflower Knitting Mills, Incorporated, Brooklyn, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56953). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of Mayflower Knitting Mills, Incorporated were separated from employment in October, 1977. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is November 17, 1978 and, thus, workers terminated prior to November 17, 1977 are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation is therefore terminated.

Signed at Washington D.C. this 3rd day of January, 1979.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-791 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4267]

MILDRUM MANUFACTURING CO.

Certification Regarding Eligibility To Apply for Workers Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4267: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 17, 1978 in response to a worker petition received on October 12, 1978 which was filed on behalf of workers and former workers producing fishing rod guides and tops at Mildrum Manufacturing Company of East Berlin, Connecticut.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50271). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Mildrum Manufacturing Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of fishing rod guides and top increased in 1977 compared to 1976 and decreased during the first three quarters of 1978 compared to the same period of 1977. The ratio of imports to domestic production increased from 45.8 percent in 1976 to 46.2 percent in 1977 and increased from 51.7 percent during the first three quarters of 1977 to 53.5 percent during the same period of 1978.

A survey of customers of the Mildrum Manufacturing Company indicated that some customers have decreased their purchases from the subject firm while increasing purchases of imported fishing rod guides and tops.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with fishing rod guides and tops produced at Mildrum Manufacturing Company of East Berlin, Connecticut contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Mildrum Manufacturing Company of East Berlin, Connecticut who became totally or partially separated from employment on or after June 2, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-792 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4074]

MODULUS CORP. MT. PLEASANT DIVISION

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4074: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 17, 1978 in response to a worker petition received on August 16, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing industrial steel fasteners at Modulus Corporation, Mt. Pleasant, Pennsylvania.

The Notice of Investigation was published in the FEDERAL REGISTER on September 1, 1978 (43 FR 39194). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Mt. Pleasant Division of Modulus Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of industrial fasteners increased in 1976 to 704,474 thousand pounds and increased in 1977 to 716,916 thousand pounds. In the first six months of 1977, U.S. imports of industrial fasteners were 371,859 thousand pounds and increased to 421,251 thousand pounds in the first six months of 1978.

The ratio of imports to domestic production of industrial fasteners increased to 64.0 percent in 1976 and increased to 64.4 percent in 1977. In the first six months of 1977 the ratio was 62.4 percent and increased to 71.3 percent in the first six months of 1978.

The Department conducted a survey of Modulus customers accounting for a significant proportion of the subject firm's sales. The survey revealed that some customers decreased purchases of industrial fasteners from Modulus and increased import purchases in 1978 compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with industrial fasteners produced at the Mt. Pleasant Division of Modulus Corporation, Mt. Pleasant, Pennsylvania contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Mt. Pleasant Division of Modulus Corporation, Mt. Pleasant, Pennsylvania who became totally or partially separated from employment on or after August 11, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-793 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4348]

NA-LOR MANUFACTURING CO., INC.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4348: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 6, 1978 in response to a worker petition received on November 2, 1978 which was filed by the Knitgoods Union, International Ladies' Garment Workers' Union, on behalf of workers and former workers producing men's sweaters at Na-Lor Manufacturing Company, Incorporated, Philadelphia, Pennsylvania. The investigation revealed that the plant also produces men's knit shirts.

The Notice of Investigation was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53851-52). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Na-Lor Manufacturing Company, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' sweaters, knit cardigans and pullovers increased from 20.4 million units in 1975 to 26.5 million units in 1976 and to 28.3 million units in 1977. Imports increased to 33.2 million units in the first three quarters of 1978 as compared to 22.6 million units in the first three quarters of 1977.

U.S. imports of men's and boys' knit sport and dress shirts, excluding T-shirts, increased from 66.2 million units in 1975 to 74.0 million units in 1976 and to 75.2 million units in 1977. U.S. imports increased to 82.5 million units in the first three quarters of 1978 as compared to 54.6 million units in 1977.

Na-Lor Manufacturing Company, Incorporated increased its company imports of men's sweaters and knit shirts, in quantity, by 56.1 percent from 1976 to 1977 and by 171.6 percent during the first ten months of 1978 compared to the same period of 1977. Company imports as a percent of company production also increased during this time frame. Production ceased at Na-Lor in December of 1978 and the firm will be permanently closed in January of 1979.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sweaters and knit shirts produced at Na-Lor Manufacturing Company, Incorporated, Philadelphia, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Na-Lor Manufacturing Company, Incorporated, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after October 30, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of January 1979.

HARRY J. GILMAN,
Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-794 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-3984]

NATIONAL-STANDARD CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3984; investigation regarding certification of eligibility to apply for

worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 19, 1978 in response to a worker petition received on July 13, 1978 which was filed by the United Steelworkers of America on behalf of workers and former workers producing tensil wire, bead wire and cut wire at the Columbia, Alabama plant of the National-Standard Company. The investigation revealed that the plant primarily produces bead wire and tire cord. The Columbiana plant and other company plant in Childersburg, Alabama are engaged in an integrated production process and are operated as a single unit.

The Notice of Investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of National-Standard Company, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of some of the customers of bead wire and tire cord of the Columbiana and Childersburg, Alabama plants of the National Standard Company. None of the respondents reduced purchases of either bead wire or tire cord from National Standard in 1977 compared to 1976. Only one of the respondents reduced purchases of bead wire from National Standard in the first half of 1978 compared to the like 1977 period. This customer's marginal increase in purchases of imports did not have any impact since total sales of bead wire increased in the first half of 1978 compared to the like 1977 period. None of the customers reduced purchases of tire cord from National Standard and increased purchases of imported tire cord in the first half of 1978 compared to the like 1977 period.

CONCLUSION

After careful review, I determine that all workers of the Columbiana and Childersburg, Alabama plants of the National-Standard Company are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-795 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-3526]

NORRISTOWN APPAREL CO.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3526: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 18, 1978 in response to a worker petition received on April 6, 1978 which was filed by the Eastern Pennsylvania Clothing Workers Joint Board on behalf of workers and former workers producing men's and women's jackets and vests at Norristown Apparel Company, Norristown, Pennsylvania. The investigation revealed that the plant primarily produces men's jackets and vests.

The Notice of Investigation was published in the FEDERAL REGISTER on May 2, 1978 (43 FR 18789). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Norristown Apparel Company, its manufacturers, a manufacturer's customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey revealed that manufacturers whose combined contracts accounted for a substantial proportion of Norristown's sales in 1977 did not employ any foreign contractors, nor did the manufacturers import any men's vests, jackets or suits during 1976, 1977 or the first six months of 1978. One of the manufacturers experienced decreased sales in the first half of 1978. A secondary survey of that manufacturer's customers indicated that the only customer which decreased its purchases of men's coats from the manufacturer and increased its purchases of imports, imported an insignificant amount. In addition none of the respondents expressed any intention to import such articles in the near future.

CONCLUSION

After careful review, I determine that all workers of Norristown Apparel Company, Norristown, Pennsylvania are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 79-796 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4322]

RUD-SHAW MANUFACTURING CORP.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4322: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 31, 1978 in response to a worker petition received on October 31, 1978 which was filed on behalf of workers and former workers producing men's clothing at Rud-Shaw manufacturing Corporation, Brooklyn, New York. The investigation revealed that the plant produces men's tailored dress suit jackets.

The Notice of Investigation was published in the FEDERAL REGISTER on November 7, 1978 (43 FR 51865). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Rud-Shaw Manufacturing Corporation, its manufacturer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act

must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The manufacturer for which Rud-Shaw performs contract work does not use foreign sources or purchase imported men's tailored dress suit jackets or suits. Sales of the manufacturer increased from 1976 to 1977 and in the first ten months of 1978 compared with the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of Rud-Shaw Manufacturing Corporation, Brooklyn, New York, are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-797 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-3700]

SAWYER RESEARCH PRODUCTS, INC.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3700: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on May 11, 1978 in response to a worker petition received on May 2, 1978 which was filed on behalf of workers and former workers producing cultured crystal quartz at Sawyer Research Products, Eastlake, Ohio.

The Notice of Investigation was published in the FEDERAL REGISTER on May 30, 1978 (43 FR 23036). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Sawyer Research Products, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey revealed that most customers who decreased purchases from Sawyer in 1977 compared to 1976 and in the first six months of 1978 compared to the same period of 1977 had decreased their purchases of synthetic quartz crystal from all sources. The one customer which decreased purchases from the subject firm and increased import purchases in 1977 compared to 1976 and in the first six months of 1978 compared to the first six months of 1977 constituted an insignificant percentage of the decline in Sawyer's sales.

Technological advances in the production of citizens band radios which now require fewer crystals, the rapid decline in demand for citizens band radios in recent years and the loss of export sales contributed to the decline in sales, production and employment at Sawyer.

CONCLUSION

After careful review, I determine that all workers of Sawyer Research Products, Incorporated, Eastlake, Ohio are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-798 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4461]

SCANDIA GLASS WORKS, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4461: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 30, 1978 in response to a worker petition received on November 27, 1978 which was filed by the American Flint Glass Workers Union on behalf of workers and former workers producing glass globes and shades handblown at Scandia Glass Works, Incorporated, Kenova, West Virginia. The investigation revealed that this type of glass is illuminating glassware used for commercial and residential lighting fixtures.

The Notice of Investigation was published in the FEDERAL REGISTER on December 8, 1978 (43 FR 57692). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Scandia Glass Works, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales of glass globes and shades by Scandia, in terms of adjusted value, increased in the first eleven months of 1978 compared to the same period in 1977. Sales in the last two months of 1977 increased compared to the same period in 1976.

Production of glass globes and shades at Scandia also increased, in terms of value, in the first eleven months of 1978 compared to the same period of 1977 and in the last two months of 1977 compared to the same period of 1976.

CONCLUSION

After careful review, I determine that all workers of Scandia Glass Works, Incorporated, Kenova, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-799 Filed 1-8-79; 8:45 am]

[4510-28-M]

SHARON FABRICS

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4189: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on August 8, 1978 which was filed on behalf of workers and former workers selling finished fabric for men's shirtings at Sharon Fabrics (a division of Mode Fabrics, Incorporated) in New York, New York. The investigation revealed that the plant primarily produces women's printed fabric.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Sharon Fabrics, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met with respect to workers engaged in the sale of women's printed fabric:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales of women's finished shirting fabric increased in quantity and in value at Sharon Fabrics during the June through December period of 1977 as compared to the same period of 1976. Sales of women's finished fabric increased in the first three quarters of 1978 as compared to the same period of 1977. Sales and production are equivalent at Sharon Fabrics.

With respect to workers engaged in the sale of men's printed fabric, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey was conducted with customers that purchased men's shirting fabric from Sharon Fabrics. The results of the survey showed that customers which decreased purchases from Sharon Fabrics did not import men's shirting fabric from 1976 to 1977 and in the first three quarters of 1978 compared to the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of Sharon Fabrics, New York, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 2nd day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 79-800 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4068]

CAVERT WIRE COMPANY, INC., STEEL CITY DIVISION

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4068: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on August 17, 1978 in response to a worker petition received on August 15, 1978 which was filed by Local 1886 of the United Steelworkers of America on behalf of workers and former workers producing carbon wire products including steel paper clips at the Steel City Division of the Cavert Wire Company, Incorporated. The investigation revealed that the plant primarily produces steel paper clips.

The Notice of Investigation was published in the FEDERAL REGISTER on September 1, 1978 (43 FR 39194). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Steel City Division of the Cavert Wire Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

United States imports of paper clips increased from 2.5 million pounds in 1976 to 3.1 million pounds in 1977.

The Department of Labor conducted a survey of some of the customers of Steel City. The results of the survey indicated that some customers decreased purchases from Steel City in 1977 and 1978 and increased their purchases of foreign produced paper clips.

CONCLUSION

After careful review of the facts obtained in the investgation, I conclude that increases of imports of articles like or directly competitive with steel paper clips produced at the Steel City Division of the Cavert Wire Company, Incorporated, Pittsburgh, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Steel City Division of the Cavert wire Company, Incorporated, Pittsburgh, Pennsylvania who became totally or partially separated from employment on or after December 18, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-801 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4481]

SUN CAL COAT CO.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4481: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 6, 1978 in response to a worker petition received on November 27, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing women's coats at the Sun Cal Coat Company, Los Angeles, California.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59165-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Sun Cal Coat Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certfication of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales increased in 1977 compared to 1976 and continued to increase in the first nine months of 1978 compared to the like period in 1977. Production increased in the first eleven months of 1978 compared to the entire output in 1977.

CONCLUSION

After careful review, I determine that all workers of Sun Cal Coat Company, Los Angeles, California are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of December 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 79-802 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-3140, TA-W-3141, and TA-W-3142]

VALLEY MANUFACTURING CO.

Revised Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued notices of determination regarding eligibility to apply for adjustment assistance on September 25, 1978, applicable to workers and former workers producing women's dresses and pantsuits at Roanoke, Virginia, TA-W-3140; Buchanan, Virginia, TA-W-3141; and Radford, Virginia TA-W-3142; plants of the Valley Manufacturing Company. The Notices of Determinations were published in the FEDERAL REGISTER on October 13, 1978, (43 FR 47319 through 47321).

Workers producing dresses were denied in the original notices of determinations. At the request of petitioners, a further investigation was made by the Director of the Office of Trade Adjustment Assistance. A review revealed that increased imports of pantsuits, as well as dresses in this case, should have been regarded as like or directly competitive with the women's dresses produced by the Valley Manufacturing Company.

The intent of the certification was to cover all workers at the Roanoke, Virginia; Buchanan, Virginia and Radford, Virginia plants of the Valley Manufacturing Company who were affected by the decline in production related to import competition. The notices of determination, therefore, are revised to include all workers at the Roanoke, Virginia, Buchanan, Virginia, and Radford, Virginia plants of the Valley Manufacturing Company.

The revised notice of determination applicable to TA-W-3140, 3141 and 3142 is hereby issued as follows:

All workers at the Roanoke, Virginia; Buchanan, Virginia and Radford, Virginia plants of the Valley Manufacturing Company, who became totally or partially separated from employment on or after January 27, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 29th day of December 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 79-803 Filed 1-8-79; 8:45 am]

[4510-28-M]

[TA-W-4462]

VICTORIA FASHIONS, INC.

Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4462: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 30, 1978 in response to a worker petition received on November 27, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing dresses, blazers, pants and jackets at Victoria Fashions, Inc., Springfield, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on December 8, 1978 (43 FR 57692-57693). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Victoria Fashions, its manufacturers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Department survey of all manufacturers doing business with Victoria Fashions, Incorporated between January 1976 and March 1978 revealed that none of these manufacturers has reduced contract work with the subject firm while increasing imports of ladies' apparel. All of the manufacturers indicated that they did not contract with foreign producers.

CONCLUSION

After careful review, I determine that all workers of Victoria Fashions, Inc., Springfield, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3rd day of January 1979.

C. MICHAEL AHO,
Director, Office of Foreign Economic Research.

[FR Doc. 79-804 Filed 1-8-79; 8:45 am]

[4510-28-M]

DEPARTMENT OF LABOR

Office of the Secretary

[International Labor Affairs Order No. 79-1]

WORKER ADJUSTMENT ASSISTANCE

Assignment of Responsibility and Designation of Certifying Officers

1. *Purpose.* To assign responsiblility and designate one official as a certifying officer to carry out functions required under the worker adjustment assistance provisions of the Trade Act of 1974 (19 U.S.C. 2101, *et seq.*) and the implementing regulations published in 29 CFR Part 90.

2. *Directive affected.* International Labor Affairs Order No. 77-1 (42 FR 27343) is hereby amended.

3. *Background.* Persons designated as certifying officers are assigned responsiblity to make determinations and issue certifications of eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974, preside at public hearings held under 29 CFR 90.13, issue subpenas under 29 CFR 90.14, issue terminations of certifications of eligibility under 29 CFR 90.17, grant or deny reconsideration and issues revised determinations concerning certifications of eligibility under 29 CFR 90.18, and make findings of fact concerning determinations, pursuant to 90 CFR 90.16 and 90.17

4. *Assignment of responsibility and designation of officials.* The following official of the Bureau of International Labor Affairs is hereby designated as a certifying officer under 29 CFR Part 90:

Harry J. Gilman, Supervisory International Economist, Office of Foreign Economic Research.

5. *Effective date.* This order is effective January 3, 1979.

HOWARD D. SAMUEL,
Deputy Under Secretary,
International Affairs.

[FR Doc. 79-775 Filed 1-8-79; 8:45 am]

[6830-35-M]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

JANUARY 3, 1979.

The Legal Service 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 is is considering the grant application submitted by:

Idaho Legal Aid Services, Inc. in Boise, Idaho to serve Madison, Jefferson and Bingham Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Service Corporation at: Legal Services Corporation, Seattle Regional Office, 506 Second Aveune, Seattle, Washington 98104.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 79-689 Filed 1-8-79; 8:45 am]

[6830-35-M]

GRANTS AND CONTRACTS

JANUARY 3, 1979.

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 applications submitted by: Central Kentucky Legal Services, Inc. in Lexington, Kentucky to serve Harrison, Anderson, Mercer and Boyle Counties. Cumberland Trace Legal Services, Inc. in Bowling Green, Kentucky to serve Hart, Metcalfe and Taylor Counties. Legal Aid Society of Louisville in Louisville, Kentucky to serve Breckinridge, Grayson, Green, Hardin, Larue, Nelson, Shelby, Spencer, Bullitt, Henry and Washington Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street, N.E., 9th Floor, Atlanta, Georgia 30308.

THOMAS EHRLICH,
President.
Legal Services Corporation.

[FR Doc. 79-690 Filed 1-8-79; 8:45 am]

[6830-35-M]

GRANTS AND CONTRACTS

JANUARY 3, 1979.

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:

Virginia Legal Aid Society in Lynchburg, Virginia to serve Amherst County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Service Corporation at: Legal Services Corporation, Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600, Arlington, Virginia 22209.

THOMAS EHRLICH,
President.
Legal Services Corporation.

[FR Doc. 79-691 Filed 1-8-79; 8:45 am]

[7510-01-M]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 79-6]

A.L.W., INC.

Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to A.L.W., Inc., Los Angeles, California, of a limited, exclusive, revocable license to practice the invention described in U.S. Patent No. 3,972,651 for "Solar-Powered Pump", issued on August 3, 1976, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR § 1245.2, as revised April 1, 1972. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 30 days of this Notice, the Chairperson, Inventions and Contributions Board, NASA, Washington, D.C., 20546, receives in writing any of the following, together with supporting documentation: (i) a statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; or (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b) in which applicant states that applicant has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: January 3, 1979.

GERALD J. MOSSINGHOFF,
Acting General Counsel.

[FR Doc. 79-674 Filed 1-8-79; 8:45 am]

[7510-01-M]

[Notice 79-4]

BENDIX CORP.

Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to The Bendix Corporation, Southfield, Michigan, of a limited, exclusive, revocable license to practice the inventions described in U.S. Patent Nos. 3,869,676 and 3,883,812 for "Diode-Quad Bridge Circuit", issued on March 4, 1975 and May 13, 1975, to the Administrator of the National Aeronautics and Space Administration on behalf of the

United States of America. The proposed exclusive license will be for a limited number of years, will be limited to the field of use of "sensing devices for application in instrumentation and controls for vehicles", and will be subject to several existing nonexclusive licenses previously granted for these inventions. The license will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR § 1245.2, as revised April 1, 1972. NASA will negotiate the final terms and conditions and grant the exclusive license unless, on or before February 8, 1979, the Chairperson, Inventions and Contributions Board, NASA, Washington, D.C., 20546, receives in writing any of the following, together with supporting documentation: (i) a statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; or (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b) in which applicant states that applicant has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: January 3, 1979.

GERALD J. MOSSINGHOFF,
Acting General Counsel.

[FR Doc. 79-672 Filed 1-8-79; 8:45 am]

[7510-01-M]

[Notice 79-5]

RICHARD D. CHARNITSKI

Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to Richard D. Charnitski, Mission Viejo, California, of a limited, exclusive, revocable license to practice the invention described in U.S. Patent No. 3,882,846 for "Insulated Electrocardiographic Electrodes", issued on May 13, 1975, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will be limited to the field of use of "Portable Self-Contained Heart Rate Monitors." The license will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR § 1245.2, as revised April 1, 1972. NASA will negotiate the final terms and conditions and grant the exclusive license unless, on or before February 8, 1979, the Chairperson, Inventions and Contributions Board, NASA, Washington, D.C., 20546, receives in writing any of the following, together with supporting documentation: (i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; or (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b) in which applicant states that applicant has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written reaponses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: January 3, 1979.

GERALD J. MOSSINGHOFF,
Acting General Counsel.

[FR Doc. 79-673 Filed 1-8-79; 8:45 am]

[7510-01-M]

[Notice 79-7]

SARTORIUS FILTERS, INC.

Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to Sartorius Filters, Inc., South San Francisco, California, of a limited, exclusive, revocable license to practice the inventions described in U.S. Patent No. 4,061,561 for "Automatic Multiple-Sample Applicator and Electrophoresis Apparatus", issued on December 6, 1977, to the Administrator of the National Aeronautics and Space Administration (NASA) on behalf of the United States of America and U.S. Patent Application Serial No. 850,507 for "Improvements in Microelectrophoretic Apparatus and Process" filed by NASA on November 10, 1977. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR § 1245.2, as revised April 1, 1972. Copies of the above identified U.S. Patent and patent application can be obtained from the National Aeronautics and Space Administration, Assistant General Counsel for Patent Matters, Mail Code GP-4, Washington, DC, 20546. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 30 days of this Notice, the NASA Assistant General Counsel for Patent Matters, address above, receives in writing any of the following, together with supporting documentation: (i) a statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; or (ii) an application for a nonexclusive license under such inventions, in accordance with § 1245.206(b) in which applicant states that applicant has already brought or is likely to bring the inventions to practical application within a reasonable period. The NASA Inventions and Contributions Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: January 3, 1979.

GERALD J. MOSSINGHOFF,
Acting General Counsel.

[FR Doc. 79-675 Filed 1-8-79; 8:45 am]

[7510-01-M]

[Notice 79-8]

SARTORIUS GmbH

Intent To Grant Foreign Exclusive Patent License

In accordance with the NASA Foreign Licensing Regulations, 14 CFR 1245.405(e), the National Aeronautics and Space Administration announces its intention to grant to the Sartorius GmbH, Gottingen, West Germany, an exclusive patent license in Canada, France, Great Britain, Spain, Switzerland and West Germany for the NASA owned invention covered by the foreign counterparts of U.S. Patent Application Serial No. 850,507 for "Improvements in Microphoretic Apparatus and Process", filed by NASA on November 10, 1977. Copies of the above identified U.S. Patent Application can be obtained from the National Aeronautics and Space Administration, Assistant General Counsel for Patent Matters, Mail Code GP-4, Washington, DC, 20546. Interested parties should submit written inquiries or comments on or before March 12, 1979.

Dated: December 28, 1978.

GERALD J. MOSSINGHOFF,
Acting General Counsel.

[FR Doc. 79-676 Filed 1-8-79; 8:45 am]

[7510-01-MN]

[Notice 79-9]

SURFACE SCIENCE LABORATORIES, INC.

Intent To Grant Exclusive Patent License

Notice is hereby given that consideration is being given to the grant to Surface Science Laboratories, Palo Alto, California, of a limited, exclusive, revocable license to practice the invention described in U.S. Patent No. 3,965,354 for "Resistive Anode Image Converter", issued on June 22, 1976, to the Administrator of the National Aeronautics and Space Administration

on behalf of the United States of America. The proposed exclusive license will be for a limited number of years, will be in all fields of use "except astronomy and astrophysics." The license will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR § 1245.2, as revised April 1, 1972. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 30 days of this Notice, the Chairperson, Inventions and Contributions Board, NASA, Washington, D.C., 20546, receives in writing any of the following, together with supporting documentation: (i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed exclusive license; or (ii) an application for a nonexclusive license under such invention, in accordance with § 1245.206(b) in which applicant states that applicant has already brought or is likely to bring the invention to practical application within a reasonable period. The Board will review all written responses to the Notice and then recommend to the Administrator whether to grant the exclusive license.

Dated: January 3, 1979.

GERALD J. MOSSINGHOFF,
Acting General Counsel.

[FR Doc. 79-677 Filed 1-8-79; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

DOE/NSF NUCLEAR SCIENCE ADVISORY COMMITTEE

Amendment to Notice of Meeting

Please amend the announcement of the January 26-27 meeting of the DOE/NSF Nuclear Science Advisory Committee as follows:

From

LOCATION: Conference Room 8E-069, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C.

To

Room 642, National Science Foundation, 1800 G Street, NW., Washington, D.C.

The notice appeared in FEDERAL REGISTER, Vol. 43, No. 248, (43 FR 60244) Tuesday, December 26, 1978, FR Doc. 78-35842.

M. REBECCA WINKLER,
Committee Management Coordinator.

JANUARY 2, 1979.

[FR Doc. 79-663 Filed 1-8-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON THE SALEM NUCLEAR POWER STATION

Meeting

The ACRS Subcommittee on the Salem Nuclear Power Station will hold a meeting on January 24, 1979, (rescheduled from December 19, 1978) in Room 1046, 1717 H Street, N.W., Washington, DC 20555 to review the application of the Public Service Electric and Gas Company for a permit to operate Unit 2 of this station. Notice of this meeting was published on October 20, November 20, and December 20, 1978 (43 FR 49080, 54147, and 59447, respectively).

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, January 24, 1979, 1:00 p.m. until the conclusion of business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Public Service Electric and Gas Company, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Elpidio G. Igne (telephone 202/634-3314) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555 and at the Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated: January 3, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-678 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-3, 50-247 and 50-286]

CONSOLIDATED EDISON CO. OF NEW YORK, INC., AND POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendments to Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued to Consolidated Edison Company of New York, Inc. (Con Ed), Amendment No. 21 to Provisional Operating License No. DPR-5 for Indian Point Nuclear Generating Unit No. 1, and Amendment No. 45 to Facility Operating License No. DPR-26 for the Indian Point Nuclear Generating Unit No. 2 and has issued to the Power Authority of the State of New York, Amendment No. 21 to Facility Operating License No. DPR-64 for Indian Point Nuclear Generating Unit No. 3. These amendments revised Technical Specifications for operation of Indian Point Unit Nos. 1, 2 and 3 located in Buchanan, Westchester County, New York. The amendments are effective as of the date of issuance.

These amendments revise the provisions in the Environmental Technical Specifications for environmental sampling stations for drinking water and submission time for the annual radiological and non-radiological reports.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to this action, see (1) the applications for amendments transmitted by letters dated July 13, 1977 and March 22, 1978, (2) Amendment No. 21 to License No. DPR-5, (3) Amendment No. 45 to DPR-26, (4) Amendment No. 21 to DPR-64, and (5) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2) through (5) 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, Maryland, this 2nd day of January, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-758 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-3, 50-247 and 50-286]

CONSOLIDATED EDISION CO. OF NEW YORK, INC., AND POWER AUTHORITY OF THE STATE OF NEW YORK

Issuance of Amendments to Operating Licenses and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued to Consolidated Edison Company of New York Inc. (Con Ed), Amendment No. 20 to Provisional Operating License No. DPR-5 for Indian Point Nuclear Generating Unit No. 1, and Amendment No. 44 to Facility Operating License No. DPR-26 for the Indian Point Nuclear Generating Unit No. 2 and has issued to the Power Authority of the State of New York, Amendment No. 20 to Facility Operating License No. DPR-64 for Indian Point Nuclear Generating Unit No. 3. These amendments revised Technical Specifications for operation of Indian Point Unit Nos. 1, 2 and 3 located in Buchanan, Westchester County, New York. The amendments are effective as of the date of issuance.

These amendments revise the provisions in the Environmental Technical Specifications dealing with fish impingement to delete specific daily limits and to provide that the limits established by the State of New York in its Section 401 Certification, as they now exist or as they may be amended, will control. The revised Specifications also require reporting to the Commission high annual and monthly impingement levels.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action other than that which has already been predicted and described in the Commission's Final Environmental Statement for the facility.

For further details with respect to this action, see (1) the applications for amendments transmitted by letters dated April 20, 1977 and December 30, 1977, (2) Amendment No. 20 to License No. DPR-5, (3) Amendment No. 44 to DPR-26, (4) Amendment No. 20 to DPR-64, and (5) the Commission's Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York. A copy of items (2) through (5) 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, Maryland, this 2nd day of January, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-759 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket No. 50-341]

DETROIT EDISON CO., ET AL. (ENRICO FERMI ATOMIC POWER PLANT, UNIT 2)

Hearing

On May 28, 1975, the Nuclear Regulatory Commission published in the FEDERAL REGISTER, 40 FR 23122, a notice that the Commission has received an application for a facility operating license from Detroit Edison Company to possess, use and operate the Enrico Fermi Atomic Power Plant, Unit 2, a boiling water reactor located on a site in Frenchtown Township, Monroe County, Michigan. The Notice of Opportunity for Hearing was delayed until September 11, 1978, when the Commission published such notice in the FEDERAL REGISTER, 43 FR 40327, stating that the Commission will consider issuance of an operating license for the facility to the Applicants, Detroit Edison Company, Northern Michigan Electric Cooperative, Inc., and Wolverine Electric Cooperative, Inc. The notice provided that by October 10, 1978, any person whose interest may be affected by the proceeding could file a petition for leave to intervene in accordance with the Commission's Rules of Practice, 10 CFR Part 2, particularly 10 CFR 2.714.

Two petitions for leave to intervene and requests for a hearing in the proceeding were filed. An Atomic Safety and Licensing Board was established to rule upon petitions for leave to intervene. After holding a special prehearing conference pursuant to 10 CFR 2.751a, the Atomic Safety and Licensing Board designated to rule upon petitions issued an order on January 2, 1979, granting the petition for leave to intervene filed by Citizens for Employment and Energy (CEE) and admitting CEE as a party to the proceeding.

Please take notice that a hearing will be conducted in this proceeding. An Atomic Safety and Licensing Board, consisting of the same members who served on the Board designated to rule upon petitions, has been designated to preside over this proceeding. They are Dr. David R. Schink, Frederick J. Shon, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Board will hold one or more prehearing conferences pursuant to 10 CFR 2.752. The public is invited to attend any prehearing conferences, as well as the evidentiary hearing. During some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to make a limited appearance statement, either orally or in writing, stating his position on the issues. The number of persons making oral statements and the time allowed for each oral statement may be limited depending upon the total time available at various sessions. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section. Written statements supplementing or in lieu of oral statements may be of any length and will be accepted at any session of the proceeding or may be mailed to the Secretary of the Commission.

For further details, see the application for facility operating license and the Applicants' Environmental Report, Operating License Stage, both dated March 31, 1975, and papers filed concerning the requests for a hearing and petitions for leave to intervene, including the Prehearing Conference Order Ruling Upon Intervention Petitions, dated January 2, 1979, all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. As they become available, the following documents may be inspected at the above locations: (1) the Safety Evaluation Report prepared by the Commission's Office of Nuclear Reactor Regulation; (2) the Draft Environmental Statement; (3) the Final Environmental Statement; (4) the report of the Advisory Committee on Reactor Safeguards (ACRS) on the application for facility operating license; (5) the proposed facility operating license; and (6) the technical specifications, which will be attached to the proposed facility operating license.

The Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

Dated at Bethesda, Maryland, this 2d day of January, 1979.

CHARLES BECHHOEFER,
Chairman.

[FR Doc. 79-760 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-369 and 50-370]

DUKE POWER CO. (WILLIAM B. McGUIRE NUCLEAR STATION, UNITS 1 AND 2)

Order Extending Construction Completion Dates

Duke Power Company is the holder of Construction Permit Nos. CPPR-83 and CPPR-84 issued by the Atomic Energy Commission [1] on February 28, 1973, for construction of the William B. McGuire Nuclear Station, Units 1 and 2 presently under construction at the Company's site on the shore of Lake Norman in Mecklenburg County, North Carolina.

In response to previous requests from Duke Power Company (the applicant), the Nuclear Regulatory Commission issued an Order on August 3, 1976 extending the latest date for completion of construction to August 1, 1978 for Unit 1 and August 1, 1979 for Unit 2. By letter dated June 29, 1978, the applicant filed a request for a second extension of the completion dates, and supplemented its request by submitting additional information on November 7, 1978. This extension was requested because construction has been delayed due to, among other things, pipe hanger problems, system changes, and preoperational testing.

This action involves no significant hazards consideration; good cause has been shown for the delay; and the requested extension is for a reasonable period, the bases for which are set forth in a staff evaluation, dated December 26, 1978.

The preparation of an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the action authorized by the Order other than that which has already been predicted and described in the Commission's Final Environmental Statement—Operating License Stage for the McGuire facility, published in April 1976 and the Final Environmental Statement—Construction Permit Stage published in October 1972. A Negative Declaration and an Environmental Impact Appraisal have been prepared and are available, as are the above stated documents, for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the local public document room established for McGuire at the Public Library of Charlotte and Mecklenburg County, 310 North Tryon Street, Charlotte, North Carolina 28202.

[1] Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and Permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

It is hereby ordered, That the latest completion dates are extended for CPPR-83 from August 1, 1978 to April 30, 1979 and for CPPR-84 from August 1, 1979 to December 31, 1980.

Date of Issuance: December 26, 1978.

For the Nuclear Regulatory Commission.

ROGER S. BOYD,
Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-761 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-369 and 50-370]

DUKE POWER CO. (McGUIRE NUCLEAR STATION, UNITS 1 AND 2)

Negative Declaration; Supporting Extension of Construction Permit Nos. CPPR-83 and CPPR-84; Expiration Dates

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed Duke Power Company's (permittee) request to extend the expiration date of the construction permit for the McGuire Nuclear Station, Units 1 and 2 (CPPR-83 and CPPR-84) which is located in Mecklenburg County, North Carolina. The permittee requested a nine month extension for the Unit 1 permit to April 30, 1979, and a seventeen month extension for the Unit 2 permit to December 21, 1980, to allow for completion of construction of the McGuire plant.

The Commission's Division of Site Safety and Environmental Analysis has prepared an environmental impact appraisal relative to this change to CPPR-83 and CPPR-84. Based on this appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted because there will be no environmental impact attributable to the proposed action other than that which has already been described in the Commission's Final Environmental Statement related to construction of McGuire Nuclear Station, Units 1 and 2, and the Commission's Final Environmental Statement related to operation of McGuire Nuclear Station, Units 1 and 2.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Public Library of Charlotte and Mecklenburg County, 310 North Tryon Street, Charlotte, North Carolina.

Dated at Bethesda, Maryland, this 26th day of December 1978.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects, Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-762 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-466 and 50-467]

HOUSTON LIGHTING & POWER CO. (ALLENS CREEK NUCLEAR GENERATING STATION, UNITS 1 AND 2)

Reconstitution of Board

Mr. Glenn O. Bright was a member of the Atomic Safety and Licensing Board for the above proceeding. Because of a schedule conflict Mr. Bright is unable to continue his service on this board.

Accordingly, Mr. Gustave A. Linenberger, whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed a member of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Maryland this 3rd day of January 1979.

ROBERT M. LAZO,
Acting Chairman, Atomic Safety and Licensing Board Panel.

[FR Doc. 79-763 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket No. 50-289]

METROPOLITAN EDISON CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 47 to Facility Operating License No. DPR-50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (the licensees), which revised Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility) located in Dauphin County, Pennsylvania. The amendment is effective as of its date of issuance.

This amendment revised the Technical Specifications to add surveillance requirements for steam generator tubes.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR §51.5(d)(4) and 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 Commission's letters to the licensee dated October 17, 1974, September 14, 1976, December 14, 1976, and January 27, 1978, (2) the licensee's letter to the Commission dated November 29, 1974, the licensee's application for amendment dated November 12, 1976, as revised January 7, 1977, and supplemented by letter dated July 14, 1978, (3) Amendment No. 47 to License No. DPR-50, and (4) the Commission's related Safety Evaluation issued June 27, 1978, as supplemented December 22, 1978.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania. A copy of items (1), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, division of Operating Reactors.

Dated at Bethesda, Maryland this 22nd day of December 1978.

For the Nuclear Regulatory Commission.

MORTON B. FAIRTILE,
Acting Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc 79-764 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket No. 50-339]

VIRGINIA ELECTRIC & POWER CO. (NORTH ANNA POWER STATION UNIT 2)

Negative Declaration Regarding Extension of Construction Permit No. CPPR-78

The U.S. Nuclear Regulatory Commission (the Commission) has reviewed a request from Virginia Electric and Power Company for a 13-month extension of the construction permit for North Anna Power Station Unit 2, located in Louisa County, Virginia. The extension would permit revision of the construction completion date to December 1, 1979.

The Commission's Division of Site Safety and Environmental Analysis has prepared an environmental impact appraisal relative to the proposed extension. Based on the appraisal, the Commission has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact other than those which have been described in the Commission's Final Environmental Statement for North Anna Power Station, Unit Nos. 1, 2, 3, and 4, published in April 1973 and the Addendum to Final Environmental Statement published in November 1976, or evaluated in the environmental impact appraisal.

The environmental impact appraisal is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Board of Supervisors, Louisa County Courthouse, Louisa, Virginia 23093 and Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 29th day of December, 1978.

For the Nuclear Regulatory Commission.

JAN A. NORRIS,
Acting Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-766 Filed 1-8-79; 8:45 am]

[7590-01-M]

[Docket No. 50-339]

VIRGINIA ELECTRIC & AND (POWER CO. NORTH ANNA POWER STATION, UNIT NO. 2)

Order Extending Construction Completion Date

Viriginia Electric and Power Company is the holder of Construction Permit No. CPPR-78 issued by the Atomic Energy Commission* on February 19, 1971, for construction of the North Anna Power Station, Unit No. 2, presently under construction at the Company's site in Louisa County, Virginia.

*Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day continued under the authority of the Nuclear Regulatory Commission.

On September 26, 1978, the applicant filed a request for an extension of the construction completion date for Unit No. 2. Construction has been delayed due to:

(1) Testing of the low head safety injection and recirculation spray pumps;

(2) Emphasis placed on completion of Unit No. 1 of the North Anna Power Station for operation and transfer of materials to that unit;

(3) Revised schedule for completion of the Reactor Coolant System, thus delaying construction completion of Unit No. 2;

(4) Delay of completion of hanger design and final stress analysis for all Category 1 piping systems; and

(5) The Loan of North Anna Unit 2 reactor coolant pump motor to the Surry Power Station.

This action involves no significant hazards consideration; good cause has been shown for the delay; and the requested extension is for a reasonable period, the bases for which are set forth in the staff evaluation dated December 29, 1978. The preparation of an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the Order other than which has alrady been predicated and described in the Commission's Final Environmental Statement for the North Anna Power Station, Units 1 and 2, published in April 1973, and addendum thereto published in November 1976. A Negative Declaration and an Environmental Impact Appraisal have been prepared and are available, as are the above stated documents for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the local public document rooms established for the North Anna Power Station facility in the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901 and in the Office of the Board of Supervisors, Louisa County Courthouse, Main Street, Louisa, Virginia 23093.

It is hereby ordered, That the latest completion date for CPPR-78 be extended from November 1, 1978 to December 1, 1979.

Date of issuance: December 29, 1978.

For the Nuclear Regulatory Commission.

ROGER S. BOYD,
Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-765 Filed 1-8-79; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on January 2, 1979 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503. (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF ENERGY

Solar Energy Use: Nonresidential Buildings
EIA-C700 (SE)
Monthly
Owners of new bldg. projects using solar energy
150 responses; 75 hours
Off. of Federal Statistical Policy & Standard, 673-7956

RAILROAD RETIREMENT BOARD

Project REAP—Supplementary Information
T-10
Single-time
Unemployment benefit claimants
15,000 responses; 750 hours
Reese, B. F., 395-3211

DEPARTMENT OF COMMERCE

Economic Development Administration
Profile for Water and Sewer Assistance and Public Works Supplement to the Farmer's Home Administration
Application
ED-1105T & 1106T
On occasion
State and local governments
145 responses; 1,410 hours
Budget Review Division, 395-4773

REVISIONS

DEPARTMENT OF ENERGY

Coke and Coal Chemical Materials (Monthly Survey)
EIA-5
Monthly
Producers of coke & coal-chemical materials
768 responses, 768 hours
Hill, Jefferson B., 395-5867

Coke and Coal Chemical Materials Annual Survey
EIA-5A
Annually
Producers of coke and coal chemical materials
64 responses; 64 hours
Hill, Jefferson B., 395-5867

EXTENSIONS

DEPARTMENT OF DEFENSE

Department of the Navy
Contractor Employee Report
Monthly
Contractors
1,200 responses; 2,400 hours
Caywood, D. P. 395-6140

DEPARTMENT OF DEFENSE

Department of the Navy
First Article Inspection
Annually
Contractors
100 responses; 200 hours
Caywood, D. P., 395-6140.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 79-730 Filed 1-8-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

NEW ENGLAND NUCLEAR CORP.

Application To Withdraw From Listing and Registration

JANUARY 2, 1979.

In the matter of New England Nuclear Corporation (Common Stock, Par Value $1.00), File No. 1-7281.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the AMERICAN STOCK EXCHANGE, INC. ("Amex").

The reasons alleged in the application for withdrawing this security

from listing and registration include the following:

The common stock of New England Nuclear Corporation (the "Company") has been listed for trading on the Amex since October 10, 1967. On September 9, 1978, the stock was also listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith, such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining a dual listing on both exchanges. The company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for such stock.

The application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect upon the continued listing of such common stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before January 31, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-751 Filed 1-8-79; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.22, Amdt. No. 3]

AID REPRESENTATIVE, KOREA

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.22 dated September 21, 1973 (38 FR 27849), as amended on November 28, 1973 (38 FR 32825) and on June 1, 1976, as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The last two words in the first paragraph are deleted, i.e. "and approve:".

b. Subhead 1 is revised to read as follows:

"1. U.S. Government contracts, grants (other than grants to foreign Governments or Agencies thereof), and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

c. Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

2. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 79-737 Filed 1-8-79; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.97]

ARTHUR BJORLYKKE

Delegation of Contracting Officer Authority

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services, I hereby redelegate to Mr. Arthur Bjorlykke the authority to sign the following instruments, up to an amount of $500,000 (or local currency equivalent) *per transaction:*

(1) U.S. Government contracts (including contracts with individuals for services of the individual alone);

(2) U.S. Government grants, other than grants to foreign governments or agencies thereof;

(3) Inter-agency service agreements (IASAs) between A.I.D. and other U.S. Government agencies; and

(4) Modifications to the instruments specified above.

The authority delegated herein is to be exercised in accordance with A.I.D. regulations, procedures, and policies in effect at the time the authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

The authorities herein delegated may be redelegated at your discretion, not to exceed $300,000, only to the Assistant Area Contracting Officer. The authority so delegated may not be further redelegated.

This redelegation of authority shall be effective on the date of signature.

Dated: December 21, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 79-743 Filed 1-8-79; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.15, Amdt. No. 1]

MISSION DIRECTOR, USAID, THAILAND

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.15 dated September 26, 1973 (38 FR 29238) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The term "USOM" is deleted and "USAID" inserted in lieu thereof.

b. The last two words in the first paragraph are deleted i.e. "or approve:".

c. Subhead 1 is revised to read as follows:

"1. U.S. Government contracts, grants (except grants to foreign governments or agencies thereof), and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $100,000 or local currency equivalent."

d. Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

2. The third paragraph is revised to read as follows:

"The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 79-736 Filed 1-8-79; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.23, Amend. No. 1]

MISSION DIRECTOR, USAID, NEPAL

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby amend Redelegation of Authority No 99.1.23 dated September 28, 1973 (38 FR 29500) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The first two words in the first paragraph are deleted i.e. "or approve:".

b. Subhead 1 is revised to read as follows:

"1. U.S. Government contracts, grants (other than grants to foreign Governments or Agencies thereof), and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $75.000 or local currency equivalent."

c. Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

2. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc 79-738 Filed 1-8-79; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.65, Amdt. No. 2]

MISSION DIRECTOR, USAID, BANGLADESH

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.65 dated January 2, 1975 (40 FR 2596) as amended on March 3, 1975 (40 FR 12296) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The last two words in the first paragraph are deleted i.e. "or approve:".

b. Subhead 1 is revised to read as follows:

"1. U.S. Governments contracts, grants (other than grants to foreign Governments or Agencies thereof), and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

c. Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

d. Subhead 3 is deleted in its entirety.

2. The third paragraph is revised to read as follows:

"The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 79-739 Filed 1-8-79; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.73, Amdt. No. 2]

MISSION DIRECTOR, INDIA

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.51 dated September 19, 1975 (40 FR 45451) as amended on August 2, 1976 (41 FR 33312) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The last two words in the first paragraph are deleted, i.e., "or approve:".

b. Subhead 1 is revised to read as follows: "1. U.S. Government contracts, grants, (other than grants to foreign governments or agencies thereof), and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $100,000 or local currency equivalent."

c. Subhead 2 is revised to read as follows: "2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

2. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management

[FR Doc. 79-740 Filed 1-8-79; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.74, Amdt. No. 1]

MISSION DIRECTOR, USAID/PHILIPPINES

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.74 dated November 6, 1975, as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The words "or approve" are deleted.

b. The amount "$500,000" is deleted and the amount "$300,000" substituted in lieu thereof.

c. The last two words in the first paragraph are deleted i.e. *"per transaction."*

d. Subhead (4) concerning AID grant-financed host country contracts is deleted in its entirety.

2. The second paragraph is hereby amended to reflect the following changes:

a. The amount shown under subhead (1) as "$25,000" is hereby deleted and the amount "$50,000" substituted in lieu thereof.

b. The amount shown under subhead (2) as "$25,000" is hereby deleted and the amount "$50,000" is substituted in lieu thereof.

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 79-741 Filed 1-8-79; 8:45 am]

[4710-02-M]

[Redelegation of Contracting Authority No. 99.1.105]

MISSION DIRECTOR, USAID/INDONESIA

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services, I hereby redelegate to the Mission Director, USAID/Indonesia, the authority to sign the following instruments, up to an amount of $300,000 (or local currency equivalent) per transaction:

(1) U.S. Government contracts (including contracts with individuals for services of the individual alone);

(2) U.S. Government grants, other than grants to foreign governments or agencies thereof;

(3) Inter-agency service agreements (IASAs) between AID and other U.S. Government agencies; and

(4) Amendments to the instruments specified above.

The authorities herein delegated may be redelegated in writing, in whole or in part, by said Mission Director as follows:

(1) Authority up to $50,000 may be redelegated at the Mission Director's discretion;

(2) Authority over $50,000 may be redelegated with the prior concurrence of the Director, Office of Contract Management (except that such prior concurrence is not required in the case of a redelegation to the Mission Director's principal deputy).

Such redelegations shall remain in effect until revoked by the Mission Director, or upon advice from the Director, Office of Contract Management that his concurrence in a redelegation is withdrawn, whichever shall first occur. The authority so delegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

The authority herein delegated to the Mission Director may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Redelegation of Authority 99.1.21 (38 FR 27849) dated September 21, 1973, is hereby revoked.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

Actions within the scope of this delegation and any redelegations hereunder heretofore taken by the officials designated in such delegation or redelegations are hereby ratified and confirmed.

This redelegation of authority is effective on the date of signature.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 79-742 Filed 1-8-79; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.106]

REGIONAL DEVELOPMENT OFFICER, SUVA, FIJI

Redelegation of Authority Regarding Operational Program Grants

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836), as amended, from the Assistant Administrator for Program and Management Services, I hereby redelegate to the Regional Development Officer, Suva, Fiji, authority to execute Operational Program Grants (OPG's) as defined in Appendix 7A, Chapter 7, of AID Handbook 3, *Project Assistance*, on the following basis:

(1) Such OPG's shall not exceed $500,000 for the life of the project;

(2) Each OPG shall constitute assistance;

(3) The post must be advised by AID/W, prior to signing the OPG, that Congress has been notified and funds have been allotted; and

(4) Each OPG may be signed only after concurrence from the Area Contracting Officer.

This redelegation of authority is issued to supplement Redelegation of Authority No. 99.1.95.

The authority herein delegated may not be redelegated.

This redelegation of authority is effective immediately.

Dated: December 18, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 79-735 Filed 1-8-79; 8:45 am]

[4910-22-M]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 78-38]

SOLICITATION OF PROBLEM STATEMENTS FOR HIGHWAY SAFETY RESEARCH AND DEVELOPMENT

Issuance of Internal Document

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of issuance of internal document.

SUMMARY: In order to be responsive to the needs of the highway community, the Federal Highway Administration (FHWA) hereby solicits problem statements for the entire FHWA safety research and development program for fiscal years 1981 and 1982.

DATE: Comments must be received on or before February 16, 1979.

ADDRESS: Submit comments (original and 2 copies) to FHWA Docket No. 78-38, Room 4205, HCC-10, Federal Highway Administration, United States Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry Taylor, Office of Highway Safety (202/426-2131); or Mrs. Kathleen S. Markman, Office of the Chief Counsel (202/426-0346), Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. E.T., Monday through Friday.

Issued on: December 26, 1978.

L. P. LAMM,
Executive Director.

[FHWA Notice 7580.8]

SOLICITATION OF PROBLEM STATEMENTS FOR HIGHWAY SAFETY RESEARCH AND DEVELOPMENT

1. *Purpose.* To solicit problem statements for highway safety research and development for Fiscal Years 1981 and 1982.

2. *Background.*

a. Section 403 of Title 23, United States Code authorizes funds to conduct research and development related to the Highway Safety Standards for which FHWA is responsible, as well as other safety-related activities such as training for highway safety personnel. In the past 5 years, appropriations under this legislation have varied between $7 and $9 million per year. The Offices of Research and Development established Category 1 of the Federally Coordinated Program (FCP), "Improved Highway Design and Operation for Safety," as a framework for conducting research and development. Objectives for the Category 1 program have been cooperatively developed with the Office of Highway Safety and other FHWA offices. The current content of the Category 1 program has been cooperatively developed with the Office of Highway Safety and other FHWA offices. The current content of the Category 1 program is reflected in the FCP documentation which has been distributed to all FHWA offices, State highway agencies, and Governor's Highway Safety Representatives (GHSR).

b. To be responsive to the needs of the highway community, the Office of Highway Safety is soliciting problem statements for the entire FHWA safety research and development program.

c. Requests for problem statements are being made biennially. This solicitation is also intended to expand and improve on the previous annual solicitations for Project 1A, "Traffic Engineering Improvements for Safety." Project 1A is still under way and its purpose, which remains the same, is "to conduct research and development to improve traffic engineering techniques and procedures which may be implemented on a widescale basis to increase the safety and efficiency of highway operations." Therefore, the request for problem statements is intended to serve a twofold purpose:

(1) To solicit problem statements for all Category 1 research and development for Fiscal Years 1981 and 1982, and

(2) To further solicit specific problem statements for selection under Project 1A for Fiscal Years 1980 and 1981. (Because Project 1A is designed to meet immediate needs, its lead time is a year less.) Under Project 1A, problem statements will be selected for study which are related to improving traffic control devices and traffic engineering techniques which will serve immediate needs, and which have a high potential for implementation.

See Attachment 1 for the list of completed Project 1A reports.

d. Attachment 2 indicates procedures to be followed in submitting problem statements.

3. *Action.*

a. Additional copies of this Notice will be furnished to FHWA division offices (60 copies) to permit distribution to GHSR's and State highway agencies, and through these offices as appropriate to local jurisdictions.

b. State highway agencies, GHSR's local jurisdictions, Washington Headquarters, region and division offices, and other Federal agencies which have a responsibility for highways are urged to submit problem statements.

c. The GHSR's and/or State highway agencies are asked to distribute this Notice to local jurisdictions by January 10 or the week after receipt, and to assist them in submitting appropriate problem statements.

d. The FHWA Division Administrators are requested to coordinate the solicitations wth GHSR's and State highway agencies. The deadline for submitting statements to be considered for incorporation into the Fiscal Years 1981 and 1982 program is February 16, 1979.

ATTACHMENT 2—ADMINISTRATIVE PROCEDURES FOR THE OFFICE OF HIGHWAY SAFETY SOLICITATION OF PROBLEM STATEMENTS

I. PURPOSE

This establishes administrative procedures relating to the Office of Highway Safety's solicitation for highway safety research and development.

II. BACKGROUND

The Office of Highway Safety is initiating this solicitation to obtain assistance and guidance in the identification of critical subjects for long range and immediate highway safety research and the establishment of priorities for refinement of existing research.

III. ADMINISTRATIVE PROCEDURES

Problem statements for candidate research and development efforts for FY's 1981-82 are solicited from those agencies which have a direct responsibility for developing programs for highway and street facilities. Such agencies are

1. Office of the Governor's Representative for Highway Safety,
2. The State highway or transportation agencies,
3. Local political subdivisions;
4. FHWA program offices;
5. FHWA field offices; and
6. Offices of other Federal agencies having responsibility for highways.

A summary of the tentative organization of the highway research and development program for FY 1981 is attached for information purposes (Appendix A[1]). Problem statements are welcomed in the listed subject areas or in any other areas of highway safety. To obtain additional information about the Federally Coordinated Program for Research and Development in Highway Transportation (FCP), please contact the State Highway agency or the FHWA division office for access to the detailed documentation of the current projects or of the 1977 Annual Report; contact the GHSR for access to the Annual Report. The intent of this Notice is to identify highway safety problems, not encourage submission of unsolicited

[1] Available for inspection and copying as prescribed in 49 CFR 7, App. D.

proposals for research. Problem statements should be solicited by FHWA field offices through normal channels from State highway or transportation agencies or GHSR. It is believed that the highway safety program corrdinators in the regions and divisions should coordinate this solicitation process. The GHSR and/or the State highway agencies should solicit problem statements from the local political subdivisions. Problem statements submitted by local political subdivisions, through their respective State offices, should then be furnished to the FHWA divisions offices, who in turn will forward them through normal channels to the Director, Office of Highway Safety (HHS-1). The problem statements must be submitted to the Director by February 16, 1979, for consideration in formulation of the FY 1981 program.

The form used for submitting problem statements should consist of a one or two page description (see Appendix B*) containing the following information:

1. Problem title,
2. Problem summary (concise statement of problems or needs),
3. Objectives (expected accomplishments at conclusion of study or studies),
4. Submitter (name of submitting organization—individual to represent submitter for further contact if needed),
5. Date of submission, and
6. Project designation (if appropriate).

ATTACHMENT 1—COMPLETED PROJECT 1A RESEARACH

1. Efficacy of Red And Yellow Turn Arrows in Traffic Signals—November 1975.
2. Right-Turn-On-Red, Vol. 1—Final Technical Report and—Vol. II—Executive Summary—May 1976.
3. Guidelines for Flashing Traffic Control Devices—July 1976.
4. Traffic Controls for Construction and Maintenance Worksites—Research Report—October 1976—Office and Field Functions—May 1977.
5. Safety Aspects of the National 55 M.P.H. Speed Limit—November 1976.
6. Traffic Engineering Services for Small Political Jurisdictions—January 1977.
7. Signs and Marketings for Low Volume Rural Roads—May 1977.
8. Development of Procedures for Identifying Hazardous Locations.
9. Vehicle Detector Placement for High Speed, Isolated Traffic Actuated Intersection Control.
10. Design and Operation Speed for Construction Zones.
11. Motorists Requirement for Active Grade Crossing Warning Devices.

The following studies were completed, but the final reports have not yet been published:

12. Evaluation of Speed Control Devices for School Zones and Small Towns.
13. Intersection Signal Control to Improve Traffic Operations and Reduce Accidents.
14. Safety Aspects of Vehicle Parking.
15. Safety Features of Stop Signs at Rail-Highway Grade Crossings.
16. Safety Evaluation to Priority Techniques for High Occupancy Vehicles.
17. Passing and No Passing Zones—Signs, Markings, Laws, and Warrants.
18. Safety Aspects of Traffic Signal Control on Arterial System.

[FR Doc. 79-773 Filed 1-8-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

CARBON STEEL PLATE FROM BELGIUM, FRANCE, THE FEDERAL REPUBLIC OF GERMANY, ITALY, AND THE UNITED KINGDOM

AGENCY: U.S. Treasury Department.

ACTION: Initiation of Antidumping Investigations.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and antidumping investigations are being initiated for the purpose of determining whether imports of carbon steel plate from Belgium, France, the Federal Republic of Germany, Italy, and the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices in the home market.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

John R. Kugelman, Operations Officer, U.S. Customs Service, Office of Operations, Duty Assessment Division, Technical Branch, 1301 Constitution Avenue, N.W., Washington, D.C. 20220 (202) 455-5492.

SUPPLEMENTARY INFORMATION: On December 26, 1978, information was received in proper form pursuant to sections 153.26 and 153.27, Customs Regulations (19 CFE 153.26, 153.27), from counsel on behalf of Lukens Steel Company indicating the possibility that carbon steel plate from Belgium, France, The Federal Republic of Germany (FRG), Italy, and the United Kingdom is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

The carbon steel plate under consideration is provided for in item number 608.8415 of the Tariff Schedules of the United States Annotated (TSUSA).

Margins of dumping are alleged which, if based on a comparison with prices in the home markets, are approximately 13.0 percent for Belgium, 10.0 percent for France, 6 percent for the FRG, 20.0 percent for Italy and 18.0 percent for the United Kingdom. These margins have been computed using "guidance prices" as of July 1, 1978, established under the "Davignon Plan" of the European Community as home market prices. To the extent the investigation to be undertaken reveals that actual sales prices in the home markets have been at other than such established prices, the margins, if any, will be computed on the basis of such actual transactions.

There is evidence on record concerning injury or likelihood of injury to the U.S. carbon steel plate industry from the alleged less than fair value imports. Although domestic shipments increased in 1977 compared to 1976 and in the first 8 months of 1978 compared to the same period in 1977, total imports, and particularly imports from the countries covered by this petition, have increased even more sharply. The market share of all carbon steel plate imports was 18.8 percent in 1976; by July 1978, plate imports accounted for 22 percent. Data available to the Treasury Department indicates that this trend has continued with total carbon steel plate imports accounting for 26 percent of domestic consumption and imports from these five European countries accounting for 55 percent of total imports by October 1978. These five countries increased their share of total carbon steel plate imports from 17 percent in 1976 to 45 percent in the first 7 months of 1978. During the same time frame, the share of imports held by imports of carbon steel plate from Japan, already subject to a "Finding of Dumping" (43 FR 22937) has declined from 52 percent to 7 percent.

In addition to the information regarding increased import penetration by the allegedly "less than fair value" imports, evidence has been submitted showing declining employment by the petitioner and carbon steel plate sector, lost sales by the petitioner as a result of the allegedly dumped imports and significant underselling of U.S. prices by imports from these countries.

In assessing the injury caused by the alleged sales at less than fair value from these five countries of the European Community, it has been consid-

ered appropriate to cumulate the shares of the market held by imports from each of the countries named. The product is fungible. Under such circumstances, it would be unrealistic to attempt to differentiate the alleged injury caused by imports from one country rather than another when it is the cumulative effect of all, occurring within a discrete time frame, that creates the problem.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the United States Customs Service is instituting inquiries to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

DECEMBER 28, 1978.

[FR Doc 79-731 Filed 1-8-79; 8:45 am]

[6820-32-M]

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

RENEWAL OF THE GENERAL ADVISORY COMMITTEE

Notice is hereby given in accordance with paragraph 7(a) of Office of Management and Budget Circular No. A-63 (Rev'd, March 27, 1974), as amended by Transmittal Memorandum No. 1 (July 19, 1974), that the General Advisory Committee had been renewed effective January 5, 1979.

Dated: January 2, 1979.

GEORGE M. SEIGNIOUS II,
Director, U.S. Arms Control and Disarmament Agency.

[FR Doc. 79-670 Filed 1-8-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 2]

ASSIGNMENT OF HEARINGS

JANUARY 4, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 95540 (Sub-1038F), Watkins Motor Lines, Inc., now being assigned for hearing on February 6, 1979, (2 days), at New York, New York, in a hearing room to be later designated.

MC 124896 (Sub-61F), Williamson Truck Lines, Inc., now being assigned for hearing February 22, 1979, (1 day), at Kansas City, Missouri in a hearing room to be later designated.

MC 116254 (Sub-21OF), Chem-Haulers, Inc., now being assigned for hearing on February 23, 1979, (1 day), at Kansas, City, Missouri in a hearing room to be later designated.

MC 98952 (Sub-54F), General Transfer Company, now being assigned for hearing on February 28, 1979, (3 days), at Chicago, Illinois in a hearing room to be later designated.

MC 69833 (Sub-131F), Associated Truck Lines, Inc., now being assigned for hearing on March 13, 1979, (9 days), at Columbus, Ohio in a hearing room to be later designated.

MC 144843 (Sub-1F), W. R. GRACE & CO. DBA Grace Distribution Service, now assigned January 15, 1979, at New York, New York is cancelled transferred to Modified Procedure.

MC 141532 (Sub-17), Pacific States Transport, Inc., now assigned January 17, 1979, at Los Angeles, California is cancelled transferred to Modified Procedure.

MC 5227 (Sub-40F), Eckley Trucking, Inc., now being assigned for hearing on March 13, 1979, (1 day), at Portland, Oregon, in a hearing room to be later designated.

MC 9325 (Sub-75F), K Lines, Inc., now being assigned for hearing on March 14, 1979, (1 day), at Portland, Oregon in a hearing room to be later designated.

MC-F 13629, Shoemaker Trucking Company—Purchase (Portion)—Herrett Trucking Co., Inc., now being assigned for hearing on March 15, 1979, (2 days), at Portland, Oregon in a hearing room to be later designated.

MC 141532 (Sub-29F), Pacific States Transport, Inc., MC 141532 (Sub-30F), Pacific States Transport, Inc., now being assigned for hearing on March 19, 1979, (5 days), at Portland, Oregon in a hearing room to be later designated.

MC 119654 (Sub-57F), Hi-Way Dispatch, Inc., now being assigned for hearing on March 20, 1979, (1 day), at Chicago, Illinois in a hearing room to be later designated.

MC 117940 (Sub-285F), Nationwide Carriers, Inc., now being assigned for hearing on March 26, 1979, (5 days), at St. Paul, Minnesota in a hearing room to be later designated.

MC 125433 (Sub-160F), F-B Truck Line Company, now being assigned for hearing on March 12, 1979, (5 days), at San Francisco, California in a hearing room to be later designated.

MC 119988 (Sub-153F), Great Western Trucking, now being assigned for hearing on March 19, 1979, (1 day), at San Francisco, California in a hearing room to be later designated.

MC 107227 (Sub-134F), Insured Transporters, Inc., now being assigned for hearing on March 20, 1979, (2 days), at San Francisco, California in a hearing room to be later designated.

MC 143546, Atlantic Marketing Cooperative Association, now being assigned for hearing on March 22, 1979, (2 days), at Fresno, California in a hearing room to be later designated.

MC 42846 (Sub-6F), Debolt-Somerset Bus Company, now being assigned for hearing on March 12, 1979, (5 days), at Greenburg, Pa., in a hearing room to be later designated.

MC 144452 (Sub-2F), Arlen Lindquist DBA Arlen E. Lindquist Trucking, now assigned for hearing on February 14, 1979, at St. Paul, Minnesota and will be held in Court Rm. 584, Federal Building.

MC 43716 (Sub-33F), Bigge Drayage Co., a Corporation now assigned for hearing on January 22, 1979, at San Francisco, California and will be held in Room 510, Fifth Floor.

MC 112989 (Sub-73F), West Coast Truck Lines, Inc., now assigned for hearing on February 5, 1979, at San Francisco, California and will be held in Room 510, Fifth Floor.

MC 139807 (Sub-3F), All West Tours, a Corporation now assigned for hearing on January 23, 1979, at San Francisco, California and will be held in Room 510, Fifth Floor.

MC 142012, Bass Transportation Co., Inc., Extension-General Commodities, now assigned for hearing on February 1, 1979, at San Francisco, California and will be held in Courtroom No. One.

MC 144504F, Delta Charter Service, Inc., now assigned for hearing on February 7, 1979, at San Francisco, California and will be held in Room 510, Fifth Floor.

MC 95876 (Sub-235F), Anderson Trucking Service, Inc., now assigned for hearing on February 6, 1979, at St. Paul Minnesota and will be held in Court Rm. 584, Federal Building.

MC 92950 (Sub-1F), Wolverton Dray Lines, Inc., now assigned for hearing on February 7, 1979, at St. Paul, Minn. and will be held in Court Rm. 584, Federal Building.

MC 134477 (Sub-243F), Schanno Transportation, Inc., now assigned for hearing on February 12, 1979, at St. Paul, Minn. and will be held in Court Room 584, Federal Building.

MC 119493 (Sub-221F), Monkem Company, Inc., now being assigned for hearing on March 20, 1979, (2 days), at Chicago, Illinois in a hearing room to be later designated.

MC 5227 (Sub-41F), Eckley Trucking, Inc.,

MC 115904 (Sub-116F), Grover Trucking Co., No. MC 123407, (Sub-482F), Sawyer Transport, Inc., now being assigned for hearing on march 22, 1979, (2 days), at Chicago, Illinois in a hearing room to be later designated.

MC 113678 (Sub-750F), Curtis, Inc., now being assigned for hearing on March 26, 1979, (5 days), at Chicago, Illinois in a hearing room to be later designated.

MC 113678 (Sub-749), Curtis, Inc., now assigned for continued hearing on March 5, 1979, at San Francisco, California and will

be held in Room 510, Fifth Floor, 211 Main Street.

H. G. HOMME, Jr.
Secretary.

[FR Doc. 79-745 Filed 1-8-79; 8:45 am]

[7035-01-M]

[Notice No. 3]

ASSIGNMENT OF HEARINGS

JANUARY 4, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

CORRECTION [1]

MC 115495 (Sub-37F), United Parcel Service, Inc., now assigned for hearing on February 27, 1979, at Dallas, Texas, at the Dallas Marriott Hotel, Market Center, 2101 Stemmons Freeway.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-746 Filed 1-8-79; 8:45 am]

[7035-01-M]

[Notice No. 4]

ASSIGNMENT OF HEARINGS

JANUARY 4, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

CORRECTION [1]

MC 133937 (Sub-25F), Carolina Cartage Company, Inc., now assigned for hearing on January 23, 1979, at Atlanta, Georgia and will be held in Room 305, 1252 West Peachtree Street, NW.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-747 Filed 1-8-79; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATION FOR RELIEF

JANUARY 4, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. by January 24, 1979. FSA NO. 43650, Southwestern Freight Bureau, Agent's No. B-797, rates on rice mill feed, rice bran, and rice hulls from Cleveland and Greenville, Miss., to points in Southwestern Territory, in supplement 116 to its Tariff 326-C, ICC 5155, effective February 4, 1979. Grounds for relief—market competition, modified short-line distance formula and grouping.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-744 Filed 1-8-79; 8:45 am]

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[1] This notice changes this proceeding from continued hearing to hearing and inserting the Location of hearing room.

[1] This notice corrects the previous publication of the hearing room location, which did not give the complete address.

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

CONTENTS

	Item
Commodity Futures Trading Commission	1, 2
Federal Deposit Insurance Corporation	3
Federal Maritime Commission	4
Federal Mine Safety and Health Review Commission	5, 6
Federal Reserve System	7
International Trade Commission	8
Tennessee Valley Authority	9

[6351-01-M]

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 9:30 a.m., January 12, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Presentation by the Division of Enforcement.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-39-79 Filed 1-5-79; 3:56 pm]

[6351-01-M]

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 2 p.m., January 12, 1979.

PLACE: 2033 K Street NW., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-40-79 Filed 1-5-79; 3:56 pm]

[6714-01-M]

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Thursday, January 4, 1979, the Board of Directors of the Federal Deposit Insurance Corporation met by telephone conference call to consider a recommendation regarding the settlement of certain claims arising in connection with the receivership of the United States National Bank, San Diego, California.

In calling the meeting, the Board of Directors determined, on motion of Director William M. Isaac (Appointive), seconded by Acting Chairman John G. Heimann, that Corporation business required its consideration of the recommendation on less than 7 days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the recommendation in a meeting open to public observation; and that the meeting was exempt from the open meeting requirements of the "Government in the Sunshine Act" by subsections (c)(9)(B) and (c)(10) thereof (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

Dated: January 4, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-38-79 Filed 1-5-79; 3:42 pm]

[6730-01-M]

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: January 15, 1979, 2 p.m.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Letter of Sea-Land Service, Inc., dated December 28, 1978, concerning settlement agreement.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-3579 Filed 1-5-79; 2:16 pm]

[6735-01-M]

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

JANUARY 5, 1979.

TIME AND DATE: 9:30 a.m., January 12, 1979.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C. 20006.

STATUS: Open.

MATTERS TO BE CONSIDERED:

The Commission will hold oral argument on the following:

Secretary of Labor v. *Peter White Coal Mining Corp., HOPE 78-374 etc.; Peabody Coal Co., VINC 78-386; United States Steel Corp., PITT 78-335; Monterey Coal Co., VINC 78-416; Rochester & Pittsburgh Coal Co., PITT 78-323; Helvetia Coal Co., PITT 78-322; Inselin Preparation Co., PITT 78-343, 78-344; and Energy Fuels Corp., DENV 78-410.*

These cases raise a substantial issue concerning the interpretation of the Federal Mine Safety and health Act of 1977: May the Commission review the allegation of violation in a citation if no penalty has been proposed?

CONTACT PERSON FOR MORE INFORMATION:

Donald Terry, 202-653-5644.

[S-37-79 Filed 1-5-79; 3:42 pm]

[6735-01-M]

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

JANUARY 5, 1979.

TIME AND DATE: 10 a.m., January 9, 1979.

PLACE: Room 600, 1730 K Street NW., Washington, D.C. 20006.

STATUS: This meeting will be open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

3. *Eastern Associated Coal Corp.*, Docket No. MORG 78-385-P (petition for discretionary review).

4. *Consolidation Coal Company*, Docket Nos. VINC 78-417, 78-25-P (petition for discretionary review).

It was determined by unanimous vote on the Commissioners that Commission business required that these matters be added to the agenda for the next regularly sched-

uled Commission meeting and that no earlier announcement of this action was possible.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Don Terry, 202-653-5644.

[S-36-79 Filed 1-5-79; 3:42 pm]

[6210-01-M]

7

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 11 a.m., Friday, January 12, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees. 2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: January 4, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-33-79 Filed 1-5-79; 11:12 am]

[7020-02-M]

8

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, January 16, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary).
5. Certain machine needles (Inv. TA-201-38)—briefing and vote on injury.
7. Any items left over from previous agenda.
8. Cobmination locks (Inv. 337-TA-45)—vote.
9. Roller units (Inv. 337-TA-44)—vote.

Portions closed to the public:

6. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-34-79 Filed 1-5-79; 1:49 pm]

[8120-01-M]

9

[Meeting No. 1206]

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 10:30 a.m., Thursday, January 11, 1979.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS FOR ACTION:

Personnel actions:

1. Appointment of Kenneth E. Gray as Washington Representative, Office of the General Manager.

Purchase awards:

1. Req. No. 823589—Requirement contract for metal cable trays and fittings for Yellow Creek Nuclear Plant.
2. Req. No. 154194—Rebuild Electrostatic Precipitators at Cumberland Steam Plant.

Project authorizations:

1. No. 3396—Replace boiler platen elements at Kingston Steam Plant, units 5-9.
2. No. 3397—Raise ash disposal pond dike at Colbert Steam Plant.
3. No. 3400—Improve the reliability of power supply to the Cranberry, North Carolina, area.

Power items:

1. Agreement between the city of Chattanooga, Tenn., and TVA—Joint study concerning use of electric water heating in single family residence.
2. Lease agreement with city of Fayetteville, Tenn.—TVA's Fayetteville District Substation.
3. Lease agreement with the Bowling Green Municipal Utilities Board covering arrangements for 161-kV delivery at TVA's South Bowling Green Substation; and new power contract with Bowling Green, Ky.

Real property transactions:

1. Sale at public auction of a 20-year industrial easement affecting approximately 19.4 acres of Chickamauga Reservoir Land in Rhea County, Tenn.—Tract XCR-674IE.
2. Abandonment of easement rights affecting a 0.2-acre portion of a lot in the Prairie Peninsula Cabin Site Subdivision located on Chickamauga Reservoir—Tract XCR 59:26.

DATED: January 4, 1979.

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-32-79 Filed 1-5-79; 11:12 am]

federal register

TUESDAY, JANUARY 9, 1979
PART II



DEPARTMENT OF COMMERCE

Office of the Secretary

■

IMPROVING GOVERNMENT REGULATIONS

Response to Executive Order 12044

[3510-20-M]

DEPARTMENT OF COMMERCE

IMPROVING GOVERNMENT REGULATIONS

Response to Executive Order 12044

AGENCY: U.S. Department of Commerce.

ACTION: Final Report.

SUMMARY: On Tuesday, May 30, 1978, the Department of Commerce proposal for implementing Executive Order 12044, "Improving Government Regulations" (the Executive Order) was published for public comment in the FEDERAL REGISTER (43 FR 23170). Careful consideration has been given to all comments received, and a number of appropriate revisions have been made to the Department's Draft Report. As required by the Executive Order, the revised report was submitted to the Office of Management and Budget for approval on September 15, 1978. Having obtained Office of Management and Budget approval, the Department is now publishing its procedures for implementing the Executive Order.

EFFECTIVE DATE: January 9, 1979.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments
III. Revisions

I. BACKGROUND

The Executive Order outlines policy for developing regulations; sets minimum procedures for developing significant regulations, including publication by agencies of a semi-annual agenda of regulations under development or review; requires close agency head oversight; calls for early and meaningful opportunities for public participation; requires careful review of the need, quality and effectiveness of regulations being proposed; requires careful economic analysis of regulations having a major economic effect; and requires periodic review of existing regulations.

Section 5 of the Executive Order required that each agency prepare and publish in the FEDERAL REGISTER for public comment, a draft report briefly describing: (1) Its process for developing regulations and changes that have been made to comply with the Executive Order, (2) its proposed criteria for defining significant regulations, (3) its proposed criteria for identifying which regulations require regulatory analysis, and (4) its proposed criteria for selecting existing regulations for review and a list of regulations that will be considered for initial review. Section 5 further required that after receiving public comments, each agency submit a revised report to OMB for approval and then publish its final report in the FEDERAL REGISTER.

As was noted in the preamble to the draft report, the Department of Commerce is a Cabinet level agency composed of the Office of the Secretary and 13 operating units. While the principal mission of the Department is to foster, promote and develop the foreign and domestic commerce of the United States, the activities of the components of the Department in furthering that mission are broad and varied in scope. Further, while some of the operating units of the Department have a limited need for developing regulations which affect the public; others have had extensive regulatory experience.

Given these great differences in mission and experience, the Department determined that considerable decentralization is necessary to effectively implement the Executive Order by encouraging operating units to tailor procedures to their individual programs. Thus, although basic Department wide standards and procedures are established, the focal point for implementation will be the head of each operating unit (usually an Assistant Secretary). This official will establish criteria called for by the Executive Order, approve the plans for developing significant regulations, approve significant regulations before final publication in the FEDERAL REGISTER and otherwise make sure that the provisions of the Executive Order and Department Administrative orders are being followed.

At the same time, it was decided that some departmental coordinating and monitoring procedure was desirable to ensure compliance with the Executive Order. The semiannual regulatory agenda process was chosen to accomplish this objective. The head of each operating unit will submit to the Assistant Secretary for Policy a semiannual agenda covering all regulations it plans to develop or review during the relevant six-month period. This procedure will serve the dual purposes of (1) keeping the Secretary informed of operating unit activities, and (2) providing a mechanism for the Secretary to monitor agency implementation of the Executive Order and call for Secretarial approval when appropriate.

Coordination and review of the operating unit agendas will be conducted by the Assistant Secretary for Policy. After any modifications resulting from this review process, the Assistant Secretary for Policy will combine the relevant portions of the operating unit agendas into a Department Agenda as required by Section 2 of the Executive Order. The Department Agenda will be approved by the Secretary and published in the FEDERAL REGISTER.

This report contains the following:

1. Department Administrative Order (DAO) 218-7, "Issuing Departmental Regulations." This DAO sets forth the basic departmental procedures and requirements that all operating units are to follow in developing regulations. It has been circulated within the Department and operating units have revised existing procedures, or have established new procedures, to conform to the DAO.

2. Amendment to DAO 205-11. This Amendment sets forth a procedure to assure that each document published in the FEDERAL REGISTER is written in clear and simple English and is understandable to those who will be affected by it.

3. Individual appendices for each operating unit of the Department. The operating units of the Department have each developed at least the report required by Section 5. Some units, however, have developed more detailed procedures to implement the Executive Order. Rather than requiring uniform submissions meeting the minimum requirements of Section 5, it was decided to publish more detailed procedures, if submitted, to give the public as complete a picture as possible of overall Departmental implementation efforts. The individual appendices attached are:

Appendix A—Assistant Secretary for Administration
Appendix B—Bureau of Census
Appendix C—Bureau of Economic Analysis
Appendix D—Economic Development Administration
Appendix E—Industry and Trade Administration
Appendix F—Maritime Administration
Appendix G—National Fire Prevention and Control Administration
Appendix H—National Oceanic and Atmospheric Administration
Appendix I—National Telecommunications and Information Administration
Appendix J—Office of Minority Business Enterprise
Appendix K—Office of Regional Economic Coordination
Appendix L—Assistant Secretary for Science and Technology (includes National Bureau of Standards, National Technical Information Service, and Patent and Trademark Office)
Appendix M—United States Travel Service

II. PUBLIC COMMENTS

A total of four comments were received on the Department's draft report, in response to the request for comments published in the FEDERAL REGISTER on May 30, 1978 (43 FR 23170). The Department has given serious consideration to these comments in revising its initial report. The comments, in summary form, are discussed below.

One commentator objected to the length and complexity of the Department's notice and singled out § 4.03 of

DAO 218-7 as an example of unnecessary complexity. That commentator was particularly concerned that the notice was overlong and redundant, and suggested that the Department should have established "one general set of regulations for all components, plus any specific regulations pertaining to individual bureaus and administrations."

The problem of excessive length and redundancy was the subject of great concern in the drafting of the Department's implementation plan. However, given the great diversity in programs and regulatory activities of the various units of the Department, and given the fact that most individuals deal directly with a particular operating unit on specific matters (rather than the Department as a whole), it was decided that considerable decentralization was the most effective way to implement the Executive order. Further, it was decided that length and repetition were not necessarily undesirable if used to present interested individuals with as clear a picture as possible of the procedures of each particular unit with which they are concerned. Finally, it is noted that the Department did in fact follow the suggestion of the commentator. Thus, DAO 218-7 sets forth one general set of rules which all components of the Department must follow, and the individual appendices set forth the specific procedures and additional criteria for the individual units.

Section 4.03 of DAO 218-7 was also the subject of considerable internal debate in the drafting of the Department's implementation plan. This section provides that when the underlying legislation is so specific that no significant options for implementation are available to the agency, agency heads are authorized to determine that a proposed regulation is not significant, even if it meets the criteria established for determining whether a regulation is significant. The Department's request for public comments singled out this provision as one on which public input was particularly requested. Unfortunately, no other comments were received on this point. Upon further review it has been decided to leave this provision intact for the time being and revise it, if necessary, in light of future experience.

Another commentator suggested that at least 60 days notice be required for all proposed regulations. The Executive Order requires that 60 days notice be provided for only significant regulations, and even then allows for exceptions to be made. Current procedures do not prohibit 60 day, or even longer comment periods, and procedures also exist where, in appropriate circumstances, short initial comment periods may be extended upon request. In other circumstances, however it may be necessary for rules to become effective on considerably less than 60 days notice. The Department believes that its current procedures provide desirable flexibility which would be lacking if this suggestion were adopted.

This same commentator also suggested that once regulations are in place, changes and reinterpretation should be severely limited, arguing that Government policies should be predictable and certain. While the Department cannot disagree with this as a general principle, in practice, the formulation of a rule to such effect would unduly restrict the ability to make necessary changes to existing regulations (for example, Section 4 of the Executive Order requires that all existing regulations be periodically reviewed and, if necessary, revised).

Finally, one commentator suggested that the Department's procedures be modified to provide that the concerns of that particular special interest group be adequately considered when regulations in its area of concern were being considered. While the Department agrees that every effort should be made to be sure the concerns of all special and, indeed, general interest groups are considered when regulations are being drafted, it is anticipated that the procedures being established will result in this goal.

III. Revisions

In addition to a number of minor technical, editorial and grammatical corrections, the following changes have been made to the Department's implementation plan.

A. DAO 218-7

1. A new § 2.04 has been added to cover situations where two or more agencies jointly promulgate a regulation or set of regulations. The agency heads or program officials involved shall designate one agency as lead agency for the purpose of determining whose rulemaking procedures will be utilized.

2. A new § 4.03 has been added which allows agency heads to delegate authority to initially determine whether a regulation is significant. However, a determination that a regulation is not significant must be reviewed by the agency head. This change makes it absolutely clear that the final decision on the question of "significance" rests with the agency head.

3. Section 4.05 (formerly § 4.04), which lists what the agency head must review before proceeding to develop significant regulations, is revised to include a requirement that the agency head decide, at that time, whether a regulatory analysis is required. This change reinforces the existing requirement that the agency head make this decision, and clarifies when that decision must be made.

4. A new § 5.04(e) has been added to incorporate the requirements of Executive Order 12074 and OMB Circular A-116, concerning Urban and Community Impact Analyses.

5. Minor language changes have been made in Section 7 to make sure that the operating unit agendas are complete and kept current. These changes are made to ensure that the Secretary is informed, on a continuing basis, of the status of the entire regulatory process of the Department and to enable the Office of the Secretary to fulfill its central oversight function.

B. Amendment to DAO 205-11

A new last sentence has been added to § 6.02 which requires heads of operating units to provide the Director, Office of Organization and Management Systems with a list of employees they have designated to review documents prior to Federal Register publication, and keep that list current.

C. Minor changes have been made to a number of the operating unit appendices to reflect the above changes and otherwise to improve those submissions.

In consideration of the foregoing, the Department of Commerce hereby adopts, as its implementation plan for Executive Order 12044, the following:

Issuing Departmental Regulations

[Department Administrative Order 218-7]

SECTION 1. PURPOSE AND POLICY

.01 This order implements Executive Order 12044, of March 23, 1978, "Improving Government Regulations".

.02 It is the policy of the Department that regulations:

a. Be as simple and clear as possible;

b. Achieve legislative goals effectively and efficiently;

c. Not impose unnecessary burdens on the economy, individuals, public or private organizations, or State and local governments.

.03 To achieve these objectives, regulations shall be developed by following procedures which ensure that:

a. The need for and purpose of the regulation are clearly established;

b. Heads of agencies and policy officials exercise effective oversight;

c. Opportunity exists for early and meaningful participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;

d. Meaningful alternatives are considered and analyzed before the regulation is issued; and

e. Compliance costs, paperwork and other burdens on the public are minimized.

SECTION 2. SCOPE

.01 This order applies to all regulations of the Department published in the FEDERAL REGISTER, except as provided in paragraph .02 of this section.

.02 This order *does not* apply to:

a. Regulations issued in accordance with the formal rulemaking provisions of the Adminsitrative Procedure Act (5 U.S.C. §§ 556, 557);

b. Regulations issued with respect to a military of foreign affairs function of the United States (but see section 9.06);

c. Matters related to agency management or personnel;

d. Regulations related to Federal Government procurement; or

e. Regulations that are issued in response to an emergency or which are governed by short-term (less than 91 days) statutory or judicial deadlines (but see sections 9.05 and 9.06).

.03 Sections cited in the text refer to those in this order.

.04 Whenever two or more agencies plan to jointly promulgate regulations, the agency heads or program officials involved shall designate one agency as lead agency for the purpose of determining whose rulemaking procedures will be utilized. That agency shall be responsible for compliance with, and its procedures implementing Executive Order 12044 shall apply. Regardless of who is designated as lead, each Department of Commerce agency involved in a joint rulemaking will separately comply with the requirements of Sections 7 and 8 of this order.

SECTION 3. DEFINITIONS

.01 *Agency head.* In this order, agency head means: the head of each operating unit of the Department; Secretarial Officers, the Deputy Under Secretary, and the Special Assistant to the Secretary for Regional Development, for departmental offices under their jurisduction; or persons acting in those positions. The functions of the agency head may not be delegated.

.02 *Regulation(s).* In this order, regulation(s) means both rules and regulations issued by components of the Department including those which establish conditions for financial assistance. Closely related sets of regulations shall be treated as a single package.

SECTION 4. SIGNIFICANT REGULATIONS

.01 Agency heads shall establish criteria for identifying which regulations are significant.

.02 In establishing criteria for identifying significant regulations, agency heads shall consider, among other things:

a. The type and number of individuals, businesses, organizations, or State and local governments affected;

b. The compliance and reporting requirements likely to be involved;

c. The direct and indirect effects of the regulation, including the effect on competition;

d. The relationship of the regulation to those of other programs and agencies;

e. The relationship of the regulation to major Departmental policy issues; and

f. The degree of controversy over, or public interest in, the regulation.

.03 Agency heads may delegate authority to initially determine that a regulation is not significant. Any such determinations shall be reviewed by the agency head prior to the submission of the next agency agenda required by § 7.01 or the notification required by § 7.09, whichever occurs first.

.04 An agency head may conclude that a regulation is not significant, even if it meets the criteria established for identifying significant regulations, if the agency head determines, in writing, that the degree of discretion available to the agency is so limited by underlying legislation or executive branch directives (e.g. Executive Orders, OMB Circulars, etc.) that no significant options for implementation are available to the agency. A copy of this determination shall be sent promptly to the Assistant Secretary for Policy, and an explanation of the determination shall be included in the preamble to the notice of proposed rulemaking.

.05 Before proceeding to develop significant regulations, the agency head shall review: the issues to be considered; the alternative approaches to be explored; whether a regulatory analysis, as provided for in section 5, is required; a tentative plan for obtaining public comment; where applicable a tentative plan for consulting with State and local governments (see DAO 201-9); and target dates for completion of steps in the development of the regulation.

.06 Agency heads shall approve significant regulations before they are published in the FEDERAL REGISTER in final form. Before approving significant regulations, the agency head should be satisfied that:

a. The regulation is needed;

b. The direct and indirect effects of the regulation have been adequately considered;

c. Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

d. Public comments (including those from State or local or other public agencies) have been considered and an adequate response has been prepared;

e. The regulation is written clearly and as simply as possible and is understandable to those who must comply with it;

f. An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

g. The name, address and telephone number of a knowledgeable official is included in the publication; and

h. A plan has been developed for evaluating the regulation after its issuance.

.07 Agency heads may, in their discretion, refer significant regulations which they believe to be of particluar importance to the Secretary for approval.

.08 Regulations which are not significant shall be accompanied by a statement to that effect in the preamble whenever published in the FEDERAL REGISTER.

SECTION 5. REGULATORY ANALYSIS

.01 A regulatory analysis shall be prepared for each significant regulation which the agency head determines to have potential major economic consequences for the general economy, for individual industries, geographic regions, levels of government, or specific elements of the population.

.02 Agency heads shall establish criteria for determining which significant regulations require regulatory analysis. Since a regulatory analysis is designed to aid decisionmakers in promulgating effective regulations, the criteria established should consider the characteristics of their specific programs. At a minimum, a regulatory analysis shall be prepared for any significant regulations which:

a. During any one year can be expected to result in an effect (direct or indirect) on the economy exceeding $50 million;

(b) During any one year can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic regions exceeding $25 million;

c. During any one year can be expected to result in an increase in costs or prices of five percent or more for the activity, product(s) and/or service(s) affected;

d. Can be expected to reduce labor productivity by one percent or more in the economic activity or sector(s) affected;

e. Can be expected to reduce employment by five percent or more in the economic activity or sector(s) affected;

f. For the particular market(s) affected, can be expected to result directly or indirectly in a one percent or more decline in supply of materials, products or services, or a one percent

or more increase in consumption of these materials, products or services; or

g. For the particular market(s) affected, can be expected to result in a distinct decline in competition.

.03 A regulatory analysis may also be prepared when:

a. In the judgment of the agency head such an analysis would improve decisionmaking; or

b. The Secretary determines, in accordance with section 7.05, that such an analysis should be performed.

.04 A regulatory analysis shall involve a careful examination of alternative approaches early in the decisionmaking process. Thus, each analysis shall include, at a minimun:

a. A succinct statement of the problem;

b. A description of the major alternative ways of dealing with the problems that were considered;

c. A comparison of the economic and other consequences of each of these alternatives.

d. A detailed explanation of the reasons for choosing one alternative over the others; and

3. The urban and community impact analysis required by Executive Order 12074, of August 16, 1978 and OMB Circular A-116 which implements that Executive Order.

.05 The analysis in section 5.04 may also include an examination of:

a. The need for specific requirements versus the benefits of allowing varying degrees of discretion by those subject to the regulation;

b. Alternaive types of compliance incentives;

c. Alternative enforcement mechanisms; and

d. Alternative governmental levels for implementation (Federal, State, or local).

.06 The notice of proposed rulemaking for each regulation for which a regulatory analysis is required shall include:

a. A succinct description of the alternatives considered;

b. An explanation of the regulatory approach that has been selected or is favored;

c. The major reasons for selecting, or favoring, a particular alternative(s); and

d. A statement of how the public may obtain a copy of the draft regulatory analysis.

.07 Public comments on the draft regulatory analysis shall be considered in preparing a final regulatory analysis, which shall be made available to the public when the final regulation is published. Significant public comments on the analysis shall be summarized and responded to in the preamble to the final regulation.

.08 These internal procedures shall apply:

a. The agency head shall inform the Chief Economist of the Department as early as possible of the nature and extent of the analysis being undertaken to assure adequate opportunity for consultation and assistance; and

b. The agency head shall transmit the draft regulatory analysis to the Chief Economist of the Department for review and comment at least 15 days prior to submission of a notice of proposed rulemaking to the FEDERAL REGISTER.

.09 Regulatory analyses are not required in rulemaking proceedings pending as of March 23, 1978, if an Economic Impact Statement has already been prepared in accordance with Executive Orders 11821 and 11949.

.10 New or accurate information may be needed from persons and businesses, in order to make informed decisions. In those instances only essential data is to be obtained in the least burdensome way.

SECTION 6. REVIEW OF EXISTING REGULATIONS

.01 Agency heads shall establish procedures to ensure that their organization's existing regulations are reviewed periodically to determine whether they are achieving the policy goals of Executive Order 12044.

.02 Agency heads shall establish criteria for selecting existing regulations to be reviewed and the order in which the review will be conducted.

.03 In developing criteria for selecting regulations to be reviewed, agency heads shall consider:

a. The continued need for the regulation;

b. The type and number of complaints or suggestions received;

c. The burdens imposed on those directly or indirectly affected by the regulation;

d. The need to simplify or clarify language;

e. The need to eliminate overlapping and duplicative regulations; and

f. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed.

.04 The review of existing regulations shall, at a minimum, contain the following procedural steps:

a. Inclusion of notice of the review in the semi-annual agenda as required by section 7.02, or as appropriate, supplementing the Department Agenda as called for in section 7.08, and notification to the Assistant Secretary for Policy as called for in section 7.09;

b. A determination whether the regulation meets the criteria established for identifying significant regulations, and, if so, agency head oversight as called for in section 4.04 before proceeding with review;

c. A determination whether the regulation meets the criteria established for determining if a regulatory analysis must be performed, and, if so, preparing a regulatory analysis; and

d. If the review results in a determination that a regulation should be amended or rewritten, compliance with public notice and participation requirements of this order and DAO 201-9 concerning consultation with State and local governments; and, if the regulation is determined to be significant, agency head approval before final publication, as set forth in section 4.06.

.05 Agency heads should review their organization's significant regulations not less than every four years.

SECTION 7. REGULATORY AGENDA

.01 On January 15 and July 15 of each year, each agency head shall submit a regulatory agenda to the Assistant Secretary for Policy.

.02 Each agency agenda shall include:

a. A description of each regulation covered by this order which is under development or being considered for development, including, to the extent feasible:

1. A statement whether the regulation has been determined to be a significant regulation;

2. The need and the legal basis for the action being taken;

3. A statement whether or not a regulatory analysis will be required;

4. The name and telephone number of a knowledgeable official;

5. A listing of major issues likely to be considered in developing the regulation;

6. A tentative plan for obtaining public comment and, where applicable, for consulting with State and local governments;

7. Target dates for completing steps in the development process; and

8. Information on the status (including changes to the information required by this § .02.a.) of proposed significant regulations listed in previous agendas which are not yet published as final in the FEDERAL REGISTER.

b. A list of each existing regulation scheduled to be reviewed, under section 6, during the next six months, including the name and telephone number of a knowledgeable official for each regulation;

c. Information on the status of existing regulations listed for review in previous agendas; and

d. A list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

.03 If there are no plans for developing or reviewing regulations, the agency head will so report to the Assistant Secretary for Policy.

04. The Assistant Secretary for Policy shall review all agendas and, after consultation with appropriate Department officials recommend to the Secretary;

a. Which regulations determined not to be significant by the agency heads should be treated as significant;

b. Which regulations being considered or developed should be approved by the Secretary prior to being published in the FEDERAL REGISTER in final form; and

c. Which regulations, in addition to those identified by the agency heads, require a regulatory analysis.

.05 After consulting, as appropriate, with concerned Department officials, the Secretary will inform the Assistant Secretary for Policy and the relevant agency head of decisions made with regard to the recommendations submitted under paragraph .04 of this section.

.06 Using the agendas of agency heads, as may be modified by the Secretary's decisions under paragraph .05 of this section, the Assistant Secretary for Policy shall prepare an overall Department Agenda. The Department Agenda, after approval by the Secretary, shall be submitted for publication in the FEDERAL REGISTER on or about February 15, 1979, and every six months thereafter.

.07 The Department Agenda shall include the following:

a. For proposed significant regulations being considered or developed:

1. A description of the regulation;

2. The need and the legal basis for the action being taken;

3. A statement as to whether or not a regulatory analysis will be required;

4. The name and telephone number of a knowledgeable official to whom comments on that planned regulation may be addressed;

5. A discussion of the issues to be considered in developing the regulation;

6. A tentative plan for obtaining public comments and, where applicable, for consulting with State and local governments; and

7. Target dates for completing steps in the development process.

b. Information on the status (including changes to the information required in § .07.a. above) of all proposed significant regulations listed in previous agendas which are not yet published as final in the FEDERAL REGISTER;

c. A list of existing regulations scheduled to be reviewed during the next six months, including the name and telephone number of a knowledgeable official for each regulation;

d. Information on the status of existing regulations previously scheduled for review; and

e. The name and telephone number of an official to whom general comments about the Department Agenda should be addressed.

.08 Agency heads shall, in order to prevent undue delay, publish supplements to the Department Agenda whenever it becomes apparent that development or review of significant regulations not listed in the previous Department Agenda will commence before publication of the next Department Agenda or development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

.09 Agency heads shall immediately notify the Assistant Secretary for Policy whenever it becomes apparent that development or review of regulations not listed in their previous agency agenda will commence before publication of the next Department Agenda, or significant changes have occurred in the status of items listed in their previous agency agenda.

.10 Comments received on items in the Department Agenda shall be considered in developing any proposed regulations and included in the public record of the relevant proposed rulemaking.

.11 The information in any agenda is only that which is reasonably expected to be known at the time.

.12 Every year, on the first Monday in October, the Assistant Secretary for Policy will publish in the FEDERAL REGISTER a schedule showing the times during the coming fiscal year when the Department Agenda will be published.

SECTION 8. SECRETARIAL APPROVAL

.01 Whenever, under sections 4.07 and 7.05, Secretarial approval of a regulations is requested or required before it is published in final form, the appropriate agency head shall, no later than 15 days before the proposed date of publication in the FEDERAL REGISTER in final form, submit the regulation to the Secretary for approval.

.02 The Secretary shall review the regulation in accordance with section 4.06, and shall either:

a. Approve the regulation; or

b. Disapprove the regulation, indicate the reasons for disapproval, and return the regulation to the appropriate agency head.

SECTION 9. PUBLIC PARTICIPATION

.01 The public, and, for regulations with significant intergovernmental impact, State and local governments, shall be given an early and meaningful opportunity to participate in the development of the regulations of the Department.

.02 Agency heads shall consider a variety of ways to provide this opportunity, including, but not limited to:

a. Publishing an advance notice of proposed rulemaking;

b. Holding open conferences or public hearings;

c. Sending notices of proposed regulations to publications likely to be read by those affected;

d. Notifying interested parties directly; and

e. Providing for more than one cycle of public comments.

.03 The preamble of any proposed rulemaking covered by this order shall contain a brief description of plans for obtaining public, and, if applicable, State and local government participation. If none of the methods listed in paragraph .02 of this section are used in a rulemaking covered by this order, the preamble accompanying the final regulation shall briefly explain the reasons and indicate what other steps were taken to assure adequate opportunity for public and State and local government participation.

.04 The public shall be given at least 60 days to comment on proposed significant regulations. Exceptions to this requirement may be granted only by the agency head and only in those few instances where it is determined that compliance is not possible. When an exception is made, the preamble to the proposed regulation shall include a brief statement of the reasons for the shorter time period.

.05 Regulations exempted by section 2.02e. (emergencies or short-term deadlines) shall, when published in the FEDERAL REGISTER, be accompanied by a statement of the reasons why it is impracticable or contrary to the public interest to follow the procedures of this order. This statement shall include the name of the policy official responsible for the determination.

.06 Regulations exempted by section 2.02b. (military or foreign affairs functions) or 2.02e. may be made effective on issuance. However, FEDERAL REGISTER publication of these regulations shall provide for a public comment period of at least 60 days after issuance and republication after public comments have been considered and appropriate modifications, if any, are made.

SECTION 10. EFFECT ON OTHER ORDERS

.01 This order supersedes Department Administrative Order 216-7 of January 17, 1972, "Interagency Coordination of Issuances on Environmental Quality, Consumer Protection, and Occupational and Public Health and Safety", and Department Administrative Order 218-6 of November 28, 1974, "Inflationary Impact of Legislation and Regulatory Proposals".

.02 Nothing in this order shall affect the procedures set forth in Department Administrative Order 205-11 of May 12, 1971, as amended, "Publishing Documents in the FEDERAL REGISTER".

JUANITA M. KREPS,
Secretary of Commerce.

PUBLISHING DOCUMENTS IN THE FEDERAL REGISTER

[Department Administrative Order 205-11—Amendment 4]

Department Administrative Order 205-11 of May 12, 1971, is hereby further amended as shown below. The purpose of this amendment is to add a new Section 6.

1. A new Section 6. is added to read as follows:

"SECTION 6. PLAIN ENGLISH.

".01 It is the policy of the Department that all documents published in the FEDERAL REGISTER be designed to be understandable to those affected by them and be written as simply and clearly as possible.

".02 The head of each operating unit and the Director, Office of Organization and Management Systems (OOMS), for other components of the Department, shall designate an employee or employees who shall review each document to be published in the FEDERAL REGISTER to ensure that it is written clearly and simply as possible and is designed to be understandable to those affected by it. Heads of operating units will provide the Director, OOMS, with a list of employees they have designated and promptly notify the Director of changes to that list.

".03 No document will be published in the FEDERAL REGISTER until it is cleared by this designated employee.

".04 Exception to paragraph .03 of this section may be granted only by the head of the operating unit or the Assistant Secretary for Administration. Exceptions shall be in writing and explain why the exception is necessary. Copies of all exceptions will be provided to the Director, OOMS."

2. Renumber the existing Section 6., 7., and 8., as 7., 8., and 9. respectively.

Effective: October 23, 1978.

Issued: October 24, 1978.

APPENDIX A—ASSISTANT SECRETARY FOR ADMINISTRATION

MEMORANDUM FOR ALL OFFICE DIRECTORS IN ADMINISTRATION

SUBJECT: Executive Order 12044

On March 23, 1978, the President signed Executive Order 12044, "Improving Government Regulations". As part of this Executive Order, each Federal agency is required to establish: (a) a regulatory process; (b) criteria for defining significant regulations; (c) criteria for identifying regulations which require a regulatory analysis; (d) criteria for selecting existing regulations to be reviewed; and (e) a list of regulations that the agency will consider for its initial review. Overall Departmental procedures for implementing these requirements, including definitions of coverage, are prescribed in Department Administrative Order 218-7, a copy of which is attached. The purpose of this memorandum is to describe the steps which each office in Administration will follow in order to implement DAO 218-7.

SIGNIFICANT REGULATIONS

Before proceeding to develop any regulation covered by DAO 218-7, each office director shall provide me with a report containing the information described in Section 4.02 of DAO 218-7. Based on the information supplied, I will determine if the regulation is to be treated as significant. A determination of significant will be made if:

—The regulation applies to a large number of persons or organizations;

—The requirements for ensuring compliance, including data collection and reporting requirements, imposed more than a minimum burden on those affected;

—The regulation causes other Federal agencies or State and local governments to incur new responsibilities or make other than minimal changes in program operations;

—The regulation meets the criteria for preparation of a regulatory analysis; or

—The regulation can be expected to generate considerable public interest or controversy.

As soon as possible after a regulation has been determined to be significant, the appropriate office director shall submit a report containing the information necessary for me to make the review described in Section 4.04 of DAO 218.7.

Before a significant regulation is published in the FEDERAL REGISTER in final form, the appropriate office director shall submit it to me for approval. The submission shall contain all of the information necessary for me to address each point described in Section 4.05 of DAO 218.7.

REGULATORY ANALYSIS

Office directors shall prepare a regulatory analysis for any proposed regulation which meets the criteria described in Section 5.02 of DAO 218-7. In addition, based on the information supplied in the report necessary to make a determination of whether a regulation is significant, I may also determine that the regulation requires a regulatory analysis.

In preparing a regulatory analysis, office directors shall follow the procedures described in Section 5.04 through 5.07 of DAO 218-7 and, as soon as possible, shall seek the assistance of the Chief Economist in preparing the analysis. A draft regulatory analysis shall be submitted to me at least three weeks prior to the submission of a notice of proposed rulemaking to the FEDERAL REGISTER.

REVIEW OF EXISTING REGULATIONS

All existing regulations issued by an Administration Office and covered by DAO 218-7 shall be reviewed no less frequently than once every three years. In addition, an existing regulation shall be reviewed if:

—New laws, Executive Orders, etc. require changes;

—Amendments to central or coordinating agency regulations require changes; or

—I receive suggestions or complaints which indicate a need for changes.

The existing regulations which an office director proposes to review shall be identified in the office's regulatory agenda submission (discussed below). Each regulation proposed for review should be accompanied by a report containing the information described in Section 4.02 of DAO 218-7 so that I can determine if the regulation is significant or requires a regulatory analysis. If either of these determinations are positive, the appropriate office director shall follow the procedures described above.

REGULATORY AGENDA

By December 15, 1978, and every six months thereafter, each office director shall submit a regulatory agenda to me. The agenda shall include all of the information described in Section 7.02 of DAO 218-7. Negative submissions stating that an office director does not contemplate either the development of a new or the review of an existing regulation during the next six months are required. Office directors shall submit supplements to their agenda: (a) whenever it appears that the development or review of a regulation not listed in a previous agenda will begin before the next regular agenda is schedued to be submitted; or (b) whenever it appears that the development or review of a previously listed regulation will not begin as scheduled.

RESPONSIBILITIES

All of the submissions discussed in this memorandum shall be sent to me through the Director, Office of Organization and Management Systems. The Director of OOMS shall be available to assist office directors in the preparation of these submissions, shall compile the Office of Administration agenda from the material submitted by the office directors, and shall serve as the liaison with the Office of the

General Counsel and the Assistant Secretary for Policy.

RELATED REQUIREMENTS

DAO 205-11, "Publishing Documents in the FEDERAL REGISTER", has been amended to require that all documents published in the FEDERAL REGISTER be reviewed by a designated employee to ensure that these documents are clearly written. All documents which Administration offices propose to publish in the FEDERAL REGISTER shall be reviewed by Bob Ingram, the Head of the Directives Management Staff in the Office of Organization and Management Systems. Bob is in Room 5312 and can be reached on 377-5481.

EXISTING OFFICE OF ADMINISTRATION REGULATIONS SCHEDULED FOR REVIEW DURING THE NEXT SIX MONTHS

Department of Commerce regulations under Title VI of the Civil Rights Act of 1964 will be reviewed. These regulations appear at 15 CFR 8.1-8.15, and deal with the prohibition of discrimination in many programs for which Federal financial assistance is authorized under a law administered by the Department. The review will be for the purpose of ensuring consistency with the Title VI regulations issued by the Department of Justice (28 CFR 41.401-41.415), and ensuring that the regulations are understandable to those affected. Comments on this review should be sent to Arthur E. Cizek, Office of Civil Rights, Room 4065, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The telephone number is (202) 377-3940.

APPENDIX B—BUREAU OF THE CENSUS

The Bureau of the Census was established as a permanent Bureau by the Act of March 6, 1902 (32 Stat. 51). Laws pertaining to the Bureau's statistical program are encompassed in title 13 of the United States Code. The mission of the Census Bureau is to collect and publish basic statistics concerning the population and the economy of the Nation in order to assist the Congress, the Executive Branch, and the general public in the development and evaluation of economic and social programs. The Bureau publishes a wide variety of statistical data and provides special tabulations of statisical information for government and private users. Major Census Bureau program areas include periodic censuses, current surveys and programs and reimbursable work.

It should be noted that because of the nature if its work, the Census Bureau does little rulemaking. Those half dozen regulations that are in existence have no major impact on the economy. They relate to either administering a data collection program or data service programs. Consequently, there has been no need to formalize an extensive process for developing regulations; the process has been ad hoc in nature. To comply with the Executive Order, the Bureau is now establishing procedures in addition to the requirements provided for in Department Administrative Order 218-7 for the issuance of regulations.

1. *Existing procedures and changes that have been made to comply with Executive Order 12044.*

(a) The following procedures shall be applicable to all regulations. Prior to the promulgation of a regulation, the Director shall determine:

(1) That the need for and purpose of the regulation are clearly established and specified in the FEDERAL REGISTER preamble;

(2) That adequate provisions are made for early public participation in the development of regulations by notification of advisory committees and announcements in relevant publications and the regulatory agenda that the regulation is being considered and comments are solicited;

(2) That the least burdensome of the acceptable alternatives has been chosen;

(3) That the issues have been thoroughly reviewed;

(4) That the feasible alternatives have been explored;

(5) That compliance costs, paperwork and other burdens on the public are minimized; and

(6) That the Program and Policy Development Office will be responsible for insuring that the regulation is written in plain English and is understandable to those who must comply with it.

(b) In addition, before approving and signing significant regulations, the Director shall determine:

(1) That the direct and indirect effects of the regulation have been adequately considered including whether a regulatory analysis, as provided in section 3, and whether an Urban and Community impact analysis as required by OMB Circular A-116 are required;

(3) That public comments, including those from State and local Governments, have been considered and an adequate response prepared;

(4) That an estimate has been made of the new reporting burden or recordkeeping requirements, if any, necessary for compliance with regulations;

(5) That the name, address, and telephone number of a knowledgeable official is included in the FEDERAL REGISTER preamble; and

(6) That a plan is developed for evaluating the effect of the regulation after its issuance. Organization and Management Systems Division shall provide a report containing the information necessary for the Director to make these determinations. This report shall be provided the Director prior to the Director's approving and signing significant regulations

(c) The Director shall submit an agency regulatory agenda to the Assistant Secretary for Policy by January 15, 1979, and every six months thereafter,

The regulatory agenda shall include,

(1) A description of each regulation under development or being considered which includes items specified in Section 7.02 of Department of Adminstrative Order 218-7;

(2) A list of each existing regulation scheduled to be reviewed;

(3) Information on the status of existing regulations listed for review on previous agency agendas; and

(4) A list of all final regulations promulgated during the previous six months with the date and FEDERAL REGISTER citation.

The Director shall immediately notify the Assistant Secretary for Policy whenever it becomes apparent that development or review of regulations not listed in the previous agency agenda will commence before submission of the next agency agenda to the Assistant Secretary for Policy, or review of a regulation listed in the previous agency agenda will not take place, or significant changes have been made to items in previous agency agendas. The Director shall determine at the time of notification whether or not a regulation significant. If the regulation is significant, a supplement to the Departmental agenda will be published, if necessary.

(d) A docket on each regulation will be established and maintained in the office of the legal counsel when the regulation is first put on the agency's agenda. Documents which are relevant to the regulation will be filed and available to the public, unless prohibited by law.

2. *Criteria for defining significant agency regulations.*

A regulation shall be considered significant by the Director if it meets any of the Departmental criteria as set forth in Department Administrative Order 218-7 or one or more of the following:

(a) Since a burden is placed on shippers by the regulations, a substantive change in the reporting requirements necessary for compliance with the Foreign Trade statistics regulations will be considered significant;

(b) The Regulation would affect over 25 percent of all States or local government units;

(c) The procedures or programs of another department or agency will be effected.

(d) Significant public controversy or interest is expected to result;

(e) The Secretary, the Chief Economist of the Department or the Director requests that a regulation be considered significant.

3. *Criteria for identifying which regulations require regulatory analysis.*

A regulatory analysis shall be prepared for significant regulations which meet the Departmental criteria as set forth in Department Administrative Order 218-7, or the Secretary, the Chief Economist of the Department, or the Director request that such an analysis be performed.

4. *Criteria for selecting existing regulations to be reviewed.*

All existing regulations shall be reviewed within 1 year of the date of the publication of this report. Thereafter, a regulation will be reviewed whenever:

(a) The regulation has not been reviewed for 5 years;

(b) A significant regulation has not been reviewed for 2 years;

(c) It appears to the Director that there is no further need for the regulation in the light of public comments received;

(d) It appears to the Director that the burdens imposed upon the public are increased even though no change has been made to the regulation itself;

(e) It appears to the Director that there is a need to simplify or clarify the language of the regulation;

(f) It appears to the Director that there is a need to eliminate overlapping and duplicative regulations;

(g) Technology, economic conditions or other factors have changed the effect of the regulation on the public;

(h) The Secretary, the Chief Economist of the Department or the Director requests that such review should take place.

The Bureau's regulations may be found in 15 CFR Chapter 1. We plan to complete the review of Bureau regulations within 1 year of the effective date of these procedures.

These regulations are:

15 CFR 20 relating to the Bureau of the Census official seal.

15 CFR 30 establishes reporting requirements and criteria relating to exports and imports.

15 CFR 40 which provides, through the State Department, training of foreign participants in Census procedures and general statistics.

15 CFR 50 establishes fees charged for various services provided by the Bureau to individual, State and local governments and firms.

15 CFR 60 relates to the release of information under the Freedom of Information Act.

15 CFR 70 establishes the date by which a change in a political boundary must be reported to the Bureau in order to be included in the decennial census.

15 CFR 80 establishes the procedure for obtaining data from past records of the decennial census questionnaires.

APPENDIX C—BUREAU OF ECONOMIC ANALYSIS

The Bureau of Economic Analysis (BEA) was established under Department Order No. 10, effective December 18, 1945. Department Order No. 15, as amended December 1, 1953, pursuant to authority contained in reorganization Plan No. 5 of 1959, further designated BEA as a primary operating unit of the Department. The mission of BEA is to provide a clear picture of the state of the economy through the preparation, development and interpretation of the economic accounts of the United States.

To construct the accounts, BEA uses mainly data collected by other agencies from individuals, businesses, and other respondents. About one-third of these primary data comes from the Census Bureau. Most of the rest come from the Treasury Department, the Labor Department, and the Office of Management and Budget. BEA also conducts its own surveys to collect data whenever there is a close link between the data and its analytical work, as for instance, in the case of its balance of payments work and its work on international investment.

Because of the nature of its work, the Bureau of Economic Analysis does little rulemaking. Proposed rules and regulations have been developed primarily to establish new statistical surveys and public reporting requirements, and it has not been necessary to formalize a process for developing regulations; the process has been ad hoc in nature. To comply with the Executive Order, the Bureau is now establishing procedures in addition to the requirements provided for in Department Administration Order 218-7 for the issuance of regulations.

The Bureau of Economic Analysis has received no public comments to the draft Appendix C published in the FEDERAL REGISTER (43 FR 23170) May 30, 1978. The final version of Appendix C here published takes into consideration and its consistent with recent changes to Department Order 218-7 and guidelines received from the Administrative Conference of the United States.

1. *Existing procedures and changes that have been made to comply with Executive Order 12044.*

(a) The following procedures shall be applicable to all regulations. Prior to the promulgation of a regulation, the Director shall determine:

(1) That the need for and purpose of the regulation are clearly established and specified in the FEDERAL REGISTER preamble;

(2) That adequate provisions are made for early public participation in the development of regulations by notification of advisory committees and announcements in relevant publications and the agency regulatory agenda that the regulation is being considered and comments are solicited;

(3) That the issues have been thoroughly reviewed:

(4) That the feasible alternatives; have been explored;

(5) That compliance costs, paperwork and other burdens on the public are minimized;

(6) That the regulation has been reviewed by Management Services Division to insure that it is written in plain English and is understandable to those who must comply.

(b) In addition, before approving and signing significant regulations, the Director shall consult with Management Services Division and determine:

(1) That the direct and indirect effects of the regulation have been adequately considered, including whether a regulatory analysis, as provided for in Section 3, and whether an urban and community impact analysis as required by OMB Circular A-116 are required;

(2) That the least burdensome of the acceptable alternatives has been chosen;

(3) That all public comments, including those from state and local governments have been considered and an adequate response prepared;

(4) That an estimate has been made of the new reporting burden or recordkeeping requirements, if any, necessary for compliance with the regulation;

(5) That the name, address, and telephone number of a knowledgeable official is included in the FEDERAL REGISTER preamble;

(6) That a work plan is developed for scheduling target dates for consultation and comment, the issuance process, and evaluation of the effect of the regulation after its issuance.

(c) The Director shall submit an agency regulatory agenda to the Assistant Secretary for Policy by January 15, 1979, and every 6 months thereafter. The agency regulatory agenda shall include:

(1) A description of each regulation under development or being considered which includes items specified in Section 7.02 of Department Administrative Order 218-7;

(2) A list of each existing regulation scheduled to be reviewed;

(3) Information on the status of existing regulations listed for review on previous agency agenda; and

(4) A list of all final regulations promulgated during the previous 6 months with the date and FEDERAL REGISTER citation. The Director shall

immediately notify the Assistant Secretary for Policy and furnish supplements to the Department Agenda whenever it becomes apparent that development or review of regulations not listed in the previous agency agenda will commence before publication of the next Department Agenda, review of a regulation listed in the previous Department Agenda will not commence as scheduled, or significant changes have been made to items in previous agency agendas.

A docket will be established within the Office of the General Counsel whenever a new regulation is first proposed in draft form. The docket will be available for review by the public, at any time, unless prohibited by law.

2. *Criteria for defining significant agency regulations.*

A regulation shall be considered significant if it meets the Departmental criteria as set forth in Department Administrative Order 218-7, or one or more of the following:

(a) The regulation would affect over 25 percent of all State or local governments;

(b) The procedures or programs of another department or agency will be affected;

(c) Significant public controversy or interest will result;

(d) The Secretary, Chief Economist, or the Director determines that a regulation is significant.

3. *Criteria for identifying which regulations require regulatory analysis.*

A regulatory analysis shall be prepared for significant regulations which meet the Departmental criteria as set forth in Department Administrative Order 218-7, or the Secretary, Chief Economist of the Department, or the Director determines that such an analysis should be performed.

4. *Criteria for selecting existing regulations to be reviewed.*

All existing regulations (15 CFR Chapter VIII) shall be reviewed within 1 year of the date of the publication of this report. Thereafter, a regulation will be reviewed whenever:

(a) The regulation has not been reviewed for 5 years;

(b) A significant regulation has not been reviewed for 2 years;

(c) It appears to the Director that there is no further need for the regulation in the light of public comments received;

(d) It appears to the Director that the burdens imposed upon the public are increased even though no change has been made to the regulation itself;

(e) It appears to the Director that there is a need to simplify or clarify the language of the regulation;

(f) It appears to the Director that there is a need to eliminate overlapping and duplicative regulations;

(g) Technology, economic conditions or other factors have changed the effect of the regulation on the public;

(h) The Secretary, the Chief Economist of the Department, or the Director, requests that such review take place.

The Bureau's basic regulations may be found in 15 CFR Chapter VIII. We plan to complete the review of Bureau Regulations within 1 year of the effective date of these procedures. These regulations are: 15 CFR 802 which relates to the reporting of revenues and expenditures by carriers of imports.

15 CFR 803 which relates to the reporting of royalties and fees earned by foreign holdings of U.S. persons.

15 CFR 806 which relates to the reporting of direct investment.

15 CFR 807 which relates to the release of material under the Freedom of Information Act.

15 CFR 804 and 805 are outdated and will be deleted.

APPENDIX D—ECONOMIC DEVELOPMENT ADMINISTRATION

REPORT ON IMPROVING THE REGULATORY PROCESS

This notice sets forth the report which Executive Order 12044 on Improving Government Regulations (E.O. 12044, March 23, 1978) requires each agency to publish in the FEDERAL REGISTER for public comment.

The Economic Development Administration (ERA) administers programs to foster the economic development of the Nation. As a part of the Department of Commerce, EDA has been delegated responsibility primarily for implementing the following acts:

The Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121), authorizing the Secretary of Commerce to provide financial assistance for public works, business development, and economic development planning which are needed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions;

Title II, Chapters 3 and 4 of the Trade Act of 1974 (19 U.S.C. 2101), authorizing the Secretary to provide adjustment assistance for trade impacted firms and communities in trade impacted areas;

The Local Public Works Capital Development and Investment Act of 1976, as amended (42 U.S.C. 6701), which authorized the Secretary to provide grants to State and local governments experiencing high unemployment; and

The Community Emergency Drought Relief Act of 1977 (42 U.S.C. 5184), which authorized the secretary to extend assistance in drought impacted areas.

EDA has promulgated regulations to implement these acts in Chapter III of Volume 13 of the Code of Federal Regulations. Henceforth, additions and changes to these regulations will be prepared in accordance with E.O. 12044, Department Administrative Order (D.A.O.) 218-7 and this report.

The following topics are examined in this report: (1) EDA's current process for developing significant regulations; (2) the changes EDA has made to that process to comply with E.O. 12044; (3) EDA's criteria for determining significant regulations; (4) criteria for identifying significant regulations which require regulatory analysis; (5) criteria for the selection of existing regulations to be reviewed according to the provisions of E.O. 12044; (6) a list of existing regulations which EDA will consider in its initial review; and, (7) a description of EDA's regulatory agenda.

I. CURRENT PROCESS FOR DEVELOPING REGULATIONS

EDA develops new regulations and revises existing regulations through basically the same process. There are several stages to this development: initiation, circulation within the agency, publication in the FEDERAL REGISTER, and opportunity for public comment.

(1) EDA's regulatory process starts in its Office of Chief Counsel (OCC) on its own initiative or at the request of the program offices, depending on the nature of the regulation. Regulations required by legislation originate with OCC; regulations implementing policy are proposed in program offices.

(2) Where OCC proposes a regulation, it prepares a draft of the proposal accompanied by background information on the authority for the regulation, the purpose it is intended to accomplish, and, if necessary, any policy decisions incorporated into the regulation. When a program office suggests a regulation, it supplies the background information to OCC, which drafts the proposed regulation. These drafts are circulated through the Agency for comments.

(3) After comments, if any, have been received and appropriate revisions made, the regulation is sent to the Assistant Secretary for approval. When the Assistant Secretary signs the regulation, it is published in the FEDERAL REGISTER, as a final rule. The FEDERAL REGISTER publication includes the name of an agency official whom interested persons may contact for further information and allows the public 30 days to comment on the regulation.

Up to this date, EDA pulished regulations directly in final because section 553 of the Administrative Procedure Act (5 U.S.C. 551) exempts agencies from the notice-and-comment procedure for regulations pertaining to grant and loan programs. Because of this exemption, EDA was not required to publish notices of proposed rulemaking. Upon occasion, EDA obtained comments prior to publication in the

FEDERAL REGISTER, through formal and informal consultation with State and local governments. For instance, under the $6 billion Local Public Works Program, EDA submitted draft regulations to the Advisory Commission on Intergovernmental Relations for their comments.

II. REVISED PROCESS FOR SIGNIFICANT REGULATIONS

The following reforms have been made to EDA's procedures for significant (as defined in part III) regulations to accomodate the provisions of E.O. 12044. EDA will also comply with the procedures set forth in D.A.O. 218-7 "Issuing Departmental Regulations". EDA's process now includes the following stages: initiation, agency head oversight, regulatory analysis (where appropriate), public participation, and approval.

A. Initiation of Process

EDA will continue to initiate regulations as it did prior to E.O. 12044. As permitted under section 4.03 of D.A.O. 218-7, the Office of the Chief Counsel will examine regulations initially to determine their significance. The criteria for determining significance in regulations are discussed in part III below. If a regulation is determined significant, it will be subject to the remaining four stages. A regulation found not to be significant will be developed through similar procedures consistent with section 1 of E.O. 12044, depending on the nature of the regulation involved. When OCC determines that a regulation is not significant, the Assistant Secretary will review that determination prior to the submission of the next agency agenda or agenda supplement under section 7.01 or section 7.09 of D.A.O. 218-7, whichever occurs first.

B. Oversight by the Assistant Secretary.

Before drafting a significant regulation, OCC will inform the Assistant Secretary about the issues to be considered in the proposal and alternative approaches to achieve the proposal's purpose which should be explored. The Deputy Assistant Secretary for Policy and Planning will submit an initial determination to the Assistant Secretary regarding the necessity for preparing a regulatory analysis under parts II.C and IV below. The Assistant Secretary then will determine how the Agency will proceed with the regulation.

The Assistant Secretary also will review a tentative plan for obtaining public comment on the regulation. Where appropriate to the nature of the regulation, this plan shall include provision for consultation with State and local governments. Finally, the Assistant Secretary will establish dates for the completion of various steps in the development of the regulation.

Notice of developing a significant regulation will be given in EDA's regulatory agenda as described in part VII.

C. Regulatory Analysis

EDA will prepare a regulatory analysis for all significant regulations which may have major economic consequences, as set forth in part IV. For such regulations, EDA will scrutinize alternative approaches early in the decisionmaking process. The Office of the Deputy Assistant Secretary for Economic Development Policy and Planning will be responsible for determining the need for and for preparing regulatory analyses. In performing the regulatory analysis, EDA will:

(1) provide a succinct statement of the problem;

(2) describe the major alternative ways of dealing with the problem;

(3) analyze the economic consequences of each alternative considered;

(4) explain in detail the reasons for choosing one alternative over the others;

(5) explain in the public notice of proposed rulemaking the regulatory approach selected or favored, describe briefly other alternatives considered, and state how the public may obtain a copy of the draft regulatory analysis; and

(6) prepare a final regulatory analysis which EDA will make available when final regulations are published.

In performing the regulatory analysis, EDA will include as part of that analysis the urban and community impact analysis required by Executive Order 12074 and OMB Circular A-116, and section 5.04.e of D.A.O. 218-7.

D. Opportunity for Public Participation

EDA will give the public early and meaningful opportunity to participate in the development of significant regulations. In accordance with this goal, the Agency will publish an advance notice of proposed rulemaking after the Assistant Secretary has performed his oversight functions. EDA also will notify appropriate interested parties directly of the development of regulations.

In addition to these steps, EDA may, where appropriate and helpful, hold open conferences or public hearings on proposed rulemaking and send notice of proposed regulations to publications likely to be read by those affected by the rulemaking.

EDA will publish significant regulations as proposed rules and will allow the public sixty days to submit written comments on them. Written comments received from the public will be considered when the regulations are put into their final form.

In accordance with section 2(c) of E.O. 12044, EDA reserves the right to publish significant regulations with a shorter period for public comment or as final rules where short-term (60-90 days) statutory or judicial deadlines or other exigencies make the 60 day period impratical or contrary to the public interest. The preamble to these regulations will be accompanied by a statement of the reason for the abbreviated public participation procedures and the name of the EDA official responsible for this determination.

E. Approval of Significant Regulations

As in EDA's former process, the Assistant Secretary will approve all significant regulations prior to publication in final form in the FEDERAL REGISTER. The Assistant Secretary will make the following specific determinations as part of his approval:

(1) the proposed regulations are needed;

(2) the direct and indirect effects of the regulations have been considered;

(3) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

(4) public comments have been considered and responded to adequately;

(5) the regulations are written in plain English and are understandable to those who must comply with them;

(6) an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulations;

(7) the name, address and telephone number of a knowledgeable agency official is included in the publication; and

(8) a plan for evaluating the regulations after their issuance has been developed.

Pursuant to sections 4.07 and 7.05 of the D.A.O., EDA will submit significant regulations to the Secretary of Commerce for approval at least fifteen days before the proposed publication date.

III. CRITERIA FOR DETERMINING SIGNIFICANT REGULATIONS

The process for developing regulations described in part II applies only to regulations which EDA determines are significant. As noted in II.A., the Office of the Chief Counsel will initially determine significance. EDA will use the following criteria to determine the significance of regulations.

(1) EDA will consider the relationship of the regulation to major Departmental or Agency policy issues. Where an EDA regulation implements a major policy of either the Department or the Agency, rather than mandatory legislative authority or execu-

tive branch directive (see paragraph III (4)(b) below), the regulation will be considered significant.

(2) EDA will consider the degree of controversy over or public interest in the regulation. Where a proposal for a regulation is controversial or of great public interest, that regulation will be considered significant.

(3) EDA will also consider the following factors in determining significance:

(a) the type and number of individuals, businesses, organizations, State and local governments affected;

(b) the compliance and reporting requirements likely to be involved;

(c) the direct and indirect effects of the regulation, including the effect on competition; and

(d) the relationship of the regulation to those of other programs and agencies.

(4) EDA will determine that regulations are not significant where the regulation is required by statute or other exigency (e.g. judicial deadlines) to be published quickly (i.e. 60–90 days) or where the regulation is required by statute or an executive branch directive and allows EDA no substantial discretion in developing the contents of the regulation.

(a) EDA will determine a regulation to be an emergency regulation where the statute or exigency requires publication within 91 days. In such a case, the regulation will not be significant. EDA will follow the procedures described in part II only inasfar as time will allow. EDA will publish these regulations as interim regulations and allow the public to comment for at least 60 days prior to final publication.

(b) The Assistant Secretary may conclude that a regulation is not significant, even if it meets the criteria established for identifying significant regulations, if the Assistant Secretary determines, in writing, that the degree of discretion available to EDA is so limited by underlying legislation or executive branch directives (e.g. Executive Orders, OMB Circulars, etc.) that no significant options for implementation are available to EDA. A copy of this determination shall be promptly sent to the Assistant Secretary for Policy and an explanation of the determination shall be included in the preamble to the notice of the proposed rulemaking.

IV. EDA'S PROPOSED CRITERIA FOR IDENTIFYING SIGNIFICANT REGULATIONS WHICH REQUIRE REGULATORY ANALYSIS

EDA will prepare a regulatory analysis of proposed regulations which the Agency has both (a) identified as significant under the above criteria and (b) determined may have major economic consequences.

EDA will apply the following alternative criteria to determine whether a significant regulation may have major economic consequences:

(1) *Effect on the economy as a whole.* Where the potential economic consequences of the significant regulation will affect the economy as a whole, EDA will determine those consequences to be major if such regulation can be expected, during any 12-month period it is in effect, to result in an effect, direct or indirect, on the economy of $50 million or more. If this criterion is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(2) *Effect on an individual industry.* Where the potential economic consequences of the significant regulation will affect an individual industry, EDA will determine those consequences to be major:

(a) if, during any 12-month period in which it is in effect, such regulation can be expected to result in an increase of cost or price of 5 percent or more for the specific activity, product(s) or service(s) affected by the regulation; or

(b) if, during any 12-month period in which it is in effect, such regulation can be expected to result in an effect, direct or indirect, exceeding $25 million; or

(c) if the regulation can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation; or

(d) if such regulation can be expected, for the particular market(s) affected, to result in a 1 percent or more decline in a supply of materials, products or services or a 1 percent or more increase in consumption of these materials, products or services as a direct or indirect result of such regulation; or

(e) if such regulation can be expected to result in a decline in competition in the particular market(s) affected. Factors to be considered include limitation of market information, or other restrictive factors that impede the functioning of the market system.

If any of the criteria (a) through (e) is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(3) *Effect on a level of government.* Where the potential economic consequences will affect a level of government, EDA will determine those consequences to be major if the effect, direct or indirect, is an increase in costs to that level of government which can be expected to exceed $25 million. If this criterion is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(4) *Effect on a geographic area.* Where the potential economic consequences will affect a geographic area, EDA will determine those consequences to be major if, during any 12-month period in which it is in effect, the significant regulation can be expected to result in an effect, direct or indirect, exceeding $25 million. If this criterion is met, EDA will perform a regulatory analysis of the proposed significant regulation.

(5) *Effect on consumers.* Where the potential economic consequences of the significant regulation will result in an effect, direct or indirect, to consumers, EDA will determine those consequences to be major:

(a) if, during any 12-month period it is in effect, such regulation can be expected to result in an effect, direct or indirect, exceeding $25 million; or

(b) if, during any 12-month period it is in effect, such regulation can be expected to result in an increase in price of 5 percent or more for the specific activity, product(s) or service(s) affected by the proposed regulation; or

(c) if such regulation can be expected to result, for the particular market(s) affected, in a 1 percent or more decline in supply of materials, products or services or a 1 percent or more increase in consumption of these materials, products or services as a direct or indirect result of the regulation; or

(d) if, such regulation can be expected to result in a decline in competition in the particular market(s) affected. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

EDA will also prepare a regulatory analysis of existing regulations where the Agency has determined, pursuant to the criteria set forth in part V, that the regulations should be revised, and that the regulations as revised are both significant and will have major economic consequences under one or more of the preceding criteria.

If the Agency determines that a proposed or revised regulation is not significant or that a proposed or revised regulation is significant but will not have major economic consequences under one of the above criteria, EDA will not perform a regulatory analysis of the regulation except where:

(a) the Assistant Secretary for Economic Development determines that such an analysis would be beneficial; or

(b) the Secretary of Commerce determines, in accordance with section 7.05 of D.A.O. 218-7 that such an analysis should be performed.

V. CRITERIA FOR SELECTING REGULATIONS FOR REVIEW

In order to assure that existing regulations are achieving the policy goals of E.O. 12044, EDA will review its regulations periodically. In selecting ex-

isting regulations for review, EDA will consider the following criteria:

(1) The length of time since the regulation has been evaluated. All regulations which meet the criteria of significance will be reviewed at least once every four years. EDA will review all other regulations within six years of publication. After selecting regulations under this criterion, EDA will review the regulations in accord with the other criteria listed below.

(2) The continued need for the regulation. EDA shall examine all its regulations periodically to determine if there is a continuing need for the regulations. EDA will measure the need for each regulation on the basis of the underlying legislation, EDA policy, or other Federal agency requirements.

(3) The need to simplify or clarify language. EDA will note which of its regulations have caused misunderstandings and review them as necessary to clarify them.

(4) The need for clarifying the organization of parts or subparts due to the addition of or substantial revision of individual regulations.

(5) The need to eliminate overlapping or duplicative regulations.

(6) The need to eliminate unnecessary variations in requirements imposed on recipients of financial assistance by both EDA and other Federal agencies.

(7) The burdens imposed on those directly or indirectly affected by the regulations.

(8) The number of complaints or suggestions received.

(9) The degree to which economic conditions or other factors have changed in the area affected by the regulation.

Based upon its review of existing regulations, EDA will revise significant regulations in accord with the procedures set forth in part II above for developing new significant regulations.

VI. LIST OF EXISTING REGULATIONS WHICH EDA WILL CONSIDER FOR ITS INITIAL REVIEW

EDA will consider the following regulations for its initial review:

1. Regulations regarding the organization of Economic Development Districts. EDA will review these regulations, primarily 13 CFR 303.4, because many district organizations have requested EDA to clarify and to simplify these requirements.

2. Regulations regarding the Business Development Program, 13 CFR Part 306. EDA will review these regulations because they have not been reviewed as a whole since they were published and are in need of reorganization.

3. Regulations regarding general requirements for assistance, 13 CFR Part 309. EDA will review these regulations to eliminate those which are no longer necessary and to clarify procedural requirements.

VII. REGULATORY AGENDA

By January 15 and July 15 of each year, EDA will prepare a regulatory agenda of forthcoming regulations under review or development. EDA will submit the agenda to the Assistant Secretary of Commerce for Policy. The portions of this agenda concerning significant regulations will be published in the FEDERAL REGISTER as part of the combined Department of Commerce regulatory agenda by February 15 and August 15 of each year. The regulatory agenda for EDA will include, to the extent feasible:

(1) a description of regulations under development or being considered for development, including:

(a) a statement whether the regulation has been determined to be a significant regulation;

(b) the need for and the legal basis for the action being taken;

(c) if possible, a statement as to whether or not a regulatory analysis will be required;

(d) the name and telephone number of a knowledgeable official;

(e) a list of major issues likely to be considered in developing the regulation;

(f) a tentative plan for consulting with State and local governments;

(g) target dates for the completion of steps in the development process; and

(h) information on the status of all new regulations listed in the previous agenda, including changes to the information required by this part, until such time as these regulations are published as final in the FEDERAL REGISTER.

(2) a list of existing regulations scheduled for review during the next six months, including the name and telephone number of a knowledgeable official for each;

(3) information on the status of existing regulations previously scheduled for review; and

(4) a list of all final regulations published in the FEDERAL REGISTER during the previous six months, including the date and FEDERAL REGISTER citation.

If EDA has no regulations which it intends to review or develop, EDA will submit a report to the Assistant Secretary for Policy to that effect. If, prior to the date of the next agency agenda, it becomes necessary for EDA to develop or review regulations which were not listed on the last agency agenda, EDA will publish a supplement to the agency agenda. In addition, EDA will immediately notify the Assistant Secretary for Policy of any changes to its regulatory agenda, including any significant changes in the status of items listed on the previous agenda. EDA may also publish a supplement to the agency agenda, when appropriate, if EDA will not develop or review significant regulations as scheduled on the latest agenda.

In developing proposed regulations, EDA will consider and include as part of the public record all substantive comments which it has received concerning any item listed on the agenda.

EDA received no comments regarding the draft of this report which was published on May 30, 1978, as Appendix D to the Department of Commerce "Response to Executive Order No. 12044". Interested persons should send comments on this final report to: Assistant Secretary for Economic Development, Room 7800B, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: December 8, 1978.

APPENDIX E—INDUSTRY AND TRADE ADMINISTRATION ISSUING REGULATIONS

SECTION 1. PURPOSE.

This order prescribes the procedures which shall apply in implementing Executive Order 12044 of March 23, 1978, improving Government Regulations, and Department Administrative Order 218-7.

SECTION 2. SCOPE

.01 Except as provided in paragraph .02 of this section, this order applies to all regulations of the Industry and Trade Administration published in the FEDERAL REGISTER.

.02 Unless specifically noted to the contrary, this order does not apply to regulations exempted by Executive Order 12044 and D.A.O. 218-7, specifically.

a. regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557);

b. regulations issued with respect to a military or foreign affairs function of the United States;

c. matters related to agency management or personnel;

d. regulations related to Federal Government procurement; or

e. regulations that are issued in response to an emergency or which are governed by short-term (less than 91 days) statutory or judicial deadlines.

.03 Whenever two or more agencies plan to jointly promulgate regulations, bureau heads shall designate one agency as lead agency for the purpose of determining whose rulemaking procedures will be utilized. The designated agency shall be responsible for compliance with Executive Order 12044 and its procedures implementing that Executive Order shall apply. Regardless of the designation as lead agency, each bureau head involved in a joint

rulemaking will separately comply with the requirements of Section 7 of this Order.

.04 Even in cases where the exemptions in paragraph .02 of this section apply, regulations will be developed, to the extent practicable, in accordance with the requirements, procedures and intent of the Executive Order.

SECTION 3. DEFINITIONS

.01 *Bureau head.* As used in this order, bureau head means the head of each bureau of the Industry and Trade Administration and persons serving in those positions in an acting capacity.

.02 *Regulation(s).* As used in this order, regulation(s) means both rules and regulations issued by the Industry and Trade Administration including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.

SECTION 4. SIGNIFICANT REGULATIONS

01. Bureau heads shall identify a regulation to be significant if:

a. a substantial number of individuals, businesses, organizations, State and local governments would be affected by the regulation:

b. the compliance and reporting requirements of the regulation are likely to be excessive and interfere with normal business practices or substantially increase paperwork requirements;

c. the regulation is likely to have a major affect directly or indirectly on competition within the marketplace;

d. the regulation would be likely to have a measurable inflationary effect;

e. the regulation would be likely to contribute substantially to unemployment;

f. the regulation would be likely to reduce U.S. exports by a substantial amount;

g. the availability of material and equipment in the marketplace would be increased or decreased in a substantial amount;

h. the regulation relates in an important way to other programs and agencies within and outside of the Industry and Trade Administration and the Department; or

i. the regulation bears an important relationship to major Industry and Trade Administration and Departmental policy issues.

.02 a. Before proceeding to develop significant new regulations the bureau head shall consult with the Assistant General Counsel for Industry and Trade and shall have reviewed the issues to be considered, the alternative approaches to be explored, whether a regulatory anaylsis, as provided for in Section 5, is required, a tentative plan for obtaining public comment where applicable, a tentative plan for consultation with State and local governments, and a target date for completion of steps in the development of the regulation.

b. The bureau head shall obtain the written approval of the Assistant Secretary for Industry and Trade of any proposal to develop significant new regulations.

.03 The Assistant Secretary for Industry and Trade shall approve significant regulations before they are published in the FEDERAL REGISTER in final form. Before approving significant regulations, the Assistant Secretary for Industry and Trade shall consult with the Assistant General Counsel for Industry and Trade and will be satisfied that:

a. the regulation is needed;

b. the direct the indirect effects of the regulation have been adequately considered;

c. alternative approaches to regulations and among various types of regulations have been considered and the least burdensome of the acceptable alternatives has been chosen;

d. public comments (including those from State and local governments) have been considered and an adequate response has been prepared;

e. the regulation is written in simple and clear English and is understandable to those who must comply with it;

f. an estimate has been made of the new reporting burdens or recordkeeping requirements necessary to carry out the regulation;

g. the cost to the Government and to the public have been assessed;

h. the name, address and telephone number of a knowledgeable official is included in the publication; and

i. a plan for periodically evaluating the effectiveness of the regulation after its issuance has been developed.

.04 The Assistant Secretary for Industry and Trade, in consultation with the Assistant General Counsel for Industry and Trade, shall review determinations that a regulation is not significant prior to the submission of the next agency agenda required by Section 7.05, or the notification required by Section 7.08, whichever occurs first.

.05 Regulations which are not significant shall be accompanied by a statement to that effect when published in the FEDERAL REGISTER.

SECTION 5. REGULATORY ANALYSIS

.01 A regulatory analysis shall be prepared for each significant regulation determined to have potential major economic consequenses for the general economy, for individual industries, geographic regions, levels of government, or specific elements of the population.

.02 Bureau heads shall determine which significant regulations require regulatory analysis. While these officials should be guided by the individual needs of their specific programs and may require an analysis for any proposed regulation, at a minimum a regulatory analysis shall be prepared for each regulation which:

a. during any one year of its existence, can be expected to result in increased cost(s) (direct or indirect) to consumers, businesses, Federal, and State and local governments exceeding $50 million;

b. during any one year of its existence, can be expected to result in increased costs (direct or indirect) to either consumers, businesses, or levels of governments exceeding $25 million;

c. during any one year of its existence, can be expected to result in an increase or decrease in costs or prices of five percent or more for the activity, product(s) and/or service(s) affected by the proposed regulation;

d. can be expected to reduce labor productivity by one percent or more in the economic activity or sector(s) affected by the regulation;

e. can be expected to reduce employment by five percent or more in the economic activity or sector(s) affected by the regulation;

f. can be expected to result in a one percent or more decline or rise in supply or consumption of materials, products or services, in the activity affected;

g. can be expected to result in a clearly identifiable decline in domestic or international competition, including such factors as limitation of market entry, restraint of market information, or other impediments to the functioning of the market system; or

h. can be expected to redirect supplies of material, equipment, products or services from one market to another by a significant amount.

.03 A regulatory analysis shall also be prepared when:

a. the Assistant Secretary for Industry and Trade determines that such an analysis should be performed; or

b. the Secretary determines that such an analysis should be performed.

.04 A regulatory analysis must involve a careful examination of alternative approaches early in the decisionmaking process. Thus, each analysis must include, at the minimum:

a. a succinct statement of the problem;

b. a description of the major alternative ways of dealing with the problems that were considered;

c. an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others; and

d. the urban and community impact analysis required by Executive Order 12047, of August 16, 1978, and OMB

Circular A-16, which implements that Executive Order.

.05 The notice of proposed rulemaking for each regulation for which a regulatory analysis is required shall include:

a. an explanation of the regulatory approach that has been selected or is favored;

b. a short description of the other alternatives considered;

c. the major reason(s) for selecting or favoring a particular alternative; and

d. a statement of how the public may obtain a copy of the draft regulatory analysis.

.06 a. The Assistant Secretary for Industry and Trade shall transmit the draft regulatory analysis along with the proposed regulation to the Chief Economist and to the Assistant General Counsel for Industry and Trade for review and comment at least 15 days prior to submission of a notice of proposed rulemaking to the FEDERAL REGISTER; and

b. The Assistant Secretary for Industry and Trade shall inform the Chief Economist as early as possible of the nature and extent of the analysis being undertaken to assure adequate opportunity for consultation and assistance.

.07 Bureau heads shall consider public comments on their regulatory analysis and prepare a final regulatory analysis to be made available when the final regulations are published. Significant public comments on the analysis shall be summarized and responded to in the preamble to the final regulation.

.08 Regulatory analyses are not required in rulemaking proceedings pending as of March 23, 1978, if an Economic Impact Statement has already been prepared in accordance with Executive Order 11821 and 11949 or it has been determined that such a statement was not needed.

SECTION 6. REVIEW OF EXISTING REGULATIONS

.01 Bureau heads shall review existing regulations administered by their organization at least every four years to determine whether they are achieving the policy goals of Executive Order 12044 and report their findings to the Assistant Secretary for Industry and Trade.

.02 Bureau heads shall consider the following criteria, among other things, in reviewing existing regulations:

a. the continued need for the regulation;

b. the availability of alternative approaches to the regulations;

c. the type or number of complaints or suggestions received;

d. the burdens imposed on those directly or indirectly affected by the regulation;

e. the cost to the Government of administration of the regulation;

f. the need to simplify or clarify the language;

g. the need to eliminate overlapping and duplicative regulations; and

h. the length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

.03 Procedures for review of existing regulations shall, at a minimum, contain the following procedural steps:

a. inclusion of notice of the review in the semi-annual agenda as required by section 7.02 of this order, or as appropriate, supplementation of the Department Agenda and notification to the Assistant Secretary for Policy as called for in section 7.08 of this order;

b. a determination of whether the regulation meets the criteria established for identifying significant regulations;

c. if the regulation is determined to be significant, approval by the Assistant Secretary for Industry and Trade as called for in section 4.02b before proceeding with the review;

d. a determination of whether the regulation meets the criteria established for determining if a regulatory analysis must be performed;

e. if applicable, the preparation of a regulatory analysis in accordance with the procedures established;

f. if the review results in a determination that a regulation should be amended or rewritten, compliance with public notice and participation requirements;

g. if applicable, Assistant Secretary for Industry and Trade approval of significant regulations before final publication in the FEDERAL REGISTER as set forth in section 4.03 of this order.

SECTION 7. REGULATORY AGENDA

.01 No later than January 3, 1979, each bureau head shall provide the Senior Deputy Assistant Secretary for Industry and Trade with the first regulatory agenda required under this section. No later than June 1, 1979, each bureau shall provide the Senior Deputy Assistant Secretary for Industry and Trade with the second regulatory agenda required under this section and shall provide such an agenda every six months thereafter.

.03 Each regulatory agenda shall include the following:

a. a description of regulations under development or being considered for development to include to the extent feasible:

1. a statement of whether the regulation has been determined to be a significant regulation;

2. the need for and the legal basis for the action being taken;

3. a statement as to whether or not a regulatory analysis will be required;

4. the name and telephone number of a knowledgeable official to whom comments on the planned regulation may be addressed;

5. a listing of the major issues likely to be considered in developing the regulation;

6. a tentative plan for obtaining public comment and where applicable, a tentative plan for consulting with State and local governments;

7. proposed dates for the completion of steps in the development process; and

8. information on the status (including changes to the information required by this Section .02.a.) of proposed significant regulations listed in previous agendas until such time as these regulations are published as final in the FEDERAL REGISTER.

b. a list of existing regulations scheduled to be reviewed, including the name and telephone number of a knowledgeable official for each such regulation;

c. information on the status of existing regulations previously scheduled for review; and

d. a list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

.03 The Senior Deputy Assistant Secretary for Industry and Trade shall review all bureau head agendas and, after consultation with the Assistant General Counsel for Industry and Trade and such Industry and Trade Administration officials as may be deemed appropriate, recommend to the Assistant Secretary for Industry and Trade:

a. which regulations not determined to be significant by the bureau heads should be treated as significant;

b. which of the new regulations under development or being considered for development should be brought to the attention of the Secretary prior to being published in the FEDERAL REGISTER in final form; and

c. in addition to those identified by bureau heads, which new regulations under development or being considered for development require a regulatory analysis.

.04 The Senior Deputy Assistant Secretary for Industry and Trade shall advise bureau heads of the decisions made by the Assistant Secretary for Industry and Trade with respect to these recommendations.

.05 Using the bureau head agendas, as modified by the Assistant Secretary for Industry and Trade, the Senior

Deputy Assistant Secretary for Industry and Trade shall prepare an overall Industry and Trade Administration agenda. This agenda after approval by the Assistant Secretary for Industry and Trade, shall be submitted to the Assistant Secretary for Policy by January 15, 1979, and every six months therafter.

.06 The Industry and Trade Administration agenda shall include the information required by section .02 above.

.07 Supplements to the Department Agenda may be published whenever it becomes apparent that development or review of significant regulations not listed in the previous Department Agenda will commence before the publication of the next Department Agenda; or development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

.08 Bureau heads will notify the Assistant Secretary for Policy whenever it becomes apparent that development or review of regulations not listed in the previous agency agenda will commence before publication of the next Department Agenda, development or review of a regulation listed in the previous Department Agenda will not commence as scheduled or significant changes have occured in the status of items listed in the previous agency agenda.

.09 a. A docket shall be established and maintained for each item appearing in the regulatory agenda.

b. Dockets shall be maintained by the staff of the Industry and Trade Administration Freedom of Information Records Inspection Facility and shall be available for public inspection in Room 3012, Main Building, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The telephone number of the inspection facility is 202-377-3031.

c. Dockets shall include, but not be limited to:

1. documents of central relevance to the proceeding and any technical support documents developed or relied on prior to publication of the Notice of Proposed Rulemaking;

2. a copy of the Notice of Proposed Rulemaking;

3. all public comments received concerning the proposal;

4. all transcripts of hearings, if held, concerning the proposal;

5. all documents of central relevance that became available after the Notice of Proposed Rulemaking; and

6. a copy of the Notice of Final Rulemaking.

SECTION 8. PUBLIC PARTICIPATION

.01 The public shall be given an early and meaningful opportunity to participate in the development of the regulations of the Industry and Trade Administration.

.02 Bureau heads shall consider a variety of ways to provide this opportunity, including, but not limited to:

a. publishing an advance notice of proposed rulemaking;

b. holding open conferences or public hearings;

c. sending notices of proposed regulations to publications likely to be read by those affected;

d. notifying interested parties directly; and

e. providing for more than one cycle of public comments.

.03 If none of the methods listed in paragraph .02 of this section are used in a particular rulemaking covered by this order, the preamble accompanying the final regulation shall briefly explain the reasons and indicate what other steps were taken to assure adequate opportunity for public participation.

.04 The public shall be given at least 60 days to comment on proposed significant regulations. Exceptions to this requirement may be granted only by the Assistant Secretary for Industry and Trade and only in those few instances where it is determined that it is not possible to comply. When an exception is made the preamble to the proposed regulation shall include a brief statement of reasons for a shorter time period.

.05 In instances when regulations exempted by sections 2.02 (b) and (c) of this order do not comply with the procedures set forth in this order, their publication in the FEDERAL REGISTER shall be accompanied by a statement of the reasons why the procedures of this order could not be followed. This statement shall include the name of the policy official responsible for the determination.

.06 Regulations exempted by section 2.02 (b) or (c) of this order shall be issued in interim form only. FEDERAL REGISTER publication of these regulations will provide for a public comment period of at least 60 days and republication in final form after public comments have been considered and appropriate modifications, if any, made.

ITA is considering for initial review the following regulations:

REVIEW OF REGULATIONS

Regulation	CFR Citation	Contact Point
Export Administration Regulations Commodity Control List and Related Matters.	15 CFR 399	Rauer Meyer 202/377-4293
Defense Materials System (DMS) Order 1—Iron and Steel	32A CFR 631	John Richards 202/377-4506
Defense Materials System (DMS) Order 2—Nickel Alloys	32A CFR 632	John Richards 202/377-4506
Defense Materials System (DMS) Order 3—Aluminum	32A CFR 633	John Richards 202/377-4506
Defense Materials System (DMS) Order 4—Copper and Copper Base Alloys.	32A CFR 634	John Richards 202/377-4506
Operation of the Priorities and Allocations Systems between Canada and the United States (DPS Reg. 2).	32A CFR 652	John Richards 202/377-4506
Compliance and Enforcement Procedures (DPS Reg. 3)	32A CFR 653	John Richards 202/377-4506
Instruments and Apparatus for Educational and Scientific Institutions.	15 CFR 301	Richard Seppa 202/377-2925
China Trade Act Corporations	15 CFR 363	Harry Stringer 202/377-3647
Joint Export Associations	15 CFR 366	Samuel Cerrata 202/377-4577
Determination of Bona Fide Motor-Vehicle Manufacturers	15 CFR 315	Edward Smith 202/377-4338
Foreign-Trade Zones Board (Administrative support is provided to the Foreign-Trade Zones Board staff by ITA).	15 CFR 400	John DaPonte 202/377-2862

APPENDIX F—MARITIME ADMINISTRATION (MARAD)

PROCESS FOR DEVELOPING REGULATIONS

PRESENT PROCESS FOR DEVELOPING REGULATIONS

Marad's principal programs are promotional (grants or contracts), or related to national defense, and have not been subject to the notice of proposed rulemaking requirements of the Administrative Procedure Act (5 USC 553). As a matter or practice, Marad has published a notice of proposed rulemaking in the FEDERAL REGISTER, and has usually allowed at least 30 days for the submission of written comments by all interested parties with respect to new regulations or amendments to existing regulations which we consider to be important. An exception to this practice has occurred where observance of such notice requirements would defeat principal objectives of the new or amended regulations. However, Marad has rarely engaged in final rulemaking without

prior consultation with parties who will be directly affected.

Previously, Marad has not adopted a uniform policy for the development of regulations or the review of existing regulations. With respect to regulations which implement our principal programs, development or revision of regulations has usually resulted from recognition of operational problems by Marad Offices responsible for administering these programs or from complaints received, either from participants in the programs or from others affected by such regulations. Where important new regulations or major revisions of such regulations have been drafted pursuant to direction or authorization of legislation, it has been customary to select a committee which meets regularly to consider and draft the proposed regulation. The Committee has usually included staff members involved in program administration and an attorney in the Office of General Counsel. With respect to most other efforts in developing regulations, draft proposals have been initiated by Offices concerned with program administration and submitted to the Office of General Counsel for review. The agency has exercised discretion in determining whether to solicit the views of interested persons before publication of the notice of final rulemaking in the FEDERAL REGISTER.

REVISED PROCEDURE FOR DEVELOPING REGULATIONS

Marad hereby establishes a uniform procedure for developing regulations, and will comply with the requirements of Department of Commerce Administrative Order 218-7 (DAO 218-7). Prior to considering in depth a proposal from any source for issuing a new or revised regulation, or set of regulations, the Director of the Office with a principal responsibility for administering the program to which the regulation relates shall prepare a brief memorandum to the appropriate Assistant Administrator. Copies shall be distributed to the Deputy Assistant Secretary for Maritime Affairs and to the General Counsel. This memorandum shall briefly describe the background of the proposal, the objectives of the regulation, possible alternative approaches to accomplish these objectives, an estimate of its potential economic impact, a tentative plan for obtaining public comment and target dates for completion of steps in the development of the regulation. The Assistant Administrator, with the concurrence of the Deputy Assistant Secretary and the General Counsel, shall make a preliminary determination as to whether the regulation is "significant", so as to be subject to requirements of sections 2 or 3 of Executive Order 12044 (EO 12044).

If these officials determine that the regulation is significant (using criteria described hereinafter), they shall recommend that the Assistant Secretary for Maritime Affairs or Maritime Subsidy Board (Assistant Secretary/MSB), as appropriate, designate the Offices (including the Office of General Counsel) to be represented on a committee which shall evaluate the proposal. The Committee shall draft proposed regulations where it considers such action to be necessary. Should a determination be made that the proposal does not involve a significant regulation; the staff of the Office Director initiating the action shall be responsible for developing such regulation with assistance from the Office of General Counsel.

The Assistant Secretary/MSB, prior to authorizing development of significant regulations, shall review the issues to be considered; the alternative approaches to be explored; whether a regulatory analysis (as described hereinafter) is required; a tentative plan for consulting with State and local government, where appropriate; and target dates for completion of the steps in the development of the regulation.

Significant regulations shall be published in the FEDERAL REGISTER, allowing all interested persons at least 60 days (except where circumstances to be described in the notice make a shorter period necessary) to submit written comments. With respect to all significant regulations, Marad shall consider utilizing other publications to advise interested persons of proposed rulemaking, as well as for giving advance notice of such proposed rulemaking. With respect to regulations determined not to be significant, the staff shall consider soliciting comments from interested persons through publication or other channels of communication.

The Assistant Secretary/MSB shall approve all significant regulations prior to their publication in the FEDERAL REGISTER in final form after determining that:

(1) The regulation is needed;

(2) Its direct and indirect effects have been adequately considered;

(3) Alternative approaches have been considered and the least burdensome acceptable alternative has been selected;

(4) Comments have been solicted from interested persons, where appropriate (including State or local government), and have been adequately considered and acknowledged responsively;

(5) The regulation is written in a manner that should be comprehensible to those subject to its requirements;

(6) An estimate has been made of any new reporting or recordkeeping requirements imposed by the regulation;

(7) The name, address and telephone number of a knowledgeable official, to whom inquiries and suggestions about the proposed regulation may be submitted, is included in the publication; and

(8) A plan has been developed for evaluating the regulation after its issuance.

Regulations which are not significant shall be accompanied by a statement to that effect when published in the FEDERAL REGISTER.

CRITERIA FOR SIGNIFICANT REGULATIONS.

Significant, within the scope of section 2 of Executive Order 12044, means a regulation that:

(1) Is necessary to implement new provisions of law relating to the operation of any major Marad program, including, but not limited to financial assistance for vessel construction or operations, reservation of cargo for United States vessels, vessel insurance, citizenship requirements and matters relating to the United States Merchant Marine Academy and State Maritime Academies; or would effect a substantial revision to an existing regulation relating to any such program;

(2) Is expected to have major economic consequences on the general economy or have a substantial impact on levels of production of employment, either at the national level or in any geographic area, of U.S. shipbuilders, vessel operators, port facility operators, or related industries or segments thereof;

(3) Overlaps or has a substantial effect on regulations in effect or functions of another Federal or State governmental body; or

(4) Is considered by the Assistant Secretary/MSB to involve an important matter on which there is current substantial public interest or controversy.

CRITERIA FOR REGULATORY ANALYSIS

The committee responsible for developing a significant regulation or set of regulations shall initially consider the problems, objectives and alternative approaches for administrative action. This consideration shall include an evaluation of the probable economic impact of the regulation upon the general economy, individual industries, geographical regions or levels of Government. The Committee shall utilize the expertise of the Office of Policy and Plans whenever it considers consultation to be appropriate. It shall issue an opinion, subject to the approval of the Assistant Secretary/MSB, as to

whether the proposed regulation may have major economic consequences of any type.

A Regulatory Analysis shall be prepared if a determination is made that any of the following major economic consequences of the regulation under consideration are likely to occur:

(1) During any one year of its existence, it can be expected to result in an effect (direct or indirect) on the national economy of $50 million or more;

(2) During any one year of its existence, it can be expected to result in an effect (direct or indirect) exceeding $25 million in the economy of any State;

(3) It can be expected to produce at least a 5 percent reduction in the level of activity or employment in the U.S. shipbuilding industry, the U.S. ship operating industry, or the U.S. port industry;

(4) It can be expected to produce at least a 5 percent reduction in the level of industrial activity or employment in any local area (e.g., city, county, port authority region);

(5) It can be expected to produce at least a 10 percent reduction in the U.S. tax revenues derived from the shipbuilding, ship operating, or port industry; or

(6) During any one year of its existence, it can be expected to result in an increase of cost or price of 5 percent or more for the specific maritime service(s) affected by its provisions.

Each draft Regulatory Analysis shall include—

(1) A succinct statement of the reason for issuing the regulation;

(2) Major alternatives to the regulation that have been considered;

(3) An analysis of the respective economic consequences of the regulation and alternative approaches; and

(4) A detailed explanation of the reasons for choosing the alternative favored or selected.

(5) The urban and community impact analysis required by Executive Order 12074 (August 16, 1978) and OMB Circular A-116.

The draft Regulatory Analysis shall be made available for public inspection, and reference to it shall be included in the notice of proposed rulemaking.

REVIEW OF EXISTING REGULATIONS

Each Marad Office which has a principal function of administering programs to which existing regulations relate shall systematically review each regulation to determine its effectiveness. An initial review of all existing regulations shall be completed by the end of the calendar year 1981 (the 1979 year end deadline stated in the draft report was based on a misinterpretation of an EO 12044 provision, and would impose an unreasonable burden on the agency). There shall be a review of all significant regulations no less frequently than every four years thereafter, subject to approval by the Assistant Secretary/MSB. In determining the priorities of initial review, the criteria for principal consideration are:

(1) Whether the regulation has been reviewed within the preceding five years;

(2) If there is a substantial question of the continuing need for regulations in any area of agency activity;

(3) Receipt of complaints from other agencies, State or local governments, or the public;

(4) Recognition by program administrators of the need for simplification, clarification, consolidation with other existing regulations, or elimination of conflicts with Marad regulations or those of other governmental agencies.

REGULATORY AGENDA

Semiannually, by January 15 and July 15, Marad will prepare and submit for Department approval a regulatory agenda which describes regulations under development or being considered, which will include the information required in section 7.02 of DAO 218-7. The Assistant Secretary/MSB shall review the proposed agenda and any determination which has been made that a regulation is not significant.

Marad presently is considering an initial review or its proceeding with the development of the regulations described below:

Subject	Regulations
Temporary removal of prohibition of vessels built with construction-differential subsidy (CDS) from carrying oil from Alaska in the domestic trade	46 CFR Part 250
Conservative Dividend Policy—Restriction on the payment of dividends by vessel operators receiving operating differential subsidy (ODS)	46 CFR Part 283
ODS for bulk cargo vessels engaged in worldwide services—essential service and U.S. foreign commerce requirement	46 CFR Part 252.21
ODS for bulk cargo vessels engaged in worldwide services—principal foreign-flag competition; foreign wage costs	46 CFR Part 252.22; 252.31
Regulations governing awards of ODS—Agreements and payments of ODS	46 CFR Part 280
Standard contract forms and other regulations for administration of CDS Program	46 CFR Part 251
Total repayment of CDS—removal of trade restrictions	46 CFR Part 276
Guarantees of obligations issued to finance vessel construction—Final.	46 CFR Part 298
Regulations for U.S. Maritime Service, a voluntary organization to train U.S. citizens for service on U.S. merchant vessels	46 CFR Part 310, Subpart B

Any inquiries about the procedure described herein or the regulations proposed for review should be directed to Richard P. Knutsen, Assistant General Counsel for Legislation and Regulations, Maritime Administration, Washington, D.C. 20230, Tel. 202-377-3159.

[3510-49-M]

APPENDIX G

Title 45—Public Welfare

CHAPTER XX—UNITED STATES FIRE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 2012—ISSUING AND REVIEW OF USFA REGULATIONS

AGENCY: United States Fire Administration (Note: The name of the National Fire Prevention and Control Administration was changed by Pub. L. 95-422 to the United States Fire Administration).

ACTION: Final rule.

SUMMARY: The Administrator of the United States Fire Administration (USFA) is authorized and directed by the Federal Fire Prevention and Control Act of 1974 (Pub. L. 93-498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*, 278 f, 42 U.S.C. 290(a)), "the Act", to carry out certain fire prevention and control programs. Section 21(b) of the Act authorizes the Administrator to "establish such rules, regulations and procedures as are necessary to carry out the provisions of [the] Act." To carry out his responsibilities under the Act, the Administrator has found it necessary, and will likely find it necessary, to issue rules and regulations. This rule sets out the procedures by which such regulations will be issued. It further provides for the review of existing regulations, on a continuing basis.

Subpart A of the rule contains the purpose, scope and definitions. Subpart B of the rule sets out the method and the procedure for issuing regulations. Subpart C establishes the circumstances under which a regulatory analysis shall be accomplished and the procedure for such an analysis. Subpart D establishes the procedure for the review of existing regulations and for the preparation of a regulatory agenda (to include a listing of proposed regulations, and a schedule for review of existing regulations). Subpart E contains some general administrative provisions.

FOR FURTHER INFORMATION CONTACT:

David F. Snyder, Acting Chief Counsel, United States Fire Administration, U.S. Department of Commerce, P.O. Box 19518, Washington, D.C. 20036, Telephone: 202-632-9685.

SUPPLEMENTARY INFORMATION: On March 23, 1978, the President signed Executive Order 12044, "Improving Government Regulations." The policies of that Executive Order, the Department of Commerce, and this rule are: the promulgation of only those regulations which are necessary, the provision for maximum public participation in regulatory affairs, the continuous review of existing regulations, and the special analysis of significant regulations.

To comply with Section 5 of Executive Order 12044, the following information is provided:

USFA has not previously published a detailed system for issuing regulations. Nonetheless, it has followed procedures consistent with the notice and comment rulemaking requirements of the Administrative Procedure Act. In one rulemaking, a Notice of Proposed Rulemaking was published with a ninety-day comment period. Comments were reviewed and the final publication occurred several months later.

In the second, more complex rulemaking, USFA followed a distinctly different process. Extensive consultations were held with and correspondence exchanged between the Office of the Chief Counsel, USFA, the General Counsel of the Department of Commerce, the General Counsel of the Department of Treasury, and the Office of Legal Counsel, Department of Justice. After the consultation and review, a Notice of Proposed Rulemaking was published with a sixty-day comment period. Simultaneously, the draft regulations were submitted to the State Fire Marshals, the State Attorneys General, the Mayors of some of the largest cities of each state, the heads of the legal staff of many federal agencies, and safety officers within some federal agencies. During the comment period, meetings were held with fire service officials in several states, with fire service officials employed by federal agencies, and inquiries, via telephone and the mails, were responded to. The comments were reviewed and the final regulations were published in the FEDERAL REGISTER and were soon thereafter published in the agency newsletter, FIREWORD, which is distributed free of charge to over 20,000 fire service, academic, and governmental personnel.

Subpart B, which sets forth a new process for developing and reviewing regulations, was published for comments to be consistent with Executive Order 12044 and departmental regulations. Under the new process, 45 CFR Part 2010 "Reimbursement for Costs of Firefighting on Federal Property", and 45 CFR Part 2011, "Public Safety Awards to Public Safety Officers", are to be reviewed first.

During the public comment period following the Notice of Proposed Rulemaking, no substantive comments were received. Any changes to the rules are procedural and are made to comply with the Department of Commerce rules or the principles set forth in the "Guide on Agency Reports under Executive Order 12044" as issued by the Administrative Conference of the United States and published at 43 Fed. Reg. 36412-36422.

To carry out the policies of the Executive Branch as announced in Executive Order 12044, applicable regulations of the Department of Commerce and the policies of the Administrator, USFA, Title 45 of the Code of Federal Regulations is amended by establishing a new Part 2012, as follows:

Subpart A—Purpose, Scope, Definitions

Sec.

2012.01 Purpose.
2012.02 Scope.
2012.03 Definitions.

Subpart B—Issuing Regulations

2012.11 Advanced Notice of Proposed Rulemaking and Public Participation.
2012.12 Agency Head Oversight Before Developing New Regulations.
2012.13 Notice of Proposed Rulemaking.
2012.14 Agency Head Approval Before Issuing Final Regulations.

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2012.31 Regulatory Agenda.
2012.32 Review of Existing Regulations.

Subpart E—General Administrative Provisions

2012.41 Changes to this Rule.
2012.42 Effects of Other Laws.

AUTHORITY: Section 21(b)(5), Pub. L. 93-498, 88 Stat. 1535 (15 U.S.C. 2218(b)(5)) and Executive Order 12044, "Improving Government Regulations" (March 23, 1978).

Subpart A—Purpose, Scope, Definitions

§ 2012.01 Purpose.

(a) On March 23, 1978, the President issued Executive Order 12044, "Improving Government Regulations" which requires that regulations shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations or on state and local governments. The Executive Order requires that regulations shall be developed by a process that insures that:

(1) The need for and purposes of the regulation are clearly established;

(2) Heads of agencies and policy officials exercise effective oversight;

(3) Opportunity exists for early participation and comment by other Federal agencies, State and local governments, businesses, organizations and individual members of the public;

(4) Meaningful alternatives are considered and analyzed before the regulation is issued; and

(5) Compliance costs, paperwork and other burdens on the public are minimized.

(b) It is the policy of the United States Fire Administration, as determined by the Administrator, USFA, that USFA regulations shall be imposed only where necessary and after the maximum feasible participation. It is also the purpose of these rules to establish a continuous review of existing regulations.

§ 2012.02 Scope.

This rule applies to all rulemaking pursuant to Section 1 of the Administrative Procedure Act (5 U.S.C. 553) and to regulations which establish conditions for financial assistance. This rule does not apply to regulations issued in accordance with 5 U.S.C. 556 and 557, to matters related to agency management or personnel, and to regulations that are issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. In these cases, the head of the agency shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable or contrary to the public interest for the agency to follow the procedures of these regulations. The statement shall include the name of the policy official responsible for this determination.

§ 2012.03 Definitions.

(a) The "Act" means the Federal Fire Prevention and Control Act of 1974 [Pub. L., 93-498, 88 Stat. 1535, 15 U.S.C. 2201 *et seq.*, 278f, 42 U.S.C. 290(a)].

(b) "Agency Head" means the Administrator of the United States Fire Administration.

(c) "Agenda" means the semi-annual listing of proposed regulations and existing regulations to be reviewed.

(d) "Major economic consequences" means any regulation which:

(1) During any one year of its existence, can be expected to result in an effect (direct and indirect) on the economy of $50 million or more;

(2) During any one year of its existence, can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic regions exceeding $25 million;

(3) During any one year of its existence, can be expected to result in an increase of costs or prices of 5 percent or more for the specific acitvity, product(s) and/or service(s) affected by the proposed rule or regulation;

(4) Can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation;

(5) Can be expected to reduce employment by 5 percent or more in the activity which is the unit of focus in the regulation;

(6) For the particular market(s) affected, can be expected to result in a 1 percent or more decline in supply of materials, products or services, or a 1 percent or more increase in consumption of these materials, products or services as direct or indirect result of the regulation; or

(7) For the particular market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

(e) "Regulations" means actions of the agency which are required by the Administrative Procedure Act (5 U.S.C. 553) to be carried out pursuant to informal rulemaking and rules and regulations which establish conditions for financial assistance. Not included in this definition are regulations issued in accordance with the formal rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 556 and 557), matters related to agency management or personnel, regulations related to Federal Government procurement, regulations issued in response to an emergency or which are governed by short-term statutory or judicial deadlines. Also not included in this definition are regulations which govern the administration or management of grants (except rules which establish conditions for receipt of financial assistance), cooperative agreements, leases, and other agreements entered into between the agency and any other party.

(f) "Significant Regulations" means regulations:

(1) Which would substantially affect the expenditure of the funds for one program area which are not expended for personnel and administrative purposes;

(2) Which would substantially and nationally affect fire service, State or local government fire prevention and control planning, management, or operations;

(3) Which would substantially add to the involuntary reporting and compliance burden of USFA funding recipients;

(4) Which would substantially and nationally affect competition; *or*

(5) Which would have a substantial negative impact on the programs of any other Federal agency.

Subpart B—Issuing Regulations

§ 2012.11 Advance Notice of Proposed Rulemaking and Public Participation.

Prior to the decision to develop a regulation, an advanced notice of proposed rulemaking shall be published in the FEDERAL REGISTER.

(a) Advanced notices of proposed rulemaking may be issued by the agency head, by an Associate Administrator, by the Superintendent of the National Academy for Fire Prevention and Control or by the Chief Counsel of the agency. In any event, all notices of proposed rulemaking must be approved by the Chief Counsel.

(b) The contents of advanced notices of proposed rulemaking shall be consistent with requirements of the FEDERAL REGISTER and shall include the following:

(1) The name of the agency, the issuing official, the official assigned to direct the project out of which the notice arises, and his address and telephone number,

(2) A solicitation of written comments from the public, with a deadline of no less than 45 days following publication of the advanced notice,

(3) A description of the problem for which the notice is issued,

(4) A description of known solutions to the problem for which the notice is issued, including solutions which have been proposed or considered and solutions which may be proposed or considered, and

(5) Information available on additional publication, conferences or meetings, which are scheduled or to be scheduled on the subject of the notice.

(c) Other devices to encourage public participation shall be used to the fullest extent feasible, including: seminars, hearings, publication, and notification of those directly interested.

§ 2012.12 Agency Head Oversight Before Developing New Regulations.

After the deadline for public comment under an advanced notice of proposed rulemaking, after any further steps to encourage public participation have been taken and before proceeding to develop new regulations, the agency head shall, based upon information provided by the Chief Counsel and the appropriate Associate Administrator:

(a) Determine whether a new regulation is to be developed,

(b) For all new regulations:

(1) Review the issues to be considered.

(2) Review the alternative approaches to be explored.

(3) Establish a plan for obtaining additional public comment.

(4) Establish target dates for the completion of steps in the development of the regulations.

(5) Determine whether the regulation is a significant regulation.

(c) For new significant regulations:

(1) Determine that the proposed regulation is needed.

(2) Determine that the direct and indirect effects of the regulation have been adequately considered.

(3) Determine that alternative approaches have been considered and the least burdensome of the acceptable alternatives have been chosen.

(4) Determine that public comments have been considered and an adequate response has been prepared.

(5) Determine that State and local government officials have been consulted, when there is significant intergovernmental impact.

(6) Determine that the regulation is written in plain English and is understandable to those who must comply with it.

(7) Determine that an estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation.

(8) Determine that the name, address and telephone number of a knowledgeable agency official are included in the publication.

(9) Establish a plan for evaluating the regulation after its issuance has been developed.

(10) Determine whether a regulatory analysis is required.

§ 2012.13 Notice of Proposed Rulemaking.

(a) After approval by the agency head, new regulations shall be published in the FEDERAL REGISTER as a notice of proposed rulemaking.

(b) The notice of proposed rulemaking shall include:

(1) Information in the form required by the FEDERAL REGISTER and applicable regulations,

(2) A public comment period of no less than 60 days,

(3) A draft of the proposed regulations,

(4) For regulations that are not significant regulations, a statement that they are not significant,

(5) For regulations with major economic consequences:

(i) An explanation of the regulatory approach that has been selected or is favored,

(ii) A short description of the other alternatives considered,

(iii) A statement of how the public may obtain a copy of the draft regulatory analysis, and

(6) For significant regulations or regulations with major economic consequences which may potentially have a substantial affect on State or local governments:

(i) A statement of how advice from the government was obtained,

(ii) A summary of the nature of the comments, and

(iii) A statement that consultations occurred sufficiently early in the decisionmaking process to influence the action.

(c) All feasible methods of encouraging public participation shall, in addition, be used, including conferences and public hearings, notices of proposed regulations to publications likely to be read by those affected and notification of interested parties directly.

(d) If new significant substantive issues are raised in the comments, which were not raised in the original notice of proposed rulemaking, an additional notice of proposed rulemaking shall be published.

§ 2012.14 Agency Head Approval of Final Issuance.

The agency head shall approve all final regulations before they are formally issued for publication in the FEDERAL REGISTER.

(a) The agency head shall determine whether the final regulations are significant.

(1) If they are, he shall review the determinations and actions of § 2012.12C and shall see that they are accurate.

(2) If the determination and actions of § 2012.12C were not made, he shall make them.

(b) If the regulations have major economic consequences, the final publication shall include:

(1) A notice of a final regulatory analysis, and where a copy of it may be obtained,

(2) An explanation of the regulatory method selected, and

(3) A discussion of alternative regulatory methods and why the selected method prevailed.

(c) The contents and form of the publication of final regulations shall be as required by the FEDERAL REGISTER and the Code of Federal Regulations.

(d) For regulations which are not significant, a statement to that effect shall be a part of the final publication.

Subpart C—Regulatory Analysis of Regulations with Major Economic Consequences

§ 2012.21 Determination of Need for Regulatory Analysis.

A regulatory analysis shall be conducted by the office which originated the regulations with the concurrence of the agency head, for all regulations with major economic consequences or for any regulation at the discretion of the agency head, in draft, before the notice of proposed rulemaking and, in final form, before the final issuance of the regulation.

§ 2012.22 Contents of Regulatory Analysis.

Each regulatory analysis shall contain:

(a) A succinct statement of the problem,

(b) A description of the major alternative ways of dealing with the problem that were considered by the agency,

(c) A comparison of the economic and other consequences of each of these alternatives,

(d) A detailed explanation for choosing one alternative over the others,

(e) All information required by Executive Order 12074 of August 16, 1978 and OMB Circular A-116 which implements that Executive Order, and

(f) Where there is significant intergovernmental impact, a statement of:

(1) Efforts to consult with State and local officials,

(2) The nature of State and local government comments, and

(3) How the agency dealt with the comments.

§ 2012.23 Procedure for Regulatory Analysis.

(a) The agency head shall be responsible for applying the criteria of § 2012.21 to determine if a regulatory analysis is necessary.

(b) The agency head must approve a draft regulatory analysis before new regulations with major economic consequences are published as a notice of proposed rulemaking.

(c) The agency head must approve a final regulatory analysis for all new regulations with major economic consequences prior to issuance as a final regulation.

(d) Agency head approvals shall be based on a determination that the regulatory analysis:

(1) Satisfies the requirements of the Executive Order 12044, applicable Department of Commerce regulations, and these rules, particularly § 2012.22, and

(2) Satisfies whatever additional requirements the agency head has imposed.

(e) The agency head shall submit draft regulatory analyses to the Chief Economist, at least 15 days before publication.

Subpart D—Regulatory Agenda and Review of Existing Regulations

§ 2012.31 Regulatory Agenda.

(a) By January 15, 1979, and every six months thereafter, the agency head shall submit a regulatory agenda to the Assistant Secretary for Policy.

(b) The regulatory agenda shall include the following:

(1) A description of regulations under development or being considered for development, including, to the extent feasible:

(i) A statement of whether the regulation has been determined to be a significant regulation;

(ii) The need and the legal basis for the action being taken;

(iii) A statement on whether a regulatory analysis will be required;

(iv) The name and telephone number of a knowledgeable official;

(v) A listing of major issues likely to be considered in developing the regulation;

(vi) A tentative plan for obtaining public comment and, where applicable, for consulting with State and local goverments;

(vii) Target dates for completing steps in the development process; and

(viii) Information on the status (including changes to the information required by § 2012.31(b)(1)) of all proposed significant regulations listed in previous agendas until these regulations are published as final in the FEDERAL REGISTER.

(2) A list of existing regulations scheduled to be reviewed, during the next six months, including the name and telephone number of a knowledgeable official for each such regulation;

(3) Information on the status of existing regulations previously scheduled for review; and

(4) A list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

(c) The agency head shall notify the Assistant Secretary for Policy when regulations are developed, reviewed or significant changes have occurred in their status before the next agenda publication.

§ 2012.32 Review of Existing Regulations.

(a) The agency head shall periodically (at least semiannually) review all existing regulations to determine whether they are achieving the goals of agency policy, these regulations, and the policies of Executive Order 12044 "Improving Government Regulations" (March 23, 1978).

(b) In reviewing existing regulations, the agency head shall consider:

(1) The continued need for the regulation,

(2) The type and number of complaints or suggestions received regarding the regulation,

(3) The burdens imposed on those directly or indirectly affected by the regulations,

(4) The need to simplify or clarify language,

(5) The need to eliminate overlapping and duplicative regulations, and

(6) The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

(c) When the review in (b), above, indicates that further evaluation of a regulation is warranted, the same procedural steps outlined for the development of new regulations in §§ 2012.12, 2012.13, and 2012.14 shall be followed.

Subpart E—General Administrative Provisions

§ 2012.41 Changes to this part.

The contents and procedures established by this part do not apply to amendments, modifications, or additions to this part.

§ 2012.42 Effects of Other Law.

This part is not intended to create delay in the regulatory and administrative processes or provide new grounds for judicial review. Nothing in this part shall be considered to supersede existing statutory obligations governing rulemaking.

JOSEPH A. MORELAND,
Acting Administrator, National Fire Prevention and Control Administration.

JANUARY 4, 1979.

APPENDIX H—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

I. CHANGES IN THE EXISTING RULEMAKING PROCESS

The process for developing regulations within NOAA already incorporates many of the improvements suggested by Executive Order 12044 and Departmental Administrative Order 218-7, particularly with respect to soliciting and incorporating public participation and comment as early in the development process as practicable. For example, under the Coastal Zone Management Act, State and local governments and other interested parties affected by regulations are consulted by rulemakers at an early stage in the regulatory development process. All segments of NOAA freely use the local press to reach the public for comments involving local issues, and NOAA rulemakers liberally publish advance notice of proposed rulemakings when such a procedure is deemed justified and helpful. In addition, NOAA generally employs a comment period of at least sixty days for major regulations, and has, where desirable, utilized more than one round of comments.

On the other hand, the procedures established by Departmental Administrative Order 218-7 change the NOAA regulatory development process in significant ways. Whereas previously the Administrator has delegated substantial rulemaking authority to Assistant Administrators, he is now personally brought into the rulemaking process at a much earlier stage, at least with regard to significant regulations. Furthermore, NOAA previously has had no formalized criteria for determining the significance of regulations, or for identifying which of its existing regulations needed review. The new rulemaking procedures place much greater stress on developing alternatives to ascertain that the least burdensome alternative is chosen. We anticipate that by scrutinizing alternatives to a contemplated regulation early in the decisionmaking process, certain regulations which otherwise would have been promulgated will be found to be unnecessary or undesirable. Finally, NOAA anticipates that Departmental Administrative Order 218-7, as supplemented herein, will provide a structural framework which provides consistency and clarity to our rulemaking procedures.

II. CRITERIA FOR DETERMINING THE SIGNIFICANCE OF REGULATIONS

A contemplated regulation shall be considered "significant" if it—

(a) Creates a major impact upon the environment of economy;

(b) Affects a large number of individuals, businesses, organizations, State or local governments;

(c) Places burdensome recordkeeping and reporting requirements on the public;

(d) Has an integral relationship either to the regulations of other programs and agencies or to major Departmental policy issues; or

(e) Is the subject of controversy or significant public interest.

III. CRITERIA FOR IDENTIFYING WHICH REGULATIONS REQUIRE REGULATORY ANALYSIS

A. *Office of Fisheries*

A regulatory analysis shall be prepared for all regulations of the Office of Fisheries which:

(a) During any one year of its existence, can be expected to result in an effect (direct and indirect) on the economy of $20 million or more;

(b) During any one year of its existence, can be expected to result in an effect (direct and indirect) on either consumers, industries, levels of government, or geographic region exceeding $10 million;

(c) During any one year of its existence, can be expected to result in an increase of cost or price of five percent or more for the specific activity, product(s) and/or service(s) affected by the proposed rule or regulation;

(d) Can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation;

(e) Can be expected to reduce employment by five percent of more in the sector of the fishing industry which is the unit of focus in the regulation;

(f) For the particular market(s) affected, can be expected to result in a ten percent or more decline in supply of materials, products or services, or a ten percent or more increase in consumption of these materials, products or services as direct or indirect result of the regulation; or

(g) For the particular market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

(h) During any one year of its existence, can be expected to result in a decrease in revenues or profits of ten percent or more in the sector of the fishing industry directly affected by the regulation.

A regulatory analysis shall also be prepared when:

(i) In the judgment of the Administrator, such an analysis would benefit the decisionmaking process and/or promote more informed public participation; or

(j) The Secretary determines, in accordance with Departmental Administrative Order 218-7, that such an analysis should be performed.

B. *All Other NOAA Elements*

A regulatory analysis shall be prepared for all regulations other than those of the Office of Fisheries which:

(a) During any one year of its existence, can be expected to result in an effect (direct or indirect) on the economy of $50 million or more;

(b) During any one year of its existence, can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic region exceeding $25 million;

(c) During any one year of its existence, can be expected to result in an increase of cost or price of five percent or more for the specific activity, product(s) and/or service(s) affected by the proposed rule or regulation;

(d) Can be expected to reduce labor productivity by 1 percent or more in the item which is the unit of focus in the regulation;

(e) Can be expected to reduce employment by five percent or more in the activity which is the unit of focus in the regulation;

(f) For the particular market(s) affected, can be expected to result in a one percent or more decline in supply of materials, products or services, or a one percent or more increase in consumption of these materials, products or services as direct or indirect result of the regulation; or

(g) For the particluar market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

A regulatory analysis shall also be prepared when:

(h) In the judgment of the Administrator, such an analysis would benefit the decisionmaking process and/or promote more informed public participation; or

(i) The Secretary determines, in accordance with Departmental Administrative Order 218-7, that such an analysis should be performed.

A regulatory analysis shall be prepared in conformance with Departmental Administrative Order 218-7, section 5.04. If data is lacking or there are questions about how to determine or analyze points of interest, the problem should be noted in the draft regulatory analysis so as to help elicit the necessary information during the public comment period on the notice of proposed rulemaking.

IV. CRITERIA FOR DETERMINING THE EXISTING REGULATIONS TO BE REVIEWED

The Assistant Administrators shall be responsible for an initial selection and subsequent periodic seletions of existing regulations for review and possible revocation or revision. In selecting regulations to be reviewed and establishing priorities, the responsible Assistant Administrators shall select those regulations—

(1) For which there is no continued need;

(2) Which have been the subject of a number of complaints or suggestions;

(3) Which impose heavy burdens on those directly or indirectly affected by the regulation;

(4) Which need to be clarified or simplified;

(5) Which overlap and duplicate other regulations; or

(6) Which have not undergone evaluation for a period of four or more years.

An existing regulation selected for review shall remain in full effect until such time as it may be revised or revoked.

V. EXISTING REGULATIONS SELECTED FOR INITIAL REVIEW

The following existing regulations have been selected for initial review:

Regulation	Reasons for Selection	Contact Person
15 CFR Part 931—Coastal Energy Impact Program.	(1) Has been the subject of complaints, comments, and criticisms. (2) Need to clarify and simplify. (3) Anticipated change in statutory language by Outer Continental Shelf Lands Act Amendments.	James Robey Tel: 634-4249, Office of Coastal Zone Management, 2001 Wisconsin Ave. NW., Room 372, Page Bldg. 1, Washington, D.C.
50 CFR 620—FCMA Citations	NOAA effort to simplify and consolidate our civil penalty procedures under the six statutes authorizing such penalties.	Stan Pitkin Tel: (206) 399-0329, Building 25, Room 23, 7500 Sand Point Way NE, Seattle, Washington.
50 CFR 621—FCMA Civil Procedures	do	Do.
50 CFR 218—Subpart C—Marine Mammals—Civil Procedures.	do	Do.
50 CFR 219—Marine Mammals—Seizure and Forfeiture Penalties.	do	Do.
50 CFR 216—Subpart F—Taking and importing of Marine Mammals.	do	Do.
50 CFR 285.6—Atlantic tuna fisheries—Civil Procedures.	do	Do.
50 CFR 246—Transportation of wildlife—Civil penalties under Lacey Act.	do	Do.
15 CFR 922—Subpart D—Marine Sanctuaries—Enforcement.	do	Do.
15 CFR 903—Public Information—Implementation of the Freedom of Information Act.	Length of time until regulation issued or evaluated.	Jay Johnson Tel: (703) 443-8066, Room 627, 6100 Executive Blvd., Rockville, Md. 20852.
50 CFR Part 210—Renegotiated INPFC.	Authorizing legislation underlying international agreement has been changed or eliminataed.	Carmen J. Blondin Tel: (202) 634-7267, Asst. Director for Intl. Fisheries, Room 240, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 240/241—Withdrawal from ICNAF	do	Do.
Part 295—Repeal of the Bartlett Act	do	William P. Allen Tel: (202) 634-7265, Special Agent Enforcement Division, Room 361, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 201—Field Organization of the National Marine Fisheries Service.	Length of time since regulation issued or evaluated.	Robert K. Crowell Tel: (202) 634-7405, Executive Officer, Room 428A, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 215—Pribilof Islands Administration of Marine Mammals.	do	Donald R. Johnson Tel: (206) 442-7575, Regional Director, Northwest Region, NMFS, 1700 West Ave., North, Seattle, Wash. 98109.
Part 216—Taking and Importing Marine Mammals (except § 216.24).	do	William F. Jensen Tel: (202) 634-7461, Marine Mammal Division, Room 410B, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.

Regulation	Reasons for Selection	Contact Person
Parts 217 thru 225—Endangered Species Act and Fish and Wildlife Act—Implementation.	.....do.....	Robert B. Gorrell Tel: (202) 634-7461, Endangered Species Specialist, Room 406A, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 230—Whaling Provisions (except native subsistence)—Enforcement of Whaling Convention Act.	.....do.....	Richard B. Roe Tel: (202) 634-7461, Acting Chief, Marine Mammal & Endangered Species Division, Room 410C, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 245—Offshore Shrimp Fisheries Act—Implementation.	.....do.....	William H. Stevenson Tel: (813) 893-3141, Regional Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, Fla. 33702.
Part 246—Transportation of Wildlife.....	.....do.....	Morris M. Pallozzi Tel: (202) 634-7265, Chief, Enforcement Div., Room 361, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 245 thru 259—Subchapter F—Aid to Fisheries.	.....do.....	Michael L. Grable Tel: (202) 634-7496, Chief, Financial Assistantce Division, Room 312, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 260 thru 279—Subchapter G—Processed Fishery Products.	.....do.....	James R. Brooker Tel: (202) 634-7458, Food Technologist Seafood Quality & Inspection Division, Room 380, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 281—Restrictions on Tuna Imports—Inter-American Tropical Tuna Convention.	.....do.....	Carmen J. Blondin Tel: (202) 634-7267, Asst. Director for Intl. Fisheries, Room 240, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 290—Fishery Marketing Cooperatives Restraint of Trade.	.....do.....	Joseph W. Slavin Tel: (202) 634-7261, Asst. Director for Fisheries Development, Room 300, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 301—Pacific Halibut Fisheries and the International Pacific Halibut Commission.	.....do.....	William H. MacKenzie Tel: (202) 634-7257, Foreign Affairs Officer, Room 249, Page Bldg. 2, 3300 Whitehaven St., NW., Washington, D.C. 20235.
Part 401—Anadromous Fisheries Conservation, Development and Enhancement under the Anadromous Fisheries Conservation Act.	.....do.....	Paul R. Nichols, Tel: (202) 634-7434, Fishery Administrator, Room 340, 3300 Whitehaven St., NW., Washington, D.C. 20235.

VI. DETERMINATION OF SIGNIFICANCE AND DETERMINATION OF THE NEED FOR REGULATORY ANALSYIS

The following officials shall determine initially whether a regulation is significant and whether that regulation requires a regulatory analysis:

(1) The Assistant Administrator for Fisheries

(2) The Assistant Administrator for Coastal Zone Management

(3) The Assistant Administrator for Adminstration

(4) The Assistant Administrator for Research and Development

(5) The Assistant Administrator for Oceanic and Atmospheric Services

These initial determinations by an Assistant Administrator shall be reviewed and approved by the Administrator.

VII. PREPARATION OF THE REGULATORY AGENDA

On January 15 and July 15 of each year, the Administrator shall submit the NOAA regulatory agenda to the Assistant Secretary for Policy of the Department of Commerce in order to enable examination and review of the agenda by the Office of the Secretary. Each regulatory agenda shall include:

a. a description of each regulation covered by DAO 218-7 which is under development or being considered for development, including, to the extent feasible:

(1) a statement whether the regulation has been determined to be a significant regulation;

(2) the need and the legal basis for the action being taken;

(3) a statement whether or not a regulatory analysis will be required;

(4) the name and telephone number of a knowledgeable official;

(5) a listing of major issues likely to be considered in developing the regulation;

(6) a tentative plan for obtaining public comment, and where applicable, for consulting with State and local governments;

(7) proposed dates for completing steps in the development process; and

(8) information on the status of proposed significant regulations listed in previous agendas which are not yet published as final in the FEDERAL REGISTER.

b. a list of each existing regulation scheduled to be reviewed, including the name and telephone number of a knowledgeable official for each regulation;

c. information on the status of existing regulations listed for review in previous agendas, and

d. a list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

If there are no plans for developing or reviewing regulation, the Administrator will so report to the Assistant Secretary for Policy.

The Administrator, inorder to prevent undue delay, shall notify the Assistant Secretary for Policy whenever it becomes apparent that:

a. development or review of significant regulations not listed in the previous Department Agenda will commence before publication of the next Department Agenda, or

b. development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

In such an event, the Administrator shall publish a supplement to the Department of Commerce agenda.

The information contained in any agenda is only that which is reasonably expected to be known at the time of its preparation.

VIII. COMMENTS

Any comment on this report should be directed in writing to: Michael A. Levitt, Office of General Counsel, National Oceanic and Atmospheric Administration, Washington, D.C. 20230 (Tel: 377-4080).

APPENDIX I—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

I. INTRODUCTION

The National Telecommunications and Information Administration was established effective March 26, 1978. It absorbed the functions of the Office of Telecommunications Policy in the Executive Office of the President (with exceptions explained in Executive Order 12046, "Relating to the Transfer of Telecommunications Functions") and the Office of Telecommunication in the Department of Commerce.

NTIA does not have, nor did its predecessor offices have, any established procedures for issuing regulations covered by Executive Order 12044 and the Department's implementing administrative order, DAO 218-7. NTIA does have regulations governing the management of Federal agency use of radio frequencies, and procedures for issuing them. Because these regulations are related to the management of Federal agencies, Executive Order 12044 does not apply to them (see Section 6(b)(3)). Thus, NTIA has no regulations covered by the order.

NTIA establishes herein, for any future regulations covered by Executive Order 12044 and DAO 218-7, the following: (1) a process for developing them; (2) criteria for deciding which of them are significant under Section 2 of the order; and (3) criteria for identifying which of them require regulatory analysis under Section 3 of the order. Criteria for selecting existing regulations to be reviewed under Section 4 of the order will be established concurrently with NTIA's first issuance of regulations covered by the order.

The process and criteria adopted herein are substantially similar to those published in draft form at 43 Fed. Reg. 23190-13191 (1978), upon which no comments were received.

II. PROCESS FOR DEVELOPING REGULATIONS

The NTIA process requires the preparation and approval of an issue paper before the development of *any* regulation(s) covered by Executive Order 12044. The issue paper must undergo staff review and be submitted for approval to the Assistant Secretary for Communications and Information, who is also the Administrator of NTIA (hereinafter called the Administrator). The issue paper must cover (1) the need, purpose and alternatives required by Section 1 of the Executive order; (2) whether the regulation is significant under Section 2(e) of the order and NTIA criteria (Part III) of this draft report); (3) whether a regulatory analysis is required under Section 3 of the order and NTIA criteria (Part IV of this draft report); and (4) plans for compliance with all applicable requirements of the order and the Department's Administrative Orders. One of the plans must show exactly how the opportunity will be provided for early participation and comment by other Federal agencies, State and local governments, businesses, organizations, and individuals, as required by Section 1(c) of the order. In preparing this plan, consideration will be given to (1) publishing an advance notice of proposed rulemaking, (2) holding open conferences or public hearings, (3) sending notices of proposed regulations to publications likely to be read by those affected; and (4) notifying interested parties directly, and the plan will include the method(s) which are most appropriate to the regulation(s) proposed to be developed.

As NTIA begins to develop *any* regulation(s), the information from the approved issue paper, which is necessary to public understanding of the issues and process to be followed, will be made public by following the issue paper's plan for providing an early opportunity for participation and comment. Notice of development of a *significant* regulation will also be published in the Department's Semiannual Agenda of Significant Regulations, or a supplement to the agenda.

Development will proceed in compliance with the order. After appropriate analysis and consideration of public comments, a Notice of Proposed Rulemaking will be prepared for staff review and approval of the Administrator or Secretary (or Deputy Administrator if the regulation is not significant). After publication of the notice in the FEDERAL REGISTER and circulation to the appropriate media as set forth in the issue paper's plan for providing an early opportunity for participation and comment, the resulting comments will be analyzed. A notice of the final regulation (which includes a plan for subsequent evaluation) will be prepared for staff review and final approval of the officer who approved the notice of Proposed Rulemaking. Upon approval, the notice will be appropriately published and put into effect.

III. CRITERIA FOR IDENTIFYING SIGNIFICANT REGULATIONS

As noted above, NTIA has not yet issued any regulations of that type covered by the Executive order. Thus, except for the Department's minimum criteria for requiring regulatory analysis, NTIA has nothing with which to compare our proposed specific criteria, nor to judge their reasonableness.

We have prepared two economic criteria, which are based upon the Department's minimum standards. In all other respects, NTIA must use general criteria until the opportunity occurs to develop specific regulations. The following have been prepared for the area of telecommunications and information in general, and are intended to serve as an interim check list to aid in deciding whether a proposed regulation would have a significant effect on the *status quo*. The criteria are as follows:

Criteria for Identifying Significant Regulations. A regulation shall be considered significant if it appears at the time of evaluation that:

(a) During any one year of its existence, the regulation can be expected to result in an effect (direct or indirect) on the economy of $30 million or more:

(b) During any one year of its existence, the regulation can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic regions exceeding $15 million;

(c) It will have some other economic impact which is large enough to require regulatory analysis (Part IV);

(d) It will have a substantial effect upon the availability of the radio spectrum resource, other telecommunication resources, information resources, or upon the use of any of these resources;

(e) It will have a substantial effect upon a telecommunications or information equipment or service industry, or the structure of one or more such

industries, and is likely to be perceived as important to any such industry;

(f) It will have a substantial effect upon users of telecommunications or information resources, equipment or services (for example, by significantly limiting or expanding users' ability or opportunity to use them, or the range of choices available to users), or upon non-users, and is likely to be perceived as important to users or non-users; or

(g) It will require a substantial change in the existing relationships among suppliers and users of telecommunications and information goods and services, or upon their relationships with non-users.

In applying these criteria, the following factors, at least, shall be considered:

(1) The type and number of individuals, businesses, organizations, State and local governments affected;

(2) The compliance and reporting requirements likely to be required or changed;

(3) The direct and indirect effects of the regulation including the effect on competition;

(4) The relationship of the regulation to those of other programs and agencies;

(5) The relationship of the regulation to major Departmental policy issues;

(6) The degree of controversy over, or public interest in, the regulation; and

(7) The probable social impact of the regulation.

IV. CRITERIA FOR DETERMINING WHETHER REGULATORY ANALYSIS IS REQUIRED

For the reasons previously explained, NTIA has no specific basis for deciding whether its criteria for determining whether regulatory analysis is required should be more rigorous than, or otherwise different from, the minimum criteria for the Department set for in Section 5 of DAO 218-7. Thus, until NTIA does have a specific basis for issuing, and does issue, new criteria, a regulatory analysis must be prepared for all regulations which meet or exceed any of the criteria set forth in subsections .02 and .03 of section 5 of the Department Administrative Order.

V. EXISTING REGULATIONS

As was explained in the introduction to this report, NTIA has no regulations covered by Executive Order 12044. Criteria for selecting existing regulations to be reviewed under Section 4 of the order will be established concurrently with NTIA's first issuance of regulations covered by the order.

APPENDIX J—OFFICE OF MINORITY BUSINESS ENTERPRISE

The Office of Minority Business Enterprise (OMBE) coordinates Federal activities designed to assist minority business, stimulates private sector efforts in support of minority enterprise, and provides financial assistance to private and public organizations that provide management and technical assistance to minority businessmen, as authorized by Executive Order 11625.

The following report is provided as required by Section 5 of Executive Order 12044, Improving Government Regulations:

1. This agency has never issued regulations, and prior to the issuance of Executive Order 12044 no process for developing regulations had been established. Since then the Department of Commerce, to implement the order, has developed Department Administrative Order 218-7, which prescribes procedures for issuing departmental regulations. OMBE has adopted the identical process for issuing its regulations, except as provided below.

2. The Director has determined that all regulations of the agency will be considered significant.

3. If the Director determines that a regulation has potential major economic consequences, a regulatory analysis must be performed. The criteria to be used in determining when a regulation has major economic consequences, and what such an analysis must include, are found in Section 5 of Department Administrative Order 218-7. If the Director determines a regulation has no potential major economic consequences, a regulatory analysis need not be done, unless in the Director's judgment such an analysis would be beneficial.

4. Existing regulations will be reviewed not less frequently than every four years. The procedures to be followed in any review of existing regulations are described in Section 6.04 of Department Administrative Order 218-7. Since this agency has no existing regulations, an initial review cannot be done. Criteria for reviewing existing regulations will be developed when OMBE begins to issue regulations.

APPENDIX K—OFFICE OF REGIONAL DEVELOPMENT

DESCRIPTION OF PROCESS

The Special Assistant to the Secretary for Regional Development carries out the duties of the Secretary of Commerce under Title V and related provisions of the Public Works and Economic Development Act of 1965, as amended, which establishes the Regional Action Planning Commission program. The Special Assistant heads the Office of Regional Development, which assists him/her in meeting the duties under Title V. These tasks include the development of guidelines for the use of Title V funds and liaison with the Regional Commissions and with the Federal Cochairmen to the Commissions. By delegation of authority from the Secretary (DOO 15-5 dated), the Special Assistant may adopt appropriate regulations applicable to Commission activities in order to carry out the responsibility of administering Title V.

The Commissions are partnerships between the Federal Government and the States which comprise the economic development regions designated by the Secretary pursuant to 42 U.S.C. 3181. Each Commission prepares a long-range economic development plan for its Region and undertakes the funding of economic development planning activities, studies and demonstration projects and the supplemental funding of other Federal grant-in-aid programs.

The Department's regulations on Title V apply to the Regional Commissions and only indirectly affect the public. They generally relate to the administration and management of the program by the Commissions and contain limitations on the use of funds. No regulation controls how businesses or consumers conduct their economic activities, nor do any regulations direct a Commission to make expenditures in any particular program or geographic area within the applicable Region. By the terms of the legislation creating the program, each Commission has a great deal of discretion in choosing specific activities and projects to be assisted.

Because the program is limited in scope, the Special Assistant's staff is small and the regulations have no major impact on the public, there are no formal procedures for developing regulations. However, the process of development always has and will continue to have the following elements:

(a) Examination of the need for a regulation or guideline as the means to resolve a problem, to implement legislation, executive orders or judicial decisions, or to respond to public petitions or requests.

(b) Consultation with the Federal Cochairman to the Commissions and Commission principals in order to draft, review, and re-draft any proposals.

(c) Keeping the members of the Commissions informed of major developments.

(d) Publication of any proposed rule in the FEDERAL REGISTER and solicitation of comments and suggestions from the public.

(e) Consideration of comments and re-drafting of proposals as needed.

(f) Approval by the Special Assistant and publication of final regulations in the FEDERAL REGISTER.

In response to the President's Executive Order and Department of Commerce Administrative Order (DAO) 218-7, the Special Assistant and the Office of Regional Development will modify these regulation development procedures in order to—

(1) Apply the criteria and procedures specified in the Order and in DAO 218-7 for different stages of the development process;

(2) Identify significant regulations early in the development process in order to implement requirements applicable to significant regulations, including developing a tentative plan for obtaining public comments which will provide for early and meaningful participation;

(3) Prepare a regulatory analysis for significant regulations in order to aid the Special Assistant in the decision-making process;

(4) Prepare an agency regulatory agenda for inclusion in the Department agenda;

(5) Estimate new reporting burdens and record-keeping requirements;

(6) Insure that alternatives to the regulatory approach are thoroughly considered;

(7) Submit proposals for legal review;

(8) Establish target dates for the completion of steps;

(9) Check more carefully the language and format of the rules in order to achieve understandability ("plain English"); and

(10) Develop a plan for future evaluation of the regulations.

The Office of Regional Development will attempt to involve all affected parties in the development process and plans to institute intergovernmental consultation procedures for significant regulations as required in the President's memorandum of March 23, 1978, to the heads of executive departments and agencies (concerning consultation with State and local Governments).

CRITERIA FOR DEFINING SIGNIFICANT REGULATIONS

I. The Special Assistant establishes the following criteria for determining which regulations are significant, taking into account the criteria of Executive Order 12044 and DAO 218-7:

(a) Any program regulation developed to implement a future Congressional authorization for a new Regional Commission program area.

(b) Any change in program regulations or any new regulations which will require Regional Commissions—

(1) To make major shifts of funds or major reprogrammings of funds—

(i) For the initiation of new programs or major new policies, or

(ii) For substantially increased financial activity in an existing program area or the substantial augmentation or abatement of an existing program;

(2) To undertake a major redirection of a program activity.

In addition, the Special Assistant may designate any regulation as "significant", although it may not meet the above criteria.

II. The Deputy, Office of Regional Development, shall make the initial determination of what is a significant regulation at the time the agency regulatory agenda is prepared. The Special Assistant will review this determination when the agenda is approved for submission to the Assistant Secretary for Policy or when a change is made in the agenda.

PERFORMANCE OF REGULATORY ANALYSIS

The Special Assistant will require the development and use of a regulatory analysis in accordance with DAO 218-7 for each significant regulation as defined above. In addition, the Special Assistant may require the development of a regulatory analysis for any non-significant regulation. This decision will be made at the time the agency regulatory agenda is approved.

REVIEW OF EXISTING REGULATIONS

The Special Assistant and the Office of Regional Development will review all of the Title V regulations in accordance with the policies and procedures of Executive Order 12044. The initial review over the next six months will concentrate on the following Parts of Chapter V, Title 13, Code of Federal Regulations:

—530: Review of Commission Long-Range Economic Plans
—540: Grants for Administrative Expenses of Commissions
550: Technical and Planning Assistance by the Secretary and the Commissions
—560: Supplemental Grants to Other Federal Grant-in-Aid Programs
580: Coordination under the Title V Program.

Within one year this Office will have reviewed all of the regulations in 13 CFR, Chapter V—the remainder dealing with the designation of regions, regional boundaries, commission administration, specific commission demonstration project authorities, and interagency evaluation and coordination. During the next year, each time the review of a set of regulations is completed, this Office will establish a schedule for subsequent review, at least as often as every two years.

CONTACT OFFICIAL

Ms. Frances Pappas, Program Development Officer Office of Regional Development Department of Commerce Room 2092, Main Commerce Building Washington, D.C. 20230 202/377-5174.

APPENDIX L—OFFICE OF SCIENCE AND TECHNOLOGY REVISED REPORT REQUIRED BY SECTION 5(b), E.O. 12044

This report consists of a list of regulations selected for intensive review, the name and official address of the person to be contacted for further information on this report, and the full text of a directive from the Assistant Secretary for Science and Technology implementing Executive Order 12044 within the Office of Science and Technology.

LIST OF EXISTING REGULATIONS SELECTED FOR INTENSIVE REVIEW

The regulations to be reviewed during the year following issuance of this report are as follows:

15 CFR Part 240—dealing with Barrels and Other Containers for Lime;

15 CFR Part 241—dealing with Barrels for Fruits, Vegetables and Other Dry Commodities, and for Cranberries;

37 CFR sections 1.15, 1.65, 1.107, 1.244, 1.344 and 1.345, dealing with patents; and

37 CFR sections 2.27, 2.64-2.65, 2.91-2.136, 2.141-2.142, 2.146-2.148, 2.165, 2.173 and 2.184, dealing with trademarks.

CONTACT PERSON FOR THIS REPORT

The person to be contacted for information concerning this report is: Robert B. Ellert, Assistant General Counsel for Science and Technology Room 3859, U.S. Department of Commerce, 14th & E Streets NW., Washington, D.C. 20230 Telephone 202-377-5394.

DIRECTIVE IMPLEMENTING EXECUTIVE ORDER 12044

The full text of the Assistant Secretary's directive implementing Executive Order 12044 in the Office of Science and Technology is as follows:

DIRECTIVE TO HEADS OF ORGANIZATIONS WITHIN THE OFFICE OF SCIENCE AND TECHNOLOGY; PROCEDURES FOR ISSUING REGULATIONS

Section 1. *Purpose.*

The purpose of this directive is to implement Executive Order 12044 of March 23, 1978, Improving Government Regulations, DAO 218-7, Issuing Department Regulations, and section 6 of DAO 205-11, on use of plain English, for organizations within the Office of Science and Technology.

Section 2. *Scope.*

.01 Except as provided in paragraph .02 of this section, this directive applies to all regulations issued by organization under the jurisdiction of the Assistant Secretary for Science and Technology (hereinafter, the Assistant Secretary), published in the FEDERAL REGISTER.

.02 Unless specifically noted to the contrary, this directive *does not* apply to:

a. Regulations issued in accordance with the formal rulemaking provisions

of the Administrative Procedure Act (5 U.S.C. 556, 557);

b. Regulations issued with respect to a military or foreign affairs function of the United States;

c. Matters related to agency management or personnel, including matters dealing with providing the public with an agency's services;

d. Regulations related to Federal Government procurement;

e. Regulations that are issued in response to an emergency or which are governed by short-term (less than 91 days) statutory judicial deadlines; or

f. Procedures and their implementing specifications governing voluntary compliance programs and standards wherein parties in the private sector may, on their own volition, choose whether or not to participate and may withdraw at any time.

Section 3. *Definitions.*

.01 *Agency head.* As used in this directive, "agency head" means the Director, National Bureau of Standards, Commissioner, Patent and Trademark Office, the Director, National Technical Information Service, the Assistant Secretary for other organizations within the office of Science and Technology, and persons serving in those positions in an acting capacity. The functions of the agency head may not be delegated.

.02 *Regulation(s).* As used in this directive, "regulation(s)" means both rules and regulations issued by components of the Office of Science and Technology, including those which establish conditions for financial assistance. Closely related sets of regulations shall be considered together.

Section 4. *Significant Regulations.*

.01 Any regulation issued within the Office of Science and Technology shall be deemed significant for the purpose of this directive.

.02 Before proceeding to develop significant new regulations the agency head shall have reviewed the items in subsection .03 of this section and, as appropriate, any other relevant issues. Furthermore, the agency head shall have reviewed the alternative approaches to be explored; whether a regulatory analysis, as provided for in section 5, is required; a tentative plan for obtaining public comment; and, where applicable, a tentative plan for consultation with state and local governments; and the agency head shall have established a target date for completion of steps in the development of the regulations. All regulations shall be reviewed for legal sufficiency by the chief legal officer of the agency and the Assistant General Counsel for Science and Technology.

.03 Agency heads shall approve significant regulations before they are published in the FEDERAL REGISTER in final form. Before approving significant regulations, these officials should be satisfied that:

a. The regulation is needed;

b. The direct and indirect effects of the regulation have been adequately considered;

c. Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen;

d. Public comments (including those from state or local governments) have been considered and an adequate response has been prepared;

e. The regulation is written in plain English so that it is understandable to those who must comply with it;

f. An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation;

g. The name, title, address and telephone number of a knowledgeable official is included in the publication; and

h. A plan for evaluating the regulation after its issuance has been developed.

.04 Agency heads may, except where otherwise required by law, in their discretion, refer regulations which they believe to be of particular importance to the Assistant Secretary or through the Assistant Secretary to the Secretary for approval.

Section 5. *Regulatory Analysis.*

.01 A regulatory analysis shall be prepared for each significant regulation determined to have potential major economic consequences for the general economy, for individual industries, goegraphic regions, levels of government, or specific elements of the population.

.02 Since a regulatory analysis is designed to aid decisionmakers in promulgating effective regulations, the criteria established should consider the characteristics of their specific programs. However, at a minimum, a regulatory analysis shall be prepared for all regulations which:

a. During any one year of its existence can be expected to result in an effect (direct and indirect) on the economy of $50 million or more;

b. During any one year of its existence, can be expected to result in an effect (direct or indirect) on either consumers, industries, levels of government, or geographic region exceeding $25 million;

c. During any one year of its existence, can be expected to result in an increase of cost or price of five percent or more for the specific activity, product(s) and/or service(s) affected by the proposed rule or regulation;

d. Can be expected to reduce labor productivity by one percent or more in the item which is the unit of focus in the regulation;

e. Can be expected to reduce employment by five percent or more in the activity which is the unit of focus in the regulation;

f. For the particular market(s) affected, can be expected to result in a one percent or more decline in supply of materials (including energy), products or services, or a one percent or more increase in consumption of these materials (including energy), products or services as direct or indirect result of the regulation; or

g. For the particular market(s) affected, can be expected to result in a decline in competition as a result of the regulation. Factors to be considered include limitation of market entry, restraint of market information, or other restrictive factors that impede the functioning of the market system.

.03 A regulatory analysis shall also be prepared for any regulation, when:

a. In judgment of the agency head or the Assistant Secretary such an analysis would improve the decisionmaking; or

b. The Secretary determines, in accordance with DAO 218-7, that such an analysis should be performed.

Section 6. *Review of Existing Regulations.*

.01 Existing regulations issued within the Office of Science and Technology shall be reviewed annually to determine whether they are achieving the policy goals of Executive Order 12044.

.02 Procedures for review of existing regulations shall, at a minimum, contain the following procedural steps:

a. Inclusion of notice of the review in the semi-annual agenda as required by section 7.02 of this directive, or as appropriate, supplementing the Department Agenda as called for in section 7.03, and notification to the assistant Secretary as called for in section 7.04 of this directive;

b. Agency head oversight as called for in section 4.02, before proceeding with the review;

c. A determination of whether the regulation meets the criteria established for determining if a regulatory analysis must be performed, and, if so, preparing a regulatory analysis in accordance with the procedures established under DAO 218-7;

d. If the review results in a determination that a regulation should be amended or rewritten, compliance with public notice and participation requirements of this directive and DAO 201-9, concerning consultation with state and local governments; and agency head approval of significant regulations before final publication, as set forth in section 4.03 of this directive; and

e. In reviewing existing regulations under this section the agency head shall consider the following:

1. The continued need for the regulation;

2. The type and number of complaints or suggestions received;

3. The burdens imposed on those directly or indirectly affected by the regulation;

4. The need to simplify or clarify language;

5. The need to eliminate overlapping and duplicative regulations; and

6. The degree to which technology, economic conditions or other factors have changed in the area affected by the regulation.

Section 7. *Regulatory Agenda.*

.01 No later than January 8, 1979, and every six months therafter, each agency head shall submit its regulatory agenda to the Assistant Secretary. By January 15, 1979, and every six months thereafter, the Assistant Secretary shall submit the regulatory agenda for the Office of Science and Technology to the Assistant Secretary for Policy.

.02 Each regulatory agenda shall include the following:

a. A description of regulations under development or being considered for development, including, to the extent feasible:

1. The need and legal basis for the action being taken;

2. A statement as to whether or not a regulatory analysis will be required;

3. The name, title, and telephone number of knowledgeable official;

4. A listing of major issues to be considered in developing the regulation;

5. A tentative plan for obtaining public comment and, where applicable, a tentative plan for consulting with state and local governments;

6. Proposed dates for completing steps in the development process; and

7. Information on the status (including changes to the information required by this subsection .02a.) of all proposed regulations listed in previous agendas until these regulations are pulished as final in the FEDERAL REGISTER.

b. A list of existing regulations scheduled to be reviewed within the next 6 months, including the name, title, and telephone number of a knowledgeable official for each such regulation;

c. Information on the status of existing regulations previously scheduled for review; and

d. A list, including the date and FEDERAL REGISTER citation, of all final regulations published in the FEDERAL REGISTER during the previous six months.

.03 Agency heads shall publish supplements to the Department Agenda whenever it becomes apparent that development or review of significant regulations not listed in the previous Department Agenda will commence before publication of the next Department Agenda or development or review of a regulation listed in the previous Department Agenda will not commence as scheduled.

.04 Agency heads shall immediately notify the Assistant Secretary whenever it becomes aparent that development or review of regulations not listed in their previous agenda will commence before publication of ,the next Department Agenda, or significant changes have occurred in the status of items listed in their previous agency agenda.

Section 8 *Secretarial Approval.*

Whenever, under DAO 218-7, Issuing Departmental Regulations, Secretarial approval of a regulation is required, the agency head shall no later than 25 days prior to the proposed date for publication in the FEDERAL REGISTER in final form, submit the regulation to the Assistant Secretary for approval and transmittal to the Secretary.

Section 9. *Public Participation.*

.01 The public shall be given an early and meaningful opportunity to participate in development of all the regulations.

.02 Agency heads shall, as appropriate, consider a variety of ways to provide this opportunity, including, but not limited to:

a. Publishing an advance notice of proposed rulemaking;

b. Holding open conferences or public hearings;

c. Sending notices of proposed regulations to publications likely to be read by those affected;

d. Notifying interested parties directly; and

e. Providing for more than one cycle of public comments.

.03 If none of the methods listed in paragraph .02 of this section are used in a particular rulemaking covered by this directive, the preamble accompanying the final regulation shall briefly explain the reasons and indicate what other steps were taken to assure adequate opportunity for public participation.

.04 The public shall be given at least 60 days to comment on proposed signifcant regulations. Exceptions to this requirement may be granted only by the agency head and only in those few instances where it is determined that it is not possible to comply. When an exception is made the preamble to the proposed regulation shall include a brief statement of the reasons for the shorter time period.

.05 Regulations exempted by section 2.02(e) of this directive (emergencies or short-term deadlines) shall, when published in the FEDERAL REGISTER, be accompanied by a statement of the reasons why it is impracticable or contrary to the public interest to follow the procedures of this directive. This statement shall include the name and title of the policy official responsible for the determination.

.06 Regulations exempted by section 2.02(b) (military or foreign affairs functions) or (e) of this directive shall be issued in interim form only. FEDERAL REGISTER publication of these regulations will provide for a public comment period of at least 60 days and republication in final form after public comments have been considered and appropriate modifications, if any, made.

Section 10. *Plain English.*

Agency heads are responsible for compliance with section 6 of the DAO 205-11, subject to the following conditions:

a. All lists and notices required by section 6.02 shall be transmitted to the Director, OOMS, through the Assistant Secretary.

b. Exceptions under section 6.04 must be coordinated with the Assistant General Counsel for Science and Technology.

APPENDIX M—UNITED STATES TRAVEL SERVICE

Background: The United States Travel Service (USTS) is responsible for promoting international travel to the United States, for encouraging Americans to travel within their own country, and for reviewing applications of U.S. cities interested in hosting international expositions. The regulatory functions of the agency are limited, currently consisting only of (1) procedural regulations governing applications of states, cities and nonprofit organizations for matching grants to promote international tourism to the United States (15 C.F.R. Part 1200); and (2) procedural regulations setting forth the criteria for applications for Federal recognition of international expositions (15 C.F.R. Part 1202).

USTS does not have an established procedure for developing new regulations. As a general rule, proposed regulations are published, and interested parties are given 30 days in which to comment. Final regulations, when issued, take any comments received into account.

Regulatory agenda: By January 15, 1979, and every six months thereafter, the Assistant Secretary for Tourism will submit a regulatory agenda to the Assistant Secretary for Policy. This agenda will include a description of regulations under development or being considered for development during the next six months. To the extent possible, it will include statements concerning whether the regulation is a significant regulation; the

need and legal basis for the action being taken; and whether a regulatory analysis is required. It will also provide the name and telephone number of a knowledgeable official; a listing of major issues likely to be considered in developing the regulation; a tentative plan for obtaining public comment (including consultation with State and local governments, where appropriate); proposed dates for completion of the steps in the development process; and information on the status of any proposed regulations previously listed. Finally, the regulatory agenda will include a list of existing regulations scheduled to be reviewed, including the name and telephone number of a knowledgeable official; information on the status of existing regulations previously scheduled for review; and a list of any final regulations published in the FEDERAL REGISTER during the previous six months, including the date of publication and FEDERAL REGISTER citation.

Procedure for developing regulations: USTS will comply with the procedures set forth in DAO 218-7. Thus, prior to issuing any new or amended regulation, the Assistant Secretary for Tourism will ensure that the regulation is needed and is relevant to the mission of USTS; it is written in plain English and understandable to those who must comply; alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen; notice of any proposed regulation is sent to publications likely to be read by those affected; public comments are considered and an adequate response prepared prior to issuing any final regulation; and the name, address, and telephone number of a knowledgeable official is included.

Significant Regulations: In developing new regulations, any regulation which meets one or more of the following criteria will be deemed to be a significant regulation: (1) a regulation which has a substantial impact on the travel industry; (2) a regulation which has a substantial impact on the balance of payments; or (3) a regulation which is expected to generate substantial controversy or public interest. The existing regulations are not deemed to be significant, and it is not anticipated, given the present statutory framework of the agency, that any new regulations would meet the criteria for significant regulations.

Regulatory analysis: Should a regulation be determined to be significant, USTS will apply the minimum criteria set forth in Section 5 of DAO 218-7 to determine whether regulatory analysis is required.

Review of existing regulations: Every regulation issued by USTS will be reviewed every two years, or more frequently if the Assistant Secretary for Tourism so requires.

Regulations for initial review: USTS is currently reviewing its regulation governing applications for matching grants (15 C.F.R. Part 1200). A review of the regulation governing applications for Federal recognition of international expositions will be undertaken during CY 1979 (15 CFR Part 1202).

Contact point: Comments should be directed to: Lee J. Wells, Director, Office of Administration, United States Travel Service, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, Phone: Area Code (202) 377-4096.

[FR Doc. 79-669 Filed 1-8-79; 8:45 am]

federal register

TUESDAY, JANUARY 9, 1979
PART III



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

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SPECIAL SUPPLEMENTAL FOOD PROGRAMS FOR WOMEN, INFANTS AND CHILDREN

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Part 246]

SPECIAL SUPPLEMENTAL FOOD PROGRAMS FOR WOMEN, INFANTS AND CHILDREN

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice proposes various changes in requirements for the Special Supplemental Food Program for Women, Infants and Children (WIC Program), in order to comply with Section 3 of Pub. L. 95-627 which amends Section 17 of the Child Nutrition Act of 1966 and extends the authorization for the WIC Program through FY 1982. The major proposals include: standards for WIC Program administration; requirements for nutrition education; sanctions for failure to comply with regulatory requirements; and income eligibility limit for participants; and an outreach requirement. The income eligibility requirement must be phased in beginning on July 1, 1979; the staffing standards are proposed to become effective October 1, 1979; the State Plan requirements must be met in the FY 1980 State Plan; and all other requirements are proposed to become effective 90 days after final publication. The proposed revisions and additions to current WIC Program regulations will increase the efficiency and effectiveness with which the Program is administered and will result in improved services to needy individuals applying for and receiving WIC Program benefits. As required by Executive Order 12044 and Department regulations, a draft Impact Analysis Statement concerning the major proposals will be available from the address listed below.

DATES: Comments should be mailed so that they are received on or before February 23, 1979.

ADDRESS: Send comments to address listed below.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Department believes that public participation in policy development serves as an information source for developing and assessing program alternatives. The Department further believes that any program which it administers should reflect the needs and veiwpoints of the public served by the program. Because public participation serves as a means of improving the effectiveness of Department programs, public input is particularly important prior to the development of regulations. Consequently, prior to issuing this proposal, the Department actively sought the advice and assistance of knowledgeable individuals, groups and organizations which were willing to offe assistance and expertise toward the goal of developing regulations that would most effectively satisfy the health and nutritional needs of the eligible population. The following steps were taken in preparation for this proposal.

National Advisory Council. Public input on the WIC Program was periodically received from the National Advisory Council on Maternal, Infant and Fetal Nutrition, established by Pub. L. 94-105. The members of the Council have widely diversified backgrouds. The membership includes State and local health officials and administrators of the WIC Program from a variety of agencies, representatives of the Department of Health, Education and Welfare, two parents who participate in the WIC Program, a pediatrician, an obstetrician, and a person involved in the retail sales of food used in the Program. This advisory council has the expertise to consider all aspects of the operation of the Program and is extremely helpful in providing insight into how the operation of the WIC Program is viewed by those directly affected by it.

The Council annually submits a written report to the Congress and the President with recommendations for administrative and legislative changes. Advisory Council meetings were held in June 1977; February 1978; and June 1978. Prior to each meeting a notice was published in the FEDERAL REGISTER announcing the dates of each meeting and advising that the meetings were open to the public.

Public Hearings. In June 1977 public hearings were held in seven cities to consider comments regarding possible legislative and regulatory changes for the WIC Program. The hearings wre held to solicit public testimony concering the future structure and administration of the Program. The Washington Supplemental Food Programs Division, the Regional Administrators and their staffs, and the Information Division worked together to ensure that all interested parties were aware of the hearings and were encouraged to attend and testify. The Supplemental Food Programs Division prepared a notice for the FEDERAL REGISTER and worked with the Information Division to produce a public release, posters, and other forms of communication to bring media attention to the hearings. In addition, the Supplemental Food Programs Division sent over 750 invitation letters to individuals as well as to every Governor, the House Education and Labor Committee; the Senate Select Committee on Nutrition; all Advisory Council and Committee members; advocacy groups; grass roots organizations; industry representatives; and professional groups. Regional Administrators wrote to all State Chief Health Officers and to all State/WIC Coordinators. All individuals who desired to give testimony were allowed to do so. Time was allowed at the end of each speaker's testimony for questions from the floor.

Advisory Panel Meetings. Specifically for the purpose of regulatory development, a series of advisory panel meetings were held during September and October 1978 to solicit involvement and input from the public sector, health professionals, advocacy groups, and program participants. There were four separate panels established to develop viewpoints on the issues of funding, food packages, nutrition education and performance standards. The recommendations and conclusions of the funding panel were published in the FEDERAL REGISTER on October 11, 1978. Public comments concerning the funding issue were requested in that publication.

Other Meetings. As another means of obtaining public input, the Supplemental Food Programs Division personnel attended several regional, State, and local meetings in an effort to hear and relay the opinions of the public concerning possible changes in regulations. These meetings included program participants, as well as State and local administrators.

Although all of the above mentioned steps were taken to develop this proposal, the Department considers the 45 day comment period essential to the development of complete final regulations. The Department would prefer to provide 60 days for public comment. However, Pub. L. 95-627 requires that final regulations be issued within 120 days after the enactment of that law, which was signed on November 10, 1978. Therefore, due to overall time constraints and particularly due to the Department's need for adequate time to analyze the comments received on this proposal, Mr. Gene Dickey, Deputy Administrator Special Nutrition Programs, FNS, has determined that a longer comment period is not feasible.

During the comment period, the Department's Regional offices will host meetings with State agencies to discuss operational aspects of the proposed regulations and a meeting will be held with the Advisory Council. In addition, the public is invited to submit written comments, relevant data, objections, and recommendations regarding the proposed regulations. Comments should cite the appropriate

section of the regulations and specify reasons for all objections and recommendations. To be assured of consideration, all comments should be received or postmarked by the specified deadline. Copies of all written comments received pursuant to this notice will be made available for public inspection during regular business hours (8:30 AM to 5:00 PM) in Room 4405, Food and Nutrition Service, 201 14th Street, SW., Washington, D.C. 20250. All comments, objections, relevant data, and recommendations will be given careful consideration before final rules are published.

GENERAL PURPOSE AND SCOPE

Section 246.1 of the proposal states that the purpose of the Program is to serve as an adjunct to good health care during the critical times of growth and development of women, infants and children in order to improve their health status and prevent the occurrence of health problems. This section also authorizes the payment of cash grants to State agencies which administer the Program.

The language and requirements in this section are basically unchanged from the regulations currently in effect.

DEFINITIONS

Section 246.2 of the proposal sets forth the meanings of significant terms for purposes of all parts of the proposal and all contracts, guidelines, instructions, forms, or other documents which may be used in relation to operation of the Program. The section lists the terms in alphabetical order.

This proposal reflects several revisions and additions from current regulations in order to implement the provisions of Pub. L. 95-627 and in order to clarify terms in current usage.

The following changes from current regulations have been made in the proposed section on definitions. "Affirmative Action Plan" has been added because several provisions in Pub. L. 95-627 increase the significance and use of this term in the regulations.

"A-110" has been added since this Circular deals with grants to hospitals and several provisions in the proposal require State agencies to comply with the mandate of the Circular.

"Categorical ineligibility" has been added to clarify that the term means persons who do not meet the definition of pregnant women, breastfeeding women, postpartum women, or infants or children.

"Competent professional authority" has been revised to make reference to the section of the proposal prescribing, as required by Pub. L. 95-627, standard qualifications.

"Family" has been added because the term is used in the sections of the proposal which incorporate the income limitations mandated by Pub. L. 95-627. The term excludes from participation in the Program residents of an institution.

"Food instrument" has been simplified to improve clarity.

"Income Poverty Guidelines" has been added to implement the income limitations mandated by Pub. L. 95-627. The term means the annual income standards set by the Department for reduced price school meals which is 95 percent in excess of the Secretary's poverty guidelines.

"Local agency" has been slightly revised. Rather than referencing health and welfare agencies, the phrase welfare agency has been changed to service agency because the term is more descriptive of the type of non-health agencies currently operating the program.

"Nutrition education" has been added and is a direct quote from Pub. L. 95-627. This term separates nutrition education activities from other nutrition-related activities conducted under the program. The term means individual or group educational sessions and the provision of materials designed to, among other things achieve a positive change in dietary habits.

"Nutritional risk" has replaced the term nutritional need in the current regulations and has been revised to conform with Pub. L. 95-627. For the purposes of determining nutritional risk, the term provides that consideration be given to abnormal nutritional conditions, nutritionally related medical conditions, dietary deficiencies which impair or endanger health, and conditions which pre-dispose persons to inadequate nutritional patterns or nutritionally related medical conditions. Examples of allowable conditions have been included in the definition.

"SFPD" has been included to reflect, as a result of reorganization, the proper name of the division responsible for administration of the Program within FNS. The term means the Supplemental Food Programs Division. This Division is responsible for the administration of the Special Supplemental Food Program (referred to as the Program in this proposal) and the Commodity Supplemental Food Program (7 CFR Part 247).

"State" has been revised to include the Northern Marianas. Pub. L. 94-241, which established the Commonwealth of the Northern Mariana Islands, provides that the Northern Marianas are eligible to apply for all Federal grant programs for which Guam is eligible to apply. This means that the Northern Marianas are eligible to apply for participation in the Program.

ADMINISTRATION

Section 246.3 of the proposal delegates program administrative responsibilities among FNS, States and local agencies. Also, in accordance with the provision of Pub. L. 95-627 which requires the Department to set staffing standards, this section outlines the minimum staffing levels needed for efficient and effective program operations. The section contains provisions concerning delegations to State agencies, delegations to FNS, agreements and State Plans, State staffing standards, and delegations to local agencies.

The proposal retains all the provisions in this section of current regulations in an unchanged form with the following exception and the following additional new provisions on staffing standards.

A minor wording change has been made from current regulations in the paragraph concerning Federal/State agreements. Words have been added to clarify that submission of a State Plan as well as completion of a Federal/State agreement is a requirment.

The proposal sets minimum staffing standards to assure efficient administration of all program functions including nutrition education, monitoring, fiscal reporting, food delivery, and training.

The staffing standards proposed require each State to employ the equivalent of at least one full-time Program administrator if the State's Program monthly participation is over 1,500 participants. Further, for States with larger monthly participation, the proposal requires States to employ the equivalent of at least one additional full-time program specialist for each additional 5,000 participants. The responsibilities of the State staff include such functions as monitoring vendors, nutrition education, reviewing the operation of local agencies, providing training, and controlling fiscal accountability.

For program operations related to nutrition services, the proposal requires one full-time State WIC Nutrition Coordinator for participation above 500 or a minimum of a half-time professional for participation of less than 500. Educational and other recommended qualifications for the State WIC Nutrition Coordinator are listed in the proposal. The Department realizes that this staff is not adequate to fully administer a Program. There is, however, substantial difficulty in mandating more extensive Federal staffing standards. Many States receive in-kind contributions of staff, while other States have various divisions of responsibility between State and local levels. Due to the existence of factors

such as these, the Department is proposing to mandate only the basic, minimum standards set forth in the proposal. All States' performance will be measured, and all States will need sufficient staff to comply with all regulatory requirements. This will normally entail more staff than the minimums proposed here.

STATE PLAN

Section 246.4 of the proposal describes the requirements related to the State Plan of Program Operation and Administration which is the document that describes State agency's goals and action plans for efficient and effective Program operation. This section of the proposal lists the specific data to be included in a State Plan and sets forth minimum reuirements for the conducting of public hearings on each State Plan. This section of the proposal contains provisions concerning submission of the Plan to the Governor of each State. This section also establishes specific timeframes for submission and approval of the State Plan and amendments to the Plan.

Pub. L. 95-627 requires that a number of additions be made to the State Plan of Program Operation and Administration. The following are the requirements of the Law and what has been included in the proposal.

Several of the new State Plan requirements which are contained in the Law were already included in WIC Program regulations. Therefore, no changes were required in the regulations to implement these requirements. These include a description of the State agency's financial management system, a description of the methods used to determine nutritional risk, a budget for administrative funds, the State agency's staffing pattern, and a description of the food delivery system.

Pub. L. 95-627 requires that the State Plan include a copy of the procedure manual developed by the State agency. In order to ensure that State agencies comply with the intent of the Law that a comprehensive manual be developed by each State agency and be included in the State Plan, the Department is proposing that the manual include, at a minimum, all aspects of certification, recordkeeping, nutrition education, food delivery system, and expansion of services during migrant season.

Pub. L. 95-627 requires that the State agency include plans to provide Program benefits to eligible migrants and Indians. In accordance with the law's emphasis on serving migrants and Indians under the Program, the proposal requires a detailed description of the plans to provide Program benefits to eligible migrant farmworkers and Indians, including the procedures instituted by the State agency to ensure that eligible migrant farmworkers may, to the maximum extent feasible, continue to receive Program benefits when they enter the State agency's jurisdiction subsequent to original certification in another Program jurisdiction.

Pub. L. 95-627 requires that a description of the State agency's outreach program be included in the State Plan. This requirement is included in the proposal.

As mandated by Pub. L. 95-627, the proposal includes the requirement that the State agency's plans to coordinate Program operations with special counseling services be included in the regulations. The services given in the Law are the Expanded Food and Nutrition Education Program and the Food Stamp Program administered by the Department of Agriculture, family planning services, immunization, prenatal care, well-child care, alcohol and drug abuse counseling, and child abuse counseling.

Pub. L. 95-627 requires that the State Plan include nutrition education goals and action plans, including a description of the methods that will be used to meet the special nutrition education needs of migrants and Indians. In addition, the Act also requires that the State agency provide training to persons providing nutrition education and that the State agency annually evaluate the nutrition education provided, taking into consideration the views of participants. In order to monitor State agency compliance with these requirements and to ensure that high quality nutrition education is provided, the Department is proposing that the following information be included in the State Plan: a summary of resources and technical assistance available to local agencies for the purposes of developing nutrition education sessions; the plans for training persons responsible for providing nutrition education to participants, and a description of the training materials to be used, and the evaluation methods used to determine local agency compliance with nutrition education requirements and to determine the impact of nutrition education on participants.

Pub. L. 95-627 requires several changes in the Affirmative Action Plan used by State agencies in determining which area receives highest priority for WIC Program funds. The Act requires that the Affirmative Action Plan include all areas and populations within the jurisdiction of the State agency; the State agency's plans to initiate or expand operations under the Program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies of the availability and benefits of the program; and a description of how the State agency will take all reasonable actions to identify potential local agenecies and encourage such agencies to implement or expand operations under the Program within the following year in the neediest one-third of all areas unserved or partially served. These requirements are included in the proposal. In addition, the State agency shall specify which areas are currently operating a Commodity Supplemental Food Program and those areas being served by the WIC Program.

Recently questions have been raised concerning the validity of the methods used in implementing the Affirmative Action Plan requirements. The Department believes a further effort should be made to evaluate Affirmative Action Plans. In order to assist in this evaluation, the Department is proposing that State agencies submit, in addition to current requirements, the relative weights given to each criteria used and the raw statistics used in the Affirmative Action Plan. Language has been included to provide guidance in the development of Affirmative Action Plans. An important change is that the Department is proposing to specify an inclusive list of allowable statistical measures of relative need for use in the Affirmative Action Plan. State agencies would not be required to use all of these criteria, but would not be allowed to use other criteria than those listed in the proposal. This change is intended to give more uniformity in ranking of areas for Program initiation or expansion.

Migrant farmworkers must be considered in the Affirmative Action Plan. The Department has heard from migrant farmworker representatives, however, that migrant populations still have problems in receiving the benefits of WIC participation. The Department wants to emphasize that State agencies should use the best available statistical information on migrant farmworker populations in the development of their Affirmative Action Plans. In many cases, this will mean that States need to pay particular attention to pockets of populations rather than statistics by county. Commenters are asked to review the Affirmative Action Plan proposals and suggest ways to improve the process so that migrant farmworkers receive proper consideration.

Pub. L. 95-627 requires that the State agency conduct hearings to enable the general public to participate in the development of the State Plan. These hearings must be held no late than 30 days prior to the submission of the State Plan to the Governor's office for review. The Department believes that these hearings can be a useful management tool to enable

the State agency to make their Program as responsive as possible to the needs of the people they serve. In order to implement this requirement, we are proposing that the State agency send letters of invitation at least 30 days before the hearing to all local agencies, to those agencies which refer potential participants, and to other health or service oriented agencies such as Food Stamp offices, Expanded Food and Nutrition Education Programs, agencies for family planning, family counseling, and well child care; that the hearings be accessible to the public; that there should be sufficient space in the hearing room to accommodate the number of people expected to attend; that the State agency publish a notice in the media providing the time, place and subject or the hearing and inviting interested members of the public to participate; and that a description of the steps taken to comply with public hearing requirements and a summary of the public hearings be included in the State Plan.

The fact that State agencies have not required sufficient information to determine whether potential local agencies have adequate facilities and resources to administer properly the WIC Program has given rise to some concern. In order to ensure that each local agency submits sufficient information to the State agency for it to determine the local agency's capability to administer the WIC Program, the Department is proposing that the State agency have a standard application form to be used by agencies applying to administer the WIC Program. Under the proposal, a copy of this form would be submitted in the State Plan.

Various sections of the current regulations contain some requirements which affect the State Plan. We believe that it would be clearer to include all State Plan requirements in one section. Therefore, the section in the proposal on the State Plan has been expanded to include requirements formerly found in other sections of the regulations, including audits, Affirmative Action Plan and food delivery.

Pub. L. 95-627 requires that one-sixth of their State agency's administrative funds be spent on nutrition education, unless the State agency requests that it be authorized to expend a lesser amount and such request is accompanied by documentation that other funds will be used to conduct such activities. The proposal requires that the State agency submit a detailed description of the procedures used to ensure that this requirement is adhered to.

Pub. L. 95-627 requires that the State agency, in cooperation with local agencies, develop guidelines for the allocation of administrative funds. Therefore, the proposal requires that the Plan include a description of the method used to allocate operational and administrative funds to local agencies, the procedures used to develop allocation standards in cooperation with local agencies, and procedures for distributing operational and administrative funds, including start-up funds, to local agencies.

The Department believes that State agencies have not been given adequate guidance to enable them to produce a useful, comprehensive description of their food delivery system for the State Plan. The plans submitted have varied widely in the range of subjects covered and the detail provided. Therefore, the proposal lists elements of the food delivery system that the State agency would have to include in the State Plan, including the form for the agreement between the food vendor and the State or local agency, the guidance to be provided to food vendors, the system for limiting abuse of the Program by vendors and participants, a facsimile of the food instrument used, the State agency's system for the control and reconciliation of food instruments, the criteria used to approve the mailing of food instruments, and the procedures used to ensure prompt and accurate payment to food vendors.

Selection of Local Agencies

Section 246.5 of the proposal explains the procedures for State agency selection of local agencies to operate the Program. The section includes provisions on the local application process, the program initiation and expansion requirements, and the priority system for selecting local agencies.

The following changes from current regulations are included in the proposal.

Questions have arisen since the publication of current regulations concerning the need for an application from a local agency which is a subdivision of the State agency. The proposal clarifies that there is no exemption for local agencies which are subdivisions of the State agency. The Department believes that to assure efficient and effective service to participants at each local agency, a careful review should be made of each applicant agency's facilities, resources, willingness to participate, and convenience to participants. Even though a local agency is a subdivision of a State agency, a State may not have sufficient information on file to determine the appropriateness of approving program operations. The proposed requirement that applications be submitted by all potential local agencies, including local agencies considered subdivisions of the State agency, will assure that full consideration is given to all aspects of program operations and to participant convenience prior to the selection of a local agency.

In accordance with the provisions of Pub. L. 95-627, the proposal requires that State agencies shall, within 15 days of receiving an incomplete application, notify the applicant agency that further information is needed to complete the application. Further, in accordance with Pub. L. 95-627, the proposal requires that the State agency shall, within 30 days of receiving a complete application, notify the applicant agency of the approval or denial of the application. All notifications shall be in writing and notifications of denials shall include an explanation of the reasons for denial in addition to information concerning an applicant local agency's right to appeal. The proposal specifies that applications shall be denied if there are not funds available for Program operations to avoid completed applications being held pending for indefinite periods of time. However, the State agency must notify the denied agency that its application is being filed and will be reviewed again when funds become available.

The proposal clarifies that consideration of expansion in operating Program areas must be handled in accordance with the State agency's Affirmative Action Plan.

The proposal retains the provision added by Amendment No. 1 to the current regulations which requires State agencies to consider opening additional local agencies in areas which have an existing WIC Program that cannot serve all potential participants who request Program benefits. The determination concerning the extent of need to be served in an area should be based on criteria included in a State's Affirmative Action Plan.

In accordance with Pub. L. 95-627, the proposal requires State agencies to take all reasonable actions necessary to identify potential local agencies in the neediest one-third of all areas unserved or partially served. Further, in accordance with Pub. L. 95-627, the proposal requires State agencies to encourage potential local agencies in the neediest one-third of all areas to implement or expand program operations within a year. The determination of the neediest one-third of all areas should be based on the State agency's Affirmative Action Plan.

The proposal retains the local agency priority system unchanged from the current regulations except for the third priority consideration. Because of the inclusion of a national income standard in Pub. L. 95-627, it is proposed that the third priority consideration be revised. The proposal

gives third consideration to health agencies which must enter into a written agreement with private physicians to provide health services to a specific category of participants or to participants which are not eligible for health services at the local agency due to income in excess of the local agency's income standards for health care.

Because previous legislation mandated and Pub. L. 95-627 also mandates the Program to operate as an adjunct to health care, all local agencies are and will continue to be required to make health care available to participants. Under current regulations and the proposal, therefore, health agencies which do not provide health care to a certain segment of the Program's target population must contract with another health provider to assure the availability of health care to all participants.

Since current regulations allow State or local agencies to set the income limitation for program eligibility, there is no possibility that persons would be income eligible for the Program but ineligible for health services. The establishment of a national income standard in Pub. L. 95-627 creates the possibility that local agencies may have income limitations for health services which are lower than the national income limitation for program eligibility. The proposal requires health agencies with income limitations for health services which are lower than the program income limitation to contract with a separate health provider to assure that health care services are made available to all participants. The Department is particularly concerned about this issue and would like to invite all interested persons to write specific comments on the impact of this provision. The Department is especially interested in learning whether any currently participating local agencies, or any potential local agencies, will be kept out of the Program because they cannot provide health services (either directly or through private physicians) to persons up to the new income standard.

Minor revisions in the organization of this section of the proposal have been made in comparison to current regulations. The revisions are proposed to improve clarity and readibility. Some provisions found in the current regulations under this section have been moved in the proposal to sections more related to the subject matter of the provision. For example, the provisions in the current regulations concerning the Affirmative Action Plan have been placed under the State Plan section of the proposal.

The provision in current regulations prohibiting operation of the program in the same geographic area as the Commodity Supplemental Food Program (7 CFR Part 247) has been deleted from the proposal. Pub. L. 95-627 specifically allows the operation of both programs in the same area.

Agreements With Local Agencies

Section 246.6 of the proposal describes the requirements for State agency agreements with local agencies selected to operate the program. The provisions in the section include the requirement that signed written agreements be used and include a list of the specific clauses which must be in the agreement.

The proposal retains the provisions in this section of current regulations in an unchanged form with the following exceptions.

The proposal would clarify that there is no exemption from the requirement for local agency agreements for local agencies which are subdivisions of the State agency. As explained above concerning local agency applications, questions have arisen since publication of current regulations over requirements for local agencies which are subdivisions of a State agency.

Similar to the Department's position concerning local agency applications, the Department believes local agency agreements are necessary between all State agencies and local agencies, even those local agencies which are subdivisions of a State agency. The purpose of the agreement is to specify the division of Program responsibilities, to assure understanding and to establish a legal statement of agreement between the State and local agencies.

The proposal adds to current regulatory requirements a statement in the local agency agreement to the effect that nutrition education will be provided to all Program participants. This proposed statement is in accordance with the Pub. L. 95-627 requirement that nutrition education be provided to all Program participants.

Certification

Section 246.7 of the proposed regulations provides requirements for State and local agencies in the determination of those persons eligible for the program. Specifically, this section sets requirements for income guidelines and their application, the determination of nutritional risk by a competent professional authority, the priority system for participants after reaching maximum caseload levels, processing standards for certification, prohibition against dual participation, certification forms, and participant rights, obligations and notifications.

Pub. L. 95-627 requires significant changes from current regulations on certification. One major change is a requirement for the Secretary to adopt a nationwide income limit. The new law provides that persons shall be eligible for the program only if they meet the standards for free or reduced price meals under Section 9 of the National School Lunch Act. The proposal specifies that eligibility determinations shall be made based on income levels which qualify applicants for "reduced" price school lunches. Reference to eligibility for "free" school lunches was not included in the proposal because the income standard for reduced price lunches is higher than the standard for free lunches. In other words, the maximum income limits for WIC purposes are based on the higher level which qualifies participants for reduced price lunches and which automatically includes all participants with the lower income levels which qualify them for free school lunches. The Department has decided that regulatory reference to the two separate levels may confuse the issue and may be misconstrued to mean that there are two separate income eligibility standards for WIC benefits.

When income standards were previously used, State agencies set income standards or approved income standards used by local agencies.

As required by Pub. L. 95-627, these proposed rules require all eligible WIC program participants to be members of families which have income at or below the Secretary's poverty income guidelines increased by 95 percent. The local agency is required by the proposed rules to determine an applicant's income eligibility based on the use of a clear and simple application on which applicants state their income for the income eligibility determination.

The definition of what is considered "income" for the WIC Program is the same as that for the National School Lunch Program. This follows the Congressional intent that WIC participants meet the National School Lunch Act income guidelines. Included in the definition are monetary compensations such as salaries, wages, commissions, net self-employment income, social security and public assistance benefits, unemployment compensation, retirement, pensions and annuities, alimony and child support and other gross cash income, before any deductions. Excluded income is any income exempt from consideration by legislative prohibition, such as Food Stamp benefits.

The proposed regulations also exclude from consideration that income which is used for special hardships. Families which could not reasonably anticipate or control expenditures for unusually high medical bills, shelter costs greater than 30 percent of their total income, special education expenses due to a mental or physical condition of a child or disaster or casu-

alty losses would not have that income counted. These hardship conditions are consistent with the National School Lunch Program provisions.

This section also gives guidance on certification of foster children. If a welfare agency is responsible for the care of a child, then the payments made by the welfare agency for the care of children would be considered the child's income. For all other foster children, the income eligibility would be determined on the income of the family with whom the child resides. These proposed regulations reflect a standing Department policy. The Department believes that this method of counting the income of the foster child leads to an accurate picture of the child's income status under the new income guidelines.

Nutritional Risk. In accordance with Pub. L. 95-627, the proposed regulations require that applicants must both meet the income guidelines and be at nutritional risk to be eligible. This section of the regulations establishes specific procedures for the determination of nutritional risk.

As in previous regulations, the determination of nutritional risk must be done by a competent professional authority. The Act now requires that the Secretary specify in regulations the criteria for qualification as the competent professional authority.

The Department has considered the published advice of various professional societies in specifying what qualifications a competent professional authority must have. Based on professional advice, the Department believes that the competent professional authority must be medically trained or be trained specifically in nutrition, or be certified by a physician or health official to be enrolled in appropriate formal medical or nutrition training. Therefore, the competent professional authority must either be a physician, nutritionist (with a college degree in nutrition or emphasizing nutrition), a dietitian (registered or eligible for registration) a registered nurse, a certified physician's assistant, or a State or locally trained health official or a person certified by State or local officials to be formally enrolled in appropriate training or a person who has completed training qualifying the person as a paraprofessional.

The Department believes these standards ensure that those individuals making the determination of nutritional risk do so accurately while at the same time do not disqualify from consideration those individuals which have not yet fully completed their formal training but are qualified and are currently providing their valuable service in many local agencies.

The proposed regulations depart slightly from current regulations in regard to the determination of nutritional risk. Previously, nutritional risk was both inadequate income and nutritional need. The new definition of nutritional risk no longer includes income as a consideration, since the law now specifically sets a maximum income level for participants and the income levels are addressed elsewhere in the proposal. The nutritional need ideas are now incorporated into the term nutritional risk. These proposed regulations require the competent professional authority to determine nutritional risk by among other things, measuring the person's height or length, and weight, and performing hematological (blood) tests for anemia.

The Department has received several comments on the current blood test requirements. Bascially, there has been a concern that blood tests at every certification may be excessive, requiring too much staff time and inconveniencing the person receiving the test. The Department is concerned about these comments.

The WIC Program was conceived because various studies in the U.S. have shown a high prevalence of anemia and other nutritional deficiencies in the Program's target population. Based on expert medical advice, the hemoglobin and hematocrit blood tests were determined to be simple, fast, reliable and inexpensive methods of measuring iron nutriture. These tests, along with other certification measures, serve as means to detect existing problems as well as to screen for deficiencies.

The Department is concerned that reducing the blood work requirement could lead to inadequate assessments. Further, the blood tests should be a simple process requiring very little staff time compared to other medical tests or services provided to participants. The Department is considering whether children need a blood test at every certification as long as the result from the last test was within the normal range and the children have a blood test at least once a year.

The Department is proposing to reduce the blood test requirement in response to local agency concerns, especially to enable coordination at the local agency level among other existing health programs. Although the term "dietary deficiencies that impair or endanger health" is used now to replace "inadequate nutritional pattern" the meaning has not changed.

Priority System. The priority system of the current regulations was designed to assure that persons at greatest nutritional risk are first to receive Program benefits when local agencies reach maximum caseload levels. Only one change from current regulations is proposed. A new category is added to Priority II. The Department has added to Priority II, those infants, up to six months of age, whose mothers were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions. This category would not include infants in Priority I, since these infants exhibit overt nutritional or medical conditions which place them more in need of Program benefits.

Current regulations allow the infants of WIC participants to be eligible as Priority II cases. Commentors have urged the Department to allow also as Priority II, infants of non-WIC participants, if the mothers were at nutritional risk during pregnancy due to a documented nutritional or medical condition. The Department agrees that these infants are nutritional risks. Further, it is difficult to assess subclinical medical conditions in these infants and infants of this age would not have a "medical history" other than that of the mother during pregnancy. Moreover, these mothers did not receive the benefits of WIC participants during their high-risk pregnancy. Therefore, to prevent future problems these infants should be eligible as a high priority.

Processing Standards. The major change to processing standards is the requirement stated in Pub. L. 95-627 for the Secretary to establish shorter notification periods for categories of persons who, due to special nutritional risk conditions, need to receive benefits more expeditiously. The Department is proposing that pregnant women eligible as Priority I participants, infants under six months of age and members of migrant farmworker households planning to leave the local agency area must be notified of their eligibility or ineligibility within 10 days of application. That is also now the standard for issuance of food instruments to these persons where retail purchase systems are used. All other applicants would have to receive notification within 20 days. Where retail purchase systems are used, applicants would also have to be issued food instruments within the same 20-day period.

The Department is proposing that notification be given within ten days after application because certain applicants need to receive benefits quickly, but within the limits of local agency abilities. The Department is proposing ten days as the maximum standard but hopefully many local agencies can process special cases more expeditiously, especially for those who are very needy.

Pregnant women in Priority I and infants under six months need notification faster than other eligibles be-

cause of their particularly vulnerable and temporary conditions. The sooner these pregnant women and small infants receive benefits, the better their chances will be for preventing problems or improving their status during the critical, short gestation or neonatal period.

Migrant farmworker households need the shorter notification period because of their unique work schedules. Clearly, if the Program is to serve migrant farmworkers better, one step toward improvement is to provide benefits to eligible family members as soon as possible before the family must move to the next work area.

Certification Periods. The Department is proposing to retain the basic requirement that persons be certified for six months, except for pregnant women who are certified for the duration of their pregnancy plus six weeks thereafter. For clarification, the Department is proposing that certification periods extend into the entire month in which a person becomes categorically ineligible. For example, when a child reaches the fifth birthday on December 15, certification would expire at the end of December. This is administratively less complex than attempting to prorate a partial month's benefits.

The Department is also proposing to have local agencies certify breastfeeding women, infants and children at six month intevals, but allow thirty days lee-way. That is, the certification could be from between 5-7 months depending upon local agency ability to schedule clinic visits and other health care services. This is proposed so that the local agencies have flexibility in scheduling for maximum benefit to participants and clinics in providing health services along with WIC benefits.

Certification Forms. The Department is proposing that State agencies provide a standard State-wide certification form. This proposal is designed to help provide more uniformity in local agency data collection so that better, more meaningful results may be tabulated and compared. Information and data collected for other health services may be used to complete this form. State agencies may also develop a single form for all certification data or States may separate income information so that applicants can easily fill out this part. The Department is proposing no other changes to the certification forms.

Transfer of Certification. Pub. L. 95-627 requires that a person's certification remain valid when the person moves from one area to another in which the Program is operating. The proposed regulations would require that each State agency issue migrant farmworker participants or other participants likely to travel a verification of certification. This verification of certification must be accepted by local agencies operating a WIC Program within each State or in other States so that the person can continue participation in the new location

Some State agencies may have local agencies with full caseloads. In those situations, the Department is proposing that any person who transfers to an area at maximum participation be put on the local agency priority waiting list ahead of all others, regardless of priority of their nutritional risk. The Department is concerned that a currently certified person be allowed to continue receiving benefits before expanding the caseload to those uncertified persons on the local agency waiting list.

Dual Participation. The Act prohibits dual participation, that is, simultaneously receiving benefits from either two local agencies serving overlapping areas or simultaneously receiving benefits from both the WIC Program and the Commodity Supplemental Food Program. To fulfill the requirements of the Act, the proposed regulations prohibit dual participation and require local agencies to exchange lists of participants' names for comparison. Anyone receiving dual benefits must be advised of all available appeal rights, given a fair hearing if requested, and ultimately terminated from one of the programs. The State agency may also disqualify dual participants from continued program participation. Such disqualification shall not exceed a 3-month period and children and infants are exempt from this penalty because they obviously should not be penalized for the actions of their parents or guardians. Additionally, disqualification of any participant shall be waived altogether if the competent professional authority determines that a serious health risk may develop from disqualification in the Program. If State agency believes fraud is involved, appropriate sanctions may be pursued. These measures are designed to assure that individuals do not abuse the Program. Applicants should be advised of the serious penalties for Program abuse (see Claims and Penalties).

Residency. Previous regulations required that eligible persons must be residents of areas or members of populations served by the local agency. The Department is proposing to eliminate the reference to residence since this has confused some agencies which believed a specific geographic boundary had to be delineated. However, the person must still be in the agency's health service area. Currently, the Department has allowed local agencies to serve populations not specifically within their jurisdiction.

Commenters are asked to pay special attention to this change to determine its effect and whether the requirement should be retained.

Supplemental Foods

The Food Package supplied by the WIC Program has always been a source of much controversy. The issue is highly complex, one that must take many diverse factors into consideration. Because of its complex nature and the Department's desire to investigate all ramifications of a Food Package, more time will be required before proposed regulations concerning the Food Package can be issued, consequently, § 246.8 is reserved.

Previous legislation specifically stated those nutrients which must be provided by the WIC Program supplemental foods. Thus, the Department was bound to provide sources of these nutrients. In 1973, the Department created a WIC Program Task Force which, with the help of outside medical and nutrition consultants, designed the original food packages. The foods chosen by the Task Force were those that could supply the greatest quality and quantity of these nutrients, be acceptable to all ethnic groups, be commercially available and be administratively manageable. Additionally, the food packages were designed to complement the use of additional foods that provide variety and other nutrients in the diet. The Department then grouped participant populations which consume the same general categories of foods with the intent that a competent professional authority at the local agency would tailor the food packages to meet the nutritional needs of individual participants, and language to that effect was included in the regulations.

The new law, Pub. L. 95-627, does not state which nutrients must be provided by the supplemental foods. Rather, it leaves this decision up to the Department. The law authorizes the Department to provide nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding and postpartum women, infants and children. The Department believes that before food packages can be delineated, a thorough review of all pertinent literature must be made in order to specify these necessary nutrients and consider the variety of foods which supply these nutrients. Also, the Department is considering delineating more food packages to provide packages which are more appropriate for each category of participants.

Finally, the foods must be subjected to close scrutiny as they pertain to nutritional benefits, market availability, wide participants acceptability, nutritional education message presented, and cost. In addition, the law states

that the levels of fat, sugar and salt must be appropriate for the target population. All these factors are to be taken into consideration when the food packages are developed.

The complexity of the issue requires great care in analyzing each individual part as it relates to the whole issue. Thus, it has been decided that the portion of the regulations pertaining to the Food Package, § 246.8, will be issued in approximately a month as a proposed rule.

NUTRITION EDUCATION

Section 246.9 of the proposal describes requirements for providing nutrition education to WIC Program participants. The section explains the general requirements, the broad goals, the State agency and local agency responsibilities, and requirements concerning participant contacts.

The Department strongly endorses and supports nutrition education at all levels of Program administration—local, State and Federal. Participants benefit greatly from the foods and improved nutrition they are provided through the Program. In fetuses, infants and children this nutrition is particularly critical because it provides the foundation for sound minds and bodies that will endure for a lifetime. However, the Department is acutely aware of the necessity of encouraging participants to take part in health services and in nutrition education. Teaching parents and children the importance of preventive health care and of proper nutrition will provide them with the knowledge needed to maintain good health after they leave the Program. Furthermore, it will provide them with the tools to educate extended family members and future generations who have not had or will not have the opportunity to experience the health service and nutrition benefits associated with the WIC Program.

The nutrition education provisions in the proposal have been substantially strengthened and expanded over current regulations. Since the passage of Pub. L. 94-105 and the subsequent publication of the final regulations, certain inadequacies have been discovered and the need for further clarification has become apparent. The need for more emphasis on nutrition education under the WIC Program has been continually encouraged, and numerous recommendations have been made by a variety of sources—through testimony at Congressional hearings, from reports from State and local agencies, and from the general public.

The FY 1977 Report of the National Advisory Council on Maternal, Infant and Fetal Nutrition mandated by Pub. L. 94-105 emphasized "that nutrition education efforts must be an integral part of health care."

Valuable input was received from the Advisory Panel on Nutrition Education that met in Washington, D.C., in September 1978, to explore alternatives and recommend standards for nutrition education under the new legislation, which was pending at the time. The Advisory Panel was comprised of representatives from State and local WIC agencies and several advocacy groups, and FNS staff.

Based on the volume of input from persons involved with the WIC Program at all levels as well as public interest groups, the following requirements are proposed for nutrition education.

The wording in Pub. L. 95-627 is intended to strengthen nutrition education as a benefit of the WIC Program rather than something that is secondary in the Program. The assurance that nutrition education is to be provided to participants at no cost is mandated in the new law, as well as the requirement that nutrition education bear a practical relationship to the cultural preferences of individual participants. The requirement of inclusion of information on how participants can select food for themselves and their families is a recommendation of the Advisory Panel. The Department concurs that this would be valuable, pertinent training for WIC participants.

The proposal completely revises the current regulations with respect to State agency responsibilities due to overall reorganization and incorporation of many of the Advisory Panel's recommendations. The proposals for State agency responsibilities are described below. It should be noted that State agencies may provide nutrition education using their own staff or many use other contractual arrangements to provide such training.

Pub. L. 95-627 mandates that the State agency shall provide training to persons providing nutrition education. The Advisory Panel wished to specify that in-service training and instruction techniques should be provided to local agency staffs. They felt the State agency could thereby ensure that proper training and techniques were being utilized by local staffs. Because the Department agrees, such a provision has been included in the proposal. However, this is not to include degree work at universities or colleges.

The Advisory Panel also recommended that the State agency identify or develop resource and educational materials for local agencies. The Advisory Panel felt that circumstances at times dictate such assistance to local agencies if they are unable to develop their own educational materials and modules, or do not have adequate equipment such as audio-visuals. The Department concurs with the Advisory Panel on the State agency's providing this service to the local agency when needed. In addition, the new law mandates that nutrition education is to be administered in languages other than English as cultural needs dictate.

Pub. L. 95-627 further mandates that the State agency may provide nutrition education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the Program, who do not participate in the Program. The proposal contains a provision allowing States to provide nutrition education and materials to non-participants through group training sessions and to provide nutrition education materials to these persons.

The Act also mandates that each State agency annually evaluate nutrition education, and that such evaluation include the views of participants concerning the effectiveness of the nutrition education they have received. The proposal makes development of an evaluation plan a State agency responsibility.

The Advisory Panel recommended a team approach to the State agency's responsibility for monitoring local nutrition education activities. It was their intent to involve other State administrative personnel, as well as the nutritionist, in monitoring the local agency's nutrition education activities. This would provide additional input from different perspectives at the State level and result in a more thorough monitoring process. Furthermore, this would encourage all key State personnel to become more knowledgeable about, and involve themselves in, all aspects of Program operations. The Department concurs with the Advisory Panel's recommendation and has included language in the proposed regulations to encourage the use of a team approach to monitoring.

The regulations relating to the responsibilities of the local agency have also been rewritten due to overall reorganization and incorporate the Advisory Panel's recommendations. It is proposed that local agency responsibilities include the changes described below.

In accordance with Pub. L. 95-627, the local agency may provide group nutrition education sessions to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other than WIC even though such persons do not participate in the Program.

Another new requirement is the development of an annual local agency nutrition education plan. This is a recommendation of both the Advisory

Panel and the Department. It is felt that the plan requirement would accomplish certain objectives. First, the local agencies would be required to analyze their particular needs and circumstances and would be able to communicate these ideas to the State agency. Second, local agencies would be responsible for and could be held accountable for, the formulation and follow-through of such designs. For inclusion in this plan, the Advisory Panel recommended a nutrition education need assessment in terms of staff, resources, and available facilities. They also recommended that the local agency draw up a nutrition education budget, as well as plans for in-service training for personnel, and describe a system for integrating the services of community resources. The Advisory Panel's local nutrition education plans recommendation also included a listing of local agency goals and action plans. The Department concurs with these recommendations concerning local agency nutrition education plans, for the reasons described above and has included implementing provisions in the proposal.

The entire portion of the nutrition education regulations dealing with the number of participant contacts represents a significant change from current regulations. Both the Advisory Panel on Nutrition Education and the Panel on Performance Standards and Sanctions, proposed that all adult participants and parents of caretakers of infant and child participants be provided at least two nutrition education contacts per certification. The contacts would be based on the nutrition education need category of each participant, ranging from least critical to most critical. The Advisory Panel on nutrition education recommended three categories of nutrition education contacts—basic, secondary, and high risk. Under the proposal, all participants would be provided the basic contact at least once per certification period, and then, either the secondary or the high-risk contact, dependent upon individual needs. The three categories of nutrition education are explained as follows:

The basic contact requirements include an explanation of the participant's nutritional risk condition and ways to achieve an adequate diet; the importance of the supplemental foods being consumed by the participant; an explanation of the Program as a supplemental rather than total food program; information on the nutritional value of the supplemental foods; and an explanation of the importance of health care.

The Advisory Panel defined a secondary contact as one administered a minimum of once per certification and aimed at the participant's particular needs as a member of a specific target group; for example, pregnant women, breastfeeding women, postpartum women, infants, and children. Nutrition education discussions during this type of contact could include the relationship of diet to health; current consumer and nutritional issues such as consumption of foods containing high levels of fat, sugar and salt; and the benefits of consuming a variety of foods including those not provided by the Program. The Advisory Panel felt that once developed, the nutrition education program for these participants could be carried out by paraprofessionals or nutrition aides, leaving the nutritionist free to concentrate on the high-risk participants.

The third type of contact defined by the Advisory Panel is nutrition education for the WIC participant at high nutritional risk. In this category, the proposal states that in addition to discussing the topics included in the secondary contact category, the nutritionist would develop as recommended by the Advisory Panel, individual care plans for the high-risk persons. The Panel also felt that individuals who are not at high nutritional risk could also be provided with an individual care plan, if they so requested.

The proposed regulations do not intend that participants be required to attend nutrition education classes or else be denied the food package. The Department believes it was not Congressional intent to deny individual participants the benefit of supplemental foods for failure to attend or to participate in nutrition education. Rather, the Department believes each State and local agency must make all reasonable efforts to provide nutrition education. The proposed regulations reflect this position.

Minor revisions have also been proposed in the organization of this section on nutrition education as compared to the section in the current regulations. These revisions have been made to improve clarity and readability.

Food Delivery System

Section 246.10 of the proposal explains the requirements for the State agency's system or systems for delivering supplemental foods to participants. The section explains the general delivery system requirements, the State agency responsibilities, and the specific requirements for retail purchase, home delivery, or direct distribution systems.

The food delivery system provisions in the proposal have not been substantially changed from current regulations although several significant revisions have been made and some points have been clarified. There has been very little public comment in regard to the current food delivery system requirements with the exception of the provision concerning providing supplemental food free of charge to participants and the provision concerning written agreements with each food vendor authorized to accept WIC food instruments. Compliance with the requirement that food delivery systems be uniform has required more time than anticipated at the time current regulations were published. However, Amendment No. 2 to the current regulations extended the time allowed for compliance and expressed the Department's intent to grant individual States extensions based on presentation of a reasonable schedule for final compliance. Therefore, the proposal retains the requirements for uniform delivery systems.

The proposal also retains the requirement that supplemental foods be provided free of charge to participants. The legislation now specifies that supplemental foods be provided at no cost.

Although there has been considerable discussion between the Department and various State agencies regarding the current regulatory requirement for written agreements with food vendors, the Fiscal Year 1979 State Plans of Program Operation and Administration indicate that all States have either complied or are in the process of complying with this provision. Therefore, because some form of agreement is necessary to provide a legal and binding contract between State agencies and food vendors and because all States are either in or near compliance with the current regulations we have retained unchanged the provision in current regulations mandating written agreements with all food vendors authorized by the State agency to accept WIC food instruments.

The following changes from current regulations have been made in the proposal concerning food delivery system.

In order to emphasize the requirement, a specific paragraph in the opening portion of the section now states that supplemental foods must be provided to participants free of charge.

In accordance with a suggestion made by the Advisory Panel on Nutrition Education, language has been included in the section indicating that food vendors should receive WIC Program nutrition education material in addition to other guidelines concerning supplemental foods and Program operations. The Department understands that some areas already provide nutrition education information to food vendors and the Department believes the provision of such information will be beneficial to program oper-

ations. Increasing the food vendor's understanding of the Program goals and the relationship of nutrition to health will increase the food vendor's support of the Program and his efforts to comply fully with Program requirements.

It has been clarified that a food vendor's disqualification from participation in any other FNS program shall be grounds for a review of that vendor's operation of the WIC Program.

In regard to procedures to control participant abuse, language has been included to assure that knowing and deliberate submission of false information to obtain benefits is considered Program abuse and subjects persons involved to appropriate sanctions.

The provision prohibiting issuance of supplemental foods for use in institutions has also been clarified specifically to prohibit use by residents of institutions.

The proposal retains provisions for the mailing of food instruments to participants under certain circumstances.

In regard to the list of items which must appear on the face of the food instrument, the proposal adds a requirement that the food instrument have a printed list of the brand names of foods authorized for purchase under the program. For purposes of compliance, this list may be on either side of the food instrument as long as the face of the food instrument indicates where the list is located. The purpose of including this list on food instruments is to facilitate identification of authorized foods for both the participant and the vendor. At least one food from each major food group, however, must be listed and, where possible, more than one brand name should be provided.

Provision has been made in the proposal to allow State agencies to reimburse food vendors for food instruments submitted after the expiration date if the total value of expired food instruments is $200 or less. It is proposed that reimbursement for expired food instruments in excess of $200 be approved by the FNS Regional Office. The Department believes this revision will eliminate some of the delays now created by restricting approval for all reimbursement of expired food instruments to FNS. The proposed $200 limit on the delegation of authority to the State agency is consistent with a similar delegation for other FNS food programs.

In addition to the current regulatory requirement that written agreements be made with more than one food vendor in each local agency service area it is proposed that State agencies be required to enter into written agreement with at least three food vendors in each clinic service area to assure participant convenience in obtaining supplemental foods.

The Department proposes that States authorize as many food vendors as necessary to assure convenience to participants in obtaining supplemental foods. The Department further proposes that, at a minimum, more than three food vendors per clinic service area be authorized to accept food instruments unless the State agency determines that lack of retail outlets prevents compliance with the minimum requirement in a local agency service area. In view of the precarious health or nutritional status of persons eligible for the Program and in view of the inherent difficulties in travelling for a pregnant or breastfeeding woman or a parent with young children, the Department believes participant convenience must be a primary consideration in determining the number of stores to be authorized to accept food instruments.

Minor revisions have been proposed in the organization of this section as compared to the section in current regulations. These revisions were made to improve clarity and readability.

Financial Management Systems

Section 246.11 of the proposal explains the requirements for the State agency's financial management system. It includes requirements for disclosure of expenditures, reporting, recording expenditures, prompt payment for costs, identification of obligated funds, resolution of audit findings, use of minority owned banks, reconciliation of food instruments, indentification of unredeemed food instruments, transfer of cash, and monitoring of local agency financial management procedures.

This section of the current regulations contains a requirement that State agencies compare current and projected funding needs and develop cost data that identify trends for future budget planning and program funds control. That requirement was deleted from this section of the proposal and was revised and relocated in § 246.4, State Agency Plan of Program Operation and Administration.

It should be noted that the requirements for reconciliation of food instruments and for identification of unredeemed food instruments have been retained in this proposal. Although these requirements have in the past been the subject of discussion between the Department and several State agencies, the State Plans for Fiscal year 1979 clearly indicate that all States have complied with or are in the process of complying with the requirements. Furthermore, the Department continues to consider both requirments essential to accurate Program accountability. Any other restructuring of this secion is strictly for purposes of clarification.

Program Costs

Section 246.12 of the proposal describes the costs allowable for reimbursement under the Program. The section is divided into a general part stating that food and operational or administrative costs are allowable and a specific part listing examples of allowable cost items.

To incorporate provisions in Pub. L. 95-627, the proposal contains some significant points which are not included in current regulations. Also, the provisions in current regulations concerning the operational and administrative funding formula based on 25 percent of food costs have been deleted from the formula since Pub. L. 95-627 no longer includes such a requirement. The Pub. L. 95-627 provisions concerning operational and administrative funds have been included in the proposal under the section concerning Distribution of Funds. The following changes from current regulations have been made to incorporate provisions in Pub. L. 95-627.

The portion of the section concerning the allowability of costs for nutrition education activities has been revised and expanded. The proposal includes the requirements of Pub. L. 95-627 mandating that at least one-sixth of the funds expended by each State agency for administrative cost be used for nutrition education. As in Pub. L. 95-627, however, the proposal allows State agencies to request to spend less than one-sixth of their administrative expenditures on nutrition education if such request documents that an equivalent amount of funds from all combined sources, including Program funds will be used.

Because of the one-sixth funding mandate in Pub. L. 95-627, it is necessary for the proposal to provide examples of costs which may be credited toward the set-aside. The proposal also states which costs may not be considered nutrition education for purposes of determining compliance with the one-sixth funding requirement. The proposal allows costs related to the specific nutrition education requirements in Pub. L. 95-627 to be considered part of the one-sixth set-aside. Such costs are costs related to: individual or group educational sessions with participants; the provision of nutrition education materials; training persons providing nutrition education; evaluations of nutrition education including the collection of participant views; mailing nutrition education materials; monitoring nutrition education; the development of the nutrition education portions of the State Plan. The cost of dietary assessments for the

purpose of certification and the costs of prescribing and issuing supplemental foods may not be considered costs related to nutrition education. Although these are certainly a part of the nutrition services of the Program, the definition of nutrition education in Pub. L. 95-627 is restrictive. To accommodate the provisions of the law, the proposal limits nutrition education to those activities which are distinct and separate efforts to help participants understand the importance of nutrition to health.

The portion of the section concerning the allowability of costs for non-expendable medical equipment has been revised to reflect the authorizations provided in Pub. L. 95-627. As stated in the law, the costs of purchasing centrifuges, measuring boards, spectophotometers, and scales used for determining eligibility are allowable. The proposal, however, requires that anticipated purchases which exceed limits set by FNS must be submitted to FNS for approval prior to expenditure.

Since Pub. L. 95-627 allows the purchase of certain non-expendable items of medical equipment, the portion of this section in the current regulations prohibiting the allowability of cost for non-expendable medical equipment has been deleted from the proposal.

Program Income

Section 246.13 of the proposal describes the requirements for State agency handling of Program income which results from interest earned on Program funds, proceeds from the sale of property, and royalties received from copyrights and patents.

The proposal retains the provisions of the regulations currently in effect.

Distribution of Funds

Section 246.14 of the proposal prescribes the procedures for the distribution of Program funds between FNS and the State agencies and between the State agencies and local agencies. The section contains provisions describing general requirements on the use of funds, the allocation basis for funds given to State agencies and the allocation basis for funds to local agencies.

Several changes from current regulations have been made in the proposal to incorporate provisions of Pub. L. 95-627. The following changes are in the proposed regulations.

As in Pub. L. 95-627, the proposal states that FNS will allocate funds to the States on the basis of a formula determined by the Department. Copies of the Department's funding proposals may be obtained from FNS. The proposal states that, as allowed by Pub. L. 95-627, up to one-half of one percent of sums appropriated for each fiscal year, not to exceed $3,000,000, shall be used by the Department for Program evaluations and pilot projects. Guidelines for the use of these evaluations and pilot project funds will be published in the near future, and after publication copies may be received from FNS.

In regard to the distribution of funds between State agencies and local agencies, the proposal contains several specific provisions to incorporate requirements in Pub. L. 95-627. State agencies are required to forward in advance those administrative funds which a local agency may need to successfully begin Program operations. In cases where funds are advanced to a local agency, the proposal requires States to ensure the local agency has sufficient funds to cover the estimated monthly disbursement needs.

In accordance with Pub. L. 95-627, the amount of funds distributed to local agencies for administrative costs shall, under the proposal, be determined on the basis of a formula developed by the State agency in cooperation with a representative sample of local agencies. At a minimum, the proposal requires that the formula for the allocation of local agency administrative funds take into consideration factors such as: staffing needs; caseload levels; salary scales; necessary certification equipment; needs for bilingual services; special needs of members of populations; population density or a population that resides in a rural area; and, available funding sources other than the Program.

Redistribution of Funds

Section 246.15 of the proposal describes the conditions under which the Department may adjust, withhold and redistribute Program funds to State agencies.

The proposal retains the provisions in this section of current regulations and adds a paragraph to clarify the following: Upon reaching a determination that a State agency has failed, without good cause, to properly administer the Program or has failed to carry out its State Plan, FNS may withhold such amounts of the State agency's administrative funds as FNS deems appropriate.

Records and Reports

Section 246.16 of the proposal enumerates the reporting requirements State agencies must meet and specifies that all records must be retained for a minimum of three years. The proposal specifies that the reporting and retention requirements pertain to information about food delivery systems; financial operations; food instrument issuance and redemption; equipment purchases and inventory; certification procedures; nutrition education; and civil rights and fair hearing procedures. Other issues addressed in this section are the audit acceptability of reports, the certification of reports, and the Department's use of reports to monitor State compliance with goals set forth in the State Plan.

The requirements of this proposal are identical to those set forth in current regulations.

Closeout Procedures

Section 246.17 of the proposal requires State agencies to liquidate all obligations before final closure of a fiscal year grant and to submit preliminary and final closeout reports for each fiscal year. Also proposed in this section are the procedures State agencies must follow when they are terminated from participation in the Program. Such termination may occur when the State agency has failed to comply with Program requirements or when the State agency and FNS agree that continuation would not produce beneficial results commensurate with the further expenditure of funds.

There are no revisions or new requirements imposed upon State agencies in this section. All proposed requirements are currently in effect as required by the current regulations and by the amendment published in the Federal Register on June 2, 1978. (43 FR 23983). That amendment provided State agencies a time limit of 120 days past the end of the fiscal year, for the purpose of submitting a final fiscal year closeout report.

Procurement and Property Management Standards

Section 246.18 of the proposal describes the requirements State agencies must follow when using Program funds to procure food in bulk lots, supplies, equipment or services. Also set forth in this section are the responsibilities of the State agencies to settle all contractual issues arising out of procurements and to observe specific standards in utilizing or disposing of property acquired with Program funds. This proposal retains the requirements of current regulations with no revisions.

Claims and Penalties

Section 246.19 of the proposal prescribes the procedures and penalties to be invoked if FNS determines Program funds have been misused or otherwise diverted from Program purposes. The section contains provisions regarding claims against State agencies and regarding penalties such as jail sentences or fines against persons.

The portion of this section in the proposal concerning claims has been retained unchanged from current regulations.

The portion of this section in the proposal concerning penalties is a direct quote from Pub. L. 95-627 with the exception of wording changes necessary to make the law provisions apply to the proposal.

Management Evaluations and Reviews

Section 246.20 of the proposal requires the establishment of a system to assess the accomplishment of Program objectives. The section contains provisions related to FNS responsibilities and to State agency responsibilities.

In accordance with the provision of Pub. L. 95-627 which requires the Department to set standards for proper, efficient, and effective Program administration, this section of the proposal outlines specific standards to be evaluated during Program reviews. As also provided in Pub. L. 95-627, this section of the proposal sets forth a sanction procedure for non-compliance with the specified standards. The law and the proposal grants FNS authority to withhold State agency operational and administrative funds for failure to comply with Program requirements. If corrective action is taken within the fiscal year, withheld funds will be returned to the State agency.

The performance standards and sanctions set forth in this section of the proposal were developed on the basis of the recommendations made by the Advisory Panel on Program Performance Standards and Sanctions. In particular, the panel suggested that a minimum number of standards in key areas of Program operations be selected. The standards set forth certain requirements in the Program operation areas of food issuance, program accountability, financial management, certification, nutrition education, and program administration.

The following changes have been made from current regulations in the portion of the proposal concerning FNS responsibilities.

FNS is required to annually review each State agency. If non-compliance with Program standards is disclosed, FNS shall withhold State operational and administrative funds. However, prior to withholding funds, FNS is required to invoke a series of warning procedures. If compliance is achieved before the end of the fiscal year in which funds were withheld, the withheld funds shall be restored to the State. If compliance is not achieved, the funds revert to FNS.

The deficiencies listed in the proposal which will result in the implementation of the sanction procedure include: (1) payments to vendors being delayed past the 60 days specified in the Food Delivery section of the proposal; (2) reviews being conducted in less than 10 percent of the vendors in the Program; (3) late submission of more than 10 percent of the monthly and annual reports required each fiscal year in the Reports and Records section of the proposal; (4) failure to individually reconcile at least 95 percent of the food instruments issued in a three month period; (5) improper completion of more than 5 percent of participant certification records; and (6) vacancies for more than nine months in staff positions required in the Administration section of the proposal.

To measure the extent of the deficiencies FNS is required to make on-site reviews of State and local agencies.

The responsibilities of the State agencies in this section of the proposal remained unchanged from current regulations with two exceptions. In addition to the requirement for an annual review of each local agency a minimum of 20 percent of the clinics under each local agency must be annually reviewed. Also, it is specified that on-site visits must be made to at least 10 percent of the retail outlets required to be annually reviewed.

The Department believes the above stated standards are the minimum necessary to assure proper, efficient, and effective Program administration.

Audits

Section 246.21 of the proposal sets forth procedures for conducting Program audits. The provision in the section concern Federal access to information, State agency response requirements, corrective action, and State sponsored audits.

One significant change was made in this section of the proposal from current regulations. The portion of the section concerning scope and frequency of State sponsored audits has been revised to reflect a recent amendment to A-102. The proposal requires that State sponsored audits be conducted in accordance with the provisions of Attachment G of A-102. Allowance is made, however, for FNS to request a State sponsored audit of the Program, if FNS reviews of operations indicate that there are questionable financial management procedures in the State agency operation of the Program.

The references in this section of current regulations to descriptions necessary for inclusion in the State Plan have been moved to the section of the proposal concerning State Plans.

Investigations

Section 246.22 of the proposal sets forth the Department's authority to investigate any allegation of noncompliance with these regulations and FNS guidelines or instructions. The section has provisions regarding the Department's authority to investigate and assuring confidentially of the investigation records.

Nondiscrimination

Section 246.23 of the proposal sets forth the prohibition against discrimination under the Program. The section has been expanded to cite specific laws on nondiscrimination and to include prohibitions against discrimination on the basis of age or handicap. It should be noted that section also contains requirements for non-English staff or interpreters as well as for materials where necessary and the address to which complaints should be submitted.

Fair Hearing Procedures for Participants

Section 246.24 of the proposal sets forth the procedures for conducting fair hearings. The section contains provisions on participant notification of rights and on the minimum procedures which must be included in the State agency's fair hearing process.

Although the Act does not require any specific changes to the existing fair hearing regulations for participants, to clarify and improve upon the current requirements the proposal makes the following revisions or additions.

The proposed regulations establish a 90-day minimum time period in which State agencies must accept requests for fair hearings. This time period is proposed to afford aggrieved individuals an adequate amount of time to decide to file a request. A longer time period is not proposed because appeals may concern medical conditions which may well have changed after the 90-day limit. If a participant files a request within the 90-day appeal request period, benefits will be continued, or reinstated if they were terminated prior to receipt of the request. Benefits should continue until the hearing official reaches a decision which upholds the agency action.

For purposes of clarification, the proposal sets forth the circumstances under which a State agency can deny or dismiss a request for a hearing. Paragraphs are also proposed to clarify the hearing official's responsibilities and the applicant's rights during the hearing procedure.

The proposal specifies that fair hearing decisions must comply with Federal law, regulation or policy and must be factually based on the hearing record. Although this is current policy, it is not clearly stated in the current regulations. Lastly, a statement has been added to clarify that in addition to a decision being reached within 45 days, benefits must also begin or be reinstated within that time frame if the hearing is decided in favor of the appellant.

ADMINISTRATIVE APPEAL OF STATE AGENCY DECISIONS

Section 246.25 of the proposal sets forth the requirements for State agencies to provide appeal procedures to agencies or food vendors aggrieved by State agency actions. Besides the statement of the requirement, the section specifies the minimum procedures which must be included in the State agency's appeal process.

Although only minor revisions from current regulations were made in this section, several significant points were clarified. In response to public comment received since the publication of current regulations, the proposed regulations have been expanded to clarify that the State agency shall provide hearings upon request not only when applications for participation in the Program are denied, but also when participation is teminated or when contracts are not renewed by the State agency or for any other State agency action. A sentence has also been added to require the State agency to provide advance notice of the forthcoming hearing to all parties involved, to provide them sufficient time to prepare for the hearing.

MISCELLANEOUS PROVISIONS

Section 246.26 sets forth numerous provisions indirectly related to program operations. The section has provisions on: prohibiting program benefits from being considered income in other programs; reserving FNS right to use program information; restrictions regarding use of medical records; disclosure of program information; and contacting FNS regional offices.

The proposed provisions are unchanged from current requirements with two exceptions—update the address for the FNS Mountain Plains Regional Office, and require that each State and local agency have a copy of the State Procedure Manual for public inspection.

The current WIC Program regulations will remain in full force and effect until the proposal is revised in response to comments received and final regulations are published.

The proposed structure of Part 246 reads as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAMS FOR WOMEN, INFANTS AND CHILDREN

Sec.

246.1 General purpose and scope.
246.2 Definitions.
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246.23 Nondiscrimination.
246.24 Fair hearing procedures for participants.
246.25 Administrative appeal of State agency decisions.
246.26 Miscellaneous provisions.

AUTHORITY: Child Nutrition Amendments of 1978, Pub. L. 95-627, 92 Stat. 3603 et seq.

§ 246.1 General purpose and scope.

(a) *Purpose.* This part specifies the policies and prescribes the regulations for the Special Supplemental Food Program for Women, Infants and Children (WIC or Program), carried out by the U.S. Department of Agriculture USDA) under section 17 of the Child Nutrition Act of 1966, as amended. Section 17 states in part that the Congress finds that substantial numbers of pregnent, postpartum and breastfeeding women, infants and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. The purpose of the Program is to provide supplemental foods and nutrition education through local agencies to eligible persons. The Program shall serve as an adjunct to good health care, during critical times of growth and development, in order to prevent the occurence of health problems and improve the health status of these persons.

(b) *Scope.* Section 17 authorizes payment of cash grants to State agencies which administer the Program through public health or service agencies or private, nonprofit agencies of States, or Indian tribes, or IHS service units.

As set forth in this part, supplemental foods and nutrition education are provided to pregnant, pastpartum and breastfeeding women, infants and children from families with inadequate income determined by a competent professional authority to be at nutritional risk.

§ 246.2 Definitions.

For the purpose of this part and all contracts, guidelines, instructions, forms and other documents related hereto, the term:

"Affirmative Action Plan" means the State agency plan for initiation or expansion of the Program within the State's jurisdiction in accordance with Section 246.4 of the regulations.

"A-102" means Office of Management and Budget Circular No. A-102, which establishes uniform standards for the administration of grants to State and local governments.

"A-110" means Office of Management and Budget Circular A-110, which sets forth uniform administrative requirements for grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.

"Breastfeeding women" means women up to one year postpartum who are breastfeeding infants.

"Categorical Ineligibility" means persons who do not meet the definition of pregnant women, breastfeeding women, postpartum women, or infants or children.

"Certification" means the use of criteria and procedures to assess and document each applicant's eligibility for the Program.

"Children" means persons who have had their first birthday but have not yet attained their fifth birthday.

"Clinic" means a facility where participant are certified.

"Competent professional authority" means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians of State or local medically trained health officials, in accordance with standards prescribed in § 246.7 of this part, as being competent professionally to evaluate nutritional risk.

"Department", U.S. Department of Agriculture.

"Dual participation" means simultaneous participation in the Program in more than one local agency, or participation in the Program and in the Commodity Supplemental Food Program (7 CFR part 247) during the same period of time.

"Family" means a group of related or nonrelated individuals who are not residents of an institution but who are living together as one economic unit.

"Fiscal year" means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"FMC 74-4" means Federal Management Circular 74-4 which sets forth principles and standards for determining costs applicable to grants and contracts.

"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"Food costs" means the acquisition cost of the supplemental foods provided to State or local agencies or to participants, whichever receives the foods first. Food costs shall not exceed the vendor's customary price.

"Food delivery system" means the method used by State and local agencies to provide supplemental foods to participants.

"Food instrument" means a voucher, check, coupon or other document which is used by a participant to obtain supplemental foods.

"Health services" means ongoing, routine pediatric and obstetic care such as infant and child care, and prenatal and postpartum examinations.

"IHS" means the Indian Health Service of the U.S. Department of Health, Education and Welfare.

"Income poverty guidelines" means the income standards prescribed annually by the Secretary for reduced price school meals under Section 9 of the National School Lunch Act, which is 95 percent in excess of the Secretary's guidelines.

"Infants" means persons under one year of age.

"Local agency" means a public health or service agency or a private, nonprofit health or service agency which provides health services, either directly or through contract in accordance with § 246.5 of the regulations. The term shall include an IHS service unit, an Indian tribe, band, or group recognized by the Department of the Interior or an intertribal council, or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an IHS service unit.

"Members of populations" means persons with a common special need that do not necessarily reside in a specific geographic area, such as off-reservation Indians or migrant families.

"Nonprofit agency" means a private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

"Nutrition education" means individual or group educational sessions and the provision of information and materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

"Nutritional risk" means one or more of the following:

(1) For a pregnant woman—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements such as anemia or abnormal weight gain;

(ii) Other documented nutritionally related medical conditions such as toxemia, diabetes, vitamin and mineral deficiencies, lead poisoning, hypoglycemia alcoholism or drug addiction;

(iii) Dietary deficiencies that impair or endanger health; and

(iv) Conditions which predispose persons to inadequate nutritional patterns or nutritionally related medical conditions such as a history of alcoholism and drug addiction, history of difficult pregnancy, mental retardation, chronic infections, pregnancy within two years of onset of menses of over 35 years, or conception prior to 16 months postpartum.

(2) For a breastfeeding woman—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements such as anemia, underweight, or obesity;

(ii) Other documented nutritionally related medical conditions such as diabetes, hypoglycemia, vitamin and mineral deficiencies, and alcoholism or drug abuse;

(iii) Dietary deficiencies that impair or endanger health;

(iv) Conditions which predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as history of alcoholism and drug abuse, mental retardation or chronic infections.

(v) Breastfeeding an infant which meets the nutritional risk criteria in paragraph (4) below.

(3) For postpartum women—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements such as anemia, obesity and underweight;

(ii) Other documented nutritionally related medical conditions, such as diabetes, hypoglycemia, and vitamin and mineral deficiencies;

(iii) Dietary deficiencies that impair or endanger health; and

(iv) Conditions which predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as a history of alcoholism and drug abuse, or chronic infections.

(4) For infants—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements such as anemia or phenylketonuria (PKU), abnormal pattern of growth including obesity or stunting or a birth weight of 2500 grams or less;

(ii) Other documented nutritionally related medical conditions, such as diabetes, hypoglycemia, vitamin and mineral deficiencies, and failure to thrive;

(iii) Dietary deficiencies that impair or endanger health;

(iv) Conditions which predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, such as chronic infections, intestinal parasites, pyloric stenosis, a history of sibling failure to thirve, or infant of an alcoholic, mentally retarded or drug addicted mother; and

(v) Status as an infant (up to six months of age) of a mother who either was a participant during pregnancy or who was in nutritional risk during pregnancy because of detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions.

(5) For a child—

(i) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements such as anemia or abnormal pattern or growth including underweight, obesity or stunting;

(ii) Other documented nutritionally related medical conditions such as diabetes, hypoglycemia, vitamin and mineral deficiencies;

(iii) Dietary deficiencies that impair or endanger health; and

(iv) Conditions which predispose persons to inadequate nutritional patterns or nutritionally related medical conditions such as chronic infections, intestinal parasites, physical anomalies which preclude proper ingestion of food, such as cerebral palsy or cleft palate.

"Operational and administrative costs" means those direct and indirect costs, exclusive of food costs, which State and local agencies determine to be necessary to support Program operations. Such costs include, but are not limited to, the cost of Program administration, monitoring, auditing, nutrition education, start-up, outreach, certification and developing and printing food instruments.

"Participants" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods or food instruments under the Program.

"Participation" means the number of persons for whom supplemental foods or food instruments have been issued for the reporting period.

"Plan of Program Operation and Administration (State Plan)" means the document that describes the manner in which the State agency intends to implement and operate all aspects of Program administration within its jurisdiction in accordance with § 246.4.

"Postpartum women" means women up to six months after termination of pregnancy.

"Pregnant women" means women determined to have one or more fetuses in utero.

"Program" means the Special Supplemental Food Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966, as amended.

"SFPD" means the Supplemental Food Programs Division of the Food

and Nutrition Service of the U.S. Department of Agriculture.

"Secretary" means the Secretary of Agriculture.

"State" means any of the fifty States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, Northern Marianas and the Trust Territory of the Pacific Islands.

"State agency" means the health department or comparable agency of each State. It can also mean an Indian tribe, band or group recognized by the Department of the Interior, or an intertribal council or group which is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior and which has an ongoing relationship with such tribes, bands or groups for other purposes and has contracted with them to administer the Program; or the appropriate area office of the IHS.

"Supplemental foods" [Reserved]

§ 246.3 Administration.

(a) *Delegation to FNS.* Within the Department, FNS shall act on behalf of the Department in the administration of the Program. Within FNS, SFPD and the Regional Offices are responsible for Program administration. FNS will provide assistance to State and local agencies and evaluate all levels of Program operations to assure that the goals of the Program are achieved in the most effective and efficient manner possible.

(b) *Delegation to State agency.* The State agency is responsible for the effective and efficient administration of program operations within its jurisdiction and shall administer the Program in accordance with the requirements of this part, A-110, A-102, FMC 74-4, and FNS guidelines and instructions. The State agency shall provide guidanace to local agencies on all aspects of Program operations.

(c) *Agreement and State Plan.* Each State agency desiring to administer the Program shall annually submit a State Plan and enter into a written agreement with the Department for the administration of the Program in the jurisdiction of the State agency in accordance with the provisions of this part.

(d) *State staffing standards.* Each State agency shall assure that sufficient staff is available to administer an efficient and effective Program including the functions of nutrition education, certification, monitoring, fiscal reporting, food delivery, and training. Each State agency as a minimum shall, based on the previous fiscal year's particpation as of June, have the following levels:

(1) A State agency shall employ a full-time equivalent (FTE) administrator when the monthly participation level exceeds 1,500 participants.

(2) A State agency shall employ at least one full time equivalent (FTE) program specialist for each additional 5,000 participants. These program specialists should be utilized for providing technical assistance, monitoring vendors, reviewing local agencies, training, nutritional services and fiscal management.

(3) For nutrition related services, one full time nutritionist, named as State WIC Nutrition Coordinator, when the prticipation is above 500, or minimum of a half-time professional with a participation of less than 500. The State WIC Nutrition Coordinator shall meet the following qualifications:

(i) Hold a Master's degree with emphasis in Community Nutrition, Public Health Nutrition, or Nutrition Education. Request for exception may be submitted to FNS for approval.

(ii) Have at least three years progressively responsible administrative experience in education, social service, maternal and child health, public health, or clinical dietetics.

(iii) Special skills recommended include: a knowledge of nutrition; administrative experience; program development skills and evaluation skills; education background and skills in the development of educational and training resource materials; community action experience; counseling skills; and experience in participant advocacy.

(4) The State agency shall also assure for the delivery of nutrition education to participants and for sufficient qualified staff consisting of professionals and paraprofessionals.

(5) The State agency shall enforce hiring practices which comply with the nondiscrimination criteria set forth in § 246.23(a), and the hiring of minority staff is encouraged.

(e) *Delegation to local agency.* The agency shall provide Program benefits to participants in the most effective and efficient manner, and shall comply with this part, A-102, A-110, FMC 74-4 and State agency and FNS guidelines and instructions.

§ 246.4 State Agency Plan of Program Operation and Administration.

(a) *Requirements.* Each year by August 15 the State agency shall submit to FNS for approval a State Plan for the following fiscal year. FNS shall provide written approval or denial of a completed State Plan or amendment within 30 days of receipt. Within 15 days after FNS receives an incomplete Plan, FNS shall notify the State agency that additional information is needed to complete the Plan. Any disapproval shall be accompanied by a statement of the reasons for the disapproval. Approval of the Plan by FNS is a prerequisite to the payment of funds to the State agency for Program operations. The Plan and all amendments shall be signed by the Chief Health Officer of the State agency or equivalent. The State Plan shall provide the following:

(1) The names and addresses of the local agencies which are currently operating or are expected to operate during the fiscal year, the area or population served by each local agency, the number of clinics of each local agency and an estimate of the number of potentially eligible persons.

(2) A map identifying the areas and populations which will be served by each local agency.

(3) A copy of the preapplication package for local agencies which includes eligibility criteria for local agencies, sample proposals for Program operations in either an urban or rural setting, and a local agency application.

(4) A copy of the forms to be used for:

(i) A local agency application to operate a local program;

(ii) The agreement between the State agency and local agencies.

(5) A current Affirmative Action Plan which includes the following information;

(i) A list of all areas and a description of special populations within the jurisdiction of the State agency ranked according to need. Areas and special populations of highest relative need shall be those that are determined, through some method to be developed by the State agency, to contain eligible populations at greatest nutritional risk.

(ii) A comprehensive description of the method used by the State agency to determine rankings of areas and special population groups according to need. This description shall include discussion and justification of criteria used in the ranking method, discussion and justification of the relative importance assigned to ranking criteria, and the actual data used in the ranking procedure. Ranking criteria used shall be limited to infant mortality rates, neonatal mortality rates, the incidence of low birth weights, teenage pregnancies, Apgar scores, the incidence of poor prenatal care, and percentage of population below poverty levels or some other indicator of the economic conditions of the population. The selection of health-related measures used as ranking criteria and the determination of relative importance assigned to them in the ranking method used should be affected by consideration of the relative specificity of the measure to the types of nutrition and health related problems that are intended to be alleviated by the program and the statistical reliability of the

data used. Measures with relatively high variability between years within an area or special population, for example, should be used with caution or means should be determined to derive statistics more indicative of normal levels. Also, consideration should be given to the statistical significance of differences in measures observed among areas of special populations. The greater the probability that observed differences in a specific measure are due to random fluctuations in values observed, the less should be the importance place on the measure in establishing rankings. Members of special populations shall be given consideration in the Affirmative Action Plan. The Affirmative Action Plan shall not be approved by FNS unless Indian and migrant farmworker populations that exist within the jurisdiction of the State agency are given consideration.

(iii) The State agency shall describe all actions it will take to identify potential local agencies in the neediest one-third of all areas unserved or partially serviced and encourage such agencies to implement or expand program operations within the following year.

(iv) The State agency shall specify which areas in the Affirmative Action Plan are currently operating a Commodity Supplemental Food Program and those areas being served by the program, including which participant priority categories in § 246.7 are being reached.

(6) A copy of the procedure manual developed by the State agency for guidance to local agencies in the implementation and operation of the Program. The manual shall include, as a minimum, all aspects of: certification, recordkeeping, nutrition education, food delivery system, and expansion of services during migrant season.

(7) A detailed description of plans to provide Program benefits to eligible migrant farmworkers and Indians, including the procedures instituted by the State agency to ensure that eligible migrant farmworkers may, to the maximum extent feasible, continue to receive program benefits when they enter the State agency's jurisdiction subsequent to original certification in another Program jurisdiction.

(8) The outreach portion of the State Plan shall include:

(i) A description of the State agency's outreach program which shall be conducted in cooperation with local agencies. A description shall be included of the actions taken to publicize the availability of program benefits, including the eligibility criteria and the location of local agencies operating the Program. Such information shall be publicly announced, in the form of press releases to all relevant media sources, at least on an annual basis. In addition, State and local agencies shall establish referral systems through which persons who are potentially eligible for the program are referred to the appropriate local agency. State and local agencies shall contact, and attempt to incorporate into this referral network, all of the following agencies, offices, and organizations that serve low income pregnant, breastfeeding and postpartum women, infants, or children residing in WIC service areas: health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian Tribal organizations, religious and community organizations in low income areas including community action agencies, and other agencies, offices and organizations that deal with significant numbers of potentially eligible persons.

(ii) State and local agencies shall provide all agencies, organizations and offices in the referral network with outreach materials describing the Program and containing the name, address, and phone number of local agencies. State and local agencies shall work with agencies, organizations, and offices in the referral network to assure that, to the maximum degree possible, persons contacting these agencies, organizations and offices who are potentially eligible for the Program are informed of the program and referred to the local agency. State and local agencies shall provide these agencies, organizations, and offices with any training needed to assure the referral system is effective.

(iii) State and local agencies shall arrange a referral service with agencies administering the Food Stamp Program and the Aid to Families with Dependent Children Program, through which WIC applicants who appear eligible for benefits from these programs are informed of these programs, referred to the local welfare and food stamp offices and provided the addresses and phone numbers of these local offices. Printed materials that explain the Food Stamp Program shall be supplied by food stamp offices and made available to all WIC clinics. The State Plan shall include a description of the State and local actions to establish and expand these referral networks including the efforts that will be taken to notify eligible members of racial and ethnic minority groups about the program.

(9) An estimate of participation for the next fiscal year by category of women, infants and children.

(10) A description of the methods used to certify participants which shall include a list of the specific nutritional risk criteria which cites conditions and indices to be used to determine a persons's nutritional risk.

(11) A plan for the provision of nutrition education for the fiscal year, including the procedures which shall be used to meet the special nutrition education needs of migrants and Indians. The nutrition education portion of the Plan shall include:

(i) A description of the State nutrition education goals;

(ii) A description of the action plan for achieving the goals including a summary of the resources and technical assistance available to local agencies for purposes of developing nutrition education sessions;

(iii) The plans for training persons responsible for providing nutrition education to participants and a description of the training materials to be used,

(iv) The evaluation methods to be used to determine local agency compliance and to determine the effect of the lessons on participants including a means for obtaining the views of participants concerning the effectiveness of the nutrition education they have received;

(v) A summary of the results of the nutrition education evaluations conducted in the prior fiscal year.

(12) A description in detail of the food delivery system including:

(i) A description of all food delivery systems to be used by local agencies under its jurisdiction;

(ii) The form for the written agreement between the food vendor and the State or local agency;

(iii) A description of the guidance provided to food vendors concerning the authorized supplemental foods and WIC Program requirements;

(iv) A description of the State agency's system designed to limit food vendor and participant abuses of the Program;

(v) Where food instruments are used, a facsimile of the food instrument, the system for control and reconciliation of food instruments, and the criteria used to approve the mailing of food instruments;

(vi) The procedures used to pay food vendors; and

(vii) A description of how the State agency assures that the number of food vendors serving an area is adequate.

(13) A plan for the detection and prevention of dual participation within the jurisdiction of the State agency.

(14) A description of the financial management system, including:

(i) A detailed breakdown of the proposed expenditures among the cost categories of operational and administrative costs, nutrition education costs, and food costs;

(ii) A detailed description of procedures to ensure that one-sixth of the State agency's operational and administrative funds are expended on nutrition education, or to document that equivalent nutrition education resources are provided by other sources; and

(iii) A description of the method used to allocate operational and administrative funds among local agencies, the procedures used to develop the allocation standards in cooperation with local agencies, and procedures for distributing operational and administrative funds, including start-up funds, to local agencies.

(15) A description of the State agency monitoring procedures including the number of on-site reviews of local agencies and clinics performed in the last full four quarters prior to July 1, and the number planned for the coming fiscal year.

(16) A description of the State agency audit procedures, including:

(i) A description of the scope and frequency of audits of the State agency and local agencies and a delineation of the procedures used that assure audit examinations at reasonable frequency. State agency guidelines for selecting a sample of grant programs for audits should be included.

(ii) A description of the State agency in sufficient detail to demonstrate the independence of the audit organization.

(iii) The number of local agencies in which the WIC Program was included in the audit in the last full four quarters, the number of local agency audits planned, and the number of local agencies to be audited in the coming fiscal year which will include the WIC program in the audit.

(17) A description of the plans to coordinate Program operations with special counseling services and with other programs. Coordination shall include, but not be limited to services for family planning, alcohol and drug abuse counseling, child abuse counseling, immunization, penatal care, and well-child care. Coordination with other programs shall include Food Stamp Program (Pub. L. 95-113), and the Expanded Food and Nutrition Education Programs (Pub. L. 95-113).

(18) A description of the resources and staff available to perform State agency responsibililties and to assist local agencies in Program operations, such as any necessary supervision, reviews, training and guidance.

(19) A description of the steps taken to comply with the State Plan public hearing requirements and a summary of the public hearings.

(20) A description of the procedures used to comply with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 including racial and ethnic participation data collection, public notification procedures and the annual civil rights compliance review process, and with 7 CFR Part 15.

(21) A description of fair hearing procedures for participants and the administrative appeal procedures for local agencies and food vendors.

(b) *Public Hearings.* Not later than May 31 of each year the State agency shall conduct public hearings to enable the general public to participate in the development of the State Plan. In the case of Indian State gencies, the public hearings shall be held one month prior to submission of the State Plan to an areawide Federal Planning office or to FNS.

(1) The hearings shall be accessible to the public, and there shall be sufficient space in the hearing room to accommodate the number of persons expected to attend; and

(2) The State agency shall publish notice in the media throughout the State which provides the time, place and subject of the hearing and invites interested members of the public to participate.

(3) The State agency shall send letters of invitation at least 30 days before the hearing to all local agencies and those parties cited in § 246.4(a)(17) and to those agencies referring potential participants.

(c) *Submission of Plan to Governor.* Annually, by June 30 all State agencies except Indian State agencies shall submit the State Plan to the Governor or delegated authority, for comment as required by Circular A-95 (38 FR 37874), issued by the Office of Management and Budget on September 13, 1973. A period of 45 days from the date the Governor receives the State Plan shall be allowed for comments prior to submission to FNS. The comments shall be submitted with the State Plan. If the Governor makes no comment, a statement to that effect shall be attached to the State Plan. Amendments to the State Plan need not be submitted to the Governor unless they include a significant change. Indian State agencies may consult areawide Federal planning offices in the development of their State Plan.

(d) *Amendments.* At any time, the State agency may amend the State Plan to reflect changes or budget increases requested. The State agency shall submit the amendments to FNS for approval.

§ 246.5 Selection of local agencies.

(a) *General.* This section sets forth the procedures the State agency shall perform in the selection of each agency which applies to operate under the Program and in Program expansion.

(b) *Preapplication package.* The State agency shall provide a preapplication package to any interested agency within 15 calendar days of a request for information concerning Program operations.

(c) *Application of local agencies.* The State agency shall require each agency which desires approval as a local agency to submit written application which contains sufficient information to enable the State agency to make a determination as to the eligibility of the local agency. Local agencies which are subdivisions of the State agency shall not be exempt from this requirement. Within 15 days after receipt of an incomplete application, the State agency shall provide written notification to the applicant agency of the additional information needed. The State agency shall notify the applicant agency in writing of the approval or denial of its application within 30 days of receipt of a completed application. The State agency shall deny applications from local agencies if there are not funds available for Program initiation or expansion. These agencies shall be advised that the State agency is filing their application and they will be reconsidered and notified when funds become available. When an application is denied, the State agency shall advise the applicant agency of the reasons for denial and of the right to appeal as set forth in § 246.25 of this part.

(d) *Program initiation and expansion.* The State agency shall meet the following requirements concerning Program initiation and expansion:

(1) The State agency shall fund local agencies serving those areas or special populations most in need first, in accordance with their order of priority as listed in the Affirmative Action Plan described in § 246.4. Expansion of existing operations shall also be done in accordance with the Affirmative Action Plan. The selection criteria cited in paragraph (e)(1) of this section shall be applied in each area or population before eliminating that area from consideration and serving the next area or population. The State agency shall consider the participant priority system in § 246.7 in determining when it is appropriate to move into additional areas in the Affirmative Action Plan.

(2) The State agency shall provide a written justification to FNS for not funding the highest priority area or population such as inability to administer the Program, lack of interest expressed for operating under the Program, or, for those areas or special populations which are under consideration for expansion of an existing operation, a determination by the State

agency that there is a greater need for funding in an area or population not operating the Program. The participant priority system in § 246.7 shall be utilized in making this determination.

(3) The State agency may fund new local agencies without FNS approval as long as the requirements of this part are met. The State agency may fund more than one local agency to serve the same area or population, as long as more than one local agency is deemed necessary to serve the full extent of need in that area or population.

(4) The State agency shall take all reasonable actions to identify potential local agencies in the neediest one-third of all areas unserved or partially served and encourage such agencies to implement or expand Progarm operations within the following year.

(e) *Local agency priority system.* The State agency shall comply with the following requirements in the selection of local agencies.

(1) The State agency shall select local agencies in accordance with the following priority system which is based on the availability of health and administrative services:

(i) First consideration shall be given to a public or private nonprofit health agency which will provide health and administrative services.

(ii) Second consideration shall be given to a public or private nonprofit health or service agency which must enter into a written agreement with another such agency for either health or administrative services.

(iii) Third consideration shall be given to a public or private nonprofit health agency which must enter into a written agreement with private physicians, licensed by the State, in order to provide health services to a specific category of participant women, infants and children or to participants not eligible for health services at the local agency due to family income which exceeds the standards for health services as established by the local agency.

(iv) Fourth consideration shall be given to a public or private nonprofit service agency which must enter into a written agreement with private physicians, licensed by the State, to provide health services.

(2) The State agency shall publish a notice in the media of the area next in line according to the Affirmative Action Plan, unless the State agency has received an application from a public or nonprofit private health agency which can provide adequate health and administrative services. The notice shall include a brief explanation of the Program, a description of the local agency priority system cited in this paragraph, a description of the preapplication package that is available, and a request that potential local agencies notify the State agency of their interest within 30 days. In addition, the State agency shall contact all potential local agencies in the area to ensure that they are aware of the opportunity to apply for participation under the Program. If no agency expresses interest within 30 days, the State agency may then proceed with the selection of a local agency in the area next in line according to the Affirmative Action Plan. If sufficient funds are available a State agency shall give notice and consider applications in more than one area at the same time, but shall fund new local agencies in conformance with the sequential ranking of the Affirmative Action Plan.

§ 246.6 Agreements with Local Agencies.

(a) *Signed written agreement.* The State agency shall enter into a signed written agreement with each local agency which sets forth the local agency's responsibilities for Program operations as prescribed in this part. Local agencies which are subdivisions of the State agency shall not be exempt from this requirements. Copies of the agreement shall be kept on file at both the State and local agency for purposes of review and audit in accordance with § 246.20 and § 246.21.

(b) *Provisions of agreement.* The agreement between the State agency and each local agency shall ensure that local agencies:

(1) Comply with all the fiscal and operational requirements prescribed by the State agency pursuant to this part and FNS guidelines and instructions;

(2) Have the competent professional authority on the staff of the local agency and the facilities and equipment necessary to perform the certification procedures;

(3) Make available appropriate health services to participants; up to the income level specified for the Program;

(4) Provide nutrition education services to participants, in compliance with § 246.9 and FNS guidelines and instructions;

(5) Implement a food delivery system prescribed by the State agency pursuant to § 246.10 and approved by FNS;

(6) Provide on a timely basis to the State agency all required information regarding fiscal and program administration in accordance with this part;

(7) Maintain complete, accurate, documented and current accounting of all Program funds received and expended; and

(8) Maintain on file and have available for review, audit, and evaluation all criteria used for certification, including information on the areas served, income standards which comply with § 246.7, and a specific criteria used to determine nutritional risk.

(c) *Indian agencies.* Each Indian State agency shall assure that all local agencies under its jurisdiction serve primarily Indian populations.

(d) *Health or service agencies.* When a health and service agency comprise the local agency, both agencies shall in conjunction meet all the requirements of this part and shall enter into a written agreement which outlines all Program responsibilities of each agency. The agreement shall be approved by the State agency during the local agency application process, and shall be on file at both the State and local agency. No Program funds shall be used to reimburse the health agency for the health services provided. However, costs of certification borne by the health agency may be reimbursed.

(e) *Health or welfare service agencies and private physicians.* When a health service agency and private physicians comprise the local agency, the agency shall have a written agreement with the private physicians and shall provide guidance to the private physicians regarding their responsibilities under the Program. The agency shall advise the State agency on its application of the names and addresses of the private physicians participating and obtain State agency approval of the written agreement. A competent professional authority on the staff of the service agency shall be responsible for the certification of participants. No Program funds shall be used to reimburse the private physicians for the health services provided. However, costs of certification borne by the physician may be reimbursed.

§ 246.7 Certification.

(a) *Requirements.* To be certified as eligible for the Program, an applicant must meet the income criteria specified in paragraph (c) of this section and the nutritional risk criteria specified in paragraph (d) of this section.

(b) *State agency responsibilities.* To enable local agencies to accurately determine the eligibility of persons for supplemental foods, the State agency shall provide local agencies with the following:

(1) Guidance regarding certification procedures in accordance with this section.

(2) The income poverty guidelines and procedures to be used in income determinations. Each State agency shall by June 1 of each year announce the family size income standards to be used in making income determinations effective on July 1.

(3) A list of specific criteria for Statewide use in determining nutri-

tional risk as defined in this part which is in accordance with the priorities listed in paragraph (c)(2)(ii) of this section.

(4) A standard certification form, meeting the requirements of paragraph (h) of this section, for Statewide use.

(c) *Income determination.* (1) Participation in the Program shall be limited to those persons whose family income is equal to or less than the Secretary's income poverty guidelines increased by 95%, which is equivalent to the standard for reduced price meals for the School Lunch Program, for the appropriate family size. This provision shall be phased in at regular certifications. No person shall be removed from the Program due to changes in income criteria during a certification period.

(2) The local agency shall determine income through the use of a clear and simple application which meets the requirements of paragraph (h) of this section. In applying the income poverty guidelines, the local agency may consider the income of the family during the past 12 months and the family's current rate of income to determine which is the better indicator of income. However, persons from families with adult members who are unemployed shall be eligible based on income during the period of unemployment if the loss of income causes the current rate of income to be less than the Secretary's income poverty guidelines increased by 95%.

(3) The local agency shall determine the income eligibility of foster children as follows:

(i) In those cases where a welfare agency is legally responsible for the child and the foster home is an extension of the welfare agency, the foster child should be considered a one-member family. Payments made by the welfare agency for the care of that foster child shall be considered the income of that one-member family.

(ii) In those cases where the welfare agency has placed a child in a permanent home and/or subsidizes the adoption of the child, the child, shall be considered a member of the family with whom the child resides and the income eligibility would be based on that family's income.

(4) The local agency shall determine the income eligibility of persons from families which would not otherwise meet the income criteria and which claim the special hardship conditions according to the definition of special hardships in paragraph (6) below.

(5) Income means gross income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. Income includes the following:

(i) Monetary compensation for services, including wages, salary, commissions, or fees;

(ii) Net income from farm and nonfarm self-employment;

(iii) Social security;

(iv) Dividends or interest on savings or bonds, income from estates or trusts, or net rental income;

(v) Public assistance or welfare payments;

(vi) Unemployment compensation;

(vii) Government civilian employee or military retirement or pensions or veterans' payments;

(viii) Private pensions or annuities;

(ix) Alimony or child support payments;

(x) Regular contributions from persons not living in the household;

(xi) Net royalties; and

(xii) Other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

(6) Income shall not include any of the following:

(i) Income or benefits received under any Federal program which are excluded from consideration as income by any legislative prohibition, for example, income recieved by volunteers for services performed in the National Older Americans Volunteer Program as stipulated in the Domestic Volunteer Services Act of 1973, and the value of assistance to children or their families under the National School Lunch Act, the Child Nutrition Act of 1966 and the Food Stamp Act of 1977.

(ii) The value of in-kind housing or other in-kind benefit.

(iii) Income used for special hardship conditions which could not be reasonably anticipated or controlled by the household, including only the following:

(A) Unusually high medical expenses

(B) Shelter costs in excess of 30 percent of income as defined in this section

(C) Special education expenses due to the mental or physical condition of a child

(D) Disaster or casualty losses.

(d) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program's income eligible standard must be determined to be at nutritional risk.

(1) A competent professional auhority on the staff of the local agency shall determine if a person is at nutritional risk through a medical or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency. The person's height or length and weight shall be measured, and hematological test for anemia such as a hemoglobin or hematocrit test shall be performed. However, such tests are not required for infants under six months of age. Also, the blood test is not required for children who were determined to be within the normal range at their last certification. However, the blood test shall be performed on such children at least once a year. A breastfeeding woman may be certified if the child she is breastfeeding is determined to be at nutritional risk and the woman meets the income eligibility criteria.

(2) *Priority System for Nutritional Risk Criteria.* The following priorities shall be applied by the competent professional authority when vacancies occur after a local agency has reached its maximum participation level, in order to assure that those persons at greatest nutritional risk receive Program benefits. State agencies may set income priority levels within these six priority levels.

(i) *Priority I.* All pregnant women who became pregnant within 2 years after the onset of menses, pregnant women, breastfeeding women and infants at nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented medical conditions which demonstrate the persons' need for supplemental foods.

(ii) *Priority II.* Except those infants who qualify for Priority I, infants (up to 6 months of age) of WIC participants who participated during pregnancy, and infants born of women whose medical record document that they were at nutritional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions.

(iii) *Priority III.* Children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

(iv) *Priority IV.* Pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

(v) *Priority V.* Children at nutritional risk because of an inadequate dietary pattern.

(vi) *Priority VI.* Postpartum women at nutritional risk.

(e) *Processing standards.* (1) When there are funds available to provide Program benefits, the local agency shall accept applications, arrive at eligibility determinations, notify the applicants of the decisions made and, if the applicants are eligible, issue food or food instruments. All of these actions shall be accomplished within the processing standards set forth below.

The processing standards shall begin when the applicant personally makes an oral or written request to the local agency for Program benefits during regular office hours. To ensure that accurate records are kept of the date of the first oral or written request, the local agency shall at the time of the request record on a certification form the applicant's name, address and the date. The remainder of the form shall be completed at the time of certification. The local agency shall act on applications within the following timeframes:

(i) Pregnant women eligible as Priority I participants, infants under six months of age and members of migrant farmworker households who plan to leave the jurisdiction of the local agency shall be notified of their eligibility or ineligibility within 10 days of the date of the first oral or written request for Program benefits.

(ii) All other applicants shall be notified of their eligibility, ineligibility, or placement on a waiting list within 20 days of the date of the first oral or written request for Program benefits.

(iii) Each local agency with a retail purchase system shall issue a food instrument to the participant at the same time as the notification of certification. Such food instruments shall be redeemable immediately.

(iv) Each local agency with a direct distribution or home delivery system shall issue the supplemental foods to the participants within 10 days of issuing the notification of certification.

(2) When there are no funds available to provide Program benefits, the local agency shall maintain waiting lists of individuals who contact the local agency to express interest in receiving Program benefits. These waiting lists must include the name of the applicant, the date placed on waiting list, an address or phone number of applicant and the applicant's status, i.e., pregnant, breastfeeding, age.

(f) *Certification Periods.* Program benefits may be continued until the end of the month in which categorical ineligibility begins. For example, until the end of the month in which a child reaches the fifth birthday. Pregnant women shall be certified for the duration of their pregnancy and for six weeks postpartum. Postpartum women shall be certified within six weeks postpartum. Breastfeeding women shall be certified within six weeks postpartum and shall be certified at a six-month interval thereafter plus or minus 30 days. Infants and children shall be certified at the time of their entrance into the Program and at six-month intervals thereafter plus or minus 30 days. However, if the nutritional risk determination is based on data taken before the time of entrance to the Program, the certification intervals, for participants other than pregnant women, shall be based on the date when the data was taken rather than on the date of admittance to the Program.

(g) *Regression in nutritional status.* Participants may remain in the Program as long as they are eligible according to income criteria and there is a possibility of regression in nutritional status without the supplemental foods. However, the competent professional authority determining nutritional risk may remove a participant from the Program at a certification visit if that person, in the competent professional's judgment, is no longer at nutritional risk, or if there are potential participants waiting who, according to the priority system, are at greater nutritional risk.

(h) Certification forms. All certification data for each person certified shall be recorded on a form (or forms) which are provided by the State agency. The information on the form shall include the following:

(1) The person's name and address.

(2) Date of initial visit to apply for participation.

(3) The person's family income, family size, and the hardship conditions. The certification form may include income information integrated into a single application form or may separate income information onto an attachment to the certification form for easy completion by applicants. Income and nutritional risk information and data collected for other health services may be used to complete this form. However, the applicants must be informed of the hardship conditions by citing them on the certification form.

(4) The date of certification and the date nutritional risk data was taken if different from the date of certification.

(5) The person's height or length, weight, and hematological test results.

(6) The person's specific nutritional risk which established eligibility for the supplemental foods.

Documentation should include health history when appropriate to participant's nutritional risk condition, with participant's consent.

(7) The signature and title of the competent professional authority making the nutritional risk determination, and, if different, the signature and title of the administrative personnel responsible for determining income eligiblity under the Program.

(8) A statement saying, "This certification form is being made in connection with the receipt of Federal funds. Program officials may for cause verify information on this form. Deliberate misrepresentation may subject you to prosecution under applicable State and Federal statutes."

(9) After the person has been advised of the rights and obligations set forth in paragraph (i) of this section, the person or parent or caretaker shall read or be read the following statement and shall undersign on the form:

I have been advised of my rights and obligations under the Program. I certify that the information I have provided for my eligibility determination is correct, to the best of my knowledge.

(i) *Participant rights and obligations.* The following sentences shall be read by, or read to, the person or the parent or caretaker at the time of certification. Where a significant proportion of the area served by a local agency is composed of non-English or limited English speaking persons who speak the same language, the sentences shall be stated to such persons in a language they understand:

(1) Standards for participation in the Program are the same for everyone regardless of race, color, creed, or national origin.

(2) You may appeal any decision made by the local agency regarding your participation in the Program.

(3) The local agency will make health services and nutrition education available to you and you are encouraged to participate in these services.

(j) *Notification requirements.* The following responsibilities shall be performed by the State or local agency:

(1) Each Program applicant shall be informed of the right to a fair hearing as a part of each certification procedure.

(2) A person found ineligible for the Program during a certification visit shall be advised in writing of the ineligibility, of the reasons for the ineligibility and of the right to a fair hearing.

(3) A person found ineligible for the Program at any time during the certification period shall be advised in writing 15 days before termination of eligibility, of the reasons for ineligibility, and of the right to a fair hearing.

(4) Each participant shall be notified at least 15 days before the expiration of each certification period that eligibility for the Program is about to expire.

(5) Each participant shall receive an explanation of how the food delivery system in the local agency operates.

(6) Each participant shall be advised of the availability of health services.

(k) *Transfer of certification.* Each State agency shall issue verification of certification to every participant who is a menber of a family in which there is a migrant farmworker or any participant who is likely to be relocating during the certification period. The State agency shall require the local agencies under its jurisdiction to accept verification of certification

from participants, including migrant farmworker participants, who have been participating in the Program in another local agency within or outside of the jurisdiction of the State agency. The verification of certification is valid until the certification period expires, and shall be accepted as proof of eligibility for Program benefits. However, if the receiving local agency has waiting lists for participation, the transferring participant shall be placed on the list ahead of all other waiting applicants regardless of the priority of their nutritional risk criteria. The verification of certification shall include the name of the participant, the date the certification was performed, the nutritional risk criteria of the participant, the date the certification period expires, the signature and typed name of the local agency official in the originating jurisdiction, and the name and address of the certifying local agency.

(l) *Dual participation.* When a local agency serves the same area as a Commodity Supplemental Food Program or the same area as another local agency, the local agency shall comply with the following requirements:

(1) The local agency shall obtain a monthly copy of the list of persons participating in the CSFP Program or other local agency which serves the same area, and compare lists to determine whether there is any dual participation.

(2) If any participant is found to have committed dual participation, that person's participation in one of the Programs shall be terminated, subject to the provisions of § 246.24(b). The State agency may also disqualify dual participators from continued Program participation. Such disqualification shall not exceed a 3 month period, shall not be imposed upon infants or children, and shall be waived altogether if the competent professional authority determines that a serious health risk may result from disqualification from the Program.

(3) At certification and when issuing food or food instruments, the local agency shall check the identification of each participant.

(m) *Competent professional authority.* The competent professional authority on the staff of the local agency shall be responsible for determining nutritional risk and for prescribing supplemental foods. The following persons are the only persons authorized to serve as a competent professional authority:

(1) Physicians, nutritionists (B.S. or B.A. in nutrition, Public Health Nutrition, or Home Economics with emphasis in Nutrition or M.S. in Nutrition, Public Health Nutrition or Home Economics with emphasis in Nutrition), dieticians (Registered by the American Dietetic Association or eligible for Registration), Registered Nurses, Physicians Assistants (Certified by the National Committee on Certification of Physicians's Assistants or certified by the State medical certifying authority), or State or local medically trained health officials.

(2) Persons certified by physicians or State or local medically trained health officials to be currently enrolled in a formal course of training leading to one of the professional qualifications cited in subsection (1) above, or has completed a course of training which qualifies that person as a paraprofessional.

§ 246.8 Supplemental foods [Reserved].

§ 246.9 Nutrition education.

(a) *General.* Nutrition education shall be considered a benefit of the Program, and shall be provided at no cost. Nutrition education shall be designed to be easily understood by individual participants, and it shall bear a practical relationship to their nutritional needs, household situations, and cultural preferences including information on how to select food for themselves and their families. Nutrition education shall be thoroughly integrated into participant health care plans and the delivery of supplemental foods and other Program operations.

(b) *Goals.* Nutrition education shall be designed to achieve two broad goals:

(1) Emphasize the relationship between proper nutrition and good health, with special emphasis on the nutritional needs of pregnant, postpartum, and breast feeding women, infants and children under five years of age;

(2) Assist the individual who is at nutritional risk in achieving positive change in food habits, resulting in improved nutritional status and in the prevention of nutrition-related problems through optimal use of the supplemental foods and other nutritious foods. This is to be taught in the context of the ethnic, cultural and geographic preferences of the participants and with consideration for educational and environmental limitations experiences by the participants.

(c) *State agency responsibilities.* The following are the State agency responsibilities for nutrition education:

(1) Development and coordination of the nutrition education portion of Program operations including consideration of local agency plans and needs and the availability of nutrition education services from other sources;

(2) Provision of training and technical assistance to local agency professional and paraprofessional staffs involved in nutrition education;

(3) Identification or development of resource and educational materials for use at the local agencies including materials in languages other than English in areas in which a substantial number of persons speak a language other than English.

(4) Implementation of procedures to assure nutrition education can be provided to all adult participants and to parents or guardians of infant or child participants as well as child participants whenever possible.

(5) Design and performance of annual evaluations of nutrition education action plans including the assessment of participant views concerning the effectiveness of the nutrition education received.

(6) Monitoring of local agency activities to assure compliance with provisions set forth in paragraph (d) of this section. State agency staff involved in program operations as well as State agency staff involved in a nutrition education should monitor the local agency nutrition education activities.

(7) At least annually the State agency shall conduct a training session for all outreach workers and referral sources.

(d) *Local agency responsibilities.* Local agencies shall be responsible for:

(1) Provision of nutrition education to all adult participants, to parents or caretakers of infant and child participants, and whenever possible to child participants. In addition, the local agency may, through group educational sessions and provisions of materials designed for program participants, provide nutrition education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children participating in local agency services other that the Program even though such persons do not participate in the Program.

(2) Development of an annual local agency nutrition education plan consistent with the nutrition education portion of the State Plan and in accordance with this part and FNS guidelines. The Plan shall be submitted to the State agency by a date specified by the State agency and shall include:

(i) A nutrition education needs assessment in terms of staff, resources, and facilities available at the local agency and any specific subject matter concerns of the Program participants in the local agency's service area;

(ii) A budget for the local agency's nutrition education activities with an indication of anticipated expenditures and sources of available funds;

(iii) A nutrition education in-service training program for professional and paraprofessional persons involved in providing nutrition education to participants for local agency staff persons involved in Program operations other

than nutrition. If the State agency chooses to provide this training, a notation to that effect should be made in the Plan.

(iv) A system for, where possible, integrating the services of community resources such as the Expanded Food and Nutrition Service Program into the nutrition education services provided to participants; and,

(v) A list of local agency goals and action plans related to improved nutrition education processes and procedures.

(e) *Participant contacts.*

(1) During each certification period of 5 to 7 months, all adult participants and the parents or caretakers of infant and child participants shall receive a basic nutrition education contact and, depending on need as established at the local agency, either a secondary or a high-risk contact. The type of nutrition education contact provided to each participant shall be documented in each participant's certification file. For purposes of this requirement basic, secondary, and high-risk contacts are defined as follows:

(i) Basic contact means an explanation of: the participant's nutritional risk condition and ways to achieve an adequate diet; the importance of the supplemental foods being consumed by the participant for whom they are prescribed rather than the whole family; the Program as a supplemental rather than a total food program; the nutritional value of the supplemental food; and the importance of health care.

(ii) Secondary contact means an explanation of: the participant's particular needs according to the category of eligibility, for example, the needs of pregnant women, breastfeeding women, postpartum women, infants or children; the relationship of diet to health; the need for an understanding of consumer and nutritional issues such as a discussion on the importance of copper, fiber, folate, and zinc and a discussion on the consumption of foods containing high levels of fat, sugar and salt; and the benefits of consuming a variety of foods including those not provided by the Program.

(iii) High-risk contact means in addition to an explanation of the topics under the secondary contact, the development of an individual nutrition care plan which includes: a definition of the participant's specific needs; an individualized educational program for the participant; a list of objectives for participant improvement with assigned completion dates and methods of achieving the objectives; and a system for review and reassessment of the participant's condition.

(2) Participants selected to receive the basic and secondary contacts shall be provided an individual care plan, if requested.

(3) Individual participants shall not be denied supplemental foods for failure to attend or participate in nutrition education activities although local agencies are required to make all reasonable efforts to provide some form of nutrition education to each participant.

§ 246.10 Food delivery system.

(a) *General.* This section sets forth design and operational requirements for State and local agency food delivery systems.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems: retail purchase, home delivery or direct distribution. These food delivery systems shall be uniform within the jurisdiction of the State agency. When used, food instruments shall be uniform within each type of system.

(c) Participants shall receive the Program's supplemental foods free of charge.

(d) *State agency responsibilities.* Each State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction and shall comply with the following requirements:

(1) Using participant accessibility as a criterion, the State agency shall design all food delivery systems to be used by local agencies under its jurisdiction. FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and shall allow a reasonable time for the State agency to effect such a revision.

(2) The State agency shall ensure payment to food vendors within 60 days of submission of food instruments for payment for food costs incurred by the food vendor in providing supplemental foods. Actual payment to food vendors may be made by local agencies.

(3) The State agency shall ensure that all food vendors participating in the Program enter into written agreements with the State or local agency. Copies of these agreements shall be on file at the State agency. The agreements shall require the food vendors to:

(i) Ensure that they will provide only the supplemental foods specified in this part when providing foods under the Program;

(ii) Provide supplemental foods at the current price or at less than the current price charged to customers other than participants;

(iii) When food instruments are used, submit those food instruments for payment within the allowed time limit and accept food instruments from participants only within the allowed time limit; and

(iv) Comply with the nondiscrimination requirements of Department regulations (7 CFR Part 15).

(4) The State agency shall ensure that food vendors are transmitted pertinent information and are provided guidance concerning the authorized supplemental foods including nutrition education materials and all other applicable FNS guidelines and instructions.

(5) The State agency shall assure that on-site reviews are conducted by State or local agency personnel of those food vendors accepting food instruments;

(6) The State agency shall assure that training sessions are conducted by State or local agency personnel for participating food vendors.

(7) The State agency shall implement a system of management review to limit food vendor and participant abuses of the Program. The system shall include the following:

(i) The State agency shall ensure that food vendors are suspended from participation under the Program for a reasonable period of time, not to exceed three years, upon a determination that they have committed any of the following abuses of the Program: Providing cash, unauthorized foods, or other items to participants in lieu of authorized supplemental foods; providing less food than specified on and payable with the food instruments; and charging more for supplemental foods than other customers are charged for the same food item. Other abuses by food vendors may be dealt with at the discretion of the State agency. The State agency shall provide adequate procedures for appeal from a suspension from participation under the Program as specified in § 246.25. In addition, prior to suspending vendors, State agencies shall determine if such a suspension would create undue hardships for participants. A food vendor's disqualification from participation in any other FNS program shall be grounds for a review of that vendor's operation of the WIC Program. Food vendors may be subject to the penalties outlined in § 246.19 in the case of deliberate fraud.

(ii) The State agency shall establish procedures designed to control participant abuse of the Program. Participant abuse includes, but is not limited to, knowing and deliberate misrepresentation of circumstances to obtain benefits, sale of supplemental foods or food instruments to (or exchange with) other individuals or entities, and receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized food. The State agency shall establish sanctions for

participant abuse. Such sanctions may, at the State agency's discretion, include suspension from the Program. Warnings may be given prior to the imposition of sanctions. Before a participant is suspended from the Program for alleged abuse, that participant shall be given full opportunity to appeal a suspension as set forth in § 246.24. In addition, a suspension shall not exceed a three month period, shall not be imposed on infants or children, and shall be waived if the competent professional authority determines that a serious health risk may result from Program disqualification.

(iii) The State agency may also impose upon food vendors and participants any criminal or civil sanctions or other remedies for Program abuse that are applicable under any Federal and State statute or local ordinance.

(8) The State agency shall ensure that the food delivery system is compatible with the delivery of health and nutrition education services to the participants.

(9) The State agency shall control the receipt and issuance of supplemental foods and food instruments.

(10) The State agency shall reconcile the records of receipt, issuance and redemption of supplemental foods or food instruments in accordance with § 246.11 and identify and document expired or any unredeemed food instruments along with their value.

(11) The State agency shall ensure that supplemental foods are not issued for use in or for use by residents of institutions, such as day care centers or homes for unmarried mothers.

(12) The State agency shall ensure that participants sign upon the receipt of supplemental foods or food instruments. This requirement shall not pertain to systems which mail food instruments.

(13) The State agency shall ensure that no conflict of interest exists between any local agency and the food vendor or vendors within the local agency's jurisdiction.

(e) *Retail purchase systems.* Retail purchase food delivery systems are systems in which participants obtain supplemental foods by submitting a food instrument to local retail outlets. All retail purchase food delivery systems shall meet the following requirements:

(1) The State agency shall use uniform food instruments within its jurisdiction. The State agency is responsible for the design and printing of the uniform food instruments, and their serialization.

(2) The State agency shall develop guidelines for the mailing of food instruments to participants. Food instruments may be mailed to participants on a local agency-wide basis only if approved by the State agency. In making its determination regarding the mailing of food instruments by a local agency, the State agency shall consider participant hardships, such as seasonal inclement weather, which may be encountered by the target population of the local agency if food instruments are not mailed. In localities where participation drops significantly during certain months of the year due to the weather, State and local agencies could consider the mailing of food instruments. The State agency shall approve a local agency's request for the mailing of food instruments if accountability is ensured and if either a reasonable level of health and nutrition education services can be provided, or if the State agency determines that persons in need of the Program in rural areas will be unable to participate in the Program if food instruments are not mailed to them. Mailing food instruments on an individual participant basis shall be permitted only if:

(i) Individual participants encounter difficulties in personally obtaining food instruments for such reasons as illness, imminent childbirth, inclement weather conditions, distance to travel, high cost of travel, or inability to get to the local agency during business hours;

(ii) The reasons for mailing the food instruments are documented by the State or local agency in the participant's certification file; and

(iii) The mailing of food instruments to the participant is discontinued if the participant's initial hardship is resolved.

(3) Each food instrument shall clearly bear on the face, the following information:

(i) The first date from which the food instrument may be used by the participant to obtain supplemental foods.

(ii) The last date by which the participant may use the food instrument to obtain supplemental foods. This date shall be a minimum of 30 days from the date specified in paragraph (i) above or for the participant's first month of issuance it may be the end of the month for which the food instrument is valid.

(iii) An expiration date by which the food vendor is required to submit the food instrument for payment. This date shall be no more than 90 days from the date specified in paragraph (i) above. If the date is less than 60 days from the date specified in paragraph (ii) above, the State agency shall ensure that the food vendor is able to submit food instruments for redemption within the required time limit without undue burden.

(iv) A unique and sequential serial number.

(v) A maximum purchase value which is higher than the price of the food for which it will be used; but low enough to be a reasonable protection against potential losses as a result of theft, counterfeiting or other fraudulent activities.

(iv) The brand names of foods authorized to be provided in accordance with § 246.8.

(4) The State agency shall assure that food vendors are not reimbursed an amount in excess of the actual purchase price of the supplemental foods.

(5) With justification and documentation, State agencies may reimburse food vendors for food instruments submitted after the expiration date if the total value of the food instruments submitted after the expiration date is $200.00 or less. If the total value of the food instruments submitted exceeds $200.00, reimbursement may not be made without the approval of the FNS Regional Office.

(6) The State agency shall assure that no more than a three month supply of food instruments are issued to any participant at one time and that nutrition education and health services are frequently made available to the participant, and that nutrition education services are made available in accordance with § 246.9(e).

(7) The State agency shall assure that the State or local agency enter into written agreements with as many food vendors as necessary to assure convenience to participants in obtaining supplemental foods. At a minimum, State agencies must enter into written agreements more than with three food vendors in each clinic service area, unless the State agency determines it is impossible to enter into written agreements with more than three food vendors in the clinic service area because of a lack of retail outlets.

(f) *Home food delivery systems.* Home food delivery systems are systems in which food is delivered to the participant's home. Systems for home delivery of food shall provide for:

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth in paragraph (d) above;

(2) Procurement of supplemental foods in accordance with § 246.18, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States; and

(3) The accountable delivery of supplemental foods to participants.

(g) *Direct distribution systems.* Direct distribution food delivery systems are systems in which participants pick up food from storage facilities operated by the State or local agency. Systems for direct distribution of food shall provide for:

(1) Uniform food instruments, where applicable, which comply with the appropriate requirements set forth under paragraph (e) of this section;

(2) Adequate storage and insurance coverage that minimizes the dangers of loss due to theft, infestation, fire, spoilage, or other causes;

(3) Adequate inventory control of food received, in stock, and issued;

(4) Procurement of supplemental foods in accordance with § 246.18, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(5) The availability of Program benefits to participants and potential participants who live at great distances from storage facilities; and

(6) The accountable delivery of supplemental foods to participants.

§ 246.11 Financial Management System.

(a) *Disclosure of expenditures.* The State agency shall maintain a financial management system which provides accurate, current and complete disclosure of the financial status of the Program and includes an accounting for all property and other assets and all Program funds received and expended each fiscal year.

(b) *Reports.* The State agency shall maintain its financial accounts sufficient to permit the preparation of the reports required in § 246.16.

(c) *Record of expenditures.* The State agency shall maintain records which identify adequately the source and use of funds expended for Program activities. These records shall contain, but are not limited to, information pertaining to authorization, receipt of funds, obligations, unobligated balances, assets, liabilities, outlays, and income.

(d) *Payment of costs.* The State agency shall implement procedures which ensure prompt and accurate payment of allowable costs, and ensure the allowability and allocability of costs in accordance with the cost principles and standard provisions of this part, FMC 74-4 and FNS guidelines and instructions.

(e) *Identification of obligated funds.* The State agency shall implement procedures which accurately identify obligated Program funds at the time obligations are made.

(f) *Resolutions of audit findings.* The State agency shall implement procedures which ensure timely and appropriate resolution of audit findings and recommendations.

(g) *Use of minority owned banks.* The State agency shall observe the national goal of expanding the opportunities for minority business enterprises, by encouraging the use of minority owned banks.

(h) *Reconciliation of food instruments.* The State agency shall, where applicable, implement procedures to reconcile the number of food instruments issued with food instruments redeemed, and the value of individual food instruments issued with the value of individual food instruments redeemed.

(i) *Identification of unredeemed food instruments.* The State agency shall, where applicable, implement procedures to identify unredeemed, expired and unexpired, food instruments and their issuance value, and to make the appropriate adjustments to records and reports on obligations and expenditures.

(j) *Transfer of cash.* The State agency shall have controls to minimize the time elapsing between receipt of Federal funds from the U.S. Department of Treasury and the disbursements of these funds for Program costs. In the Letter of Credit system, the State agency shall make drawdowns from the U.S. Department of Treasury's Regional Disbursing Office as close as possible to the actual disbursement of funds. Advances made by the State agency to local agencies shall also conform to these same standards.

(k) *Local agency financial management.* The State agency shall ensure that all local agencies develop and implement a financial management system consistent with the requirements prescribed by the State agency pursuant to the requirements of this section.

§ 246.12 Program costs.

(a) *General.* The two categories of allowable costs under the Program are as follows:

(1) Food costs.

(2) Operational and Administrative Costs. The two types of operational and administrative costs are:

(i) Direct costs. Those direct costs which are allowable under FMC 74-4; and

(ii) Indirect costs. Those indirect costs which are allowable under FMC 74-4. Food costs may not be used as a basis for computing indirect cost rates.

(b) *Specific allowable costs.*

(1) Food costs. Food costs shall not exceed the food vendor's customary price.

(2) The cost of nutrition education provided which meets the requirements of § 246.9. At least one-sixth of the funds expended by each State agency for administrative costs shall be used for nutrition education. However, the State agency may request in its State Plan to spend less than one-sixth of its administrative expenditures on nutrition education. Such a request may be approved by FNS if the State agency can document that funds from other sources and program funds will be expended at an amount equal to one-sixth of administrative funds. Nutrition education costs are limited to activities which are distinct and separate efforts to help participants understand the importance of nutrition to health. The cost of dietary assessments for the purpose of certification and the cost of prescribing and issuing supplemental foods may not be applied to the one-sixth minimum amount required to be spent on nutrition education. The cost of the following items may be applied to the one-sixth minimum amount required to be spent on nutrition education:

(i) Salary and other costs for time spent on nutrition education consultations whether with an individual or group.

(ii) Costs of producing nutrition education materials including handouts, flip charts, filmstrips, food models or other teaching helps.

(iii) Costs of training nutrition educators including cost related to conducting training sessions and producing training materials.

(iv) Costs of conducting evaluations of nutrition education, including contractor involvement and time spent in the design of data collection forms and compilation and analysis of data.

(v) Costs of time spent developing the nutrition education portion of the State Plan.

(vi) Costs of mailing nutrition education materials.

(vii) Costs of monitoring nutrition education.

(3) The cost of certification procedures including:

(i) Laboratory fees incurred for tests conducted to determine the eligibility of persons to participate in the Program;

(ii) Expendable medical supplies necessary to determine the eligibility of persons to participate in the Program;

(iii) Centrifuges, measuring boards, spectrophotometers, and scales used for determining eligibility persons, provided that expenditures limits will be set by FNS per piece of equipment and expenditures which exceed the limits must receive prior approval by FNS Regional Office;

(iv) Salary and other costs for time spent on certification.

(4) The cost of outreach services.

(5) The cost of administering the food delivery system.

(6) The cost of capital expenditures other than those specified in paragraph (3) (iii) above, provided that capital expenditures over $2,500.00 are apprroved by the FNS Regional Office.

(7) The cost of translators for materials and interpretors.

§ 246.13 Program income.

(a) *Interest.* Interest earned on Program funds at the State or local levels shall be used in accordance with Attachment E, OMB A-102.

(b) *Sale of property.* Proceeds from the sale of personal property purchased in whole or in part with Program funds shall be handled in accordance with Attachment N, OMB A-102.

(c) *Royalties.* Royalties received from copyrights and patents during the grant period shall be retained by the State agency and be added to the funds already committed to the Program. After termination or completion of the grant, the Federal share of royalties in excess of $200 received annually shall be returned to FNS.

§ 246.14 Distribution of funds.

(a) *General.* This section prescribes the procedures for the distribution of available funds by FNS to participating State agencies and by State agencies to local agencies. All Program funds shall be used only for Program purposes. As a prerequisite to the receipt of funds, the State agency shall have executed an agreement with the Department and shall have received approval of its Plan of Program Operation and Administration.

(b) *Distribution of Funds to State Agencies.* Funds made available to the Department for the Program in any fiscal year shall be distributed by FNS on the basis of funding formulas which allocate funds to all State agencies for food cost and operational and administrative costs. However, up to one half of one percent of the sums appropriated for each fiscal year, not to exceed $3,000,000 shall be used by the Department for the purpose of evaluating Program performance, evaluating health benefits, and the administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. Each State agency's funds shall be provided by means of a Letter of Credit unless other funding arrangements are made with FNS. Funds shall be used by State agencies to cover those allowable and documented Program costs, as defined in § 246.12, which are incurred by the State Agency and participating local agencies within its jurisdiction.

(c) *Distribution of Funds to Local Agencies.* All funds made available by FNS to each State agency, except those funds necessary for allowable costs for State agency administration, shall be provided to local agencies. The State agency shall distribute the funds based on claims submitted monthly by the local agency. Where the State agency advances funds to local agencies, the State agency shall ensure that each local agency has funds to cover immediate disbursement needs and the State agency shall make necessary increases or decreases in the funding level once the local agency has submitted its monthly claim.

(1) To accomplish the allocation of funds to local agencies, the State agency shall:

(1) Distribute funds to cover expected food costs expenditures.

(2) Allocate funds to cover expected local agency administrative costs in a manner which takes into consideration each local agency's needs. For the allocation of administrative funds, the State agency shall:

(i) Develop an administrative funding formula, in cooperation with a representative sample of local agencies including a rural agency, an urban agency, a small agency, a large agency, a migrant agency, an Indian agency where applicable, and a potential local agency, which takes into account the varying needs of local agencies. The formula shall be comprised of factors such as: the type and ratio of staff needed to serve the estimated number of participants; the variation of salaries of personnel among local agencies; the types of equipment needed for certification; expenses the local agency may incur for providing bilingual services and material where the client population contains a significant proportion of non-English speaking persons; special services needed to reach particular members of populations such as migrants and Indians; costs related to serving areas with a high or low density of population, or a population that resides in a rural area; and financial and in-kind resources, other than Program funds, which are available to the local agency.

(ii) Forward in advance to local agencies those administrative funds necessary for the successful commencement of Program operations during the first three months of operation or until the local agency reaches its projected caseload level, whichever comes first.

§ 246.15 Redistribution of funds.

(a) *Conditions for redistribution of funds.* FNS may recover and redistribute funds from a State agency under any of the following conditions:

(1) If FNS determines, through a review of the State agency's reports, program or financial analysis, monitoring, audit or otherwise, that the State agency's performance is inadequate or that the State agency has failed to comply with this part or FNS guidelines and instructions.

(2) If FNS determines, based on State agency reports of expenditures and operations, that the State agency is not expending funds at a rate commensurate with the amount of funds distributed or provided for expenditure under the Program.

(b) *Withholding of funds.* If FNS determines that a State agency has failed without good cause to administer the Program in accordance with this part or to carry out the approved State Plan, FNS may withhold such amounts of the State agency's administrative funds as FNS deems appropriate. Upon correction of such a failure during the same fiscal year, these funds shall be provided to the State agency.

(c) *Adjustments in funding.* FNS shall effect such recovering of funds through adjustments in the amount of funds provided under the program.

§ 246.16 Records and reports.

(a) *Recordkeeping requirements.* Each State and local agency shall maintain full and complete records concerning Program operations which comply with the following requirements:

(1) Records shall include, but not be limited to, information pertaining to financial operations, food delivery systems, food instrument issuance and redemption, equipment purchases and inventory, certification procedures, nutrition education, civil rights and fair hearing procedures.

(2) All records shall be retained for three years following the date of submission of the final expenditure report for the period to which the reports pertain. However, FNS may, by written notice, require longer retention of any records deemed by it to be necessary for resolution of an audit or of any litigation. If FNS deems any of the program records to be of historical interest, it may require the State or local agency to forward such records to FNS whenever either agency is disposing of them. All records, except medical case records of individual participants (unless they are the only source of certification data), shall be available during normal business hours for representatives of the Department and of the General Accounting Office of the United States to inspect, audit, and copy. Any reports resulting from such examinations shall not divulge names of individuals.

(b) *Financial reports.* All financial data shall be submitted on a monthly basis as required by FNS.

(c) *Program reports.* All program performance data shall be submitted on a monthly basis as required by FNS.

(d) *Civil rights.* Each local agency participating under the Program shall submit a report of racial and ethnic participation data, at a frequency prescribed by FNS.

(e) *Audit acceptability of reports.* To be acceptable for audit purposes, all financial and program performance re-

ports shall be traceable to source documentation.

(f) *Certification of reports.* Financial and program reports shall be certified as to their completeness and accuracy by the person given that responsibility by the State agency.

(g) *Use of reports.* FNS shall use State agency reports to measure progress in achieving objectives set forth in the State Plan. If it is determined, through review of State agency reports, program or financial analysis, or an audit, that a State agency is not meeting the objectives set forth in its State Plan, FNS may request additional information including, but not limited to, reasons for the failure to achieve its objectives.

§ 246.17 Closeout procedures.

(a) *General.* State agencies shall submit preliminary and final closeout reports for each fiscal year or part thereof. All obligations shall be liquidated before final closure of a fiscal year grant. Obligations shall be reported for the fiscal year in which they occur.

(b) *Fiscal year closeout reports.* State agencies:

(1) Shall submit to FNS, within 30 days after the end of the fiscal year, preliminary financial reports which show cumulative actual expenditures and obligations for the fiscal year, or part thereof, for which Program funds were made available.

(2) Shall submit to FNS, within 120 days after the end of the fiscal year, final fiscal year closeout reports; and

(3) May submit revised closeout reports at any time. However, FNS is not responsible for reimbursing unpaid obligations later than one year after the close of the fiscal year in which they were incurred.

(c) *Grant closeout procedures.* When grants to State agencies are terminated, the following procedures shall be performed in accordance with A-102 and A-110.

(1) Termination for cause. FNS may terminate a State agency's participation under the Program, in whole or in part, whenever FNS determines that the State agency has failed to comply with the conditions prescribed in this part, and in FNS guidelines and instructions. FNS shall promptly notify the State agency in writing of the termination, together with the effective date. A State agency shall terminate a local agency's participation under the Program by written notice whenever it is determined by FNS or the State agency that the local agency has failed to comply with the requirements of the Program. When a State agency's participation under the Program is terminated for cause, any payments made to the State agency, or any recoveries by FNS from the State agency, shall be in conformance with the legal rights and liabilities of the parties.

(2) Termination of convenience. FNS or the State agency may terminate the State agency's participation under the Program, in whole or in part, when both parties agree that continuation under the Program would not produce beneficial results commensurate with the further expenditure of funds. The State agency or the local agency may terminate the local agency's participation under the Program, in whole or in part, under the same conditions. The two parties shall agree upon the termination conditions, including the effective date thereof and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of the noncancellable obligations, property incurred by the State agency prior to termination.

§ 246.18 Procurement and property management standards.

(a) *Requirements.* State and local agencies shall comply with the requirements of A-102, A-110, and FMC 74-4 procedures for the procurement and allowability of food in bulk lots, supplies, equipment and other services with Program funds. These requirements are adopted by FNS to ensure that such materials and services are obtained for the Program in an effectiver manner and in compliance with the provisions of applicable law and executive orders.

(b) *Contractual responsibilities.* The standards contained in A-102, A-110, and FMC 74-4, do not relieve the State or local agency of the responsibilities arising under its contracts. The State agency is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to, disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.

(c) *State regulations.* The State or local agency may use its own procurement regulations which reflect applicable State and local regulations, provided that procurements made with Program funds adhere to the standards set forth in A-102, A-110, and FMC 74-4.

(d) *Property acquired with Program funds.* State and local agencies shall observe the standards prescribed in A-102, Attachment N, in their utilization and disposition of property acquired in whole or in part with Program funds.

§ 246.19 Claims and penalties.

(a) *Claims.* If FNS determines that any Program funds provided to a State agency for food delivery or administrative purposes were, through State agency or local agency negligence or fraud, misused or otherwise diverted from Program purposes, a claim shall be made by FNS against the State agency, and the State agency shall pay promptly to FNS a sum equal to the amount of the administrative funds or the value of supplemental foods or food instruments so misused or diverted. Further, if FNS determines that any part of the money received by a State agency, or supplemental foods purchased or food instruments, were lost as a result of thefts, embezzlements, or unexplained causes, the State agency shall, on demand by FNS, pay to FNS a sum equal to the amount of the money or the value of the supplemental foods or food instruments so lost. The State agency shall have full opportunity to submit evidence, explanation or information concerning alleged instances of noncompliance or diversion before a final determination is made in such cases.

(b) *Penalties.* Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under Section 17 of the Child Nutrition Act of 1966, as amended, whether received directly or indirectly from USDA, or whoever receives, conceals or retains such funds, assets or property to his or her use of gain, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud shall, if such funds, assets or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or if such funds, assets or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 246.20 Management evaluation and reviews.

(a) *General.* FNS and each State agency shall establish a management evaluation system in order to assess the accomplishment of Program objectives.

(b) *Responsibilities of FNS.* FNS shall establish evaluation procedures to determine whether State agencies carry out the purposes and provisions of this part, the State Plan, and FNS guidelines and instructions. As a part of the evaluation procedures, FNS shall review audits performed by the State agency to ensure that the Pro-

gram at both the State and local levels, has been included in audit examinations at a reasonable frequency.

(1) These evaluations shall include an annual evaluation of each State agency including on-site reviews of the local agencies. These evaluations should measure the State agency's progress toward meeting the objectives outlined in its State Plan.

(2) If, as a result of this evaluation it is disclosed that the State agency is failing to administer the Program in a manner consistent with the legislation, this part, or the State Plan, FNS shall withhold State agency administrative funds. If the failure is corrected within the fiscal year in which the funds were withheld, the funds shall be returned to the State agency.

(3) To effectuate this requirement a graduate scale of sanctions varying from five to 20 percent of the State agency's total administrative funds shall be withheld. FNS will determine the percentage based on the number of violations and the degree of severity. However, no funds shall be withheld until the following procedures and processes have been completed:

(i) The State agency and FNS have established a corrective action plan which includes specific time frames for the correction of deficiencies and the State agency has been given sufficient time to correct the deficiencies but has failed to do so.

(ii) A followup review has been performed by FNS to determine if the noted deficiencies have been corrected.

(iii) An early warning letter has been sent to the State agency informing the State agency of the Program areas which are not in compliance with the performance standards listed in paragraph (4) below and that a formal warning will be issued if positive actions toward compliance are not taken by the dates agreed upon in the corrective action plan. This letter should also specify in detail the technical assistance available from FNS to correct the deficiency.

(iv) If positive actions are not taken by the State agency, within the time limits established in the corrective action plan, FNS will issue a formal warning to the Chief State Health Officer or his equivalent. The warning will state that sanctions will be applied within 30 days if compliance with the corrective action plan is not achieved. The formal warning will identify the amount of funds which will be withheld, the sanction and the exact steps the State agency must take to prevent the application of the sanction.

(v) If at the end of the formal warning period, the deficiencies have not been corrected, FNS will withhold administrative funds by a reduction of the State agency Letter of Credit (LOC) and inform the Chief State Health Officer.

(vi) If compliance is achieved before the end of the fiscal year the administrative funds withheld shall be restored in the State agency's LOC. If compliance is not achieved, the funds will revert to FNS.

(4) The sanction process, as set forth in § 246.20(b)(3), shall be immediately implemented if FNS determines that deficiencies exist in any of the following performance standards. Any determination that a deficiency exists shall be based on a review by FNS of a statistically valid sample of relevant program records.

(i) More than 10 percent of the sampled proper vendor claims submitted in a three-month period being delayed for payment past the 60 days specified in § 246.10.

(ii) Less than 10 percent of the vendors being reviewed annually.

(iii) More than 10 percent of the monthly and annual reports required in § 246.16 being postmarked later that the due date specified by FNS.

(iv) More than five percent of the food instruments issued in a three-month period not being individually reconciled within 90 days after the end of the three-month period.

(v) More than five percent of participant certification actions to approve or deny applications being improperly performed or records being improperly documented.

(vi) Having any of the staff positions specified in § 246.3 vacant for more than nine months.

(c) *Responsibilities of State agencies.* The State agency is responsible for meeting the following requirements:

(1) The State agency shall establish evaluation and review procedures and document the results of such procedures. The procedures shall include, but not be limited to:

(i) Monitoring of all local Program areas to evaluate management, nutrition education, civil rights compliance, accountability, and financial management systems. The operation of each local agency and a minimum of 20 percent of the clinics in each local agency shall be reviewed annually. However, more frequent reviews may be performed as the State agency deems necessary. The State agency shall provide a continuing evaluation of each local agency through on-site reviews, reviews of local agency reports, and reviews of claims of the retail outlets and home delivery vendors annually; and

(ii) Instituting the necessary followup procedures to correct identified problem areas.

(2) On its own initiative or when required by FNS, the State agency shall provide special reports on Program activities.

(3) The State agency shall require that local agencies establish Program review procedures to be used in reviewing their operations and those of subsidiaries or contractors.

§ 246.21 Audits.

(a) *Federal access to information.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records (except medical case records of individuals unless that is the only source of certification data) of the State and local agencies and their contractors, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *State agency response.* The State agency may take exception to particular audit findings and recommendations. The State agency shall submit a response or statement to FNS as to the action taken or planned regarding the findings.

(c) *Corrective action.* FNS shall determine whether Program deficiencies have been adequately corrected. If additional corrective action is necessary, FNS shall schedule a follow-up review, allowing a reasonable time for such corrective action to be taken.

(d) *State sponsored audits.* (1) Each State agency shall provide for an independent audit of the financial operations of the State agency and local agencies. Audits may be conducted by State and local government audit staffs or by certified public accountants and audit firms under contract to the State or local agencies. Audits shall conform to "The Standards of Audit of Governmental Organizations, Programs, Activities and Functions", issued by the Comptroller General of the United States (1972, for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402, price 70 cents). An audit shall be used to determine whether:

(i) Financial operations are properly conducted;

(ii) The financial reports are fairly presented; and

(iii) The entity has complied with applicable laws, regulations, and administrative requirements pertaining to financial management.

(2) The State agency shall conduct audits in accordance with the provisions of A-102, Attachment G. Audits of the State agency and the local agencies under the state agency's jurisdiction must be performed in a representative sample of grant program audit examinations, but need not be completed during each audit cycle which occurs, at a minimum, every two years. However, audits of the Program shall be performed at intervals frequent enough to ensure consistency

with good Program management. Provided; that if FNS in the course of Program reviews of State agency operations, finds that the efficiency and effectiveness of the State agency's financial management system is in question, FNS may request the State agency to include the Program in the sample for the next audit examination.

(3) Each State agency shall make all State or local agency sponsored audit reports of Program operations under its jurisdiction available for the Department's review upon request. The cost of these audits shall be considered a part of operational and administrative costs and funded from the State or local agency operational and administrative funds, as appropriate.

§ 246.22 Investigations.

(a) *Authority.* The Department may make an investigation of any allegation of noncompliance with this part and FNS guidelines and instructions. The investigation may include, where appropriate, a review of pertinent practices and policies of any State or local agency, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the State or local agency has failed to comply with the requirements of this part.

(b) *Confidentiality.* No State or local agency, participant, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege under this part because that person has made a complaint, formal allegation, or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding.

§ 246.23 Nondiscrimination.

(a) *Requirement* (1) The State agency shall not, in any aspect of Program administration or service, discriminate against any applicant or participant for reasons of age, race, color, sex, handicap, religious creed, national origin or political beliefs. Discrimination in any aspect of Program administration or service is prohibited by the Department's regulations concerning nondiscrimination (7 CFR Part 15), the Age Discrimination Act of 1975 (P.L. 94-135), the Rehabilitation Act of 1973 (P.L. 93-112, section 504) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accordance with 7 CFR Part 15.

(2) The State agency shall comply with the Department's requirments for: racial and ethnic participation data collection; public notification of nondiscrimination policy; and annual reviews to assure compliance with such policy to ensure that individuals are not excluded from Program participation, denied benefits, or in any way subjected to adverse treatment as a result of discrimination for any of the above listed reasons.

(b) *Non-English materials.* Where a significant proportion of the area served by a local agency is composed on non-English or limited English speaking persons who speak the same language, the State agency shall take action to ensure that Program information, including certification forms, is provided to such persons in the appropriate language both orally and in writing. The State agency shall ensure that there are bilingual staff members available to serve these persons.

(c) *Complaints.* Complaints of discrimination filed by applicants or participants shall be referred to the Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250.

§ 246.24 Fair hearing procedure for participants.

(a) *Availability of hearings.* Each State agency shall provide a fair hearing to any individual aggrieved by any action of the State agency which affects the amount of Program benefits or the participation of the individual.

(b) *Notification of appeal rights.* At the time of application and at the time of denial or termination from the Program, each individual shall be informed in writing of the right to a fair hearing, of the method by which a hearing may be requested, and that any positions or arguments on behalf of the individual may be presented personally or by a representative such as a relative, friend, legal counsel or other spokesperson. Such notification is not required at the expiration of a certification period or if a person fails to reapply when terminated.

(c) *Request for hearing.* A request for a hearing is defined as any clear expression by the individual, the individual's parent, guardian or other representative that an opportunity to present its case to a higher authority is desired. The State agency shall not limit or interfere with the individual's freedom to request a hearing.

(d) *Time limit for request.* The State agency shall provide individuals a reasonable period of time to request fair hearings. Such time limit shall not be less than 90 days from the date of the State agency action to deny, reduce or terminate benefits.

(e) *Denial or dismissal of request.* The State agency shall not deny or dismiss a request for a hearing unless:

(a) The request is not received within the time limit set by the State agency in accordance with paragraph (d) of this section.

(2) The request is withdrawn in writing by the appellant or a representative.

(3) The appellant or representative fails, without good cause, to appear at the scheduled hearing.

(f) *Continuation of benefits.* Participants currently receiving Program benefits shall be given 15 days advance notice prior to termination of benefits, as required in § 246.7(j): If such participants are being terminated and they appeal the termination of benefits, they shall continue to receive Program benefits until an adverse decision is reached by the fair hearing official.

(g) *Rules of procedure.* The State agency shall process each request for a hearing under uniform rules of procedure. The uniform rules of procedure shall be available for public inspection and copying. At a minimum, the uniform rules of procedure shall include: the time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the appellant.

(h) *Hearing official.* Hearings shall be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial determination of the action being contested. The hearing official shall;

(1) Administer oaths of affirmations if required by the State;

(2) Ensure that all relevant issues are considered;

(3) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised;

(4) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;

(5) Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the State agency;

(6) Render a hearing decision which will resolve the dispute.

(i) *Conduct of the hearing.* The hearing shall be accessible to the appellant and shall be held within three weeks from the date the State agency shall provide the appellant with a minimum of 10 days advance written notice of the time and place of the hearing and shall enclose the procedure. The procedures shall not be unduly complex

or legalistic and the appellant's background shall be taken into consideration. The State agency shall also provide the appellant or representative an opportunity to:

(1) Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Advance arguments without undue interference;

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(j) *Hearing decidions.* (1) Decisions of the hearing official shall comply with Federal law, regulations or policy and shall be factually based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for a final decision by the hearing official. This record shall be retained in accordance with § 246.16. This record shall also be available, for copying and inspection, to the appellant or representative at any reasonable time.

(2) A decision by the hearing official shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.

(3) Within 45 days of the request for the hearing, the appellant or representative shall be notified in writing of the decision and the reasons for the decision in accordance with paragraph (b)(2) of this section and if the decision is in the favor of the appellant, benefits shall begin or be reinstated within this time period.

(4) All State agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 246.26, and provided the names and addresses of participants are kept confidential.

§ 246.25 Administrative appeal of state agency decisions.

(a) *Requirement.* The State agency shall provide a hearing procedure whereby a food vendor or local agency adversely affected by a State agency decision may appeal the decision. The right of appeal shall be granted when a local agency's or food vendor's application to participate is denied, when participation is terminated, when a contract is not renewed by the State agency or any other adverse action is taken by the State agency.

(b) *Procedure.* The State agency hearing procedure shall at a minmum provide:

(1) Adequate advance notice of the time and place of the hearing, to provide all parties involved sufficient time to prepare for the hearing;

(2) The opportunity for the aggrieved agency or food vendor or its representative to present its case;

(3) The opportunity for the agency or food vendor to confront the cross examine adverse witnesses;

(4) The opportunity for the agency or food vendor to be represented by counsel, if desired;

(5) The opportunity for the agency or food vendor to review the case file prior to the hearing;

(6) An impartial decision maker, whose conclusion as to the agency's or food vendor's eligibility shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the conclusion shall be stated in writing, though it need not amount to a full opinion or contain formal findings of fact and conclusions of law;

(7) Written notification to the agency or food vendor of the decision concerning the appeal within 60 days from the date of the request for a hearing.

§ 246.26 Miscellaneous provisions.

(a) *No aid reduction.* The value of benefits or assistance available under the Program shall not be considered as income or resources of participants or their families for any purpose under Federal, State or local laws, including, but not limited to, laws relating to taxation, welfare and public assistance programs.

(b) *General information.* FNS reserves the right to use information obtained under the Program in a summary, statistical or other form which does not identify particular individuals.

(c) *Medical information.* FNS may require the State or local agencies to supply medical data and other information collected under the Program in a form that does not identify particular individuals, to enable the Secretary or the State agencies to evaluate the effect of food intervention upon individuals determined to be at nutritional risk.

(d) *Nondisclosure of information.* Each State agency shall restrict the use or disclosure of information obtained from Program applicants or participants to persons directly connected with the administration or enforcement of the Program.

(e) *Public information.* The State agency procedure manual shall be available for review at each State and local agency. Any person who wishes information, assistance, records or other public material shall request such information from the State agency, or form the FNS Regional Office serving the appropriate State as listed below:

(1) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont: U.S. Department of Agriculture, FNS, New England Region, Northwest Park, 34 Third Avenue, Burlington, Massachusetts 01803.

(2) Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia: U.S. Department of Agriculture, FNS, Mid-Atlantic Region, One Vahlsing Center, Robbinsville, New Jersey 08691.

(3) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: U.S. Department of Agriculture, FNS, Southeast Region, 1100 Spring Street, N.W., Atlanta, Georgia 30309.

(4) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: U.S. Department of Agriculture, FNS, Midwest Region, 536 South Clark Street, Chicago, Illinois 60605.

(5) Arkansas, Louisiana, New Mexico, Oklahoma, Texas: U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, Room 5-C-30, Dallas, Texas 75242.

(6) Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming: U.S. Department of Agriculture, FNS, Mountain Plains Region, 2420 West 26th Avenue, Room 430-D, Denver, Colorado 80211.

(7) Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, Washington: U.S. Department of Agriculture, FNS, Western Region, 550 Kearney Street, Room 400, San Francisco, California 94108.

(Catalog of Federal Domestic Assistance, Program No. 10.557, National Archieves Reference Service.)

Signed at Washington, D.C., on December 28, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 79-668 Filed 1-8-79; 8:45 am]

federal register

TUESDAY, JANUARY 9, 1979
PART IV



SECURITIES AND EXCHANGE COMMISSION

■

FILING AND DISCLOSURE REQUIREMENTS RELATING TO BENEFICIAL OWNERSHIP

[8010-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15457]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Filing and Disclosure Requirements Relating to Beneficial Ownership

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of amendments to the schedules relating to the disclosure requirements applicable to certain beneficial owners of certain classes of equity securities. The purpose of the amendments is to enable the Commission to satisfy its obligation under Section 13(g) of the Securities Exchange Act of 1934 ". . . to tabulate and promptly make available the information contained in any report filed pursuant to this subsection . . ." The Commission also announces certain methods for collating beneficial ownership information, through computer and other systems, to satisfy its above-mentioned Section 13(g) obligation.

EFFECTIVE DATE: Effective for Schedules 13D, 13G and 14D-1 filed on or after February 14, 1979 (reporting persons making earlier filings are encouraged to file the amended cover pages).

FOR FURTHER INFORMATION CONTACT:

William H. Carter, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-376-8090).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of amendments to Schedule 13D [17 CFR 240.13d-101], Schedule 13G [17 CFR 240.13d-102], and Schedule 14D-1 [17 CFR 240.14d-100] relating to disclosure by certain persons whose beneficial ownership of equity securities described in Section 13(d)(1) 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) and Pub. L. No. 95-213 (December 19, 1977)] exceeds five percent. The amendments were adopted to assist in the development of a comprehensive system to tabulate and make publicly available the information contained in the schedules disclosing the beneficial ownership of certain public companies. The amendments consist basically of expanded cover pages for the three schedules on which persons filing the schedules will abstract certain data from within the schedules in order to facilitate the entering of such data into a computer system. The tabular information required on these amended cover pages would not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act (unless expressly made a part of a schedule (see below)) but shall be subject to all other provisions of the Act.

The release originally proposing the amendments for comments was issued on November 9, 1978 (Securities Exchange Act Release No. 34317 (43 FR 54256)). Four letters of comments were received and, to the extent possible, revisions in response to these letters have been made. Such revisions include making blank copies of the cover pages available for the use of filing persons, revising the format of the cover pages to accommodate computer printers, and allowing limited incorporation of cover page disclosure into the schedules themselves by means of cross references to eliminate unnecessary duplication. Other than the changes outlined immediately above, the amendments and the methods for implementing them are basically unchanged from those proposed for comments on November 9th.

Blank copies of the cover pages may be obtained from "Publications," Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 755-1600.

I. Background

The Williams Act Amendments to the Exchange Act were designed: (1) to provide adequate disclosure and other protection to stockholders in connection with takeover attempts, such as tender offers and corporate repurchases; and (2) to provide adequate disclosure to stockholders in connection with any substantial acquisition of securities within a relatively short period of time. Section 13(d) of the Exchange Act, added by the Williams Act Amendments, requires any person who acquires beneficial ownership of more than five percent of a classs of certain equity securities to file a statement with the Commission reporting that acquisition and certain other information related to such person's ownership of those securities. Section 13(d)(3) also requires disclosure from certain "groups" of persons who beneficially own five percent of a class of equity securities and act together for the purpose of acquiring, holding or disposing of the securities. Section 13(d) is not, however, an ownership reporting provision of general application. Its legislative history reveals it was intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities in the hands of persons who would then have the potential to change or influence control of issuer.[1]

Because Section 13(d) attempted to deal with the more limited concern of rapid shifts in control, acquisitions unrelated to that purpose were exempted therefrom. Thus, persons who acquired not more than two percent of a class of securities within a twelve month period were exempted by Section 13(d)(6)(B) from disclosing their ownership. Also, Section 13(d) is keyed to making an "acquisition" of the requisite amount of securities. Thus persons who acquired their ownership prior to the enactment of the five percent threshold on December 22, 1970 (Pub. L. 91-567) were not subject to Section 13(d). There was also an exemption under Section 13(d)(6)(A) from reporting acquisitions of securities acquired in a stock-for-stock exchange which was registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.].

In June 1975 Congress enacted Section 12(m) of the Exchange Act which directed the Commission to conduct a study and investigation of the practice of recording the ownership of securities in other than the name of the beneficial owner—"street"[2] and "nominee"[3] names—to determine whether the practice is consistent, inter alia, with the purpose of Section 13(d). In its Final Report to Congress on December 3, 1976 the Commission concluded that the practice limits the amount of information readily available to the public regarding beneficial owners of substantial amounts of an issuer's securities. In particular, the Commission noted the gaps in Section 13(d) discussed above, which permitted certain persons whose ownership ex-

[1] S. Rep. No. 550, 90th Cong., 1st Sess. 7(1967); H.R. Rep. No 1711, 90th Cong. 2d Sess. 8(1968) and Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. (1967).

[2] Street name registration, a specialized type of nominee registration, refers to the practice of a broker registering in its name, or in the name of its nominee, securities left with it by customers or held by it for its own account.

[3] Nominee name registration refers to arrangements used by institutional investors and financial intermediaries for the registration of securities held by them for their own account or for the account of their customers who are the beneficial owners of the securities.

ceeded five percent to avoid reporting such ownership. The Commission recommended that a comprehensive system for disclosure of ownership interests be established and requested legislation to require ownership reports from those persons owning more than five percent of an issuer's securities who were not then required to report under the Exchange Act.

The Commission's recommendation was implemented by the enactment of Section 13(g) of the Exchange Act on December 19, 1977.[4] Section 13(g)(1) requires any person who is directly or indirectly the beneficial owner of more than five percent of a class of equity securities specified in Section 13(d)(1) of the Exchange Act to send to the issuer and file with the Commission a Statement which sets forth, in such form and at such time as the Commission may, by rule, prescribe: such person's identity, residence, citizenship, the number and description of the shares in which such person has an interest and the nature of such interest.

The legislative history is clear that Section 13(g) was intended to "supplement the current statutory scheme by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively."[5] The principal effect of Section 13(g), therefore, is to provide the authority necessary to close the gaps previously described in the disclosure requirements under Section 13(d).[6] These gaps have since been closed.[7]

Finally, and most relevant as to the amendments adopted today, the legislative history of Section 13(g) also stresses "the need to integrate and consolidate, wherever possible, the various reporting requirements of the Securities Exchange Act into a comprehensive system for gathering and disseminating information about ownership interests in public (sic) held companies."[8] Thus, Section 13(g)(5) directs the Commission to take such steps as it deems necessary or appropriate in the public interest: To achieve centralized reporting of information regarding ownership; to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report; and to tabulate and promptly make available the information contained in any report filed thereunder in a manner which will, in view of the Commission, maximize the usefulness of the information.

In addition to the tabulation systems described in this release, existing disclosure requirements under Item 5 of Schedule 14A and Item 13 of Form 10-K impose an obligation on registrants to disclose certain persons' beneficial ownership of securities, including the ownership of persons beneficially owning more than five percent of certain classes of the registrant's equity securities. Copies of reports on Schedules 13D, 13G and 14D-1 are required to be sent to registrants in part to provide them with information with which to make disclosures in annual reports and proxy statements. The computer system described herein may afford registrants a means of confirming that they have received all such reports on Schedules 13D, 13G and 14D-1.

II. Synopsis of Amendments to Schedules

A. General

In order to effectuate the Congressional purpose underlying Section 13(g), as described above, the existing "cover pages" for Schedule 13D, Schedule 13G, and Schedule 14D-1[9] will be replaced by expanded cover pages and a set of instructions for the cover pages will be added. The new cover pages, with the exception of the disclosure of Social Security or I.R.S. identification numbers, do not require any additional disclosure but merely require information presently in the Schedules to be abstracted on the cover page to facilitate its insertion into a computer system. As previously mentioned, the Commission today also decided to have blank copies of the cover pages made available from the Commission's publication unit for the convenience of reporting persons. As noted above, the new cover pages would also request (on a voluntary basis) the Social Security or I.R.S. identification number of each "reporting person."

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b-12) [17 CFR 240.12b-12].

Within certain limitations (see instructions to cover pages), items of the schedules themselves may be completed by appropriate cross references to the cover page in order to prevent unnecessary duplication. However, it should be noted that such a use of a cover page item will result in the item being considered as "filed" for purposes of Section 18 of the Act.

Methods for the tabulation and public dissemination of all such data, to be instituted on a trial basis, are discussed later in this release. The public availability of this additional data will, of course, only supplement the original Schedules 13D, 13G and 14d-1, which will continue to be available to the public as soon as filed.

B. Amendment to Schedule 13D

The amended cover page for Schedule 13D and the instructions thereto appear immediately below. This cover page will entirely replace the existing one, to be followed by "Instructions for Cover Page" and "SPECIAL INSTRUCTIONS FOR SCHEDULE 13D." For purposes of clarity, the existing caption titled "Instructions" will be changed to "General Instructions."

Text of Amended Schedule

§ 240.13d-101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a).

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No. ——)*

(Name of Issuer)

(Title of Class of Securities)

(CUSIP Number)

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Sched-

[4] Section 13(g) was added to the Exchange Act by the Domestic and Foreign Investment Disclosure Act of 1977 [the "Act"] [Title II of Public Law No. 95-213]. The Act also amended Section 13(d)(1) and Section 15(d) of the Exchange Act and added Section 13(h) to the Exchange Act.

[5] S. Rep. No. 114, 95th Cong. 1st Sess. 13 (1977).

[6] Id.

[7] Securities Exchange Act Release No. 15348 (November 22, 1978) [43 FR 55751].

[8] S. Rep. No. 114, 95th Cong. 1st Sess. 14 (1977).

[9] The cover page to Schedule 14D-1 is being amended along with the cover pages of Schedules 13D and 13G since Schedule 14D-1, in certain specified circumstances, may be used to satisfy the reporting requirements of Section 13(d).

ule 13D, and is filing this schedule because of Rule 13d-1(b)(3) or (4), check the following box ☐.

Check the following box if a fee is being paid with this statement ☐ (A fee is not required only if the reporting person: (1) has a previous statement on file reporting beneficial ownership of more than five percent of the class of securities described in Item 1; and (2) has filed no amendment subsequent thereto reporting beneficial ownership of five percent or less of such class. (See Rule 13d-7.)

NOTE.—Six copies of this statement, including all exhibits, should be filed with the Commission. See Rule 13d-1(a) for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

[8010-01-C]

CUSIP No. _____

1) Names of Reporting Persons S.S. or I.R.S. Identification Nos. of Above Persons		
2) Check the Apppropriate Box if a Member of a Group (See Instructions)		(a) (b)
3) SEC Use Only		
4) Source of Funds (See Instructions)		
5) Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e)		
6) Citizenship or Place of Organization		
Number of Shares Beneficially Owned by Each Reporting Person With	(7) Sole Voting Power	
	(8) Shared Voting Power	
	(9) Sole Dispositive Power	
	(10) Shared Dispositive Power	
11) Aggregate Amount Beneficially Owned by Each Reporting Person		
12) Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)		
13) Percent of Class Represented by Amount in Row (11)		
14) Type of Reporting Person (See Instructions)		

Instructions for Cover Page

(1) *Names and Social Security Numbers of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their Social Security or I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13-D" below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check row 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) [unless a joint filing pursuant to Rule 13d-1(e)(1) in which case it may not be necessary to check row 2(b)].

(3) The 3rd row is for SEC internal use; please leave blank.

(4) Classify the source of funds or other consideration used or to be used in making the purchases as required to be disclosed pursuant to Item 3 of Schedule 13D and insert the appropriate symbol (or symbols if more than one is necessary) in row (4):

Category of Source	*Symbol*
Subject Company (Company whose securities are being acquired)	SC
Bank	BK
Affiliate (of reporting person)	AF
Working Capital (of reporting person)	WC
Personal Funds (of reporting person)	PF
Other	OO

(5) If disclosure of legal proceedings or actions is required pursuant to either Items 2(d) or 2(e) of Schedule 13D, row 5 should be checked.

(6) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, Furnish place of organization. (See Item 2 of Schedule 13D).

(7)-(11), (13) *Aggregate Amount Beneficially Owned by Each Reporting Person, Etc.*—Rows (7) through (11), inclusive, and (13) are to be completed in accordance with the provisions of Item 5 of Schedule 13D. All percentages are to be rounded off to nearest tenth (one place after decimal point).

(12) Check if the aggregate amount reported as beneficially owned in row (11) does not include shares which the reporting person discloses in the report but as to which beneficial ownership is disclaimed pursuant to Rule 13d-4 [17 CFR 240.13d-4] under the Securities Exchange Act of 1934.

(14) *Type of Reporting Person*—Please classify each "reporting person" according to the following breakdown and place the appropriate symbol (or symbols, i.e., if more than one is applicable, insert all applicable symbols) on the form:

Category	*Symbol*
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan, Pension Fund, or Endowment Fund	EP
Parent Holding Company	HC
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

NOTES—Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G, or 14D-1) by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as "filed" for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b-12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13D

Under Sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statements or provisions. Social Security or I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

C. AMENDMENT TO SCHEDULE 13G

The amended cover page for Schedule 13G and the instructions thereto appear immediately below. This cover page will entirely replace the existing one, to be followed by "Instructions for Cover Page" and "SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G." For purposes of clarity the existing caption titled "INSTRUCTIONS" will be changed to "General Instructions."

TEXT OF AMENDED SCHEDULE

§ 240.13d-102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d-1(b) and amendments thereto filed pursuant to § 240.13d-2(b).

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13G

Under the Securities Exchange Act of 1934

(Amendment No. ——)*

(Name of Issuer)

(Title of Class of Securities)

(CUSIP Number)

Check the following box if a fee is being paid with this statement ☐. (A fee is not required only if the filing person: (1) has a previous statement on file reporting beneficial ownership of more than five percent of the class of securities described in Item 1; and (2) has filed no amendment subsequent thereto reporting beneficial ownership of five percent of less of such class.) (See Rule 13d-7.)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

[8010-01-C]

CUSIP No. _____

1) Names of Reporting Persons S.S. or I.R.S. Identification Nos. of Above Persons		
2) Check the Appropriate Box if a Member of a Group (See Instructions)		(a) (b)
3) SEC Use Only		
4) Citizenship or Place of Organization		
Number of Shares Beneficially Owned by Each Reporting Person With	(5) Sole Voting Power	
	(6) Shared Voting Power	
	(7) Sole Dispositive Power	
	(8) Shared Dispositive Power	
9) Aggregate Amount Beneficially Owned by Each Reporting Person		
10) Check if the Aggregate Amount in Row (9) Excludes Certain Shares (See Instructions)		
11) Percent of Class Represented by Amount in Row 9		
12) Type of Reporting Person (See Instructions)		

Instructions for Cover Page

(1) *Names and Social Security Numbers of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their Social Security or I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G", below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check row 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) [unless a joint filing pursuant to Rule 13d-1(f)(1) in which case it may not be necessary to check row 2(b)].

(3) The third row is for SEC internal use; please leave blank.

(4) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish place of organization.

(5)-(9), (11) *Aggregated Amount Beneficially Owned By Each Reporting Person, etc.*—Rows (5) through (9) inclusive, and (11) are to be completed in accordance with the provisions of Item 4 of Schedule 13G. All percentages are to be rounded off to the nearest tenth (one place after decimal point).

(10) Check if the aggregate amount reported as beneficially owned in row (9) does not include shares as to which beneficial ownership is disclaimed pursuant to Rule 13d-4 [17 CFR 240.13d-4] under the Securities Exchange Act of 1934.

(12) *Type of Reporting Person*—Please classify each "reporting person" according to the following breakdown (see Item 3 of Schedule 13G) and place the appropriate symbol on the form:

Category	*Symbol*
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan, Pension Fund, or Endowment Fund	EP
Parent Holding Company	HC
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

NOTES.—Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G, or 14D-1) by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as "filed" for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b-12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G

Under Section 13(d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social Security or I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

D. AMENDMENT TO SCHEDULE 14D-1

The amended cover page for Schedule 14d-1 and the instructions thereto appear immediately below. As with Schedules 13d and 13G, this cover page will entirely replace the existing one, to be followed by "Instructions for Cover Page" and "SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 14D-1." For purposes of clarity, the existing caption titled "Instructions" will be changed to "Filing Instructions and Fees."

TEXT OF AMENDED SCHEDULE

§ 240.14d-100 Schedule 14D-1—Information to be included in statements filed pursuant to § 240.14d-1(a) and amendments thereto filed pursuant to § 240.14d-1(b).

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-1

Tender Offer Statement Pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934

(Amendment No. ——)*

(Name of Subject Company [Issuer]

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of Bidder)

NOTE.—The remainder of this cover page is only to be completed if this Schedule 14D-1 (or amendment thereto) is being filed, inter alia, to satisfy the reporting requirements of section 13(d) of the Securities Exchange Act of 1934. See General Instructions D, E and F to Schedule 14D-1.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosure provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

[8010-01-C]

CUSIP No._____

1) Names of Reporting Persons S.S. or I.R.S. Identification Nos. of Above Persons	
2) Check the Appropriate Box if a Member of a Group (See Instructions)	(a) (b)
3) SEC Use Only	
4) Sources of Funds (See Instructions)	
5) Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(e) or 2(f)	
6) Citizenship or Place of Organization	
7) Aggregate Amount Beneficially Owned by Each Reporting Person	
8) Check if the Aggregate Amount in Row (7) Excludes Certain Shares (See Instructions)	
9) Percent of Class Represented by Amount in Row (7)	
10) Type of Reporting Person (See Instructions)	

Instructions for Cover Page

(1) *Names and Social Security Numbers of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons are also requested to furnish their Social Security or I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see "SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 14D-1", below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check row 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) [unless a joint filing pursuant to Rule 13d-1(e)(1) in which case it may not be necessary to check row 2(b)].

(3) The third row is for SEC internal use, please leave blank.

(4) *Source of Funds*—Classify the source of funds or other consideration to be used in making purchases as required to be disclosed pursuant to Item 4 of the schedule and insert the appropriate symbol (or symbols if more than one is necessary) In row (4):

Category of Source	*Symbol*
Subject Company (company whose securities are being acquired)	SC
Bank	BK
Affiliate (of reporting person)	AF
Working Capital (of reporting person)	WC
Personal Funds (of reporting person)	PF
Other	OO

(5) If disclosure of legal proceedings or actions is required pursuant to either Items 2(e) or 2(f) of Schedule 14d-1, row 5 should be checked.

(6) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish the place of organization. (See Item 2 of Schedule 14D-1.)

(7), (9) *Aggregate Amount Beneficially Owned by Each Reporting Person, etc.*—Rows (7) and (9) are to be completed in accordance with the Instructions to Item 6 of Schedule 14D-1. All percentages are to be rounded off to nearest tenth (one place after decimal point).

(8) Check if the aggregate amount reported as beneficially owned in row (7) does not include shares as to which beneficial ownership is disclaimed.

(10) *Type of Reporting Person*—Please classify each "reporting person" according to the following breakdown and place the appropriate symbol (or symbols, i.e., if more than one is applicable, insert all applicable symbols) on the form:

Category	*Symbol*
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan, Pension Fund, or Endowment Fund	EP
Parent Holding Company	HC
Group Member	GM
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

NOTES.—Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G or 14D-1) by appropriate cross references to an item or items on the cover page(s). This approach may be used only where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as "filed" for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b-12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 14D-1

Under Section 14(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for Social Security or I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Social Security or I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processisng statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for Social Security or I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

III. DESCRIPTION OF TABULATIONS OF BENEFICIAL OWNERSHIP DATA TO BE PUBLICLY AVAILABLE UPON IMPLEMENTATION OF THE REPORTING SYSTEM UTILIZING THE PROPOSED EXPANDED COVER PAGES

The Comission presently proposes to make available at its public reference room, on a trial basis, two basic tabulations of beneficial ownership data, both to be updated quarterly. The data on which these two tabulations will be based will be taken from Schedules 13D, 13G and 14D-1. However, no data will be included in these tabulation systems from filings pursuant to Section 13(f) or 16 of the Exchange Act. One tabulation will be classified by issuer. For each issuer there will be shown the beneficial owners who hold over five percent of the issuer's equity securities described in Section 13(d)(1), the class or classes of securities owned by each such person, the amount and percentage owned, the citizenship or place of organization of such person, and whether or not any shares are held by a group and, if so, what group. The following is a facsimile of the tabulation, as presently contemplated.

[8010-01-C]

SEC Control No. _____ CUSIP No. _____

Issuer Name _____

Title of Class of Securities Beneficially Owned _____

Name of Reporting Person _____

S.S. or I.R.S. Identification Number of Above Person _____

Group No. if a Member of a Group _____

Group Membership is Disclaimed or Otherwise not Affirmed (yes or no) _____

Citizenship or Place of Organization _____

Source of Funds _____

Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 3(e) of Schedule 13D or Items 2(e) or 2(f) of Schedule 14D-1 (yes or no) _____

Number of Shares Beneficially Owned With	Sole Voting Power	
	Shared Voting Power	
	Sole Dispositive Power	
	Shared Dispositive Power	

Aggregate Amount Beneficially Owned _____

Row Checked if Aggregate Amount Listed Above as Beneficially Owned Does Not Include Certain Shares as to Which Beneficial Ownership is Disclaimed _____

Percent of Class Represented by Aggregate Amount Beneficially Owned _____

Form No. _____ Date Filed _____

The second tabulation will be classified by reporting persons rather than issuers, i.e., for each reporting person it will give the companies in which such person had a reportable beneficial interest, as well as other data similar to that presented in the first-mentioned tabulation. The following is facsimile of the second tabulation, as presently contemplated.

Name of Reporting Person _____

S.S. or I.R.S. Identification No. of Above Person _____

Citizenship or Place of Organization of Above Person _____

Type of Reporting Person _____

Name of Issuer _____

Title of Class of Securities Beneficially Owned _____

CUSIP No. _____

Group No. if a Member of a Group _____

Group Membership is Disclaimed or Otherwise Not Affirmed (yes or no) _____

Number of Shares Beneficially Owned With	Sole Voting Power	
	Shared Voting Power	
	Sole Dispositive Power	
	Shared Dispositive Power	

Aggregate Amount Owned Beneficially _____

Row Checked if Aggregate Amount Listed Above as Beneficially Owned Does Not Include Certain Shares as to Which Beneficial Ownership is Disclaimed _____

Percent of Class Represented by Aggregate Amount Beneficially Owned _____

Form No. _____ Date Filed _____

Source of Funds _____

Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e) of Schedule 13D or items 2(e) or 2(f) of Schedule 14D-1 (yes or no) _____

After an appropriate trial period, the Commission will consider whether to continue offering the above two tabulations (as well as any modifications that might improve their value to the public) and whether to offer any other tabulations for which there is a significant public need. The Commission also intends to make certain special compilations of data available at cost to interested parties upon request.

Finally, the Commission foresees that the compiled data will be of benefit to its own Division of Enforcement, other government agencies, and to the United States Congress. One example of information retrieval for which the system will be used will be a tabulation of the citizenship of all reporting foreign beneficial owners of United States companies for use of the United States Congress. Every effort will be made to get the above-mentioned systems operational as soon as possible at which time appropriate public announcements will be made. Consideration is being given to "contracting out" at least a portion of the computer tabulation work to private concerns and "Requests For Proposals" will be issued in the near future.

CERTAIN FINDINGS: As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the amendments adopted herein would have on competition. The Commission has found that these amendments will not significantly burden competition and, in any event, has determined that any possible resulting competitive burden will be far outweighed by, and is necessary and appropriate to achieve, the benefits of this information to investors.

STATUTORY AUTHORITY: The foregoing action is taken pursuant to the authority set forth in sections 13(d), 13(g), 14(d) and 23 of the Exchange Act.

(Secs. 13(d), 13(g), 14(d), 23, 48 Stat. 894, 895, 901; sec. 8, 49 Stat. 1379; sec. 203(a), 49 Stat. 704; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; sec. 18, 89 Stat. 155; secs. 202, 203, 91 Stat. 1494, 1498, 1499; 15 U.S.C. 78m(d), 78m(g), 78n(d), 78w)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 4, 1979.

[FR Doc. 79-810 Filed 1-8-79; 8:45 am]

federal register

TUESDAY, JANUARY 9, 1979
PART V



DEPARTMENT OF ENERGY

■

RESIDENTIAL ENERGY CONSERVATION

Residential Energy Conservation Service Program

[6450-01-M]

DEPARTMENT OF ENERGY

[10 CFR Ch. I]

[Docket No. CAS-RM-79-101]

RESIDENTIAL ENERGY CONSERVATION PROGRAM

AGENCY: Department of Energy.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: In February 1979, the U.S. Department of Energy (DOE) expects to promulgate proposed rules to implement the Residential Conservation Service program. The purpose of this program is to facilitate and encourage the installation of energy conservation and renewable resource measures in private homes. In addition, the program is designed to ensure that, to the extent possible, the purchase and installation of such measures will be accomplished in a manner that protects the customer from unfair and unsafe practices.

In general, the program requires large gas and electric utilities and allows a home heating supplier to provide energy conservation information to their residential customers, to provide upon request energy audits of homes of their residential customers, and to arrange upon request for the purchase, installation, financing and billing of energy conservation and renewable resources measures by their customers. The purpose of this Advance Notice of Proposed Rulemaking is to advise the public of the proposed rulemaking, to indicate the major statutory requirements and certain questions which these requirements raise, and to invite public comments concerning the content of the proposed rules and the implementation of the program.

DATES: Written comments in response to this Advance Notice should be filed with DOE at the address noted below by 5:30 p.m., February 2, 1979. A schedule of dates for public hearings will be published on or before the date the proposed rules are published.

ADDRESSES: Written responses to the Advance Notice should be sent to: U.S. Department of Energy, Office of Public Hearings Management, Room 2313, Box WC, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Mr. J. Wm. Bethea, U.S. Department of Energy, Program Manager, Residential Conservation Service Program, 20 Massachusetts Avenue NW., Room 2253C, Washington, D.C. 20545, 202-376-1964.

SUPPLEMENTARY INFORMATION:

I. Introduction and General Background
II. General Summary of Statutory Requirements
III. Detailed Summary of Major Statutory Requirements and Comments
1. Content of DOE's Rule
2. Requirements for State Residential Energy Conservation Plans for Utilities
3. Plan Requirements for Nonregulated Utilities Not Subject to a State Plan
4. Plan Requirements for Home Heating Suppliers
5. Program Requirements for Utilities
6. Supply, Installation and Financing by Utilities
7. Program Requirements for Home Heating Suppliers
8. Temporary Program Exemptions
9. Federal Standby Authority
10. Preemption
11. Consultation

I. Introduction and General Background

On November 9, 1978, President Carter signed into law the National Energy Conservation Policy Act (Pub. L. 95-619). Title II of that Act concerns residential energy conservation. Part 1 of Title II (hereafter referred to as the "Act") establishes the "Residential Conservation Service Program" (the abbreviation "RCS Program" is used in this Advance Notice), described in the Act as the "Utility Program."

The Act requires DOE to publish an Advance Notice of Proposed Rulemaking regarding the content and implementation of residential energy conservation plans by December 24, 1978. Within 60 days thereafter (by March 6, 1979), DOE must publish proposed rules for this program. Thereafter, DOE will afford all interested persons, including Federal and State agencies, an opportunity to present oral and written comments on the proposed rules. DOE is planning several regional hearings and at least one national hearing to allow interested persons an opportunity to comment on the proposed rules. The final rules will be adopted after the public hearings and closing of the comment period. DOE will allow a minimum of 60 days for comments on the proposed rules.

Because of the limited time for comments and for their consideration by DOE, interested persons may wish to restrict their comments at this time to those matters which they consider the most important and fundamental. Moreover, because of the statutory deadline for promulgation of the proposed rules, DOE may not be able to address, before promulgation of the proposed rules, all comments received in response to this Advance Notice. Comments not considered before promulgation of the proposed rules will be considered prior to adoption of final rules.

As required by law, the proposed rulemaking will include summaries of DOE's Regulatory Analysis and Environmental Assessment of the program.

In order to meet the statutory deadline for promulgation of the proposed rules, DOE is focusing its resources upon a timely issuance of the proposed rules and, as noted above, is planning extensive public hearings on the proposed rules to provide all interested persons an opportunity to participate. Thus, this Advance Notice of Proposed Rulemaking is intended to serve as an informational document setting forth material elements of the RCS Program. As noted in the Summary, above, DOE may not be able to evaluate all comments before the proposed rules are promulgated. They will be evaluated after issuance of the proposed rules, however, and will be included as a part of the public record. Subsequent to the public hearings and closing of the record, DOE will publish a written response to the major comments, criticisms and alternatives offered during the rulemaking process.

Upon adoption of final rules, States, if a Governor chooses to submit a State plan, must submit their plans within 180 days. Non-regulated utilities must submit their plans directly to DOE if they are not included in the State plans. In general, DOE must approve or disapprove each plan within 90 days after submission. If a plan is disaproved, a new or amended plan must be submitted within 60 days thereafter and the 90 day review period will begin again. Finally, if a plan is not approved or if DOE determines, after notice and an opportunity for a public hearing, that a plan has not been adequately implemented, DOE is required to exercise the statutory Federal standby authority, that is, to develop and implement directly a plan for that State. For purposes of the Act, Puerto Rico, the District of Columbia, and the Tennessee Valley Authority ("TVA"), with respect to utilities subject to its ratemaking authority, are treated as States.

II. General Summary of Major Statutory Requirements

The Act assigns responsibilities for the RCS program to the Federal Government, the States, and large gas and electric utilities. Home heating suppliers may participate in the program under certain conditions. The role of the Federal Government, specifically DOE, is to promulgate rules:

1. Identifying, on the basis of the climatic region and other factors, the appropriate energy conservation and renewable resource measures to be included in the program;

2. Setting standards governing both materials and installations necessary

for general safety and effectiveness of the measures;

3. Setting standards for procedures to protect consumers under the program; and

4. Setting standards to protect installers, contractors, and lenders from unfair and discriminatory practices.

Another role of DOE is to assess proposed State plans for implementing the program and to assure that such plans meet the requirements of both the Act and DOE"s regulations. DOE must also annually publish a list of the utilities which are covered by the Act. Finally, DOE is responsible, where a State plan is not in effect with respect to utilities, for directly insuring that the program is implemented by the utilities.

The role of a State, if the Governor chooses to have the State participate in the program, is to insure that the utilities subject to the State plan implement the program in accordance with the terms of the Act, DOE's regulations, and the State plan. In addition, if the State participates in the program, the State is responsible for compiling lists of qualified suppliers and contractors of energy conservation and renewable resource measures and of qualified lenders who provide loans for such measures. Finally, participating States are responsible for establishing various procedures to protect consumers. Certain responsibilities are placed directly on State regulatory authorities. Under the Act, "state regulatory authority" includes any State agency, including municipalities and agencies thereof, which has ratemaking authority with respect to the sale of gas or electricity.

The role of the utilities is critical, and their participation in the program is mandatory whether or not their State participates in the program. Pursuant to the Act, DOE's rules, and any applicable State plan, utilities must offer all of their residential customers:

1. Information concerning suggested conservation measures for residential buildings;

2. Information concerning estimated savings in energy costs resulting from installation of suggested measures in typical residential buildings;

3. Individual home energy audits; and

4. Arrangements for the installation and financing of suggested measures at fair and reasonable prices and rates of interest.

A residential customer essentially includes any customer of a covered utility who lives in a currently existing residential building with four or less dwelling units.

Where a Governor has included home heating suppliers in a State plan and a particular supplier has volunteered to participate, that supplier then generally is subject to the same requirements as the utilities. Provision is made, however, for the Governor to waive any requirement if it is too burdensome on the supplier.

Section III of this Advance Notice contains a more detailed summary of certain of the Act's major requirements together with some DOE comments intended to facilitate public discussion and to illustrate some of the issues upon which interested persons may wish to comment. DOE's primary responsibilities regarding the content and implementation of residential energy conservationn plans are set forth in Part I of Section III. The primary responsibilities of the States regarding the substantive content and implementation of State plans for utilities are detailed in Part 2, while Part 3 concerns plans by nonregulated utilities not subject to State plans, and Part 4 concerns State plans for home heating suppliers. Parts 5 and 6 address the RCS Program requirements for utilities (regulated and nonregulated), the general prohibition regarding utilities' supply, installation and financing of conservation measures, and the exceptions to this general prohibition. Part 7 details the program requirements for home heating suppliers. Part 8 outlines the requirements for temporary program exemptions (for up to 3 years). Part 9 discussess DOE's statutory duty to exercise the federal standby authority upon certain conditions. Finally, Part 10 sets forth the statutory provision regarding preemption of State law in certain circumstances, and Part 11 notes DOE's consultation responsibilities. Comments follow most Parts.

III. Detailed Summary of Major Statutory Requirements and Comments

The Act sets forth specific requirements regarding the content and implementation of the RCS Program. Many of these requirements need amplification. The following list of certain statutory requirements is set forth with the hope that interested persons will comment on those areas of interest to them.

I. CONTENT OF DOE'S RULES

The Act requires DOE to issue rules regarding the content and implementation of residential energy conservation plans. These rules must:

(1) Identify suggested residential energy conservation measures for residential buildings by climatic region and by categories determined by DOE on the basis of type of construction and any other appropriate factors.

"Residential energy conservation measures" include:

(a) Caulking and weatherstripping of doors and windows;

(b) Furnace efficiency modifications, including replacement burners, furnaces, or boilers or any combination thereof, which DOE determines substantially increase the energy efficiency of the heating system; devices for modifying flue openings which will increase the energy efficiency of the heating system; and electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(c) Clock thermostats;

(d) Ceiling, attic, wall and floor insulation;

(e) Water heater insulation;

(f) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed windows and door materials;

(g) Devices associated with load management techniques;

(h) Devices to utilize solar energy or windpower to reduce the use of other forms of energy, including devices for heating of water, space heating or cooling; and

(i) Such other measures as DOE identifies by rule for the RCS Program.

None of the measures referred to above, except caulking and weatherstripping of doors and windows, may be treated as a residential energy conservation measure unless warranted by the manufacturer to meet a specified level of performance for a period of not less than three years. In determining the appropriate "suggested (residential energy conservation) measures," for a particular location and category of residential building, DOE must consider the cost of the required inspection and its effect upon the willingness of residential customers to participate in the RCS Program.

DOE's rules must also include:

(1) Standards DOE determines are necessary for the general safety and effectiveness of any residential energy conservation measure;[1]

(2) Standards DOE determines are necessary for the installation of a residential energy conservation measure;[1]

(3) Standards for procedures concerning fair and reasonable prices and rates of interest to residential customers in connection with the purchase and installation of residential energy conservation measures;

(4) Standards for procedures concerning unfair, deceptive, or anticom-

[1] A Technical Report, "Material Criteria and Installation Practices for the Retrofit Application of Insulation and Other Weatherization Materials," prepared by the Division of Buildings and Community Systems of DOE recommends material criteria and installation practices. Copies are available from Ms. Gloria Purnell, 20 Massachusetts Avenue, N.W., Room 2252C, Washington, D.C. 20545.

petitive acts or practices to ensure that plans submitted contain adequate measures to prevent such acts or practices in the program;

(5) Standards that (a) require specified lists (of suppliers, contractors and lending institutions participating in the program) to be prepared in a fair, open and nondiscriminatory manner and (b) provide for the removal, in appropriate circumstances, of suppliers, contractors or lending institutions from the lists; and

(6) Standards assuring that any person alleging an injury resulting from a violation of the requirements regarding listing and removal shall have a right to redress under procedures established by the Governor of a State.

In addition to the above, DOE may include other requirements deemed necessary to carry out the RCS Program effectively.

Comments

Each of the statutory requirements noted above raises issues which interested persons may wish to address. For example, regarding the definition of a residential energy conservation measure, what devices should be included in connection with load management techniques? In connection with the utilization of solar energy? What other factors, if any, should DOE consider in identifying "appropriate" suggested residential energy conservation measures involving solar energy? The same issue is relevant to devices to utilize windpower for a residential energy conservation purpose. What criteria should be used to define solar energy and windpower devices that would qualify as residential energy conservation measures? Should solar energy and windpower devices be treated differently from other residential energy conservation measures? If so, how?

What other conservation measures should DOE identify? What criteria should be used to evaluate measures to be added to the list? Should cost effectiveness criteria be used for determining "appropriate" suggested measures? If so, for which ones and what should be the basis for determining cost effectiveness? What should be included as "necessary" standards for the general safety and effectiveness of residential energy conservation measures? What should be included as "necessary" installation standards?

What should be included in the standards for "procedures concerning fair and reasonable prices and rates of interest" to residential customers in connection with the purchase and installation of residential energy conservation measures? What should be included in the standards for procedures regarding "unfair, deceptive or anticompetitive acts or practices?"

What standards can help ensure that the specified lists are prepared in a "fair, open and nondiscriminatory manner?" What would constitute appropriate reasons for removal of suppliers, contractors, or lending institutions from the lists? What should be included in the standards to ensure meaningful redress procedures?

2. REQUIREMENTS FOR STATE RESIDENTIAL ENERGY CONSERVATION PLANS FOR UTILITIES

A Governor need not submit a State plan at all. If he does submit a State plan, it must cover all regulated utilities in the State and may cover nonregulated utilities, if applicable State law permits. (Neither TVA nor any utility subject to TVA's ratemaking authority may be covered by a State plan. TVA must submit its own "State" plan.)

The Act defines "regulated utilities" to mean public utilities whose rates are controlled by a State regulatory authority or the TVA. "Nonregulated utilities" are public utilities whose rates are not controlled by a State regulatory authority or TVA.

The Act does not govern all public utilities. In general, in each calendar year it covers only public utilities which either sold more than 10 billion cubic feet of natural gas or more than 750 million kilowatt-hours of electric energy during the second preceding calendar year for purposes other than resale.

DOE may not approve a proposed State residential energy conservation plan for utilities unless the plan:

(1) Requires each regulated utility and each nonregulated utility subject to the plan to implement a utility program meeting the requirements described in Part 5;

(2) Contains adequate State enforcement procedures;

(3) Provides a procedure for permitting suppliers or contractors to be included on publicly available lists compiled by the State and provided by a covered utility if the suppliers or contractors both

(a) sell or install residential energy conservation measures in the area served by the utility; and

(b) comply with DOE's listing standards;

(4) Provides a procedure to permit a bank, savings and loan association, credit union or other public or private lending institution to be included on publicly available lists compiled by the State and provided by a covered utility if the institution both

(a) offers loans for the purchase and installation of residential energy conservation measures in the areas served by such utility; and

(b) complies with DOE's listing standards;

(5) Provides adequate procedures to assure that each covered utility will charge fair and reasonable prices and rates of interest to its residential customers in connection with the sale and installation of residential energy conservation measures;

(6) Provides procedures for resolving complaints against persons selling or installing residential energy conservation measures under such program;

(7) Provides procedures for insuring effective coordination among local, State and federal energy conservation programs within and affecting such State including any energy extension service program administered by DOE;

(8) Is adopted after notice and public hearings;

(9) Complies with any other standards included in DOE's rules;

(10) Contains provisions assuring that any person alleging an injury resulting from a violation of any plan provision shall be entitled to redress under procedures established by the Governor or State agency; and

(11) Contains adequate measures to prevent unfair, deceptive or anticompetitive acts or practices affecting commerce relating to the implementation of utility programs within such State.

Specifically, these measures must include provisions assuring that the utility will not, in carrying out the inspection and arrangements requirements for utility programs (described below at Part 5), unfairly discriminate among residential customers, suppliers, and contractors participating in the program. These provisions must also assure that the utility will not unfairly discriminate among measures purchased from or installed by any person under such program.

The consumer protection measures in the State plans must also include provisions assuring that a utility will not inspect a furnace or make, install or inspect any furnace efficiency modification with respect to a furnace that uses a fuel other than that sold by that utility, unless the customer requests such inspection, installation or modification in writing.

Comments

Many of the above requirements for State plans are essentially reiterations of the statutory requirements regarding the content of DOE's rules. However, there are some additional requirements imposed regarding utilities subject to the State plan which merit public discussion: What criteria should be used to evaluate "adequate State enforcement procedures"? What considerations can help assure that regulated utilities will not unfairly discriminate among suppliers, contractors, and lenders? What kind of follow-up actions, such as post-installation in-

spections, should be taken to assure meaningful implementation of the required standards and measures? In addition, the State plans must address the issues raised in Parts 4–8 below.

3. PLAN REQUIREMENTS FOR NONREGULATED UTILITIES NOT SUBJECT TO A STATE PLAN

A nonregulated utility not covered by a State residential energy conservation plan must submit a plan directly to DOE which:

(1) Meets the same substantive requirements set forth for State plans for regulated utilities (described in Part 2 above); and

(2) Contains procedures whereby such nonregulated utility will submit a written report to DOE within one year after plan approval and biennially thereafter regarding implementation and compliance with the Utility Program requirements (discussed in Part 5 below) and including any other information required by DOE's rules

Comments

Important issues regarding plan requirements for nonregulated utilities include the following:

How should DOE monitor implementation and compliance? What additional information should DOE require nonregulated utilities to submit in the reports? How should the nonregulated utility plan be coordinated with the State plan for regulated utilities? Should the nonregulated utilities under their own plans participate in certain aspects of the State plans? For example, should nonregulated utilities use State-prepared lists of contractors, suppliers, and lender audit procedures, State consumer grievance and redress procedures?

4. PLAN REQUIREMENTS FOR HOME HEATING SUPPLIERS

The Act defines home heating supplier to mean a person selling or supplying home heating fuel (including No. 2 heating oil, kerosene, butane and propane) to a residental customer for consumption in a residential building.

A State residential energy conservation plan is not required to include home heating suppliers. If it does, the plan must meet the following requirements in order to receive DOE approval:

(1) In general, it must meet the same requirements set forth regarding State plans for utilities (see Part 2 above), except that the State plan with respect to home heating suppliers cannot require home heating suppliers to participate in the program. Participation in the program is optional with home heating suppliers;

(2) It must require participating home heating suppliers to comply with the general home heating supplier program requirements (described in Part 7 below);

(3) It must contain adequate enforcement procedures regarding those requirements;

(4) It must comply with any requirements in DOE's rules applicable to home heating suppliers (see Part 7 below), and

(5) It must take into account the resources of small home heating suppliers.

Comments

The home heating supplier industry is characterized by wide disparity in firm size but with small firms predominating. Consequently, the requirements regarding home heating suppliers must be designed so as not to overburden firms with more limited resources. Nevertheless, the Act's basic standards on safety, effectiveness and consumer protection must be met. This raises many questions: What are adequate enforcement measures with regard to home heating suppliers? Should DOE's consumer protection standards be regarding the home heating supplier programs? What procedures should the Governor follow in seeking and allowing home heating suppliers to participate in the program? Should participating home heating suppliers be allowed to withdraw from the program? If so, how? How should a plan take into account the resources of small home heating suppliers?

5. PROGRAM REQUIREMENTS FOR UTILITIES

Each Utility Program must meet certain requirements. Essentially, the Act requires that public utilities (regulated and nonregulated) must establish:

(1) Procedures to inform (by specified dates) each residential building of:

(a) the suggested residential energy conservation measures for the customer's type (category) of building;

(b) the savings in energy costs likely to result from installation of the suggested measures in typical residential buildings in each category;

(c) the availability through the public utility of the State lists of supplies, contractors and lending institutions;

(d) suggested energy conservation techniques, including those developed by DOE, that residental customers can use to save energy but not requiring the installlation of energy conservation measures, including the savings in energy costs likely to result from the adoption of such suggestions; and

(e) the utility's offer described in (2) below.

(2) Procedures to offer to do the following for each residential customer owning or occupying a residential building:

(a) Inspect the building to determine and inform the customer of both the estimated cost of purchasing and installing the suggested measures and the savings in energy costs likely to result from installation of such measures. The inspection may be conducted by the utility or by inspectors under contract. A report of the inspection must be maintained for at least five years and must be made available to any subsequent owner without charge. A utility shall be required to make only one inspection of a residence unless a new owner requests a subsequent inspection;

(b) Arrange to have the suggested residential energy conservation measures installed except for prohibited furnace efficiency modifications (unless the customer requests such modifications in writing);

(c) Arrange for a lender to make a loan to such residential customer to finance the purchase and installation costs of suggested measures;

(3) Procedures to provide the State lists (of suppliers, contractors and lending institutuons) to residential customers;

(4) Accounting and cost payment procedures including:

(a) Procedures assuring that the utiltiy accounts separately for all amounts it expends or receives attributable to the RCS Program (including any penalties);

(b) Procedures assuring that all amounts it expends to provide information (see Section (1) above) are treated as current expenses of providing utiltiy service and are charged to all ratepayers in the same manner as current operating expenses of providing such utiltiy service;

(c) Procedures permitting the general administrative costs of carrying out the RCS Program and the amounts expended to carry out the inspection, arrangement, and list functions noted above to be either treated as a current operating expense or charged to the customer for whom the activity is performed. For regulated utilities, the alternative chosen shall be in the discretion of the State regulatory authority. A nonregulated utility shall make this decision for itself;

(d) Procedures assuring that the costs of labor and materials incurred by a utility for the purchase or installation of any residential energy conservation measure shall be charged to the customer for whom such activity is performed;

(e) Procedures assuring that interest and other costs of carrying out any activity as a part of an RCS Program (other than those provided in (b)–(d) above) shall be charged to the subject customer unless and to the extent that the State regulatory authority or nonregulated utility finds, after public

notice and an opportunity for a public hearing, that treatment of such costs as current operating expenses is likely to result (through a reduction in energy demand) in lower rates to the utility's ratepayers than would occur if the utility treated such costs otherwise; and

(f) Billing procedures assuring that RCS Program costs charged to the customers for whom such activity is performed shall be stated separately from costs of providing utility service.

(5) Procedures requiring that new residential customers be provided with the same services and offers as have been made to existing customers;

(6) Procedures assuring that a utility implementing a program cannot terminate utility service to any customer because of the customer's default in making payments for energy conservation measures;

(7) Procedures assuring that, when a utility makes a loan to a residential customer under the RCS Program, the utility shall permit repayment of principal and interest as a part of the customer's periodic bills over a period of not less than three years, unless the customer elects a shorter payment period. When a loan is made by a person other than the utility, the utility shall permit repayment of the loan as part of the customer's periodic utility bill if the lender agrees. Acceleration is permitted in the event of default. Pre-payment penalties are prohibited.

Comments

The Utility Program requirements are very complex and raise many issues, including: What activities should be encompassed in the statutory term "arrange" with respect to installation of conservation measures and financing? What are the soundest "procedures" to follow regarding accounting procedures and payment of costs? What actions should be taken to ensure that such procedures are equitable and effective? Should DOE give guidance on calculation methods to ensure consistency in all audits? What training or certification should be required for auditors? What, if any, potentials for abuse are there in the relations among utilities, contractors and lenders? What regulatory steps would reduce any such potential?

6. SUPPLY, INSTALLATION AND FINANCING BY PUBLIC UTILITIES

(1) The Act prohibits utilities from supplying or installing residential energy conservation measures or making loans to residential customers for the purchase or installation of such measures. The exceptions to this general rule are:

(a) The prohibition regarding supply or installation does not apply to furnace efficiency modifications, clock thermostats or load management devices for the type of energy sold by the utility;

(b) Loans are permitted if they do not exceed the greater of either $300 or the cost of purchase and installation in the customer's residence of the items noted in (a) above;

(c) The prohibitions contained in (1) above shall not apply to the following supply, installation or financing activities:

(i) Specific residential energy conservation measures which DOE determines were being installed or financed by a utility on the date of the Act's enactment (November 9, 1978);

(ii) Such activities which DOE determines were either broadly advertised or for which substantial preparations were completed on or before the enactment date (November 9, 1978); or

(iii) Those activities which a law or regulation in effect on or before the date of enactment (November 9, 1978) either required or explicitly permitted the utility to carry out.

(2) Upon the petition of a public utility (which a Governor must support in the case of a regulated utility), DOE may waive any of the prohibitions regarding supply, installation or financing if the utility demonstrates to the satisfaction of DOE that, in carrying out such activities, the utility would charge fair and reasonable prices and rates of interest, and DOE determines (after consultation with the FTC) that such activities would not be inconsistent with the prevention of unfair methods of competition and unfair or deceptive acts or practices.

(3) The RCS Program requirements shall apply to a utility carrying out activities allowed under (1)(a), (b), or (c)(ii) above. A utility "grandfathered" under (1)(c)(i) shall comply with the RCS Program requirements for such activities within a reasonable time. Utilities carrying out activities under (1)(c)(iii) need not comply with the RCS Program's requirements for those activities.

(4) In any event, no utility shall supply, install, or make a loan regarding a residential energy conservation measure if DOE determines, after notice, an opportunity for a public hearing, and consultation with the FTC that (a) such utility is making loans or supplying or installing measures on unreasonable terms and conditions or (b) such activities cause a substantial adverse effect upon competition.

(5) A violation of a prohibition regarding supply, installation or financing activities shall be deemed a violation of a plan promulgated pursuant to the statutory standby authority, thus triggering possible civil penalties (see Part 9 below).

Comments

The most difficult questions which these prohibitions raise appear to be those concerning the applicability and scope of the exemptions. What criteria should DOE use in evaluating requests by utilities for waivers to supply, finance and install measures? What activities might constitute "broad advertising" or "substantial preparations"? What tests should be used in determining whether a utility's proposed actions are consistent with preventing unfair competition and deceptive acts or practices?

7. PROGRAM REQUIREMENTS FOR HOME HEATING SUPPLIER PROGRAMS

A Governor may include home heating suppliers in a residential energy conservation plan. A home heating supplier wishing to participate in the program must so notify the Governor. A home heating supplier program must meet the following requirements, but a Governor may waive any requirement of the program upon a satisfactory demonstration that a supplier's resources do not enable him to comply with such requirement:

(1) Procedures to inform each residential customer (owning or occupying a residential building) of each participating home heating supplier of the suggested measures for the category of buildings which includes the customer's building, the savings in energy costs likely to result from installation of the suggested measures in typical residential buildings in such category, and the availability of specified arrangements (set forth in Section (2) below);

(2) Procedures whereby such suppliers offer to each residential customer the opportunity to enter into arrangements where the supplier (directly or through inspectors) will:

(a) inspect the residential building to determine and inform the residential customer of the estimated cost of purchasing and installing suggested measures as well as the savings in energy costs likely to result from installing them;

(b) inform each interested customer of the supplier/contractor and lending institution lists;

(c) either install suggested measures or have them installed;

(d) either make a loan or arrange for another lender to make a loan to the residential customer to finance the purchase and installation costs of suggested measures; and

(e) permit the residential customer to repay, as part of his periodic bill, the principal of and interest on any loan over a period of not less than three years unless the customer elects

a shorter payment period. However, the customer's failure to make any payment of principal or interest shall not be grounds for the termination of fuel deliveries to the customer. Acceleration is permitted in the event of default. Pre-payment penalties are prohibited.

Comments

The home heating supplier program elements are analogous to the utility program requirements and raise similar issues. The Governor has broad discretion to waive otherwise applicable requirements upon a showing of insufficient resources.

8. TEMPORARY PROGRAM EXEMPTIONS

A Governor, with respect to one or more utilities or a utility with the Govrnor's support, may seek a one-time temporary program exemption from some or all of the requirements and prohibitions of the Act described in Parts 5 and 6 above. DOE shall promulgate a rule setting forth the requirements for exemption applications. Applications must be submitted to DOE within 180 days after publication of the final RCS rules and the exemption is limited to a maximum of three years from the date it is granted.

At a minimum, to obtain an exemption, a Governor or utility (supported by a Governor) must satisfy DOE that the temporary program will be likely to result in the installation of suggested measures in at least as many residential buildings as would have had measures installed if the utility had submitted a plan complying with the RCS Program requirements and had not violated any of the otherwise applicable prohibitions concerning supply, installation and financing.

In addition, the temporary program must contain:

(a) Adequate procedures to assure that the utility, in connection with the temporary program, will charge fair and reasonable prices and rates of interest to its residential customers in connection with the purchase and installation of residential energy conservation measures; and

(b) Adequate procedures for preventing unfair, deceptive or anticompetitive acts or practices affecting commerce relating to the implementation of the program.

The statutory federal standby authority, discussed at Part 9, does not apply to utilities covered by a temporary exemption. After an exemption expires, DOE shall allow a reasonable time for the State or nonregulated utility to have DOE approve a plan applicable to such utility and to implement the plan.

Comments

The three basic statutory criteria for temporary exemptions are complex and raise many issues. For example, what considerations should be evaluated to determine "adequate procedures" under the first two statutory requirements described above? Should the criteria be as strict or stricter than the similar requirements for RCS plans regarding regulated and nonregulated utilities? What sort of showing should be required to establish that granting a temporary exemption will be "likely" to result in the installation of measures in as many residential units as would have been the case in the absence of an exemption?

9. FEDERAL STANDBY AUTHORITY

The Act vests DOE with standby authority which DOE must exercise, with respect to regulated utilities, if a State does not have a DOE-approved plan within certain time limits or if DOE determines, after notice and an opportunity for a public hearing, that an approved plan is not being adequately implemented. In either event, the Secretary of Energy must promulgate a plan meeting the requirements for regulated utilities and must require, by order, each regulated utility in the State to offer a utility program conforming to the Secretary's plan within 90 days thereafter.

With respect to nonregulated utilities not covered by an approved State plan, the Secretary shall invoke his standby authority if the nonregulated utility does not have a DOE-approved plan within certain time limits or if the Secretary determines that such nonregulated utility has failed to adequately implement an approved plan.

Orders issued pursuant to the Secretary's standby authority are enforceable in the appropriate United States District Court by injunction.

A public utility may be subject to a civil penalty if it violates any requirement of a promulgated Federal standby plan or if it fails to comply with an order issued in connection therewith within 90 days from the date of issuance. The civil penalty shall be up to $25,000 per violation. Each day that such violation continues is a separate violation. The Secretary shall assess a civil penalty by order. Before assessing a civil penalty, the affected person shall be given written notice and an opportunity to elect alternative assessment procedures.

Comments

While this section raises many questions, those involving what criteria DOE should use to determine whether a plan is being adequately implemented are the most difficult.

10. PREEMPTION

The Act provides that it does not supersede any State or local law or regulation except to the extent DOE determines, upon petition of a utility and for good cause shown, that such law or regulation either prohibits a utility from taking action required by the Act or permits or requires action otherwise prohibited by the Act.

11. CONSULTATION

In preparing the proposed rule, the Act requires DOE to consult with the Secretary of Commerce (acting through the National Bureau of Standards), the Federal Trade Commission, the Consumer Product Safety Commission and other appropriate agencies.

The Act requires DOE to consult with the Secretary of Commerce (acting through the National Bureau of Standards) regarding any product or material standard relied upon in implementing the RCS Program as a basis for judging the efficiency, energy efficiency, safety or other attributes of energy conservation materials, products or devices.

The Act also requires DOE to consult with the Federal Trade Commission to ensure that such standards do not operate to deceive consumers or unreasonably restrict consumer or producer options and that such standards, when applicable, are suitable as a basis for making truthful and reliable disclosures to consumers regarding performance and safety attributes of energy conservation products, materials and devices.

Comments

The statutory provisions raise many questions about product standards. For example, how should DOE determine that a given standard is "suitable" as a basis for making truthful and reliable disclosures to consumers? What criteria should be used to insure that given standards to not operate to deceive consumers or unreasonably restrict consumer or producer options?

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Assistant Secretary, Conservation and Solar Applications.

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